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 B200 Knoxville, TN 37921 Debtors.	Chapter 11 Lead Case No. 18-05665 Judge Walker Jointly Administered
The Official Committee of Unsecured Creditors, Plaintiff, vs. Stephen N. Clapp, Timothy S. Brown, Sarah N. Moore, Andrea Rich-McLerran, David A. Lopater, Leroy Vince Jarnagin, Joseph Dawson, James Decker, Christopher Sawyer, Anne Swartz, Warren Payne, Gregory Harb and Strategic Healthcare Resources, LLC, Defendants.	Adv. Pro. No:

COMPLAINT

The Official Committee of Unsecured Creditors (the "Committee" or "Plaintiff") of Curae Health, Inc., *et al.* (the "Debtors") in the above-captioned bankruptcy cases (the "Bankruptcy Cases"), by the Committee's attorneys, for the Committee's Complaint against the Debtors' current and former officers, Stephen N. Clapp, Timothy S. Brown, Sarah N. Moore, Andrea Rich-McLerran, David A. Lopater, Leroy Vince Jarnagin (collectively, the "Officer Defendants"), the Debtors' current and former directors, Joseph Dawson, James Decker, Christopher Sawyer, Anne Swartz, Warren Payne, Gregory Harb (collectively, the "Director

[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).

Defendants" and together with the Officer Defendants, the "D&O Defendants") and the Debtors' manager, Strategic Healthcare Resources, LLC ("Strategic," and together with the D&O Defendants, the "Defendants"), alleges as follows:

DESCRIPTION OF ACTION[2]

1. This Complaint seeks redress for the injuries suffered by the Debtors and their estates as a result of the actions of the Defendants.

2. In 2016, the Debtors contemplated purchasing three facilities—the Amory Facility, the Batesville Facility and the Clarksdale Facility (collectively, the "Facilities" or "Hospitals")—from Community Health Systems, Inc. ("CHS"). In connection with the proposed acquisition (the "CHS Acquisition"), the Defendants hired LBMC, PC ("LBMC") to perform financial due diligence of the Facilities. In LBMC's draft due diligence report, dated September 23, 2016 (the "LBMC Draft Report"), LBMC reported that it was "not granted access to Hospital-level operators or Hospital [] management." As such, the LBMC Draft Report stated that there were several open items with respect to its diligence investigation, including, among other things, unanswered questions related to operational performance, trends and results. Despite the lack of access to Hospital-level management discussed in the LBMC Draft Report and the Defendants failure to obtain a final version of the report, five (5) days after receipt of LBMC Draft Report, on September 28, 2016, the Defendants caused the Debtors to enter into an asset purchase agreement with CHS for the acquisition of the Hospitals (the "Initial APA").

[2] The allegations in this Complaint are based upon the documents and information available to the Committee at the time of its filing, and are subject to clarification, amendment, revision, or other modification in light of new documents and information, obtained through subsequent discovery in this adversary proceeding or the Bankruptcy Cases, or otherwise. No statement in this Complaint is intended to waive or impair any right of the Committee or the Debtors' estates with respect to any of the Defendants, and shall not have any estoppel effect with respect to any subsequent action brought against the Defendants. All rights of the Committee and the Debtors' estates with respect to the Defendants are expressly reserved.

3. Seven months later, on April 27, 2017, the parties amended the Initial APA (the "Amended APA") to restructure the closing timetable. Due to the Debtors' difficulties obtaining financing, the Amended APA provided for two closings, with the closing of the Amory Facility and the Batesville Facility to occur on May 1, 2017, and the closing of the Clarksdale Facility to occur on June 1, 2017, which date was subsequently postponed to November 1, 2017 pursuant to the *First Amendment to Amended and Restated Asset Purchase Agreement*, dated October 30, 2017 (the "First APA Amendment").

4. In connection with the purchase of the Amory Facility and the Batesville Facility, on May 1, 2017, the Defendants caused Amory and Batesville, on a joint and several basis, with Curae as guarantor, to enter into the May 2017 ServisFirst Loan Agreement,[3] obligating Amory, Batesville and Curae to ServisFirst in the aggregate amount of up to $19,000,000. Further, on May 1, 2017, the Defendants caused Amory and Batesville, with Curae as guarantor, to enter into the CHS Loan Agreement, whereby Amory and Batesville executed a term note in favor of CHS in the principal amount of $14,200,000,00.

5. After the closing of the Amory Facility and the Batesville Facility in May 2017, the Defendants formed a belief that CHS misrepresented or withheld certain information regarding the Hospitals in the due diligence process. Rather than pursue any causes of action against CHS, the Defendants proceeded with the acquisition of the Clarksdale Facility.

6. In connection with the Clarksdale acquisition, on November 1, 2017, the parties to the CHS Loan Agreement agreed to, *inter alia*, amend the CHS Loan Agreement by joining Clarksdale as borrower. In connection therewith, Clarksdale entered the 30-Day Clarksdale Note and the CHS Clarksdale Note in favor of CHS in the aggregate amount of $18,133,839.64.

[3] Capitalized terms used but not defined in this section shall have the meanings ascribed to them in subsequent sections in the Complaint.

7. Further, on December 13, 2017, the parties to the May 2017 ServisFirst Loan Agreement agreed to, among other things, join Clarksdale as a borrower, making Clarksdale jointly and severally liable to ServisFirst, without Clarksdale receiving reasonably equivalent value in connection therewith.

8. Also in connection with the Clarksdale acquisition, on December 13, 2017, Amory, Batesville and Clarksdale entered into the MidCap Credit and Security Agreement with MidCap Financial Trust ("MidCap"), whereby all three Facilities, as well as the Physician Group Debtors, granted MidCap liens on and security interests in certain of their personal property. Further, Amory, Batesville and Clarksdale executed the MidCap Revolving Loan in favor of MidCap whereby Amory, Batesville and Clarksdale jointly and severally agreed to pay MidCap the amounts advanced up to $13,000,000.

9. As such, despite the Defendants' belief that there were misrepresentations and/or omissions with respect to the CHS Acquisition prior to closing the Clarksdale Facility, the Defendants caused the Debtors to proceed with the acquisition of Clarksdale, causing the Debtors to incur layers of debt beyond their ability to repay.

10. Despite spending approximately $51 million to purchase the Hospitals pursuant to the Amended APA executed on April 27, 2017, approximately one year later on August 24, 2018, the Debtors filed for chapter 11 protection in the United States Bankruptcy Court for the Middle District of Tennessee. The sale of the Hospitals in the Debtors' chapter 11 cases yielded less than $18 million in cash—less than 50% of the purchase price the Debtors paid for the Hospitals less than two years earlier.

11. Further, the Defendants continually disregarded corporate separateness between the Debtor entities. First, as explained above, the Defendants obligated the Debtor entities

jointly and severally on the debt incurred in connection with the CHS Acquisition, without regard for each Debtor entity's ability, or lack thereof, to repay such debt. Additionally, the Debtors' accounts were commingled such that the more successful Debtor's assets were used to satisfy liabilities of less successful Debtor entities without any guarantee of repayment, to the detriment of the transferor Debtor.

12. The Defendants also failed to provide adequate oversight and control with respect to the management of the Hospitals, leading to a lack of cash flow during the pre-petition period which ultimately contributed to the Debtors' filing for chapter 11 protection. For example, in connection with the interim transition services provided by CHS to the Hospitals after the CHS Acquisition, the Defendants failed to detect CHS's alleged repeated billing and collection errors, causing cash flow shortages for the Debtors.

13. Next, the D&O Defendants caused Curae Health Inc. ("Curae") to hire Strategic—a management company owned by the Debtors' CEO, Defendant Clapp—to perform management services for the Hospitals. Under the Management Agreement, Strategic provided the Debtors with senior management personnel, including, but not limited to, the president and chief executive officer, the chief financial officer, the chief operating officer and the vice president of human resources. As such, the Debtors lacked any independent, unbiased senior officers to monitor Strategic, since Strategic employees comprised the Debtors' senior management team.

14. This harmed the Debtors throughout the tenure of Strategic's management. For example, the Management Agreement provided that Strategic receive a Management Fee linked to Curae's net revenue; not linked to profitability or performance of the Hospitals. Strategic thus had no incentive to ensure profitability at the Hospital level as long as revenue increased by, for

example, causing the Debtors to (i) purchase the Amory Facility and the Batesville Facility despite the lack of diligence, and (ii) purchase the Clarksdale Facility despite having formed a belief that CHS misrepresented information with respect to the CHS Acquisition. Since Strategic provided the senior management team to the Debtors, and because those senior managers were Strategic employees, they too were motivated to cause the Debtors to acquire additional hospitals. The Debtors thus lacked independent senior management to challenge the CHS Acquisition, harming the Debtors.

15. Further, Strategic charged the Debtors a premium in supplying the Debtors' senior management team. As of May 1, 2017, Strategic provided the Debtors a management team consisting of nine (9) members. However, at the April 26, 2018 Curae board meeting, the board stated that "[g]iven the current financial position, the board approves to move the executive team from Strategic Healthcare Resources to Curae Health" which would "result in an approximate savings to Curae of $750,000." Curae Board Minutes, April 26, 2018. On June 1, 2018—less than three months before the Debtors filed their bankruptcy petitions—the management team provided by Strategic was reduced to only two (2) members, with the Debtors' remaining managers employed directly by Curae.

16. The misconduct of each of the Defendants set forth at length herein, in whole or in part, caused the Debtors to file for chapter 11 protection on August 24, 2018, approximately one year after acquiring the Hospitals from CHS.

17. Plaintiff further seeks to avoid and recover from Strategic, or from any other person or entity for whose benefit the transfers were made, all preferential transfers of property of the Debtors that occurred during the Insider Preference Periods, as well as all fraudulent

transfers of property of the Debtors, pursuant to sections 547, 548 and 550 of chapter 5 of title 11 of the United States Code (the "Bankruptcy Code").

18. In addition, Plaintiff seeks to disallow, pursuant to sections 502(d) of the Bankruptcy Code, any claim that Strategic has filed or asserted against the Debtors or that has been scheduled for the Defendants. Plaintiff reserves all of its rights and the rights of the Debtors' estates to object to any such claim for any reason.

JURISDICTION

19. This is an adversary proceeding seeking the entry of money judgments against the Defendants.

20. This adversary proceeding arises in and related to the above-captioned chapter 11 cases now pending in this District.

