

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

In re:

Curae Health, Inc., *et al.*¹

1721 Midpark Road, Suite C300
Knoxville, TN 37921

Debtors.

Chapter 11

Lead Case No. 18-05665

Judge Walker

Jointly Administered

**DECLARATION OF STEPHEN N. CLAPP, CHIEF EXECUTIVE OFFICER OF
CURAE HEALTH, INC. IN SUPPORT OF CONFIRMATION OF THE JOINT
CHAPTER 11 PLAN OF LIQUIDATION OF CURAE HEALTH, INC., ET AL.**

Pursuant to 28 U.S.C. § 1764, I, Stephen N. Clapp, declare under penalty of perjury that:

1. I am the CEO and President of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**” or the “**Company**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”).

2. In my role at the Company, I have worked closely with the Debtors’ management, employees, and professionals. The testimony provided herein is based on my review of public and non-public documents, and my discussions with, and information provided by, other members of the Debtors’ management team, employees, agents, and advisors. I am generally familiar with the Debtors’ business, financial condition, policies and procedures, day-to-day operations, and books and records. Except as otherwise noted, I have personal knowledge of the matters set forth herein or have gained knowledge of such matters from other members of my team or from the Debtors’ employees, agents, attorneys, and advisors, the accuracy and completeness of which information I relied upon to provide this Declaration.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Curae Health, Inc. (5638); Amory Regional Medical Center, Inc. (2640); Batesville Regional Medical Center, Inc. (7929); and Clarksdale Regional Medical Center, Inc. (4755); Amory Regional Physicians, LLC (5044); Batesville Regional Physicians, LLC (4952); Clarksdale Regional Physicians, LLC (5311).

3. I submit this Declaration in support of confirmation of the *Joint Chapter 11 Plan of Liquidation* (the “**Joint Plan**”).

BACKGROUND

A. General Background

4. On August 24, 2018 (the “**Petition Date**”), each of the Debtors filed petitions in this Court commencing cases for relief under chapter 11 of the Bankruptcy Code (the “**Chapter 11 Cases**”).

5. As set forth more fully in the First Day Declaration and Joint Plan, the Debtors are healthcare providers. Curae Health, Inc. (“**Curae**”) is a Tennessee nonprofit corporation, and the sole member and sponsoring organization of the Tennessee nonprofit corporations Amory Regional Medical Center, Inc. (“**Amory Medical**”), Batesville Regional Medical Center, Inc. (“**Batesville Medical**”), and Clarksdale Regional Medical Center, Inc. (“**Clarksdale Medical**”). Amory Medical is the sole member of Amory Regional Physicians, LLC (“**Amory Physicians**”); Batesville Medical is the sole member of Batesville Regional Physicians, LLC (“**Batesville Physicians**”); and Clarksdale Medical is the sole member of Clarksdale Regional Physicians, LLC (“**Clarksdale Physicians**”), each Tennessee limited liability companies.

6. In 2017, the Debtors acquired three Mississippi hospitals from CHS/Community Health Systems, Inc. (together with its affiliates and subsidiaries, “**CHS**”): (1) Gilmore Medical Center in Amory, Mississippi (the “**Amory Hospital**”), owned and operated by Amory Medical, (2) Panola Hospital and other health-care related facilities in Batesville Mississippi (together, the “**Batesville Hospital**”), owned and operated by Batesville Medical, and (3) Northwest Mississippi Regional Medical Center (the “**Clarksdale Hospital**”, together with the Batesville Hospital and the Amory Hospital, the “**Hospitals**”) in Clarksdale, Mississippi, owned and operated by Clarksdale Medical.

7. Debtors entered bankruptcy with the intent to sell the Hospitals to new operators that could keep them open for the benefit of their respective communities. In furtherance of that goal, Debtors engaged in three separate sale processes for each of the Hospitals.

Amory Hospital

8. On August 31, 2018, the Debtors filed *Debtors' Motion for Entry of an Order (I) Authorizing and Approving Bidding Procedures for the Sale of Gilmore Medical Center, (II) Authorizing the Sale of Gilmore Medical Center Free and Clear of All Liens, Claims, Encumbrances and Other Interests, (III) Approving Stalking Horse Purchaser, Break-up Fee, and Overbid Protections, (IV) Establishing Certain Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases, (V) Scheduling an Auction, (VI) Scheduling a Hearing and Objections Deadlines With Respect to the Sale of Gilmore Medical Center, (VII) Approving the Form and Manner of Notice Thereof, and (VIII) Granting Related Relief* [Docket No. 79] (the “**Amory Procedures Motion**”), seeking to, *inter alia*, sell all, or substantially all, of their assets related to Gilmore Medical Center (the “**Amory Hospital**”).

