

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

In re:	)	
	)	Chapter 11
Curae Health, Inc., <i>et al.</i> <sup>1</sup>	)	Case No. 18-05665
	)	
1721 Midpark Road, Suite B200	)	Judge Walker
Knoxville, TN 37921	)	
Debtors.	)	Jointly Administered

**LIMITED OBJECTION TO  
DEBTORS' EXPEDITED MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING  
DEBTORS TO ENTER INTO A MEMBER SUBSTITUTION AGREEMENT WITH  
RESPECT TO THE RUSSELLVILLE HOSPITAL, AND  
(II) GRANTING RELATED RELIEF**

ServisFirst Bank, by and through counsel, hereby files this Limited Objection (the "Objection") to Debtors' Expedited Motion for Entry of an Order (I) Authorizing Debtors to Enter into a Member Substitution Agreement with Respect to the Russellville Hospital, and (II) Granting Related Relief (the "Motion"). ServisFirst Bank objects to the Motion to the extent the Debtor Curae Health, Inc. attempts to claim an ownership interest in the ServisFirst Bank account described in the Motion as the "Debt Service Reserve Fund" free and clear of the security interests, liens and right of setoff of ServisFirst Bank.

1. In paragraph 12 of the Debtors' Motion, the Debtors describe the creation of the Debt Service Reserve Fund by Curae Health, Inc. and the granting of a lien by Curae Health, Inc. on the Debt Service Reserve Fund in favor of ServisFirst Bank.

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<sup>1</sup> 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).  
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2. In paragraph 13 of the Motion, the Debtors suggest that upon consummation of the transactions contemplated by the Membership Substitution Agreement the monies held in the Debt Service Reserve Fund of approximately \$950,020.00 would be released from the liens and setoff rights of ServisFirst Bank and payable to the Debtors' estates (the "proposed Release").

3. ServisFirst Bank objects to the Debtors' assertion with respect to the proposed Release.

4. Although the consummation of the Member Substitution Agreement for the Russellville Hospital as proposed by the Debtors in the Motion would result in the repayment in full of the Russellville Hospital debt to ServisFirst Bank, Curae Health, Inc. will continue to have outstanding liabilities and obligations owing to ServisFirst Bank that will not be satisfied by the Russellville Hospital transaction. Curae Health, Inc. is indebted to ServisFirst Bank in the amount of at least \$18,773,834.20 as more particularly set forth in that certain Proof of Claim dated November 14, 2018, filed with the Court as Claim No.: 122. The obligations and liabilities of Curae Health, Inc. and the other Debtors in this jointly administered bankruptcy owing to ServisFirst Bank case are more fully described in the Final Order (I) Authorizing the Debtors to (A) Obtain Postpetition Secured Financing and (B) Utilize Cash Collateral, (II) Granting Liens And Superpriority Administrative Expense Status, (III) Granting Adequate Protection, and (IV) Modifying the Automatic Stay (Docket No.: 455).

5. The liens and security interests of ServisFirst Bank in the assets of Curae Health, Inc. are more particularly set forth in that certain Guarantor Security Agreement dated May 1, 2017, a true and correct copy of which is attached hereto as Exhibit A (the "Security Agreement"). The security interest is perfected by a UCC Financing Statement filed with the Tennessee Secretary of State's Office as Financing Statement No.: 426793008 (the "Financing Statement"). A true and

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exact copy of said Financing Statement is attached hereto as Exhibit B. The Security Agreement and Financing Statement include the grant of a security interest in all deposit accounts of Curae Health, Inc. and the proceeds thereof. The Debt Service Reserve Fund is a deposit account owned by Curae Health, Inc. at ServisFirst Bank.

6. In addition to the liens and security interests established and perfected under the Security Agreement and Financing Statement, the Terms and Conditions of the account agreement entered into by Curae Health, Inc. account number ending -2745 for the Debt Service Reserve Fund account set forth a contractual right of setoff in favor of ServisFirst Bank. ServisFirst Bank hereby asserts that the setoff right applies to any and all debts owing by Curae Health, Inc. to ServisFirst Bank including, but not limited to, the debts and obligations of Curae Health, Inc. owing to ServisFirst Bank in this bankruptcy case. A true and exact copy of the account agreement Terms and Conditions for the Debt Service Reserve Fund are attached hereto as Exhibit C. The setoff section of the account agreement Terms and Conditions states that ServisFirst Bank may “set off the funds in this account against any due and payable debt you owe us now or in the future, ... .” Exhibit C, Terms and Conditions, pg. 2; para. entitled “SETOFF.”

7. In light of the foregoing, ServisFirst Bank hereby files this Limited Objection to the Debtors’ Motion. ServisFirst Bank asserts that the liens, security interests and right of setoff of ServisFirst Bank in connection with the Debt Service Reserve Fund account should not be released as part of the Russellville Hospital member substitution transaction, but shall continue to be applicable as a valid lien, security interest and right of setoff against the Debt Service Reserve Fund account and the proceeds thereof.

IN WITNESS WHEREOF, the undersigned respectfully requests that this Court sustain this Limited Objection and direct the payment of the proceeds contained within the Debt Service Reserve Fund account directly to ServisFirst Bank.

Respectfully submitted,

**NEAL & HARWELL, PLC**

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served through the Bankruptcy Court's ECF system on this the 20<sup>th</sup> day of November, 2018, on all parties registered to receive notice in this case.

/s/ David G. Thompson