

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

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

**THE DEADLINE FOR FILING A TIMELY RESPONSE IS: December 10, 2018.
IF A RESPONSE IS TIMELY FILED, THE HEARING WILL BE: January 11, 2019,
9:00 a.m., Courtroom 2, 2nd Floor, Customs House, 701 Broadway, Nashville, Tennessee
37203**

**LIMITED OBJECTION TO PROPOSED SALE OF PANOLA ASSETS AND THE
ASSUMPTION, ASSIGNMENT AND CURE OF EXECUTORY CONTRACTS PURSUANT TO
PROPOSED SALE OF PANOLA MEDICAL CENTER ASSETS**

Come MEDHOST of Tennessee, Inc., its wholly-owned subsidiary, MEDHOST Direct, Inc., and MEDHOST Cloud Services, Inc., formerly known as YourCareUniverse, Inc., sometimes referred to herein collectively as “MEDHOST,” pursuant to the Notice of Debtors’ Intent to Assume and Assign Certain Executory Contracts dated November 30, 2018 (Docket No. 513) (the “Panola Assumption Notice”), which such Panola Assumption Notice relates to the Debtors’ Motion for Entry of an Order Authorizing the Sale of Panola Medical Center Assets (the “Panola Assets”), filed November 6, 2018 (Docket No. 401) (the “Panola Sale Motion”), and respectfully submit this limited objection to the proposed sale of the Panola Assets and the assumption, assignment and cure of certain MEDHOST Agreements (as defined below), as contemplated in the Panola Sale Motion and the Panola Assumption Notice. In support of this limited objection, MEDHOST respectfully represents as follows:

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); Clarksdale Regional Center, Inc. (4755); Amory Regional Physicians, LLC (5044); Batesville Regional Physicians, LLC (4952); and Clarksdale Regional Physicians, LLC (5311).

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1. Pursuant to Ordering Paragraph 3 of the Panola Assumption Notice, any objection on any basis to the proposed assumption and assignment of a Contract or Lease (identified in Exhibit 1 to the Panola Assumption Notice), including objections to cure amounts, must be filed by December 10, 2018. MEDHOST does not oppose the sale of the Panola Assets to the approved Stalking Horse Purchaser. However, because the proposed sale of the Panola Assets to the Stalking Horse Purchaser cannot be closed upon the terms and conditions proposed by the Debtors and the Stalking Horse Purchaser with respect to the MEDHOST Agreements (defined below), MEDHOST respectfully submits this limited objection to the sale of the Panola Assets, and specifically the assumption, assignment and proposed cure of the MEDHOST Agreements as described in the Panola Assumption Notice.

2. Under date of July 7, 2015, MEDHOST of Tennessee, Inc. entered into that certain SOFTWARE LICENSE AND APPLICATION SERVICES AGREEMENT with Curae Health, Inc. (“Curae”). Thereby, Curae obtained the rights to use at certain “Licensed Sites,” as defined therein, MEDHOST’s Enterprise software, which is the primary electronic health record software in which most core hospital operations - both financial and clinical – function. By amendment dated July 13, 2017, the Panola Memorial Hospital facility, owned and operated by Batesville Regional Medical Center, Inc., was added as a Licensed Site to this agreement.

3. Under date of July 7, 2015, MEDHOST Direct, Inc. entered into that certain HOSTING AND MANAGED SERVICES AGREEMENT with Curae, by which among other things MEDHOST hosts Curae’s licensed Enterprise software on servers owned and operated by MEDHOST at a MEDHOST data center. By amendment dated July 13, 2017, the Panola Memorial Hospital facility was added as a Licensed Site under this agreement.

4. Under date of July 7, 2015, MEDHOST Cloud Services, Inc. (f/k/a YourCareUniverse, Inc.), entered into that certain MASTER PRODUCTS AND SERVICES

AGREEMENT with Curae, pursuant to which Curae receives certain cloud-based and/or SaaS services, such as the operation of Curae's patient portal.

5. Collectively, the agreements described in numbered paragraphs 2 through 4 above shall be referred to as the "MEDHOST Agreements." The MEDHOST Agreements are executory contracts as contemplated in 11 U.S.C. § 365. All MEDHOST Agreements include MEDHOST and Debtor Curae Health, Inc. as counterparties. None of the other six (6) Debtors is a party to the MEDHOST Agreements, or any of them.

6. Pursuant to the Panola Sale Order entered by the Court on November 30, 2018 (Docket No. 507) (the "Panola Sale Order"), the Debtors filed their Panola Assumption Notice (Docket No. 513) on November 30, 2018. MEDHOST's limited objection to the Panola Assumption Notice relate, without limitation, to objections (a) to the assumption and assignment of the MEDHOST Agreements referenced above; (b) to the cure amounts indicated by the Debtors on Exhibit 1 to the Panola Assumption Notice; (c) to the Debtors' efforts to sever or bifurcate the MEDHOST Agreements into separate agreements per medical facility; and (d) because of the failure to provide MEDHOST with adequate assurance of future performance of all obligations under the MEDHOST Agreements. As noted above, MEDHOST does not object to the sale of the Panola Assets to the approved Stalking Horse Purchaser.

