

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

In re:)	
	)	Chapter 11
Curae Health, Inc.,	)	Case No. 18-05665
Amory Regional Medical Center, Inc.,	)	Case No. 18-05675
Batesville Regional Medical Center, Inc.,	)	Case No. 18-05676
Clarksdale Regional Medical Center, Inc.	)	Case No. 18-05678
Amory Regional Physicians, LLC	)	Case No. 18-05680
Batesville Regional Physicians, LLC	)	Case No. 18-05681
Clarksdale Regional Physicians, LLC	)	Case No. 18-05682
)	
1721 Midpark Road, Suite B200	)	Judge Walker
Knoxville, TN 37921)	
Debtors.	)	Joint Administration Pending

**EXPEDITED MOTION OF DEBTORS FOR ENTRY OF AN ORDER AUTHORIZING:
PAYMENT OF (I) CERTAIN PREPETITION WORKFORCE CLAIMS, INCLUDING
WAGES, SALARIES, AND OTHER COMPENSATION; (II) CERTAIN EMPLOYEE
BENEFITS AND CONFIRMING RIGHT TO CONTINUE EMPLOYEE BENEFITS ON
POSTPETITION BASIS; (III) REIMBURSEMENT TO EMPLOYEES FOR
PREPETITION EXPENSES; (IV) WITHHOLDING AND PAYROLL-RELATED
TAXES; (V) WORKERS’ COMPENSATION OBLIGATIONS; AND (VI) PREPETITION
CLAIMS OWING TO ADMINISTRATORS AND THIRD-PARTY PROVIDERS**

The above-captioned debtors and debtors in possession (the “**Debtors**”)¹ hereby move this Court (this “**Motion**”) for entry of an order (the “**Order**”) pursuant to sections 105(a), 363(b), 507, 1107(a), and 1108 of title 11 of the United States Code (the “**Bankruptcy Code**”); Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), authorizing, but not directing, the Debtors to (i) pay accrued prepetition wages, salaries, and other compensation to their Workforce (as defined below); (ii) honor any prepetition obligations in respect of, and continue in the ordinary course of business until further notice (but not assume), certain of the Debtors’ paid time off policies, severance practices, and employee benefit plans and programs, as described below; (iii) reimburse Employees (as defined below) for

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

prepetition expenses that Employees incurred on behalf of the Debtors in the ordinary course of business on a prepetition basis; (iv) pay all related prepetition payroll taxes and other deductions; (v) honor worker's compensation obligations; and (vi) pay any prepetition claims of administrators and providers in the ordinary course of business to the extent that any of the foregoing programs are administered, insured, or paid through a third-party administrator or provider. In support of the Motion, the Debtors rely upon the *Declaration of Stephen N. Clapp, Chief Executive Officer of Curae Health, Inc., in Support of Chapter 11 Petitions and First Day Pleadings*, filed with the Court concurrently herewith (the "**First Day Declaration**"). In further support of the Motion, the Debtors, by and through their undersigned counsel, respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105(a), 363(b), and 507, Bankruptcy Rules 6003 and 6004.

BACKGROUND

A. General Background

3. On the date hereof (the "**Petition Date**"), each of the Debtors filed a voluntary petition in this Court commencing a case for relief under chapter 11 of the Bankruptcy Code (the "**Chapter 11 Cases**"). The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of the Chapter 11 Cases, is set forth in detail in the First Day Declaration and fully incorporated herein by reference.

4. Concurrently with the filing of this Motion, the Debtors have requested procedural consolidation and joint administration of the Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b). The Debtors continue to manage and operate their business as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108. No trustee or examiner has been requested in the Chapter 11 Cases and no committees have yet been appointed.

B. The Debtors' Workforce and Related Obligations

5. In connection with the operation of their business, the Debtors currently employ approximately 1,245 employees, including: 969 full-time employees, 29 part-time employees, and 247 PRN employees (the "**Employees**"). The Employees consist of 152 exempt employees that are paid a fixed salary and 1,093 non-exempt employees that are paid on an hourly basis. The Employees are employed at the Debtors' medical facilities located in Mississippi (each, a "**Facility**") and in the central business office in Tennessee (the "**CBO**"). All Employees are paid out of Debtor Curae Health Inc. ("**Curae**").