9. On September 28, 2018, the Bankruptcy Court entered an order on the Amory Procedures Motion (the “**Amory Procedures Order**”) [Docket No. 260] and set a sale hearing for November 27, 2018.

10. On November 30, 2018, the Bankruptcy Court entered an order, *inter alia*, approving the Asset Purchase Agreement for the sale of the Amory Hospital to NMHS (the “**Amory APA**”) and authorizing the Debtors to sell the Amory Hospital to NMHS free and clear of all liens, claims, encumbrances, and other interests [Docket No. 506] (the “**Amory Sale Order**”).

11. On December 31, 2018, the closing of the sale of the Amory Hospital occurred, with an effective time of 12:01 a.m. on January 1, 2019 (the “**Effective Time**”).

Batesville Hospital

12. On November 6, 2018, the Debtors filed their *Motion for Entry of an Order (I) Authorizing and Approving Bidding Procedures for the Sale of Panola Medical Center, (II) Authorizing the Sale of Panola Medical Center Free and Clear of All Liens, Claims, Encumbrances and Other Interests, (III) Approving Stalking Horse Purchaser, Break-up Fee, and Overbid Protections, (IV) Establishing Certain Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases, (V) Scheduling an Auction, (VI) Scheduling a Hearing and Objections Deadlines With Respect to the Sale of Panola Medical Center, (VII) Approving the Form and Manner of Notice Thereof, and (VIII) Granting Related Relief* [Docket No. 401] (the “**Batesville Procedures Motion**”), seeking to, *inter alia*, sell all, or substantially all, of their assets related to Panola Medical Center (the “**Batesville Hospital**”).

13. On November 30, 2018, the Bankruptcy Court entered an order on the Batesville Procedures Motion (the “**Batesville Procedures Order**”) [Docket No. 507], approving the Batesville Procedures Motion and setting a sale hearing.

14. On January 22, 2019, the Bankruptcy Court entered an order, *inter alia*, approving the Asset Purchase Agreement for the sale of the Batesville Hospital to Progressive (the “**Batesville APA**”) and authorizing the Debtors to sell the Batesville Hospital to Progressive free and clear of all liens, claims, encumbrances, and other interests [Docket No. 694] (the “**Batesville Sale Order**”).

15. On March 13, 2019, the Court entered the *Expedited Consent Order (I) Approving the First Amendment to the Panola APA, (II) Authorizing the Debtors to Pay the Purchase Price*

from the Sale of Panola Medical Center to ServisFirst Bank, (III) Authorizing Certain Releases, and (IV) Granting Related Relief [Docket No. 876] (the “**Supplemental Sale Order**”).

16. On March 14, 2019, the sale of the Batesville Hospital closed in accordance with the terms set forth in the Supplemental Sale Order, with an effective time of 12:01 a.m. on March 1, 2019.

Clarksdale Hospital

17. After the Petition Date, the financial performance of the Northwest Mississippi Regional Medical Center (the “**Clarksdale Hospital**”) was significantly worse than forecasted in the Debtor’s budget. On October 12, 2018, Debtors filed the *Expedited Motion for Entry or an Order Authorizing Debtors to: (I)(A) Shut Down the Clarksdale Hospital; (B) Reject Unexpired Leases and Contracts of Clarksdale; and (C) Receive Related Relief; or, in the Alternative; (II)(A) Transfer Operations of the Clarksdale Hospital to a New Operator Free and Clear of any Liens, Claims, or Encumbrances Pursuant to an Operations Transfer Agreement to be Filed with the Court; (B) Assume and Assign the Coahoma County Lease and Certain Other Unexpired Leases and Contracts Requested by the New Operator; and (C) Receive Related Relief* [Docket No. 314] (the “**Clarksdale Shutdown Motion**”).

18. On December 13, 2018, following extensive negotiations among the Debtors, Coahoma County, Mississippi (the “**County**”), the Official Committee of Unsecured Creditors, the Debtors’ secured creditors, and CHS and multiple hearings on the Clarksdale Shutdown Motion, the Court entered the *Order (I) Authorizing the Debtors to Enter into the Interim Management Services Agreement with Clarksdale HMA, LLC, Coahoma County, and CHS/Community Health Systems, Inc., and (II) Granting Related Relief* [Docket No. 558] (the “**Clarksdale IMSA Order**”), pursuant to which the Court, *inter alia*, approved the Interim

Management Services Agreement (the “**IMSA**”). Effective December 16, 2018, Debtors transferred management of the Clarksdale Hospital on an interim basis to CHS to allow the hospital to remain open for the benefit of its community.