21. The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334.

22. Venue of this adversary proceeding is proper in this District pursuant to 28 U.S.C. §1409.

23. This adversary proceeding is a core proceeding within the meaning of 28 U.S.C. §157(b)(2)(A), (C), (E), (F), (H), and (O).

24. The Committee consents to the Bankruptcy Court's entry of final orders and judgments in this adversary proceeding, even if it is determined that this adversary proceeding is not a core proceeding under 28 U.S.C. § 157(b), or that the Bankruptcy Court cannot enter final orders or judgments in connection with this adversary proceeding consistent with Article III of the United States Constitution absent consent of the parties.

PARTIES

25. On August 24, 2018 (the "Petition Date"), each of the Debtors filed a voluntary petition in this Court (the "Bankruptcy Court") commencing a case for relief under chapter 11 of the Bankruptcy Code. The Bankruptcy Cases are jointly administered under lead case number 18-05665.

26. Plaintiff Committee is the Official Committee of Unsecured Creditors appointed in the Bankruptcy Cases on September 6, 2018 by the Office of the United States Trustee for the Middle District of Tennessee.

27. The Committee has the right and standing to bring the causes of action set forth in this Complaint pursuant to the *Order Granting the Official Committee of Unsecured Creditors Standing to Pursue Certain Estate-Based Claims* [Docket No. 1057].

28. Defendant Clapp is the President and CEO of the Debtors since December 2014. Clapp is also an employee of Strategic and has been since December 2014.

29. Upon information and belief, Clapp resides in Tennessee.

30. Defendant Brown was the Senior Vice President of Finance and Operations of the Debtors and the Chief Financial Officer of the Debtors during the relevant time periods and is currently the Treasurer of the Debtors. Brown was also an employee of Strategic during the relevant time periods.

31. Upon information and belief, Brown resides in Tennessee.

32. Defendant Moore is the Secretary of the Debtors. Moore was also an employee of Strategic during the relevant time periods.

33. Upon information and belief, Moore resides in Tennessee.

34. Defendant Rich-McLerran was the Chief Operating Officer of the Debtors during the relevant time periods. Rich-McLerran was also an employee of Strategic during the relevant time periods.

35. Upon information and belief, Rich-McLerran resides in Tennessee.

36. Defendant Lopater was the Vice President of Human Resources of the Debtors during the relevant time periods. Lopater was also an employee of Strategic during the relevant time periods.

37. Upon information and belief, Lopater resides in Tennessee.

38. Defendant Jarnagin was the Direct of Information Systems of the Debtors during the relevant time periods. Jarnagin was also an employee of Strategic during the relevant time periods.

39. Upon information and belief, Jarnagin resides in Tennessee.

40. Defendant Dawson is the Board Chairman of the Debtors.

41. Upon information and belief, Dawson resides in Tennessee.

42. Defendant Decker is the Vice Board Chair of the Debtors.

43. Upon information and belief, Decker resides in Tennessee.

44. Defendant Sawyer is a board member of the Debtors.

45. Upon information and belief, Sawyer resides in Tennessee.

46. Defendant Swartz is a board member of the Debtors.

47. Upon information and belief, Swartz resides in Tennessee.

48. Defendant Payne was a board member of the Debtors during the relevant time periods.

49. Upon information and belief, Payne resides in Tennessee.

50. Defendant Harb was a board member of the Debtors during the relevant time periods.

51. Upon information and belief, Harb resides in Tennessee.

52. Defendant Strategic is a Tennessee limited liability company with an address at 121 Leinart Street, Clinton, Tennessee, 37716.

FACTUAL BACKGROUND

I. The Debtors

53. Curae is a Tennessee non-profit corporation.

54. Curae was established on or around November 3, 2014 by Defendant Clapp for the purpose of, among other things, providing "Supporting Organizations with financial, management and advisory support services including, but not limited to: legal and accounting; strategic planning . . . financial advice . . . preparation and development of financial statements and operating and capital budgets . . . [and] data processing and information management." Bylaws of Curae Health, Inc. (the "Bylaws"), Section 2.4(e).

55. Curae is the sole member and sponsoring organization of Debtors Amory Regional Medical Center, Inc. ("Amory"), Batesville Regional Medical Center, Inc. ("Batesville") and Clarksdale Regional Medical Center, Inc. ("Clarksdale"), each of which owns and operates (or owned and operated) a hospital and/or other health care facilities in Mississippi, and each of which is a Tennessee non-profit corporation.

56. Amory is the sole member of Amory Regional Physicians, LLC ("ARP"), a Tennessee limited liability company that employed some of the physicians who worked at the Amory health care facilities.

57. Batesville is the sole member of Batesville Regional Physicians, LLC ("BRP"), a Tennessee limited liability company that employs some of the physicians who work at the Batesville health care facilities.

58. Clarksdale is the sole member of Clarksdale Regional Physicians LLC ("CRP" and together with ARP and BRP the "Physician Group Debtors"), a Tennessee limited liability company that employs some of the physicians who work at the Clarksdale health care facilities.

II. The Defendants Failed to Perform Adequate Diligence with Respect to the CHS Acquisition

59. In May 2016, Curae entered into a letter of intent to acquire the Facilities from CHS, which initially included a hospital in Florida that was not ultimately purchased.

60. The Defendants hired LBMC on or around June 14, 2016 to perform certain financial, reimbursement and coding due diligence procedures for Curae in connection with the potential CHS Acquisition.

61. Upon information and belief, on September 23, 2016, LBMC delivered the LBMC Draft Report to the Defendants.

62. Upon information and belief, the Defendants never received a final version of the report with LMBC's final due diligence results.

63. The LBMC Draft Report highlighted certain informational deficiencies with respect to the proposed CHS Acquisition.

64. In the cover letter of the LBMC Draft Report, LBMC stated that "[w]hile we believe the information obtained is substantially responsive to Client's request pursuant to LBMC's procedures as outlined in our engagement letter, **with the exception of certain items noted in the *Background and Scope of Services* section of this report**, we are not in a position to assess its sufficiency for Client's purposes." LBMC Draft Report, page 2 (emphasis added).

65. The items noted in the "Background and Scope of Services Section" refer to, among other things, the lack of access to the Hospital-level operations of the Hospitals to be acquired in the CHS Acquisition.

66. The LBMC Draft Report stated:

> Lack of Access – We were not granted access to Hospital-level operators of Hospital and Clinic Management. Our inquiries were answered at the parent level or were not answered during our diligence process. Had we discussed performance trends, nonrecurring items, and other items with management directly in-charge of the four Hospitals or Clinics, we may have identified additional items material to your analysis of the contemplated Transaction.

LBMC Draft Report, page 8.

67. Further, the LBMC Draft Report discussed open items that may have had an impact on the report if CHS had replied to LBMC's information requests.

68. The LBMC Draft Report stated:

> It is possible the requested information, if received, would have changed the results and conclusions within this report. We have identified open items within the body of this report as [OPEN]. Key open items include:
>
> - Complete understanding of operational performance and results were unavailable as we did not have access to Hospital- or Clinic-level management to address questions related to operational performance trends or results.
>
> - Rollforward of accounts receivable at Hospitals and Clinics.
>
> - Number of employees or full time equivalents at the Company's shared service sites.
>
> - Detail of management fee charges to Hospitals, including any "true-up" activity (i.e., budget to actual differences pushed down to Hospitals) related to Corporate allocations.

LBMC Draft Report, page 8.

69. Upon information and belief, the Defendants did not ask CHS to provide the missing information highlighted in the LBMC Draft Report regarding the Hospitals to be purchased.

70. Upon information and belief, the Defendants did not ask LBMC to make an additional request for the missing information highlighted in the LBMC Draft Report regarding the Hospitals to be purchased.

71. Upon information and belief, the Defendants never received the missing information highlighted in the LBMC Draft Report.

72. Upon information and belief, the Defendants therefore lacked information regarding Hospital-level operations and management of the Hospitals prior to making their decision to purchase the Hospitals pursuant to the CHS Acquisition.

73. On September 28, 2016—only five days after the Defendants' receipt of the LBMC Draft Report, Curae and CHS entered into the Initial APA.

III. The Defendants Proceeded with the CHS Acquisition Despite Lack of Due Diligence and Failed to Terminate the Amended APA After Learning of CHS's Alleged Misconduct

74. Pursuant to the Initial APA, the Debtors agreed to purchase from CHS substantially all of the assets of four (4) hospitals: (a) Highlands Regional Medical Center in Sebring, Florida ("Sebring"); (b) Merit Health Gilmore Memorial in Amory, Mississippi; (c) Merit Health Batesville in Batesville, Mississippi; and (d) Merit Health Northwest Mississippi in Clarksdale, Mississippi.

75. On April 27, 2017, the parties entered the Amended APA, which amended the Initial APA by, among other things, removing Sebring from the assets to be acquired.

76. Section 1.5 of the Amended APA provided the aggregate Purchase Price for the Amory, Batesville and Clarksdale Facilities was $51,500,000 plus the Net Working Capital as of Effective Date minus the amount of assumed capitalized leases.

77. Section 2.1(a) of the Amended APA provided:

> The Initial Agreement contemplated that all of the Assets would be transferred by the Seller Entities to the Buyer Entities at the Closing. Due to Buyer's difficulties obtaining the Financing, the parties have determined to transfer the Assets relating to Merit Health Gilmore Memorial in Amory Mississippi ("MHGM") and Merit Health Batesville in Batesville, Mississippi ("MHB"), together with certain medical office buildings, outpatient care facilities and ancillary services at an initial closing (the "First Closing") to be held on May 1, 2017 (the "First Closing Date") . . . . The parties have determined to transfer the Assets relating to Merit Health Northwest Mississippi in Clarksdale, Mississippi ("MHNM"), together with certain medical office buildings, outpatient care facilities and ancillary services at a second closing (the "Second Closing") to be held on June 1, 2017 (the "Second Closing Date").

78. Accordingly, Curae and CHS agreed to stagger the closings such that Amory and Batesville would close on May 1, 2017 (the "First Closing") and Clarksdale would close on June 1, 2017 (the "Second Closing").

79. Pursuant to sections 2.1(b) and (c) of the Amended APA, Curae was to pay CHS (i) $30,500,000, subject to adjustment, at the First Closing in the form of a promissory note in the original principal amount of $14,200,000 with the remainder in cash and (ii) $21,000,000, subject to adjustment, at the Second Closing in the form of a promissory note in the original principal amount of $10,450,000 with the reminder in cash.