6. As set forth more fully in the First Day Declaration, Debtors Amory,² Batesville, and Clarksdale are each the sole member of a Physician Entity that employs some of the physicians at each Facility. The physicians and employees of each Physician Entity work at and generate income for their respective Facilities. That income is then passed up to Curae pursuant to the Cash Management System. Curae then pays the salaries of the physicians and employees of each Physician Entity.

7. The Employees are critical to the Debtors' business, and their value cannot be overstated. To a significant extent, the long-term prognosis of the Debtors' patients depends on the Debtors' ability to attract and retain qualified personnel. The loss of certain Employees will

² Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the First Day Declaration.

impede the Debtors' business and seriously harm the ability to successfully implement their bankruptcy strategy. Furthermore, replacing Employees can be difficult for the Debtors given the limited number of individuals in their region with the breadth of skills and experience required to provide quality patient care.

8. If the Debtors cannot assure their Employees that they will promptly pay prepetition Employee Obligations (as defined below) to the extent allowed under the Bankruptcy Code, and continue to honor, as applicable, the Employee Benefits Obligations (as defined below), certain Employees will likely seek employment elsewhere. The loss of Employees at this critical juncture would have a material adverse impact on the Debtors' business and ability to maximize value through these Chapter 11 Cases.

9. The Debtors also regularly utilize the services of temporary and locums workers ("**Contractors**" and, together with the Employees, the "**Workforce**") to provide a variety of services. The Contractors are employed by third party staffing agencies and outsourced to the Debtors. As of the Petition Date, there are approximately 15 Contractors, all of which are highly skilled doctors, nurse practitioners, and nurses. As of August 20, 2018, the Debtors have spent approximately \$1,313,068.56 on account of wages and compensation owed to Contractors in 2018.

10. The Contractors fill certain critical and immediate business needs of the Debtors and allow the Debtors to have a flexible workforce to meet their operational needs in a cost-effective manner. The Contractors are a reliable and necessary component of the Debtors' operations. Thus, as with the Debtors' regular Employees, if the Debtors fail to honor their prepetition compensation obligations to the Contractors, it is likely that the Debtors will lose such individuals' valuable services to the detriment of the Debtors' ongoing business operations.

11. In the ordinary course of business, the Debtors incur payroll and other compensation obligations for their Workforce. The Debtors also provide other benefits to their Employees for the performance of services. These benefits and obligations are described in more detail below.

i. Workforce Compensation Obligations

a. Employee Compensation Obligations

12. In the ordinary course of business, the Debtors incur payroll obligations to their Employees, comprised generally of salaries and wages. Approximately 152 Employees are paid a fixed salary and approximately 1,093 Employees are paid on an hourly basis.

13. Employees are paid on a bi-weekly basis out of a Curae operating account. The Debtors' average payroll obligation is approximately \$2,477,283.29. The Debtors utilize two payroll cycles. The first payroll cycle consists of all of the Debtors' Employees that are employed at the Facilities (the "**First Payroll Cycle**"). The second payroll cycle consists of the Employees that are employed at the CBO (the "**Second Payroll Cycle**"). The last date on which the First Payroll Cycle was compensated prior to the Petition Date was August 17, 2018 for the pay period from July 29, 2018 to August 11, 2018. The last date on which the Second Payroll Cycle was compensated prior to the Petition Date was August 24, 2018 for the pay period from August 5, 2018 to August 18, 2015. The Debtors estimate that as of the Petition Date, approximately \$2,048,443.33 has accrued and remains unpaid on account of the First Payroll Cycle and the Second Payroll Cycle (collectively, the "**Employee Compensation Obligations**"). To the extent that any Employee is owed more than \$12,850, the Debtors will seek authority to pay such amounts by separate motion pursuant to Bankruptcy Code section 502.

14. The Debtors use LBMC Employment Partners ("**LBMC**") to process their payroll and coordinate the payment of Withholding Obligations (as defined below). The ongoing

services of LBMC are imperative to the smooth functioning of the Debtors' operations and payroll system. On average, the Debtors pay LBMC approximately \$7,951.21 per month.