19. Pursuant to sections 6.2(d) and (e) of the IMSA, the IMSA may be terminated by CHS, the Debtors, the Committee, Midcap, or ServisFirst after January 25, 2019 if no motion has been filed with the Court pursuant to 11 U.S.C. § 363 seeking approval of a transaction transferring the assets of the Clarksdale Hospital to CHS or another party agreed to by Debtors and the County.

20. On April 23, 2019, Debtors filed the *Debtors’ Expedited Motion for Entry of an Order (I) Authorizing the Sale of Northwest Mississippi Regional Medical Center Free and Clear of all Liens, Claims, Encumbrances and Other Interests, (II) Approving the Clarksdale APA; (III) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief* [Docket No. 962] (the “**Clarksdale Sale Motion**”), seeking to, *inter alia*, sell all, or substantially all, of their assets related to the Clarksdale Hospital to CHS. A hearing on the Clarksdale Sale Motion is set for May 9, 2019 at 9:00 a.m.

Bar Date Motion

21. On December 5, 2018 the Debtors filed the *Motion to Set Bar Date for Filing Proofs of Claim, Approving Administrative Expense Proof of Claim Form, and Approving the Form and Manner of Notice Thereof* [Docket No. 521] (the “**Bar Date Motion**”). Among other things, the Bar Date Motion sought to establish certain dates by which Proofs of Claim against the Debtors must be submitted (collectively, the “**Bar Dates**”). No responses or objections were received. The Court entered an order granting the Bar Date Motion on December 11, 2018,

setting: (i) January 21, 2019 as the General Bar Date; (ii) January 21 as the 503(b)(9) Bar Date; and (iii) February 20, 2019 as the Governmental Bar Date.

B. The Joint Plan Process

22. After extensive negotiations between the Debtors and the Committee, the Joint Plan was filed on March 4, 2019. Contemporaneously therewith, the Debtors filed the *Disclosure Statement for Joint Chapter 11 Plan of Liquidation* [Docket No. 835] (the “Disclosure Statement”) and *Motion for an Order (I) Approving Disclosure Statement; (II) Establishing Forms and Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan; (III) Establishing Deadline and Procedures for Filing Objections to the Confirmation of the Plan; and (IV) Granting Related Relief* [Docket No. 836] (the “**Disclosure Statement and Procedures Motion**”).

23. The Joint Plan is a liquidating plan and provides for the creation of a Liquidating Trust and appointment of a Liquidating Trustee for the benefit of the Debtors’ creditors, to which the remaining assets of the Debtors will be transferred. Following the Effective Date, the Debtors’ assets, except the D&O Claims, Tort Claims, and rights in and proceeds of any related Insurance Policies, will be transferred to the Liquidating Trust for the benefit of Holders of Allowed Claims the “**Liquidating Trust Assets**”).

24. On March 7, 2019, the Court entered the *Order (I) Approving Disclosure Statement; (II) Establishing Forms and Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan; (III) Establishing Deadline and Procedures for Filing Objections to the Confirmation of the Plan; and (IV) Granting Related Relief* [Docket No. 841] (the “**Disclosure Statement and Procedures Order**”). The Disclosure Statement and Procedures Order, among other things, approved the Disclosure Statement as containing adequate information, set dates related to approval of the Joint Plan, including the Confirmation Hearing

to consider confirmation, and approved various solicitation procedures (the “**Solicitation Procedures**”). The deadline for receipt of votes was set as 4:00 p.m. (prevailing Central Time) on April 17, 2019 (the “**Voting Deadline**”).

25. Following entry of the Disclosure Statement and Procedures Order, the Debtors commenced solicitation of the Joint Plan by sending solicitation packages (the “**Solicitation Packages**”) to Holders of Claims in Class 5 (General Unsecured Claims, Holders of Claims in Class 6 (Deficiency Claims of ServisFirst), and Holders of Claims in Class 7 (Deficiency Claims of CHS) (together, the “**Voting Classes**”).

