

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> , ¹)	Case No. 18-05665
)	Judge Walker
1721 Midpark Road, Suite B200)	
Knoxville, TN 37921)	(Jointly Administered)
)	
Debtors.)	

HHS CULINARY & NUTRITIONAL SOLUTIONS, LLC’S AND HHS ENVIRONMENTAL SERVICES LLC’S STATEMENT IN CONNECTION WITH (A) ORDER SETTING HEARING ON THE ADJOURNED OBJECTIONS TO THE NOTICE OF (I) DEBTORS’ INTENT TO ASSUME AND ASSIGN CERTAIN EXECUTORY CONTRACTS, UNEXPIRED LEASES OF PERSONAL PROPERTY, AND UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY; AND (II) CURE AMOUNTS RELATED TO THE FOREGOING; AND (B) NOTICE OF FILING THE ASSET PURCHASE AGREEMENT FOR THE SALE OF THE GILMORE HOSPITAL WITH SCHEDULES AND EXHIBITS
[RELATES TO DKT. NOS. 522 & 499]

HHS Culinary & Nutritional Solutions, LLC (“HHS Culinary”) and HHS Environmental Services LLC (“HHS Environmental”, and together with HHS Culinary and each of their affiliates, “HHS”), by and through their undersigned counsel, hereby file this statement (the “Statement”) in connection with (A) the *Order Setting Hearing on the Adjourned Objections to the Notice of (I) Debtors’ Intent to Assume and Assign Certain Executory Contracts, Unexpired Leases of Personal Property, and Unexpired Leases of Nonresidential Real Property; and (II) Cure Amounts Related to the Foregoing* (the “Order”) [Dkt. No. 522] and (B) *Notice of Filing the Asset Purchase Agreement for the Sale of the Gilmore Hospital with Schedules and*

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).

Exhibits (the “Notice of Gilmore APA”) [Dkt. No. 499]. In support of this Statement, HHS respectfully states as follows:

RELEVANT BACKGROUND

A. HHS Culinary & Nutritional Solutions, LLC

1. On or around November 1, 2017, Amory Regional Medical Center, Inc. d/b/a Gilmore Memorial Hospital (“Gilmore” or “Debtor”) and HHS Culinary entered into that certain Food and Nutritional Services Management Agreement (the “Food Services Agreement”).

2. By letter dated January 26, 2018, HHS Culinary gave notice of material breach of the Food Services Agreement, and provided the necessary steps for Gilmore to cure the breach set forth therein.

3. Gilmore failed to cure the material breach within ten days. By letter dated February 9, 2018, HHS Culinary notified Gilmore that it was exercising its right to terminate the Food Services Agreement pursuant to the terms thereof. The total past due amount owed by Gilmore to HHS Culinary is no less than \$179,900.47, plus applicable interest pursuant to the Food Services Agreement. Such amount remains unpaid as of the date of this filing.

B. HHS Environmental Services LLC

4. On or around November 1, 2017, Gilmore and HHS Environmental entered into that certain Housekeeping Management and Services Agreement (the “Housekeeping Agreement”).

5. By letter dated January 26, 2018, HHS Environmental gave notice of material breach of the Housekeeping Agreement, and provided the necessary steps for Gilmore to cure the breach set forth therein.

6. Gilmore failed to cure the material breach within ten days. By letter dated February 9, 2018, HHS Environmental notified Gilmore that it was exercising its right to

terminate the Housekeeping Agreement pursuant to the terms thereof. The total past due amount owed by Gilmore to HHS Environmental is no less than \$255,362.40, plus applicable interest pursuant to the Housekeeping Agreement. Such amount remains unpaid as of the date of this filing.

C. The Bankruptcy Cases and the Gilmore APA

7. On August 24, 2018 (the “Petition Date”), Curae Health, Inc. and its affiliated debtors, including Gilmore, (collectively, the “Debtors”) each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).

8. On August 31, 2018, the Debtors filed their *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 the Gilmore Medical Center, (VII) Approving the Form and Manner of Notice Thereof, and (VIII) Granting Related Relief* (the “Sale Procedures Motion”) [Dkt. No. 79].