15. The Debtors seek authorization, but not direction, to pay any unpaid Employee Compensation Obligations. In addition, the Debtors seek authority to cause any prepetition checks or electronic payment requests that were given in payment of Employee Compensation Obligations to be honored and to reissue any check or electronic payment request that is not cleared by the applicable bank or other financial institution, to the extent necessary.

b. Contractor Obligations

16. As detailed above, the Debtors regularly utilize the Contractors in the ordinary course of business. As of the Petition Date, the Debtors estimate that the aggregate amount owing on account of the Contractors for services performed prior to the Petition Date is approximately \$318,000 (the "**Contractor Obligations**" and together, with the Employee Compensation Obligations, the "**Compensation Obligations**"). The Contractors are highly skilled doctors, nurse practitioners, and nurses who are critical to the operation of Debtors' businesses and to patient care at the hospitals operated by Debtors. The Debtors would be irreparably harmed without the services of the Contractors because such parties play a critical role in the Debtors' day-to-day operations, and, as such, the Debtors request authorization, but not direction, to honor and pay any unpaid Contractor Obligations.

c. Administrative Fee Obligations

17. In connection with payroll processing, the Debtors pay certain administrative fees. Such administrative fees include amounts owed to LBMC, as discussed above and Kronos, which provides crucial services to the Debtors by providing the timekeeping system for all Debtors (collectively, the "**Administrative Fee Obligations**"). The Debtors pay Kronos \$7,410.00 per month in connection with the services it provides.

18. The Debtors seek authorization, but not direction, to pay all unpaid Administrative Fee Obligations and to continue paying the Administrative Fee Obligations postpetition in the ordinary course of business. In addition, the Debtors seek authority to cause any prepetition checks or electronic payment requests that were given in payment of Administrative Fee Obligations to be honored and to reissue any check or electronic payment request that is not cleared by the applicable bank or other financial institution, to the extent necessary.

d. Withholding Obligations

19. For each applicable pay period, the Debtors routinely deduct certain amounts directly from Employees' paychecks, including, without limitation, pre- and after-tax deductions payable pursuant to certain of the Employees' benefit plans discussed herein, including health care benefits, insurance premiums, 401(k) contributions, legally-ordered deductions, and other miscellaneous deductions (collectively, the "**Deductions**"). The Debtors withhold the Deductions from Employees' wages, which the Debtors remit to the appropriate third-party recipients and/or retain on account of benefit programs as further described below.

20. In connection with the salaries and wages paid to Employees, the Debtors are required by law to withhold amounts related to federal, state, and local income taxes, as well as social security and Medicare taxes from Employees' wages (collectively, the "**Employee Withholding Taxes**") and to remit the same to the applicable taxing authorities. In addition, the Debtors are required to make matching payments from their own funds for, among other things, social security, Medicare taxes, and state taxes (the "**Employer Payroll Tax Obligations**," and together with Employee Withholding Taxes, the "**Payroll Tax Obligations**"). Each pay cycle, the Debtors withhold any applicable Employee Withholding Taxes from the Employees' wages, and LBMC remits the same to the applicable taxing authorities. The Debtors withhold approximately

\$449,587.84 per pay cycle in Employee Withholding Taxes for the First Payroll Cycle, and the Debtors' average payment for Employer Payroll Tax Obligations per pay cycle for the First Payroll cycle is approximately \$142,384.03. The Debtors withhold approximately \$35,104.46 per pay cycle in Employee Withholding Taxes for the Second Payroll Cycle, and the Debtors' average payment for Employer Payroll Tax Obligations per pay cycle for the Second Payroll cycle is approximately \$11,775.59. LBMC debits the amounts of the Payroll Tax Obligations in advance of the relevant payroll processing day.

21. The Debtors seek authorization, but not direction, to continue to make the Deductions and satisfy the Payroll Tax Obligations and Deductions (collectively, the “**Withholding Obligations**”) and to remit amounts withheld on behalf of third parties postpetition in the ordinary course of business.

ii. Vacation Time, Holiday Pay, and Sick Leave

22. The Debtors offer their Employees vacation time (“**Vacation**”), holiday pay (“**Holiday Pay**”), and paid sick days (“**Sick Leave**”). These programs are typical and customary, and continuing to offer them is necessary for the Debtors to retain Employees during the reorganization or sale process.