80. Section 10.2 of the Amended APA provided that the "Agreement may be terminated at any time: . . . (iv) by Seller or Buyer if the Closing shall not have taken place on or before 5:00 p.m. central time on June 30, 2017 (which date may be extended by mutual agreement of Buyer and Seller, provided that the right to terminate pursuant to this subsection (iv) shall not be available to any party whose failure to fulfill any obligation under this

Agreement has been the cause of, or resulted in, the failure of the Closing to occur by such date[.]" Amended APA, 10.2 (the "June Termination Provision").

81. The First Closing regarding the Amory Facility and Batesville Facility occurred as scheduled on May 1, 2017.

82. The Purchase Price for the Amory Facility and the Batesville Facility was $30,500,000.00 plus Net Working Capital of $1,917,564.00 less assumed Capital Leases of $149,788.00, for an aggregate of $32,267,776.00.

83. Although the First Closing for the Amory Facility and Batesville Facility closed as scheduled on May 1, 2017, the Second Closing for the Clarksdale Facility did not occur on or before June 1, 2017, as scheduled.

84. The Second Closing for the Clarksdale Facility also did not close on or before 5:00 p.m. central time on June 30, 2017, the date included in the June Termination Provision.

85. Instead, on October 30, 2017, the Defendants caused Curae to enter into the First APA Amendment, pursuant to which the parties agreed to delay the Second Closing relating to Clarksdale to November 1, 2017.

86. The First Amendment also modified the June Termination Provision as follows:

> The Agreement may be terminated at any time: . . . (iv) by Seller or Buyer if the **Second** Closing shall not have taken place on or before **11:59 p.m.** central time on **November 1, 2017**[.]

First Amendment, Section 1(f) (changes from Amended APA highlighted in bold and underlined).

87. Upon information and belief, prior to executing the First APA Amendment on October 30, 2017, the Defendants formed a belief that CHS misrepresented and/or omitted

information regarding the Hospitals to be purchased in the CHS Acquisition (the "Alleged CHS Misrepresentations").

88. Upon information and belief, despite the Defendants' awareness and belief prior to October 30, 2017 of the Alleged CHS Misrepresentations, the Defendants did not terminate the Amended APA pursuant to the June Termination Provision any time on or after June 30, 2017.

89. Upon information and belief, despite the Defendants' awareness and belief prior to October 30, 2017 of the Alleged CHS Misrepresentations, the Defendants did not take any action against CHS with respect to such apparent misrepresentations and/or omissions.

90. Upon information and belief, despite the Defendants' awareness and belief prior to October 30, 2017 of the Alleged CHS Misrepresentations, the Defendants caused Curae to enter the First APA Amendment on October 30, 2017, which postponed the Second Closing Date to November 1, 2017.

91. Upon information and belief, despite the Defendants' awareness and belief prior to October 31, 2017 of the Alleged CHS Misrepresentations, the Defendants caused Curae to enter the First APA Amendment on October 30, 2017, which prevented the Debtors from terminating the Amended APA pursuant to the June Termination Provision until November 1, 2017.

92. The First APA Amendment also amended Section 2.1(c) of the Amended APA, modifying how Curae would pay the purchase price of $21,000,000 (subject to adjustments) at the Second Closing.

93. Instead of executing a promissory note in the original principal amount of $10,450,000 with the reminder in cash at the Second Closing, the First Amendment provided:

> Subject to the terms and conditions of this Agreement, Buyer shall pay the Purchase Price to Seller at the Second Closing as follows: (i) $5,000,000.00 shall be paid by wire transfer of immediately available funds to an account designated by Seller, (ii) $5,000,000.00 shall be paid pursuant to a Promissory Note with a term of thirty (30) days; and (iii) the balance of the Purchase Price shall be paid pursuant to a Promissory Note with a term of three (3) years.

94. The Second Closing regarding the Clarksdale Facility occurred on November 1, 2017.

95. The Purchase Price for the Clarksdale facility was $21,000,000.00 plus Net Working Capital of $1,591,468.00 less assumed Capital Leases of $41,190.00, plus Buyer's portion of the 2017 Clarksdale Lease Payment in the amount of $83,561.64 plus CIG Assets in the amount of $500,000.00, for an aggregate of $23,133,839.64.

IV. The Defendants Caused the Debtors to Finance the CHS Acquisition by Incurring Debt Beyond the Debtors' Ability to Pay

A. *The Defendants Caused the Debtors to Incur the CHS Debt*

96. As overseen and approved by the Defendants, in connection with the purchase and sale of the Amory Facility and the Batesville Facility, Amory and Batesville, with Curae as guarantor, entered into that certain Loan Agreement dated May 1, 2017 with CHS, whereby CHS agreed to advance $14,200,000.00 to be used as part of the purchase price of the Amory and Batesville Facilities (as amended, restates or otherwise modified from time to time, the "CHS Loan Agreement").

97. As overseen and approved by the Defendants, Amory and Batesville, on a joint and several basis, executed that certain Term Note dated May 1, 2017 in favor of CHS in the principal amount of $14,200,000.00 (the "CHS Term Loan").

98. In connection with the CHS Loan Agreement and the CHS Term Loan, and as overseen and approved by the Defendants, Curae agreed to, *inter alia*, guaranty payment of the

CHS debt obligations, as set forth in that certain Guaranty dated May 1, 2017 (as amended, restated, or otherwise modified from time to time, the "CHS Guaranty").

99. The Defendants also caused Curae to grant CHS a security interest in substantially all of Curae's assets and personal property, as set forth in that certain Guarantor Security Agreement dated May 1, 2017 (as amended, restated, or otherwise modified from time to time, the "CHS Guarantor Security Agreement").

100. Upon information and belief, no later than the time of the CHS Loan Agreement, or as a result thereof: (i) the respective liabilities of Amory, Batesville, and Curae exceeded the value of their respective assets; (ii) Amory, Batesville, and Curae were each left inadequately capitalized; and/or (iii) Amory, Batesville, and Curae each could not pay their respective obligations as they became due.

101. Concurrently with the Second Closing, on November 1, 2017, the Defendants caused Curae, Amory, and Batesville to enter into an amendment to the CHS Loan Agreement adding Clarksdale as a borrower under the CHS Loan Agreement.

102. In connection with the Second Closing, the Defendants caused Clarksdale to execute (i) that certain Promissory Note dated November 1, 2017, in favor of CHS in the principal amount of $5,000,000.00 with a term of thirty (30) days (the "30-Day Clarksdale Note"); and (ii) that certain Promissory Note dated November 1, 2017, in favor of CHS in the principal amount of $13,133,839.64 with a term of three (3) years (the "CHS Clarksdale Note").

103. In connection with the amendment to the CHS Loan Agreement adding Clarksdale as a borrower, the Defendants caused Curae to guarantee Clarksdale's obligations under the CHS Clarksdale Note and the CHS Loan Agreement.

104. Upon information and belief, despite the Defendants' awareness and belief prior to October 30, 2017 of the Alleged CHS Misrepresentations, the Defendants caused the Debtors to enter into the amendment to the CHS Loan Agreement on November 1, 2017, adding Clarksdale as a borrower under the CHS Loan Agreement.

105. Upon information and belief, despite the Defendants' awareness and belief prior to October 30, 2017 of the Alleged CHS Misrepresentations, the Defendants caused the Debtors to enter into the amendment to the CHS Loan Agreement on November 1, 2017, adding the CHS Clarksdale Note and Clarksdale's obligations under the CHS Loan Agreement to Curae's guaranteed obligations.

106. Upon information and belief, despite the Defendants' awareness and belief prior to October 30, 2017 of the Alleged CHS Misrepresentations, on November 1, 2017, the Defendants caused the Debtors to enter the 30-Day Clarksdale Note and the CHS Clarksdale Note in the aggregate amount of $18,133,839.64.

107. Upon information and belief, no later than the time of the 30-Day Clarksdale Note and the CHS Clarksdale Note, or as a result thereof: (i) the respective liabilities of Clarksdale and Curae exceeded the value of their respective assets; (ii) Clarksdale and Curae were each left inadequately capitalized; and/or (iii) Clarksdale and Curae each could not pay their respective obligations as they became due.

B. ***The Defendants Caused the Debtors to Incur the ServisFirst Debt***

108. In addition to the debt incurred with CHS, in connection with the CHS Acquisition, the Defendants also caused the Debtors to incur debt with ServisFirst Bank ("ServisFirst").

109. As overseen and approved by the Defendants, Amory and Batesville as borrowers, Curae as guarantor, and ServisFirst as lender, entered into a Loan Agreement dated May 1, 2017 (as same may have been amended from time to time, the "May 2017 ServisFirst Loan Agreement," and together with all documents executed in connection therewith, the "May 2017 ServisFirst Transaction").

110. The May 2017 ServisFirst Loan Agreement provided for, among other things, a term loan in the amount of $14,000,000 (the "May 2017 ServisFirst Term Loan") and a revolving credit loan in the amount of $5,000,000 (the "May 2017 ServisFirst Revolving Loan").

111. In connection with the May 2017 ServisFirst Loan Agreement, the Defendants caused Amory and Batesville to execute, among other things, (i) a Term Note in the amount of $14,000,000 (the "May 2017 ServisFirst Term Note") in favor of ServisFirst and (ii) a Revolving Credit Note in the amount of $5,000,000 in favor of ServisFirst (the "May 2017 ServisFirst Revolving Note"), both on a joint and several basis.

112. In connection with the May 2017 ServisFirst Loan Agreement, the Defendants caused Amory to execute a Mississippi Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing purporting to grant a security interest in Amory's real estate assets and personal property.

113. In connection with the May 2017 ServisFirst Loan Agreement, the Defendants caused Batesville to execute a Mississippi Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing purporting to grant a security interest in Batesville's real estate assets and personal property.

114. In connection with the May 2017 ServisFirst Loan Agreement, the Defendants caused Curae to execute (i) a Guaranty (as same may have been amended from time to time, the

"May 2017 ServisFirst Guaranty") of the purported obligations of Amory and Batesville to ServisFirst and (ii) a Guarantor ServisFirst Security Agreement (as same may have been amended from time to time, the "May 2017 ServisFirst Guarantor Security Agreement") purporting to grant ServisFirst a security interest in substantially all of Curae's assets and personal property.

115. Upon information and belief, no later than the time of the May 2017 ServisFirst Transaction, or as a result thereof: (i) the respective liabilities of Amory, Batesville, and Curae exceeded the value of their respective assets; (ii) Amory, Batesville, and Curae were each left inadequately capitalized; and/or (iii) Amory, Batesville, and Curae each could not pay their respective obligations as they became due.