26. As set forth in the Tabulation Declaration, Class 5 voted to accept the Joint Plan.

COMPLIANCE WITH THE BANKRUPTCY CODE

27. Compliance with the Bankruptcy Code (11 U.S.C. § 1129(a)(1)). I believe that the Joint Plan complies with the following requirements of the Bankruptcy Code:

28. Proper Classification (11 U.S.C. § 1122, 1123(a)(1)). I am familiar with the classification of Claims and Corporate Interests in the Joint Plan and believe such classifications are based upon the legal nature and relative rights of such Claims and Interests, and are not proposed for any improper purposes. Each Class contains only Claims and Corporate Interests which are substantially similar to other Claims and Corporate Interests. In addition to the Classes, Article IV of the Joint Plan also designates, but does not classify Claims of other types including Administrative Expense Claims, Professional Fee Claims, Priority Tax Claims, and Statutory Fees.

29. Specified Treatment of Unimpaired and Impaired Claims (11 U.S.C. § 1123(a)(2); (a)(3)). The Joint Plan specifies whether Classes of Claims are impaired or unimpaired.

30. No Discrimination (11 U.S.C. § 1123(a)(4)). The Joint Plan provides for equal treatment within each Class.

31. Adequate Means of Implementation (11 U.S.C. § 1123(a)(5)). The Joint Plan provides for adequate means for implementation including: (i) the establishment of the Liquidating Trust and appointment of the Liquidating Trustee; (ii) the transfer of the Liquidating Trust Assets to the Liquidating Trust; and (iii) the procedures for distributions to Holders of Allowed Claims.

32. Equity Securities (11 U.S.C. § 1123(a)(6)). The Debtors are non-profit corporations and the Joint Plan calls for the liquidation of the Debtors. As such, the Debtors cannot issue equity securities.

33. Selection of Liquidating Trustee (11 U.S.C. § 1123(a)(7)). The Joint Plan provides for the appointment of the Liquidating Trustee, and the establishment of the “Liquidating Trust”. The Liquidating Trust will be administered and controlled by the Liquidating Trustee for the interests of general unsecured creditors. I believe the selection of a Liquidating Trustee is consistent with the interests of creditors, holders of equity interests, and public policy.

34. Impairment of Classes (11 U.S.C. § 1123(b)(1)). Articles III of the Joint Plan provides for the classification and impairment or unimpairment of certain classes.

35. Executory Contracts (11 U.S.C. § 1123(b)(2)). Article VI of the Joint Plan contains provisions governing the treatment of executory contracts and unexpired leases.

36. Retention, Enforcement, and Settlement of Claims (11 U.S.C. § (b)(3)). The Joint Plan provides that, except as otherwise expressly provided in the Joint Plan, any and all Claims and Causes of Action of the Debtors and their Estates are reserved and preserved; and that the Liquidating Trustee and the Debtor Representative, as applicable, shall retain and preserve for

the benefit of all creditors all rights to commence, pursue, and settle, as appropriate, any and all such Claims and Causes of Action on the terms set forth in the Joint Plan.

37. Other Permissible Provisions (11 U.S.C. § 1123(b)(6)). The Joint Plan contains release, injunction, and exculpation provisions. These are integral components of the Joint Plan, and Debtors believe such provisions are fair and equitable, being given by the creditors of the Estates for fair consideration for the Debtors and the Estates, and are in the best interests of the Debtors and the Estates in these Chapter 11 Cases.

38. Compliance With the Bankruptcy Code (11 U.S.C. § 1129(a)(2)). To the best of my knowledge, the Debtors have complied with the Bankruptcy Code and Disclosure Statement and Procedures Order in proposing the Joint Plan and in transmitting the Solicitation Packages and related notices and in soliciting and tabulating votes on the Joint Plan.

39. Good Faith Solicitation (11 U.S.C. § 1129(a)(3)). To the best of my knowledge, the Joint Plan has been proposed in good faith and not in any means forbidden by law.

40. Payment for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)). All payment made or promised by the Debtors for services rendered in connection with these Chapter 11 Cases has been or will be subject to review by the Court and other parties in interest.

41. Proper Disclosures (11 U.S.C. § 1129(a)(5)). The identity of the Liquidating Trustee has been identified in the proposed Confirmation Order, filed contemporaneously herewith, and is consistent with the interests of Holders of Claims and Corporate Interests in the Debtors and public policy.

42. No Rate Changes (11 U.S.C. § 1129(a)(6)). Based upon advice from Debtors' counsel and because the Joint Plan does not provide for any rate changes over which a

governmental regulatory commission has jurisdiction, I understand Bankruptcy Code section 1129(a)(6) is inapplicable.