23. The Debtors request that they be authorized, but not directed, to continue to honor their Vacation, Holiday Pay, and Sick Leave policies going forward, including during the administration of these Chapter 11 Cases. The Debtors also request authority to pay any Vacation that accrued prepetition.

iii. Reimbursable Expense Obligations

24. Prior to the Petition Date, in the ordinary course of business, the Debtors reimbursed Employees for reasonable and legitimate expenses incurred on behalf of the Debtors in the scope of the Employee's employment (“**Reimbursable Expense Obligations**”).

Reimbursable Expense Obligations typically include expenses for, among other things, air travel, meals, parking, mileage, and certain other business and travel related expenses. All such expenses are incurred with the applicable Employee's understanding that he or she will be reimbursed by the Debtors in accordance with the Debtors' reimbursement policy, as described in more detail below. In all cases, reimbursement is contingent on the Debtors' determination that the charges are for legitimate, reimbursable business expenses.

25. As of the Petition Date, the Debtors estimate that the total amount of unpaid prepetition Reimbursable Expense Obligations will be approximately \$2,855.34.

26. The Reimbursable Expense Obligations are ordinary course expenses that the Debtors' Employees incur in performing their job functions. It is essential to the continued operation of the Debtors' business that the Debtors be permitted to continue reimbursing, or making direct payments on behalf of, Employees for such expenses.

27. Employees incurred the Reimbursable Expense Obligations as business expenses on the Debtor's behalf and with the understanding that they would be reimbursed. To avoid harming Employees who incurred the Reimbursable Expense Obligations, the Debtors request authority, but not direction, to satisfy all prepetition Reimbursable Expense Obligations to the extent Employees have paid for such expenses directly from their own funds or are otherwise personally liable for such expenses.

iv. Employee Benefit Programs

28. In the ordinary course of business, the Debtors implement various benefit plans and policies for their Employees that can be divided into the following categories, all as are described in more detail below: (a) medical and prescription benefits (the "**Medical Plans**"), dental care (the "**Dental Plan**"), and vision care (the "**Vision Plan**"), and collectively, with the Medical Plans and the Dental Plan the "**Health Plans**"); (b) employer paid basic life and

accidental death and dismemberment insurance, optional life and accidental death and dismemberment insurance, short and long term disability insurance, and other voluntary insurance plans (collectively, the “**Income Protection Plans**”); (c) retirement savings 401(k) plan (the “**401(k) Plan**”); (d) flexible spending account plan (the “**FSA Plan**”); (e) an employee assistance program (the “**EAP**”); (f) voluntary accident and critical illness plans (the “**Accident and Illness Plans**”); (g) the severance program (“**Severance Program**”); and (h) the bonus programs (the “**Incentive Programs**”, and together with the Health Plans, Income Protection Plans, the 401(k) Plan, FSA Plan, EAP, Accident and Illness Plans, Severance Program, the “**Employee Benefits Plans**”). In certain instances, the Debtors deduct specified amounts from the participating Employees’ wages in connection with the Employee Benefits Plans. All obligations with respect to the Employee Benefits Plans are hereinafter referred to as the “**Employee Benefits Obligations.**”

a. Health Plans

29. Employee contributions to the Health Plans have been and are collected through payroll deductions from participating Employees. The Debtors believe that it is necessary and appropriate to continue to honor their obligations to current and former Employees under the Health Plans. The Debtors request authority, but not direction, to pay all prepetition amounts due under the Health Plans. The Debtors also request authority, but not direction, to continue to offer the Health Plans and honor their obligations thereunder in the ordinary course of business during the administration of these Chapter 11 Cases. Premiums for the Health Plans are due at the beginning of each month for coverage that month.