116. Following the Second Closing related to the purchase of the Clarksdale Facility, the Defendants caused Amory and Batesville as borrowers, and Curae as guarantor, to enter into the *First Amendment to Term Note and Second Amendment to Loan Agreement*, dated December 13, 2017 (the "December 2017 ServisFirst Amendment," and together with all documents executed in connection therewith, the "December 2017 ServisFirst Transaction").

117. The December 2017 ServisFirst Amendment provided for, among other things, the conversion of the purported outstanding May 2017 ServisFirst Revolving Loan into the May 2017 ServisFirst Term Loan, for an aggregate outstanding term loan amount of $18,783,000.

118. Section 5 of the December 2017 ServisFirst Amendment stated as follows:

> 5. Section 1.1(a) of the Loan Agreement is hereby amended to increase the Term Loan described therein by $5,000,000.00 to a principal sum of up to $18,783,000.00; provided, no additional Advances to be made [sic] and such increase reflects the conversion of the existing Revolving Credit Loans to Term Loans. The Loan Documents are amended generally to reflect said increase, including without limitation the Guaranty and the

Guarantor Security Agreement and the definitions of "Guaranteed Obligations" and "Indebtedness" respectively contained therein.

119. The December 2017 ServisFirst Amendment further purported to join Clarksdale as a borrower under the May 2017 ServisFirst Loan Agreement and May 2017 ServisFirst Term Note (both as amended), and make Clarksdale jointly and severally liable for the full $18,783,000 face amount of the obligations purportedly owed to ServisFirst thereunder.

120. In connection with the December 2017 ServisFirst Amendment, the Defendants caused Curae to purportedly guarantee Clarksdale's obligations under the May 2017 ServisFirst Loan Agreement and May 2017 ServisFirst Term Note (both as amended).

121. In connection with the December 2017 ServisFirst Amendment, the Defendants caused Clarksdale to execute a Mississippi Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing purporting to grant a security interest in Clarksdale's real estate assets and personal property.

122. Upon information and belief, Clarksdale did not receive any funds or other value from ServisFirst in connection with the December 2017 ServisFirst Transaction.

123. Upon information and belief, no later than the time of the December 2017 ServisFirst Transaction, or as a result thereof: (i) the liabilities of Clarksdale and Curae exceeded the value of their assets; (ii) Clarksdale and Curae were left inadequately capitalized; and/or (iii) Clarksdale and Curae could not pay their obligations as they became due.

124. Further, as overseen and approved by the Defendants, the Physician Group Debtors executed a Guaranty dated March 6, 2018 under which the Physician Group Debtors purported to guarantee the obligations owed to ServisFirst under the May 2017 ServisFirst Loan Agreement and May 2017 ServisFirst Term Note (the "March 2018 ServisFirst Guaranty," and

together with all documents executed in connection therewith, the "March 2018 ServisFirst Transaction").

125. In connection with the March 2018 ServisFirst Guaranty, the Physician Group Debtors executed a Guarantor Security Agreement purporting to grant ServisFirst a security interest in substantially all of each Physician Group Debtors' assets and personal property.

126. Upon information and belief, the Physician Group Debtors did not receive any funds or any other value from ServisFirst in connection with the May 2017 ServisFirst Transaction and/or the December 2017 ServisFirst Transaction.

127. Upon information and belief, no later than the time of the March 2018 ServisFirst Transaction, or as a result thereof: (i) the respective liabilities of the Physician Group Debtors exceeded the value of their respective assets; (ii) the Physician Group Debtors were each left inadequately capitalized; and/or (iii) the Physician Group Debtors could not pay their respective obligations as they became due.

C. *The Defendants Caused the Debtors to Incur the MidCap Debt*

128. As overseen and approved by the Defendants, on December 13, 2017, in connection with the Second Closing of the Clarksdale Facility, Amory, Batesville and Clarksdale entered into that certain Credit and Security Agreement with MidCap, whereby Midcap agreed to make advances to Amory, Batesville and Clarksdale on a revolving credit basis up to $13,000,000.00 (as amended, restated or otherwise modified from time to time, the "MidCap Credit Agreement," and together with all documents executed in connection therewith, the "MidCap Transaction").

129. Pursuant to the MidCap Credit Agreement, Amory, Batesville, Clarksdale and the Physician Group Debtors granted MidCap liens on and security interests in certain of their personal property.

130. In connection with the MidCap Credit Agreement, the Defendants caused Amory, Batesville and Clarksdale to execute that certain Revolving Loan Note in favor of MidCap (as amended, restated or otherwise modified from time to time, the "MidCap Revolving Loan Note"), whereby Amory, Batesville and Clarksdale jointly and severally agreed to pay MidCap the amounts advanced under the MidCap Credit Agreement up to $13,000,000.00.

131. In connection with the MidCap Transaction, the Defendants caused Curae to execute a Guaranty dated December 13, 2017 of the obligations of Amory, Batesville and Clarksdale to MidCap in the maximum principal amount of $13,000,000 (the "December 2017 MidCap Guaranty").

132. Upon information and belief, no later than the time of the MidCap Transaction, or as a result thereof: (i) the liabilities of Curae, Amory, Batesville, Clarksdale and/or the Physician Group Debtors exceeded the value of their assets; (ii) Curae, Amory, Batesville, Clarksdale and/or the Physician Group Debtors were left inadequately capitalized; and/or (iii) Curae, Amory, Batesville, Clarksdale and/or the Physician Group Debtors could not pay their obligations as they became due.

V. The Defendants Disregarded the Corporate Separateness of Each of the Debtor Entities

133. The Defendants caused Curae to execute the CHS Guaranty and CHS Guarantor Security Agreement, guaranteeing Amory's, Batesville's and Clarksdale's obligations under the CHS Loan Agreement, the CHS Term Loan and the CHS Clarksdale Note.

134. The Defendants caused Amory and Batesville to become borrowers under the CHS Term Loan on a joint and several basis.

135. The Defendants caused Clarksdale to become a co-borrower with Amory and Batesville under the CHS Loan Agreement.

136. The Defendants caused Curae to execute the May 2017 ServisFirst Guaranty and May 2017 ServisFirst Guarantor Security Agreement, guaranteeing Amory's, Batesville's and Clarksdale's obligations under the May 2017 ServisFirst Transaction (as modified by the December 2017 ServisFirst Amendment).

137. The Defendants caused Amory and Batesville to become borrowers under the May 2017 ServisFirst Term Loan and May 2017 ServisFirst Revolving Loan on a joint and several basis.

138. The Defendants caused Clarksdale to become a borrower with Amory and Batesville, on a joint and several basis, under the May 2017 ServisFirst Loan Agreement and May 2017 ServisFirst Term Note (both as amended).

139. The Defendants caused the Physician Group Debtors to guarantee the May 2017 ServisFirst Loan Agreement and May 2017 ServisFirst Term Note (both as amended).

140. The Defendants caused the Physician Group Debtors to grant ServisFirst a security interest in substantially all of each Physician Group Debtors' assets and personal property.

141. The Defendants caused the Physician Group Debtors to grant MidCap a security interest in certain of their personal property.

142. The Defendants caused Curae to execute the December 2017 MidCap Guaranty, guaranteeing Amory's, Batesville's and Clarksdale's obligations under the MidCap Transaction.

143. The transactions described in paragraphs 133 through 142 above, among others, obligated each of the Debtor entities on debts owed by other Debtor entities.

144. The transactions described in paragraphs 133 through 142 above, among others, display the Defendants' repeated disregard for the separateness of each of the Debtor entities.

145. Upon information and belief, the Defendants caused the Debtors to use approximately $5 million from a prepetition sale of certain Batesville assets, which funds could have been used to pay creditors of Batesville, to (i) acquire the Clarksdale Facility, (ii) pay other entities aside from Batesville's creditors, and/or (iii) for other improper purposes.

146. The Defendants used a system of intercompany financing with respect to each of the Debtor entities.

147. "Certain Debtor Bank Accounts [] facilitate the movement of funds to other accounts of the Debtors. The Debtors routinely deposit, withdraw, and otherwise transfer money to, from, and between certain of the Debtor Bank Accounts[.]" *Expedited Motion of Debtors for an Order Authorizing: (I) Continued Use of Existing Cash Management System, Including Maintenance of Existing Bank Accounts, Checks, and Business Forms; (II) Suspension of Certain U.S. Trustee Bank Account Requirements; and (III) Continuation of Existing Deposit Practices*, ¶ 8.

148. The Defendants have not implemented any mechanisms in the intercompany financing system to ensure repayment of loans from the transferor Debtor to the transferee Debtor, to the detriment of creditors of the transferor Debtor.

149. Operating performance results for Clarksdale indicate that facility is currently losing money and has been a continued drain on operations since its acquisition.

150. Amory performed better than Batesville and significantly better than Clarksdale.

151. Upon information and belief, the Defendants caused Amory to provide funding to Batesville through intercompany transfers without any guarantee of repayment.

152. Upon information and belief, the Defendants caused Amory to provide funding to Clarksdale through intercompany transfers without any guarantee of repayment.

153. The intercompany financing system established by the Defendants displays the Defendants disregard for the separateness of each of the Debtor entities.

VI. The Defendants Failed to Adequately Monitor CHS During the Transition Services Period Causing the Debtors to Suffer a Lack of Cash Flow

154. The Debtors filed for bankruptcy approximately one year after executing the Amended APA and less than ten months after closing the Clarksdale transaction.

155. Upon information and belief, one reason for the Debtors' bankruptcy filings was the Defendants' poor execution and lack of oversight of the Hospitals' revenue cycles and billing practices as controlled by CHS during the transition services period.

156. The Debtors' lack of cash flow during the pre-petition period contributed to the Debtors' need to seek chapter 11 protection.

A. *The Defendants Failed to Monitor CHS in Connection with the Amory Transition Services Agreement*

157. In connection with the acquisition of the Amory Facility, CHS and Amory entered into a transition services agreement (the "Amory TSA") covering the period from May 1, 2017 through April 30, 2018, pursuant to which CHS would perform billing and cash flow operations for Amory.

158. CHS used Pulse Dar as its billing system for Amory.

159. On March 21, 2018, Amory transitioned to a new accounting and billing system provided by MedHost. In connection therewith, accounts were converted from the Pulse Dar system to MedHost's system, which process was completed on July 23, 2018.