9. The Sales Procedures Motion included a copy of the Asset Purchase Agreement by and among Amory Regional Medical Center, Inc., Amory Regional Physicians, LLC, Curae Health, Inc., and North Mississippi Services, Inc. (the “Gilmore APA”). The Gilmore APA did not include any schedules or exhibits.

10. On October 12, 2018, the Debtors filed their *Notice of Filing of the (1) Revised Asset Purchase Agreement for the Sale of the Gilmore Hospital and (2) Redline of Revised Asset Purchase Agreement of the Gilmore Hospital* (the “Revised Gilmore APA”) [Dkt. No. 305]. The

only schedule or exhibit included with the Revised Gilmore APA was Schedule 2.2(1): Excluded Assets.

11. In connection with the Sales Procedures Motion, on October 29, 2018, the Debtors filed the *Notice of (I) Debtors' Intent to Assume and Assign Certain Executory Contracts, Unexpired Leases of Personal Property, and Unexpired Leases of Nonresidential Real Property; and (II) Cure Amounts Related to the Foregoing* (the "Notice of Assumption") [Dkt. No. 371]. The Notice of Assumption did not identify Gilmore's contracts with HHS Culinary or HHS Environmental.

12. On November 27, 2018, at 2:00 p.m., the Court held a hearing on the Sales Procedures Motion (the "Sale Hearing"), and subsequently granted the Sales Procedure Motion (the "Sale Order") [Dkt. No. 506]. Among other things, the Sale Order stated: "The Debtors have the power and authority to assume and assign the contracts identified in the Gilmore APA, and all requirements for such assumption and assignment pursuant to section 365 of the Bankruptcy Code have been satisfied"

13. Immediately before the Sale Hearing, at 1:35 p.m. on November 27, 2018, North Mississippi Health Services, Inc. filed a notice including a revised Gilmore APA. The Notice of Gilmore APA is the first instance of the Gilmore APA that includes schedules and exhibits in full, including Schedule 4.17(a): Contracts. Schedule 4.17 identified both the Food Services Agreement and the Housekeeping Agreement.

STATEMENT AND RESERVATION OF RIGHTS

14. The Gilmore APA states that "Schedule 4.17(a) sets forth an accurate and complete list of each Contract (including a description of any oral Contract) to the extent that, such Contract binds or affects any of the Purchased Assets or Seller is a party to or is bound by such Contract in connection with the Business or the Purchased Assets (collectively, the

“Material Contracts”)” It is unclear to HHS as to the purpose of this “Material Contract” list, as it is different than the executory contract assumption list that is separately attached and which does not include either of the two terminated contracts with HHS (i.e., HHS’s contracts were not and could not have been assumed). Nonetheless, because the final APA was filed only minutes before the Sale Hearing and because the two HHS contracts now appear on a separate “contracts” list, HHS files this Statement and Reservation of Rights to clarify that the Food Services Agreement and the Housekeeping Agreement (including any other contracts between HHS and Gilmore) terminated pre-petition; thus, each is not a “Contract [that] binds or affects any of the Purchased Assets” nor is “Seller a party to or is bound by such Contract[s].”

Dated: December 14, 2018.

Respectfully submitted,

VEAZEY & TUCKER

By: /s/Thomas W. Tucker III

Thomas W. Tucker III, TBPR # 022319
222 2nd Ave. North, Suite 312
Nashville, TN 37201
Telephone: (615) 244-4693
Facsimile: (615) 256-0499
ttucker@veazeytucker.com

- and -

Jason L. Boland (*admitted pro hac vice*)
Julie Goodrich Harrison (*admitted pro hac vice*)
NORTON ROSE FULBRIGHT US LLP
1301 McKinney Street, Suite 5100
Houston, Texas 77010-3095
Telephone: (713) 651-5151
Facsimile: (713) 651-5246
jason.boland@nortonrosefulbright.com
julie.harrison@nortonrosefulbright.com

Counsel For HHS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 14, 2018, a true and correct copy of the above Statement was served via the Bankruptcy Court's Electronic Case Filing System on those parties that have consented to such service.

/s/Thomas W. Tucker III

Thomas W. Tucker III