7. Exhibit 1 to the Panola Assumption Notice comprises three tables setting forth the Debtors' listings of executory contracts to which Batesville Regional Medical Center, Inc., Batesville Regional Physicians, LLC, or Curae Health, Inc. is a party, and which may be assumed and assigned if the Panola Sale Motion (Docket No. 401) to authorize the sale of the Panola Assets is granted and executory contracts are assigned to a qualified operator of the Panola Medical Center. The reader of the Panola Sale Motion and the Panola Assumption Notice may be left with the impression that the MEDHOST Agreements are two-party contracts

between Debtor Batesville Regional Medical Center, Inc. and MEDHOST. That is incorrect. There exists no contract between Debtor Batesville Regional Medical Center, Inc. and MEDHOST. The MEDHOST Agreements are between MEDHOST and Curae Health, Inc. No subsidiary of Curae Health is a party to any of the MEDHOST Agreements, though some are Licensed Sites thereunder. The MEDHOST Agreements cannot be severed without the consent of MEDHOST, and such consent has not been given. To the extent the Panola Assumption Notice or the Panola Sale Motion implies otherwise, it is inaccurate, and MEDHOST objects.

8. Further, the footnote referenced with the “Proposed Cure Amount” on Exhibit 1 is misleading. That footnote implies that the cure amounts for the MEDHOST Agreements are severable and subject to reduction if certain amounts are paid from proceeds of the sale of the Gilmore Medical Center. That is incorrect. The cure amounts for the MEDHOST Agreements are not severable or subject to reduction. As noted above, Debtor Batesville Regional Medical Center, Inc. is not a party to the MEDHOST Agreements. The actual cure amount required to cure all defaults under the MEDHOST Agreements, pursuant to 11 U.S.C. §365(b)(1)(A), is approximately \$3,153,129.98, plus all amounts required to compensate MEDHOST, pursuant to 11 U.S.C. §365(b)(1)(B), for its actual pecuniary losses resulting from Curae Health’s default under the MEDHOST Agreements (collectively, the “Cure Amount”). The Cure Amount is not subject to reduction, and the MEDHOST Agreements cannot be assumed and assigned, under 11 U.S.C. § 365(b)(1), without the full Cure Amount being paid in full.

9. MEDHOST further objects to the assumption and assignment of the MEDHOST Agreements because the Debtors and the approved Stalking Horse Purchaser have not complied with 11 U.S.C. § 365(b)(1)(C). The Debtors and the Stalking Horse Purchaser have failed to provide MEDHOST with adequate assurance of future performance of all obligations required under the MEDHOST Agreements.

10. Separately, Debtor Batesville Regional Medical Center, Inc. may be liable for some or all amounts due and owing to MEDHOST under the MEDHOST Agreements. MEDHOST respectfully reserves this issue for future determination.

11. The Batesville Asset Purchase Agreement provides that any time prior to the closing of the sale, the approved Stalking Horse Purchaser may change its prior decision to assume, or not to assume, any executory contract or unexpired lease, including the MEDHOST Agreements. In the event that as of the closing of the Batesville Asset Purchase Agreement, the MEDHOST Agreements have not been assumed in accordance with all applicable requirements of 11 U.S.C. § 365, then, in the absence of any agreement between MEDHOST and Curae Health, Inc. to do otherwise, MEDHOST expects to discontinue services to the Batesville Medical Center and provide the purchaser with a tape of all records of the Batesville Medical Center in the system's native file format.

WHEREFORE, MEDHOST does not oppose the sale of the Panola Assets to the approved Stalking Horse Purchaser. However, MEDHOST objects to the assumption and assignment of the MEDHOST Agreements for the reasons set forth above. MEDHOST further objects to the implication in the Panola Assumption Notice that the Cure Amount owed to MEDHOST under the MEDHOST Agreements is somehow severable or subject to reduction. If the successful purchaser of the Panola Assets desires to take advantage of the benefits of the MEDHOST Agreements, and conditions the closing upon the assumption and assignment thereof, the sale cannot be approved unless and until all requirements of 11 U.S.C. § 365 have been fully satisfied, including payment in full of the Cure Amount. Further, the Debtors and the Stalking Horse Purchaser must demonstrate adequate assurance of future performance of the MEDHOST Agreements. The proposed sale of the Panola Assets to the Stalking Horse

Purchaser, and the assumption and assignment of the MEDHOST Agreements, cannot be approved under these circumstances.

Respectfully submitted this the 7th day of December, 2018.

/s/ Thomas H. Forrester

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CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2018, a true and correct copy of the foregoing document was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

/s/ Thomas H. Forrester

Thomas H. Forrester