160. Also on March 21, 2018, Amory took over the business office, which was transitioned to MedHost on December 3, 2018.

161. The Debtors are in the process of collecting Amory's gross accounts receivable ("A/R") totaling approximately $22.1 million.

162. Upon information and belief, the collectability of the gross A/R at Amory is approximately $1.3 million.

163. Upon information and belief, there are numerous accounts for which payment has reportedly been made, but which payments have apparently never been deposited by CHS.

164. Upon information and belief, there were purportedly poor controls over cash receipts and receivable posting at Amory under CHS, as supervised by the Defendants.

165. Upon information and belief, there were allegedly often stacks of remittance advices on the desks of processors at the local hospital level.

166. It was not until December 3, 2018, when MedHost took over the billing at Amory, that the process of local cash posting ceased.

167. Upon information and belief, certain payments sent to Amory were allegedly "lost" or never processed by CHS, under the supervision of the Defendants.

168. Upon information and belief, there are 298 accounts that are pending Medicaid eligibility at this site.

169. Upon information and belief, straddle accounts at Amory were apparently not completely billed by CHS.

170. In performing its services under the Amory TSA, CHS, under the supervision of the Defendants, purportedly missed several billing opportunities, some of which can no longer be recovered.

171. The Defendants repeatedly overlooked CHS's apparent failure to follow basic billing practices.

172. The Defendants demonstrated a lack of control over and oversight of the revenue cycle process maintained by CHS under the Amory TSA.

173. The Defendants failed to properly oversee CHS and analyze Medicaid eligibility data to identify eligibility issues sooner and correct them on a real time basis.

174. The Defendants failed to identify the amounts paid to CHS that were allegedly due to Amory (through, for example, collection follow-up calls) and failed to follow up with CHS on remitting such payments.

175. The Defendants failed to detect any claims not properly filed by CHS.

176. The Defendants' failure to adequately monitor CHS under the Amory TSA caused cash flow problems for Amory, deepening its insolvency.

B. *The Defendants Failed to Monitor CHS in Connection with the Batesville Transition Services Agreement*

177. In connection with the acquisition of the Batesville Facility, CHS and Batesville entered into a transition services agreement (the "Batesville TSA") covering the period from May 1, 2017 through April 30, 2018, pursuant to which CHS would perform billing and cash flow operations for Batesville.

178. CHS used Pulse Dar as its billing system for Batesville.

179. On April 18, 2018, 2018, Batesville transitioned to a new accounting and billing system provided by MedHost.

180. In connection therewith, accounts were converted from the Pulse Dar system to MedHost's system, which process was completed on July 23, 2018.

181. Also on April 18, 2018, Batesville took over the business office, which was transitioned to MedHost on December 3, 2018.

182. Upon information and belief, the collectability of the gross A/R at Batesville is approximately $2.6 million.

183. Upon information and belief, there are 139 accounts at Batesville that lack Medicaid eligibility determination.

184. Upon information and belief, there are additional accounts at Batesville in which the payor asserts that payment was made but such payments were never deposited.

185. In performing its services under the Batesville TSA, CHS, under the supervision of the Defendants, purportedly missed several billing opportunities, some of which can no longer be recovered.

186. The Defendants repeatedly overlooked CHS's apparent failure to follow basic billing practices.

187. The Defendants demonstrated a lack of control over and oversight of the revenue cycle process maintained by CHS under the Batesville TSA.

188. The Defendants failed to properly oversee CHS and analyze Medicaid eligibility data to identify eligibility issues sooner and correct them on a real time basis.

189. The Defendants failed to identify the amounts paid to CHS that were allegedly due to Batesville (through, for example, collection follow-up calls) and failed to follow up with CHS on remitting such payments.

190. The Defendants failed to detect any claims not properly filed by CHS.

191. The Defendants' failure to adequately monitor CHS under the Batesville TSA caused cash flow problems for Batesville, deepening its insolvency.

C. *The Defendants Failed to Monitor CHS in Connection with the Clarksdale Transition Services Agreement*

192. In connection with the acquisition of the Clarksdale Facility, CHS and Clarksdale entered into a transition services agreement (the "Clarksdale TSA") covering the period from October 31, 2017 to October 31, 2018, pursuant to which CHS would perform billing and cash flow operations for Clarksdale.

193. CHS used Pulse Dar as its billing system for Clarksdale.

194. On September 12, 2018, Clarksdale transitioned to a new accounting and billing system provided by MedHost.

195. In connection therewith, accounts were converted from the Pulse Dar system to MedHost's system, which process was completed on December 4, 2018.

196. Upon information and belief, there was $20.4 million in outstanding A/R of converted accounts not previously accounted for by CHS.

197. Also on September 12, 2018, Clarksdale took over the business office, which was transitioned to MedHost on December 3, 2018.

198. Upon information and belief, the A/R collectability at Clarksdale in excess of 90 days should yield $3.27 million.

199. A/R was turned over to CHS on December 15, 2018.

200. Upon information and belief, there were 17 days before December 15, 2018 for which Clarksdale was entitled to the A/R collected, yielding an additional $1.7 million in collections.

201. The combined estimated collections for Clarkdale are approximately $5.0 million ($3.27 million + $1.70 million), which CHS allegedly failed to collect.

202. With respect to the billing process prior to December 15, 2018, CHS, under the supervision of the Defendants, purportedly missed several billing opportunities, some of which can no longer be recovered.

203. With respect to the billing process prior to December 15, 2018, the Defendants repeatedly overlooked CHS's apparent failure to follow basic billing practices.

204. With respect to the billing process prior to December 15, 2018, the Defendants demonstrated a lack of control over and oversight of the revenue cycle process.

205. The determination of Medicaid eligibility was to be made at the local hospital level by a CHS employee, yet, upon information and belief, several eligibility issues with patient files went unnoticed or unaddressed by CHS, under the supervision of the Defendants.

206. The Defendants failed to properly oversee CHS and analyze this data to identify eligibility issues sooner and correct them on a real time basis.

207. Upon information and belief, cash was allegedly collected by CHS on approximately $2.6 million in gross A/R that has not been remitted to Clarksdale.

208. The Defendants failed to identify the amounts paid to CHS that were purportedly due to Clarksdale (through, for example, collection follow-up calls) and failed to follow up with CHS on remitting such payments.

209. Strategic had taken over from CHS from September 12, 2018 through December 13, 2018 and failed to identify the amounts paid to CHS that were purportedly due to Clarksdale during this time.

210. Upon information and belief, a number of accounts had discharge information and patient information, but no information related to payments or billing and there were not additional notes on these accounts.

211. As of February 12, 2018, the billing file for Clarksdale shows (i) over $6.4 million in gross charges, (ii) 1,036 incomplete billing accounts, and (iii) 54 accounts needing authorization.

212. The Defendants failed to detect any claims not properly filed by CHS.

213. The Defendants' failure to adequately monitor CHS under the Clarksdale TSA caused cash flow problems for Clarksdale, deepening its insolvency.

VII. The D&O Defendants Hired Strategic—an Insider—as Manager of the Debtors and Unjustly Compensated Strategic for its Services

214. Strategic is a management company owned by the Debtors' president and chief executive officer, Defendant Clapp.

215. As stated in Curae's Statement of Financial Affairs filed by the Debtors with the Bankruptcy Court on February 21, 2019, "Stephen Clapp received a salary from Strategic Health of $27,000 per month and would from time to time receive distribution of profits from Strategic Healthcare." Statement of Financial Affairs for Curae Health, Inc., Section 4.1.

216. Curae and Strategic entered into that certain Hospital Management Agreement, dated December 31, 2014, as amended by that certain First Amendment to Hospital Management Agreement, dated September 1, 2015, as amended by that certain Second Amendment to Hospital Management Agreement, dated April 1, 2016, as amended by that certain Third Amendment to Hospital Management Agreement, dated May 1, 2017, as amended by that certain Fourth Amendment to Hospital Management Agreement, dated November 1, 2017, as amended by that certain Fifth Amendment to Hospital Management Agreement, dated June 1, 2018, and as amended by that certain Sixth Amendment to Hospital Management Agreement, dated January 1, 2019 (collectively, the "Management Agreement").

217. Under the Management Agreement, Strategic, as manager, renders certain management, administration, consulting and purchasing services and support, and all other reasonably necessary management support needed for the Hospitals (the "Management Services").

218. With respect to Curae's senior management, the Management Agreements provides:

> [Strategic] will make available to Curae Health the services of certain employees, independent contractors, or affiliates of Manger ("SHR Senior Management") sufficient to provide the Management Services. SHR Senior Management shall provide corporate-wide senior management and oversight to Curae Health, the Hospitals, and other related healthcare facilities. The Management Fee shall include the services of SHR Senior Management . . . . [Strategic] shall have the right to manage, reassign, terminate, and determine the salary and benefits of SHR Senior Management. [Strategic] shall have the right to control and direct SHR Senior Management as to the performance of duties and as to the means by which such duties are performed.

Management Agreement, Article IV.

219. Article X of the Management Agreement states that "[a]ll of [Strategic's] employees, representatives, and agents shall act at the ultimate direction of [Strategic] , , , , Under no circumstances shall any SHR Senior Management, special consultant, or contractor provided by [Strategic], pursuant to this Agreement, be considered an employee of Curae Health."

220. Therefore, pursuant to the Management Agreement, Strategic provided senior management to Curae, which senior managers were employees of Strategic and acted at Strategic's "ultimate direction."

221. This arrangement created a conflict of interest between Strategic and the Debtors.

222. Because Curae's senior management was employed by and acted at the direction of Strategic, the senior management team was disinclined to report to the Debtors' board if and when Strategic was not adequately performing its duties.

223. The SHR Senior Management arrangement also creates a conflict of interest with respect to Strategic's compensation structure.