1) Medical Plans

30. The Debtors offer Employees and eligible dependents comprehensive medical coverage through a combination of preferred provider option (“**PPO**”) and high deductible

(“**HRA**”) plans administered by Blue Cross/ Blue Shield (“**BC/BS**”). The HRA plan includes an employer-funded health reimbursement account. Debtors set aside a specific amount of pre-tax dollars for Employees to use to pay for health care expenses. Debtors are self-insured. Accordingly, Debtors’ obligations under the Medical Plans each month vary depending on claims that have been submitted.

2) Dental Plan

31. The Debtors also offer their Employees dental insurance administered through Delta Dental. Employees are offered the option of a premier plan or a basic plan. As of the Petition Date, the Debtors estimate that approximately \$7,810.07 has accrued and remains outstanding on account of the Dental Plan.

3) Vision Plan

32. The Debtors offer vision coverage to Employees through Guardian. Two plans are available: Davis Vision (the “**Davis Plan**”) or VSP Vision Care (the “**VSP Plan**”). Debtors do not have any obligations under the Vision Plan.

b. Income Protection Plans

33. The Debtors maintain certain Income Protection Plans including employer paid basic life and accidental death and dismemberment insurance (the “**Basic Life and AD&D Insurance**”) through Mutual of Omaha. All Employees working at least 30 hours per week are offered Basic Life and AD&D Insurance.

34. Additionally, certain Employees elect to purchase optional life and accidental death and dismemberment insurance through Mutual of Omaha (the “**Optional Life and AD&D Insurance**”).

35. Additionally, as part of the Income Protection Plans, the Debtors also offer benefits-eligible Employees short and long term disability insurance through Mutual of Omaha (the “**Disability Insurance**”).

36. As of the Petition Date, the Debtors estimate that approximately \$4,061.18 has accrued and remains outstanding on account of the Income Protection Programs.

c. The 401(k) Plan

37. The Debtors maintain the 401(k) Plan, which is a retirement savings plan for eligible Employees pursuant to section 401 of the Internal Revenue Code. The 401(k) Plan is offered through Milliman Retirement Plan Services Company. Debtors contribute approximately \$101,313.99 per month on account of the 401(k) Plan. As of the Petition Date, Debtors estimate that their obligations under the 401(k) Plan are approximately \$85,817.61. Accordingly, the Debtors request authority, but not direction, to maintain the 401(k) Plan in the ordinary course of business during the administration of these Chapter 11 Cases.

d. The FSA Plan

38. Under the Debtors’ FSA Plan, the Debtors offer their Employees the ability to contribute a portion of their pre-tax compensation to flexible spending accounts to pay for health benefits and eligible out-of-pocket health care and dependent care premiums and expenses. Employees participating in the FSA Plan designate an amount to be contributed to their FSA Plan per pay period. These amounts are withheld by payroll deductions.

39. The Debtors seek authority, but not direction, to continue to pay all prepetition amounts due under the FSA Plan as and when they come due and to continue to honor their obligations thereunder in the ordinary course during the administration of the Chapter 11 Cases.

e. Employee Assistance Program

40. The Debtors offer their Employees an EAP help line administered through Mutual of Omaha. The Debtors seek authority, but not direction, to continue with the EAP in place prior to the Petition Date in the ordinary course and honor any payments owed by the Debtors to Mutual of Omaha with respect to the EAP, regardless of when they arose.

f. Voluntary Accident and Critical Illness Plans

41. The Debtors offer their Employees cash benefits for various accidents and illnesses through Sun Life Financial (“**Accident and Illness Plans**”). The Debtors seek authority, but not direction, to continue with the Accident and Illness Plans in place prior to the Petition Date in the ordinary course and honor any payments owed by the Debtors with respect to the Accident and Illness Plans, regardless of when they arose.

g. Severance Program

42. The Debtors maintain a Severance Program pursuant to which certain severed Employees may receive between two weeks’ and one month’s pay. Currently, no Employee is receiving compensation under the Severance Program. As of the Petition Date, the Debtors estimate that no amounts will be owed pursuant to the Severance Program. However, the Debtors seek authority, but not direction, to continue to make payments under the Severance Program in the ordinary course of business.