43. Best Interests of Creditors (11 U.S.C. § 1129(a)(7)). The Plan Proponents are in the process of preparing the liquidation analysis to be filed prior to the Confirmation Hearing (the “**Liquidation Analysis**”). The Liquidation Analysis will compare potential creditor recoveries under the Joint Plan with recoveries under a hypothetical liquidation of the Debtors under chapter 7 of the Bankruptcy Code, based on asset values and liabilities. The Liquidation Analysis will demonstrate that the Holder of a Claim or Corporate Interest in an impaired class will receive as much if not more under the Joint Plan than under a liquidation pursuant to chapter 7 of the Bankruptcy Code.

44. Acceptance by Impaired Voting Classes (11 U.S.C. § 1129(a)(8)). As detailed in the Tabulation Declaration: (a) Holders of Claims in Class 1, Class 2, Class 3, and Class 4 are unimpaired and deemed to accept the Joint Plan; (b) Holders of Claims in Class 5 have voted to accept the Joint Plan; (c) Holders of Claims in Class 6 and Class 7 have voted to reject the Joint Plan; and (d) Holders of Claims in Class 8 are deemed to reject the Joint Plan. I understand that the Debtors have requested that the Court confirm the Joint Plan pursuant to Bankruptcy Code section 1129(b).

45. Treatment of Administrative and Tax Claims (11 U.S.C. § 1129(a)(9)). The Joint Plan provides for the payment of Allowed Administrative Expense Claims, Professional Compensation and Reimbursement Claims, Priority Tax Claims, and Priority Non-Tax Claims.

46. Acceptance by Impaired Classes (11 U.S.C. § 1129(a)(10)). As set forth in the Tabulation Declaration, the Joint Plan was accepted by Class 5, which is an impaired class under the Joint Plan and is not composed of insiders.

47. Feasibility (11 U.S.C. § 1129(a)(11)). I understand that to satisfy the feasibility requirement, the Debtors must demonstrate that the confirmation of the Joint Plan will not be followed by a liquidation. However, the Joint Plan contemplates the liquidation of the Debtors' assets in accordance with the Joint Plan and Liquidating Trust Agreement. Thus, confirmation of the Joint Plan will not be followed by a liquidation.

48. Statutory Fees (11 U.S.C. § 1129(a)(12)). The Joint Plan provides that all statutory fees will be paid by the Liquidating Trustee on or before the date that is thirty (30) days after the Effective Date.

49. Inapplicable Provisions (11 U.S.C. § 1129(a)(13)-(15)). With regard to these provisions of the Bankruptcy Code, the Debtors (a) do not provide retiree benefits, (b) are not subject to any domestic support obligations, and (c) are not individuals.

50. Nonbankruptcy Law (11 U.S.C. § 1129(a)(16)). As stated in the Joint Plan, the Debtors have complied with all applicable provisions of nonbankruptcy law.

51. Cram Down (11 U.S.C. § 1129(b)). Holders of Claims and Interests in Class 8 (Corporate Interests) are not receiving any distribution under the Joint Plan and are deemed to reject the Joint Plan pursuant to Bankruptcy Code section 1126(g). Holders of Claims in Class 1, Class 2, Class 3, and Class 4 are unimpaired and deemed to accept the Joint Plan. Holders of Claims in Class 5 (General Unsecured Claims), Class 6 (ServisFirst Deficiency Claim), and Class 7 (CHS Deficiency Claim) are impaired under the Joint Plan. Holders of Claims in Class 5, Class 6, and Class 7 are sharing in the pro rata distributions from the Liquidating Trust.

52. The Joint Plan is fair and equitable. The treatment of Class 8 is appropriate as there is no similarly situated class of Claims or Interests. Further, the treatment of claims in Class 5, Class 6, and Class 7 is appropriate as they are all unsecured claims. Further, the Joint Plan

satisfies the absolute priority rule as no junior Holder of a Claim or Interest will receive any distribution under the Joint Plan.

53. Other Requirements (11 U.S.C. § 1129(c)-(e)). With regard to these provisions: (a) no other plan has been submitted in these Chapter 11 Cases, (b) the principal purpose of the Joint Plan is not the avoidance of taxes or application of section 5 of the Security Act of 1933, and (c) none of these Chapter 11 Cases are “small business cases.”

54. Waiver of Stay. Waiver of the 14-day stay imposed by Bankruptcy Rule 3020(e) is appropriate in these circumstances because it allows for the expeditious transfer of assets to the Liquidating Trust on the Effective Date. Expedited consummation of the Joint Plan will not prejudice any party in interest. In fact, the creditors will benefit from the expeditious transfer of the Liquidating Trust Assets.

Executed this 3rd day of May, 2019.

CURAE HEALTH, INC., et al.
Debtors and Debtors in Possession

/s/ Stephen N. Clapp

Stephen N. Clapp
Chief Executive Officer