224. Under the Management Agreement, Curae pays Strategic a monthly management fee as described in section 9.1 as follows:

> Curae Health shall pay [Strategic] a fee equal to 2.25% of the Net Revenue (as defined below) accrued by Curae Health from the operation of the Business (the "Management Fee"), unless otherwise amended by mutual agreement of the parties. In the event of a Material Change, (as defined below) in the type or level of services to be provided by [Strategic], the parties shall negotiate with each other in good faith with respect to a corresponding change in the Management Fee . . . . The Management Fee, together with all reimbursable expenses (as described below), shall be paid monthly no later than the fifth (5th) day of the month, following the month in which the fee was earned or the expenses were incurred. In the event the positions of Graphic Designed and Director of Marketing are not filled as of the inception of this Agreement, the Management Fee shall be reduced to 1.9% of Net Revenue until such positions are filled.
>
> For the purposes of this Section 9.1, "Net Revenue" shall mean the total operating revenues of Curae Health, net of revenue deductions, which include contractual allowances, discounts, and other uncollectible amounts, and as determined under the accrual method of accounting in accordance with generally accepted accounting principles.
>
> For purposes of this Section 9.1, "Material Change" shall mean a decrease, increase, or substantial change in the (1) amount of level of Management Services required to be provided by Manger; (2) amount of senior management personnel Manager provides to Curae Health, the Hospitals, and other healthcare facilities and businesses of Curae Health, including but not limited to, the Hospital CEO/administrator; or (3) number of hospitals, healthcare facilities, subsidiaries, lines of business, or services offered by Curae.

Management Agreement, Section 9.1 (emphasis added).

225. The Management Fee is based on Curae's net revenue, without regard to Curae's or the Hospitals' net profits or performance.

226. Because Curae's senior management team was supplied through and employed by Strategic, Curae lacked independent management to determine if the Management Fee was reasonable in light of the Hospitals' continuing decline in profits and/or performance, which factors were not considered in determining the Management Fee under the Management Agreement.

227. Further, although the Debtors are non-profit corporations, Strategic's employees would "from time to time receive distribution[s] of profits from Strategic Healthcare." Statement of Financial Affairs for Curae Health, Inc., Section 4.1.

228. Additionally, section 9.3 of the Management Agreement provides: "At Curae Health's request, [Strategic] may also provide other services, which are outside the scope of this Agreement. In such event, Curae Health shall reimburse [Strategic] for the reasonable expenses incurred in providing these services in an amount equal to [Strategic's] direct cost **plus twenty percent (20%)**, unless otherwise agreed to in writing." Management Agreement, Section 9.3 (emphasis added).

229. Upon information and belief, payment of an additional twenty percent above the amount of reasonable expenses incurred is not representative of a market rate and negatively impacted the Debtors.

230. The Management Fee—based on Curae's net revenue (not profit)—created an incentive for Strategic to cause Curae to acquire Amory, Batesville and Clarksdale, despite the Hospitals' inability to pay debts incurred in relation with the CHS Acquisition and despite the Hospitals' lack of profitability.

231. Strategic's provision of senior management to the Debtors prevented the Debtors from having an independent management team to review the CHS Acquisition.

232. Prior to the CHS Acquisition, pursuant to the Second Amendment to the Management Agreement, executed on April 1, 2016, Strategic provided the following SHR Senior Management to the Debtors, who all remained employees of Strategic:

- Stephen N. Clapp – President and Chief Executive Officer
- Andrea Rich-McLearran – Chief Operating Officer
- Scott Tongate – Chief Financial Officer
- Tim Brown – Vice President, Administrative Services
- Pete Lawson – Executive Vice President of Business Development
- David A. Lopater – Vice President of Human Resources
- Leroy Vince Jarnagin – Director of Information Systems
- Sarah N. Moore – Secretary
- Vacant – Vice President, Physician Practice Services

233. On May 1, 2017, in connection with the Batesville and Amory transactions, Curae entered into the Third Amendment to the Management Agreement.

234. The Third Amendment added Amory and Batesville to the list of supported hospitals and organizations under the Management Agreement.

235. The Third Amendment replaced the previous list of SHR Senior Management, listing only titles of positions, rather than the individuals occupying such positions. The titles of the SHR Senior Management under the Third Amendment were: (i) President and Chief Executive Officer; (ii) Chief Operating Officer; (iii) Chief Financial Officer; (iv) Vice President of Human Resources; (v) Vice President of Physician Practice Services; (vi) Vice President of Nursing; (vii) Vice President of Marketing; (viii) Secretary; and (ix) Business Analyst.

236. The Third Amendment also provided for a decrease in the Management Fee to 2.00% of Net Revenue of Curae, which, upon information and belief, increased as a result of

acquiring two new hospitals under the CHS Acquisition (even if net profitability did not increase).

237. The Fourth Amendment to the Management Agreement, executed on November 1, 2017, added Clarksdale to the list of supported organizations and hospitals.

238. The Management Fee did not change as a result of the Fourth Amendment and the addition of Clarksdale, despite the increase in revenue (not profit) associated with the acquisition of an additional hospital.

239. Upon information and belief, the portion of the Management Fee paid to Strategic in connection with providing the Debtors' senior management team was in excess of what the Debtors would have paid to directly hire independent senior management.

240. Curae's board minutes from April 26, 2018 stated that "given the current financial position, the board approves to move the executive team from Strategic Healthcare Resources to Curae Health."

241. As stated in the April 26, 2018 board meeting minutes, "convert[ing] all SHR employees to Curae Health employees, with the exception of [Clapp] and Planning Analyst . . . would result in an approximate savings to Curae of $750,000."

242. On June 1, 2018, Curae and Strategic executed the Fifth Amendment to the Management Agreement, replacing the previous list of SHR Senior Management referenced in the Third Amendment, which previously consisted of nine (9) senior managers provided by Strategic.

243. The Fifth Amendment stated that only two (2) senior managers would be provided by Strategic—(i) the president and chief financial executive officer and (ii) a business analyst.

244. On January 22, 2019, the Bankruptcy Court approved the Sixth Amendment to the Management Agreement, effective January 1, 2019, removing the business analyst from the list of SHR Senior Management, so that the SHR Senior Management list under the Sixth Amendment included only the president and chief executive officer.

245. The Sixth Amendment provides that "[Strategic] may at its discretion provide the services of one additional Business Analysist, as needed, at [Strategic's] expense." Sixth Amendment, section 2.

246. Upon information and belief, Strategic charged a premium to the Debtors for providing senior management.

247. As such, all amounts the Debtors paid to Strategic for the senior management team in excess of the amounts the Debtors would have paid had they directly hired such management constitute fraudulent transfers.

248. Upon information and belief, at or before the time of each payment of the Management Fee to Strategic, or as a result thereof: (i) the respective liabilities of Curae exceeded the value of its respective assets; (ii) Curae was left inadequately capitalized; and/or (iii) Curae could not pay its respective obligations as they became due.

VIII. Strategic Breached the Management Agreement and the Debtors Had No Independent Management to Recognize and/or Remedy the Breaches

249. The Management Services to be provided by Strategic included, among others:

> Day-to-Day Operations. Directing the day-to-day operations of Curae Health, including the Hospitals and any and all subsidiaries of Curae Health to ensure that Curae Health's operations are conducted in a business-like manner and in accordance with the Bylaws;
>
> . . . .
>
> Fiscal Management and Patient Accounting. Implementing and administering policies and procedures for the management and control of patient billing, claims filing, accounts receivable, credit collection,

> receivables activities, all necessary patient account transactions, purchases, accounts payable, cash disbursements, and all business-related transactions; and setting up or modifying record keeping, billing, and accounts payable accounting systems;
>
> Accounts and Disbursements. Opening checking and savings accounts, in banks or similar financial institutions, in the names of Curae health [sic]; collecting and receiving for the Hospitals; depositing in such bank accounts for the Hospitals all funds generated from the operation of the Hospitals; and supervising the disbursement of such funds for the operation of the Hospitals; provided that nothing herein shall prohibit [Strategic] from utilizing third party collection agents in fulfilling such obligations[.]"

Management Agreement, Exhibit A.

250. Curae's Bylaws provide that, among other things, Curae was required to "provide the Supporting Organizations with financial, management and advisory support services including, but not limited to: legal and accounting; strategic planning . . . financial advice . . . preparation and development of financial statements and operating and capital budgets . . . [and] data processing and information management[.]" Bylaws, Section 2.4(e).

251. Despite the Management Services description in the Management Agreement and the requirements in the Bylaws, Strategic mismanaged the Hospitals by, among other things, (i) creating a conflict of interest with respect to the Debtors' senior management team, who all remained Strategic employees, (ii) failing to implement and administer procedures in connection with fiscal management and patient accounting, especially while CHS was performing transition services, and (ii) failing to adequately supervise disbursement of funds from each of the Hospitals, as the Hospitals' cash management system allowed for intercompany transfers with no repayment mechanism.

IX. Less Than Two Years After the CHS Acquisition, The Debtors Anticipate Realizing Less Than 50% of the Purchase Price for the Hospitals Acquired from CHS

A. *The Defendants Caused the Debtors to Purchase the Amory Facility and Batesville Facility for $32,267,776.00 and Sold the Facilities Less Than Two Years Later for $17,500,000*

252. On May 1, 2017, the Defendants caused the Debtors to pay a purchase price of $32,267,776.00 for the Amory Facility and the Batesville Facility.

253. On August 31, 2018, the Debtors filed with the Bankruptcy Court the 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* (the "Amory Procedures Motion"), seeking to, *inter alia*, sell all, or substantially all, of their assets related to the Amory Facility.

254. On September 28, 2018, the Bankruptcy Court entered an order approving the Amory Procedures Motion.

255. On November 30, 2018, the Bankruptcy Court entered an order, *inter alia*, approving the Asset Purchase Agreement (the "Amory APA") for the sale of the Amory Facility to North Mississippi Health Services, Inc. for a purchase price of $15,000,000, subject to adjustment.

256. On December 31, 2018, the sale of the Amory Facility closed.

257. With respect to the Batesville Facility, on November 6, 2018, the Debtors filed with the Bankruptcy Court 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* (the "Batesville Procedures Motion"), seeking to, *inter alia*, sell all, or substantially all, of their assets related to the Batesville Facility.

258. On November 30, 2018, the Bankruptcy Court entered an order approving the Batesville Procedures Motion.

259. On January 22, 2019, the Bankruptcy Court entered an order, *inter alia*, approving the Asset Purchase Agreement Progressive (the "Batesville APA") for the sale of the Batesville Facility to Progressive Medical Management of Batesville, LLC for a cash purchase price of $2,500,000.

260. On March 13, 2019, the Bankruptcy 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* (the "Supplemental Sale Order").

261. On March 14, 2019, the sale of the Batesville Facility closed in accordance with the terms set forth in the Supplemental Sale Order.

262. As such, the Debtors sold the Amory Facility and Batesville Facility for an aggregate purchase price of approximately $17,500,000 less than two years after purchasing the facilities from CHS for an aggregate purchase price of $32,267,776.00.

B. *The Defendants Caused the Debtors to Purchase the Clarksdale Facility for $23,133,839.64 and Anticipate Selling the Clarksdale Facilities Less Than Two Years Later for $1,250,000*

263. On November 1, 2017, the Defendants caused the Debtors to pay a purchase price of $23,133,839.64 for the Clarksdale Facility.

264. After the Petition Date—less than ten months after the Second Closing related to the Clarksdale Facility—the Clarksdale Facility continued to perform poorly.

265. On October 12, 2018, the 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* (the "Clarksdale Shutdown Motion").

266. On December 13, 2018, 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*, pursuant to which the Court, *inter alia*, approved the Interim Management Services Agreement (the "IMSA") with CHS, effective December 16, 2018, which allowed the Clarksdale Facility to remain open on an interim basis, subject to certain conditions in the IMSA.

267. On April 23, 2019, the 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* (the "Clarksdale Sale Motion"), seeking to, *inter alia*, sell all, or substantially all, of their assets related to the Clarksdale Facility to CHS. The purchase price for the Clarksdale Facility is $1,250,000 with an anticipated closing date on or before May 31, 2019.

268. As such, the Debtors anticipate selling the Clarksdale Facility to CHS for a purchase price of approximately $1,250,000 less than two years after purchasing the Clarksdale Facility from CHS for a purchase price of $23,133,839.64.

X. The Debtors Made Preferential Payments to Strategic in the One-Year Period Prior to the Petition Date

269. During the one-year period prior to the Petition Date, that is, between August 24, 2017, through and including August 23, 2018 (the "Insider Preference Period"), the Debtors operated their business affairs, including the transfer of property, either by checks, wire transfers, direct deposits or otherwise to various entities.

270. As the Debtors' manager under the Management Agreement, Strategic was an insider of the Debtors since the inception of the Management Agreement in November 2014 through the present date.

271. Plaintiff has determined that transfers of interests of the Debtors' property were made to or for the benefit of Strategic during the Insider Preference Period aggregating an amount not less than $2,466,279.91 (each a "Strategic Transfer" and collectively, the "Strategic Transfers"). The Strategic Transfers are listed on Exhibit A hereto.

272. Each Strategic Transfer was to or for the benefit of Strategic, as a creditor, within the meaning of 11 U.S.C. § 547(b)(1) because each Strategic Transfer either reduced or fully satisfied a debt or debts then owed by the Debtors to Strategic.

273. Each Strategic Transfer was made for, or on account of, an antecedent debt or debts owed by the Debtors to Strategic before such Strategic Transfers were made, each of which constituted a "debt" or "claim" (as those terms are defined in the Bankruptcy Code).

274. Each Strategic Transfer was made while the Debtors were insolvent. Among other things, as evidenced by the Debtors' petitions, as well as the proofs of claim that have been received to date, the Debtors' liabilities exceeded their assets on the Petition Date.

275. Each Strategic Transfer was made during the Insider Preference Period.

276. As a result of each Strategic Transfer, Strategic received more than it would receive if: (i) these cases were under chapter 7 of the Bankruptcy Code; (ii) the Strategic Transfers had not been made; and (iii) Strategic received payments of its debts under the provisions of the Bankruptcy Code. This is evidenced by the fact that unsecured creditors, under the proposed plan, will receive less than the full amounts they are owed.

277. During the course of this adversary proceeding, Plaintiff may learn (through discovery or otherwise) of additional transfers made to Strategic during the Insider Preference Period. It is Plaintiff's intention to avoid and recover all transfers of an interest of the Debtors in property that were made by the Debtors to or for the benefit of Strategic or any other transferee. Plaintiff reserves its right to amend this original Complaint to include: (i) further information regarding the Strategic Transfers, (ii) additional transfers, (iii) additional defendants, and/or (iv) additional causes of action, including without limitation, actions under 11 U.S.C. §§ 542, 544, 545, and/or 548, if applicable (collectively, the "Strategic Amendments"), that may become

known to Plaintiff at any time during this adversary proceeding, through formal discovery or otherwise, and for the Strategic Amendments to relate back to the date of the filing of this original Complaint.

COUNT I
BREACH OF FIDUCIARY DUTY
(AS TO D&O DEFENDANTS)

278. Plaintiff repeats and realleges the allegations set forth in each of the foregoing paragraphs, which are incorporated by reference as if set forth fully herein.

279. Officers and directors of a Tennessee non-profit corporation must discharge all duties: (1) in good faith; (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (3) in a manner such directors and officers reasonably believe to be in the best interests of the corporation.

280. The D&O Defendants thus have, and at all times relevant had, fiduciary duties to the Debtors and their estates.

281. The D&O Defendants, because of their position of control, influence, and authority, were able to and did, directly and/or indirectly, exercise control over the wrongful acts complained of herein.

282. The D&O Defendants acted with a reckless disregard for the best interests of the Debtors and their estates by, among other things:

(i) failing to perform adequate diligence with respect to the CHS Acquisition;

(ii) failing to take appropriate action against CHS upon recognition of the Alleged CHS Misrepresentations;

(iii) saddling the Debtors with debts and management fees beyond their ability to repay and causing and/or deepening the Debtors' insolvency;

(iv) abandoning corporate separateness among the Debtor entities;

(v) failing to adequately monitor CHS under the transition services agreements in connection with the CHS Acquisition; and

(vi) hiring an insider management company—Strategic—to manage the Hospitals and paying Strategic a fee based on Curae's net revenue rather than net profitability or performance without adequate oversight of the fee amount.

283. In addition, the D&O Defendants owed fiduciary duties to the Debtors and their estates to familiarize themselves with the financial condition of the Hospitals and take appropriate action based on that condition. These duties included the obligations to ensure that the Debtors were administered on a financially prudent basis, and, given the insolvency and deepening insolvency of the Debtors, to prevent further incurrence of indebtedness that there was no reasonable prospect of repaying.

284. The D&O Defendants breached their duties and displayed reckless disregard for the best interests of the Debtors and their estates when, among other things, the Debtors failed to take action against CHS after the Batesville and Amory transactions, but instead, despite knowledge of the Alleged CHS Misrepresentations, went through with the Clarksdale transaction, deepening the Debtors' insolvency and causing them to incur debts beyond their ability to repay.

285. The D&O Defendants also breached their fiduciary duties and displayed a reckless disregard for the best interests of the Debtors and their estates in hiring an insider management company—Strategic—and tying Strategic's management fee to Curae's net revenue, rather than net profit. This caused the Debtors to incur additional expenses beyond their ability to repay and incentivized the Defendants to acquire the Hospitals through the CHS Acquisition despite the lack of diligence and inability to repay the debt incurred to finance the CHS Acquisition.

286. The D&O Defendants' failure to exercise the required degree of diligence, care and skill that a reasonably prudent person would exercise under similar circumstances allowed the Debtors to operate and continue operating at a substantial loss and caused the Debtors to accrue liabilities they were unable to satisfy, resulting in the Debtors' insolvency and deepening insolvency.

287. By reason of the foregoing, the D&O Defendants breached their fiduciary duties and, as a result, the Debtors and their estates have been damaged thereby.

COUNT II
BREACH OF FIDUCIARY DUTY
(AS TO OFFICER DEFENDANTS)

288. Plaintiff repeats and realleges the allegations set forth in each of the foregoing paragraphs, which are incorporated by reference as if set forth fully herein.

289. The Officer Defendants have, and at all times relevant had, a fiduciary duty to the Debtors and their estates.

290. The Officer Defendants, because of their positions of control, influence, and authority, were able to and did, directly and/or indirectly, exercise control over the wrongful acts complained of herein.

291. The Officer Defendants acted with a reckless disregard for the best interests of the Debtors and their estates by, among other things, taking actions that benefit their employer, Strategic, which actions were not in the best interests of the Debtors and their estates, such as, for example:

(i) failing to perform adequate diligence with respect to CHS Acquisition since Strategic had a motivation to close the CHS Acquisition and increase net revenue;

(ii) failing to take appropriate action against CHS after closing the Amory and Batesville transactions upon recognition that CHS allegedly misled the Debtors because Strategic had a motivation to close the Clarksdale transaction and increase net revenue;

(iii) saddling the Debtors with debts and management fees beyond their ability to repay and causing and/or deepening the Debtors' insolvency;

(iv) approving the Management Fee structure tied to Curae's net revenue;

(v) approving above-market terms in the Management Agreement, such as the reimbursement of certain of Strategic's expenses at 20% above the reasonable fees incurred; and

(vi) failing to adequately supervise Strategic in its role as manager of the Debtors.

292. The Officer Defendants' failure to exercise the required degree of diligence, care and skill that a reasonably prudent person would exercise under similar circumstances allowed the Debtors to operate and continuing operating at a substantial loss and caused the Debtors to accrue liabilities they were unable to satisfy, resulting in the Debtors' insolvency and deepening insolvency.

293. By reason of the foregoing, the Officer Defendants breached their fiduciary duties and, as a result, the Debtors and their estates have been damaged thereby.

COUNT III
BREACH OF FIDUCIARY DUTY
(AS TO DEFENDANT STRATEGIC)

294. Plaintiff repeats and realleges all prior allegations as if fully set forth herein.

295. Strategic has, and at all times relevant had, a fiduciary duty to the Debtors and their estates as a result of, *inter alia*:

(i) its position as manager pursuant to the Management Agreement;

(ii) its authority, control, and responsibility for the Debtors' operations and finances vested in it by the Management Agreement;

(iii) its position of special trust and confidence with the Debtors;

(iv) its control and/or influence over the Debtors; and

(v) its actual course of conduct.

296. As manager of the Debtors, Strategic owed fiduciary duties to the Debtors to act (i) in good faith; (ii) with the care a person in a like position would use under similar circumstances; and (iii) in a manner believed to be or not in opposition to the best interests of the Debtors.

297. Strategic, because of its position of control, influence, and authority, was able to and did, directly and/or indirectly, exercise control over the wrongful acts complained of herein.

298. Strategic breached its fiduciary duties to the Debtors and their estates given the conflict of interest apparent in the Management Agreement, pursuant to which Strategic employed and paid the salaries of the senior management team of the Debtors. The Debtors' senior management, as Strategic employees, was therefore disinclined to report any wrongdoing on behalf of Strategic to the Debtors. Strategic set up and maintained this conflicted relationship over the course of its relationship with Curae beginning in November 2014 and continuing to present day.

299. Strategic also breached its fiduciary duties, by, among other things;

(i) failing to perform adequate diligence with respect to the CHS Acquisition;

(ii) failing to take appropriate action against CHS upon recognition that CHS allegedly misled the Debtors with respect to the acquisition of the Hospitals;

(iii) saddling the Debtors with debt beyond their ability to repay and causing and/or deepening the Debtors' insolvency;

(iv) abandoning corporate separateness among the Debtor entities;

(v) failing to adequately monitor CHS under the transition services agreements in connection with the CHS Acquisition; and

(vi) accepting above-market fees and reimbursement of expenses pursuant to the Management Agreement, causing and/or deepening the Debtors' insolvency.

300. Strategic's failure to exercise the required degree of diligence, care and skill that a reasonably prudent manager would exercise under similar circumstances allowed the Debtors to operate and continue operating at a substantial loss and caused the Debtors to accrue liabilities they were unable to satisfy, resulting in the Debtors' insolvency and deepening insolvency.

301. By reason of the foregoing, Strategic breached its fiduciary duties and, as a result, the Debtors and their estates have been damaged thereby.

COUNT IV
BREACH OF CONTRACT
(AS TO STRATEGIC)

302. Plaintiff repeats and realleges all prior allegations as if fully set forth herein.

303. On December 31, 2014, Curae and Strategic entered into the Management Agreement, as amended, pursuant to which, among other things, Strategic (i) provided senior management to the Hospitals to manage the hospitals on a day-to-day basis (including the CEO); (ii) was responsible for fiscal management, patient accounting, and accounts and disbursements; and (iii) was responsible for using commercially reasonable efforts to conduct the business and operations of the Hospital in such a manner as set forth in the Bylaws.

304. Strategic breached, *inter alia*, Exhibit A (M) to the Management Agreement because it did not direct the day-to-day operations of the Debtors in accordance with the Bylaws.

305. Strategic breached, *inter alia*, Exhibit A (R) to the Management Agreement because it did not adequately implement and administer policies and procedures for the management and control of patient billing, claims filing, accounts receivable, credit collection, receivables activities, cash disbursements, and all business-related transactions and it failed to adequately set up or modify record keeping and billing systems.

306. Strategic breached, *inter alia*, Exhibit A (S) to the Management Agreement because it did not adequately supervise the disbursements of the Hospitals' funds for the operation of the Hospitals, but rather disregarded the Hospitals' corporate separateness.

307. The Debtors and their estates suffered damages as a result of Strategic's breaches in an amount to be determined at trial.

COUNT V
AVOIDANCE OF PREFERENCE PERIOD TRANSFERS – 11 U.S.C. § 547
(AS TO DEFENDANT STRATEGIC)

308. Plaintiff repeats and realleges all prior allegations as if fully set forth herein.

309. Each Strategic Transfer constituted a transfer of an interest in property of the Debtors.

310. Strategic was a creditor of the Debtors at the time of each Strategic Transfer, as more fully set forth on Exhibit A hereto.

311. Each Strategic Transfer was to or for the benefit of Strategic, as a creditor, within the meaning of 11 U.S.C. § 547(b)(1) because each Strategic Transfer either reduced or fully satisfied a debt or debts then owed by the Debtors to Strategic.

312. Each Strategic Transfer was made for, or on account of, an antecedent debt or debts owed by the Debtors to Strategic before such Strategic Transfers were made, each of which constituted a "debt" or "claim" (as those terms are defined in the Bankruptcy Code).

313. Each Strategic Transfer was made while the Debtors were insolvent. Among other things, as evidenced by the Debtors' petitions, as well as the proofs of claim that have been received to date, the Debtors' liabilities exceeded its assets on the Petition Date.

314. Each Strategic Transfer was made during the Insider Preference Period.

315. As a result of each Strategic Transfer, Strategic received more than Strategic would receive if: (i) these cases were under chapter 7 of the Bankruptcy Code; (ii) the Strategic

Transfers had not been made; and (iii) Strategic received payments of its debts under the provisions of the Bankruptcy Code. This is evidenced by the fact that unsecured creditors, under the proposed Plan, will receive less than the full amounts they are owed.

316. Based on the foregoing, each Strategic Transfer is voidable pursuant to 11 U.S.C. § 547(b).

COUNT VI
AVOIDANCE OF FRAUDULENT TRANSFERS – 11 U.S.C. § 548
(AS TO DEFENDANT STRATEGIC)

317. Plaintiff repeats and realleges all prior allegations as if fully set forth herein.

318. The Management Agreement provides that Strategic shall provide the Debtors with the SHR Senior Management and that the SHR Senior Management shall remain employees of Strategic.

319. Upon information and belief, with respect to Strategic's provision of the SHR Senior Management to the Debtors, the Debtors paid Strategic amounts above and beyond the amount the Debtors would have paid if the Debtors hired an independent management team directly.

320. Upon information and belief, the Debtors were insolvent on the dates that they made some or all of the Management Fee payments to Strategic related to the SHR Senior Management (the "SHR Payments").

321. The Debtors received less than reasonably equivalent value in exchange for the SHR Payments.

322. Any SHR Payments made within two years before the petition date—August 24, 2016, are voidable pursuant to 11 U.S.C. § 548(a).

COUNT VII
AVOIDANCE OF FRAUDULENT TRANSFERS – 11 U.S.C. § 548
(AS TO DEFENDANT STRATEGIC)

323. Plaintiff repeats and realleges all prior allegations as if fully set forth herein.

324. Section 9.3 of the Management Agreement provides: "At Curae Health's request, [Strategic] may also provide other services, which are outside the scope of this Agreement. In such event, Curae Health shall reimburse [Strategic] for the reasonable expenses incurred in providing these services in an amount equal to [Strategic's] direct cost **plus twenty percent (20%)**, unless otherwise agreed to in writing." Management Agreement, Section 9.3 (emphasis added).

325. Any payments the Debtors made to Strategic for twenty percent above the reasonable expenses incurred by Strategic under section 9.3 of the Management Agreement (the "Twenty-Percent Payments") were above the market rate for reimbursement of reasonable expenses.

326. Upon information and belief, the Debtors were insolvent on the dates that it made some or all of the Twenty-Percent Payments.

327. The Debtors received less than reasonably equivalent value in exchange for the Twenty-Percent Payments.

328. Any Twenty-Percent Payments made within two years before the petition date—August 24, 2016, are voidable pursuant to 11 U.S.C. § 548(a).

COUNT VIII
RECOVERY OF AVOIDED TRANSFERS – 11 U.S.C. § 550
(AS TO DEFENDANT STRATEGIC)

329. Plaintiff repeats and realleges all prior allegations as if fully set forth herein.

330. Plaintiff is entitled to avoid the Strategic Transfers pursuant to 11 U.S.C. § 547(b) and the SHR Payments and the Twenty-Percent Payments pursuant to U.S.C. § 548(a) (together, the "Avoidable Transfers").

331. Strategic was the initial transferee of the Avoidable Transfers or the immediate or mediate transferee of such initial transferee or the person for whose benefit the Avoidable Transfers were made.

332. Based upon the foregoing, Plaintiff is entitled to recover the Avoidable Transfers, or the value thereof, from Strategic under 11 U.S.C. § 550(a), together with an award of pre- and post-judgment interest thereon from the date of demand to the date of payment and the costs of this action.

COUNT IX
DISALLOWANCE OF ALL CLAIMS – 11 U.S.C. § 502(d)
(AS TO DEFENDANT STRATEGIC)

333. Plaintiff repeats and realleges all prior allegations as if fully set forth herein.

334. Strategic is a transferee of transfers avoidable under sections 547 and 548 of the Bankruptcy Code, which property is recoverable under section 550 of the Bankruptcy Code.

335. Strategic has not satisfied its liability for the Avoidable Transfers.

336. Pursuant to section 502(d) of the Bankruptcy Code, any and all claims of Strategic and/or its assignee against Plaintiff must be disallowed until such time as Strategic pays Plaintiff an amount equal to the Avoidable Transfers, plus interest thereon and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests entry of a final judgment against the Defendants as follows:

(i) On Count I, awarding damages against the D&O Defendants, in an amount to be determined at trial, for breach of duty;

(ii) On Count II, awarding damages against the Officer Defendants, in an amount to be determined at trial, for breach of duty;

(iii) On Count III, awarding damages against Strategic, in an amount to be determined at trial, for breach of duty;

(iv) On Count IV, awarding damages against Strategic, in an amount to be determined at trial, for breach of contract;

(viii) On Counts V, VI, VII, and VIII, awarding judgment in favor of Plaintiff and against Strategic, (i) avoiding all of the Avoidable Transfers, (ii) directing Strategic to return to Plaintiff the amount of the Avoidable Transfers, pursuant to 11 U.S.C. §§ 547(b), 548(a), and/or 550(a), and (iii) for money damages against Strategic in the amount of the Avoidable Transfers, together with interest from the date of demand at the maximum legal rate, to the extent allowed by law;

(x) On Count IX, awarding judgment in favor of Plaintiff and against Strategic disallowing any claims held or filed by Strategic against the Plaintiff until Strategic pays Plaintiff an amount equal to the Avoidance Transfers pursuant to 11 U.S.C. § 502(d);

(xii) Awarding attorney's fees to the extent permitted by law, including as set forth in Fed. R. Bankr. P. 7008(b);

(xiii) Awarding interest and cost of suit; and

(xv) Awarding such other relief as the Court deems just and equitable.

Dated: May 10, 2019

/s/ Griffin S. Dunham

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-and-

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Co-Counsel to the Official Committee of Unsecured Creditors

Exhibit A

Strategic Transfers

Payment Date	Amount ($)
8/25/2017	100,000.00
9/27/2017	80,000.00
10/6/2017	100,000.00
10/25/2017	100,000.00
11/8/2017	100,000.00
11/21/2017	100,000.00
12/6/2017	50,000.00
12/28/2017	125,000.00
1/4/2018	75,000.00
1/16/2018	100,000.00
2/12/2018	75,000.00
2/26/2018	100,000.00
3/19/2018	125,000.00
3/30/2018	100,000.00
4/9/2018	125,000.00
4/10/2018	200,000.00
5/2/2018	65,000.00
5/9/2018	65,000.00
5/29/2018	100,000.00
6/5/2018	100,000.00
7/12/2018	100,000.00
7/23/2018	50,000.00
7/28/2018	130,000.00
8/22/2018	201,279.91
TOTAL	**$2,466,279.91**