h. Incentive Programs

43. The Debtors maintain four Incentive Programs: a clinical advancement program in place at Amory; a nursing director bonus shift program only in place at Clarksdale; a C-suite level annual incentive program, applicable to Employees at Amory, Clarksdale, Batesville, and Russellville; and an incentive plan for billing and collections employees to continue collections at or above historical collection percentages. For those Employees who receive them, bonuses

earned under the Incentive Programs are an important aspect of their overall compensation. Maintaining historical prepetition practices with regard to the Incentive Programs is essential to ensuring that the Debtors can retain their Employees and continue to operate their business and maximize value through the duration of these Chapter 11 Cases. Therefore, the Debtors seek authority, but not direction, to honor their obligations under the Incentive Programs and to maintain the Incentive Programs in the ordinary course of the Debtors' business.

v. Workers' Compensation Program

44. The Debtors maintain workers' compensation insurance for their Workforce at the statutorily required level for each state in which the Debtors operate. The Debtors maintain workers' compensation coverage for claims ("**Workers' Compensation Claims**") through MagMutual Insurance Company ("**MagMutual**"). The Debtors pay approximately \$775,635.00 in premiums and fees per year to maintain the workers' compensation insurance through MagMutual. As of the Petition Date, there is approximately \$181,848.43 on reserve on account of nineteen active workers' compensation claims. The Debtors seek authority, but not direction, to pay any Workers' Compensation Claims in the ordinary course and honor payments owed with respect to the Workers' Compensation Claims regardless of when such obligations arose.

vi. Affiliate Compensation Obligations

45. Curae is responsible for administering certain payments on behalf of its affiliates (the "**Affiliate Compensation Obligations**") in the ordinary course of business. The Affiliate Compensation Obligations are similar to the Employee Obligations and Employee Plans and Programs described above.

46. Debtor Curae is the sole member and sponsor of Russellville Hospital, Inc. ("**Russellville**"). Russellville operates a hospital in Russellville, Alabama. Russellville is the sole member of Russellville Physicians, LLC ("**Russellville Physicians**", together with Russellville,

the “**Affiliates**”). As set forth in more detail in the First Day Declaration, the Debtors desire to keep the Affiliates out of bankruptcy. Should these Chapter 11 Cases interrupt the ability of the Affiliates to maintain their operations, however, the Debtors are prepared to have each of the Affiliates file petitions for relief in this Court.

47. Debtor Curae pays the payroll for the physicians and other employees of Russellville Physicians. The income generated by Russellville Physicians passes through to Russellville, and is then in turn, passed up to Curae pursuant to the Debtors’ Cash Management System. The physicians and employees of Russellville Physicians work at the facilities operated by Russellville and generate income for Amory, Batesville, and Clarksdale. That income is then passed up to Curae pursuant to the Cash Management System. Curae then pays the salaries of the physicians and employees of Russellville Physicians.

48. The debts and obligations of Russellville are separate and distinct from those of Debtors, and none of the Debtors’ obligations are cross-collateralized or cross-defaulted with those of Russellville. Funds generated by Russellville are passed up to Debtor Curae, however, such funds are kept separate and segregated from funds generated for Curae by Debtors. Curae uses these funds to pay the payroll of the employees of Russellville and Russellville Physicians.

49. Accordingly, the Debtors seek authorization, but not direction, to pay any unpaid Affiliate Compensation Obligations.

RELIEF REQUESTED

50. By this Motion, the Debtors request entry of the Order, substantially in the form of Exhibit A, attached hereto, authorizing, but not directing, the Debtors, in consultation with the DIP Lender, to (i) pay prepetition claims and honor obligations incurred or related to the Compensation Obligations, the Withholding Obligations, the Incentive Programs, Vacation, the Reimbursable Expense Obligations, the Employee Benefits Obligations, Workers’ Compensation

Claims, and all fees and costs incident to the foregoing, including amounts owed to third-party administrators (including the Administrative Fee Obligations) (collectively, the “**Employee Obligations**”); (ii) maintain, continue, and honor, in the ordinary course of business, the Incentive Programs, Vacation, Sick Leave, and Holiday Pay policies, postpetition Reimbursable Expense Obligations, the Employee Benefits Plans, and the Workers’ Compensation Claims (collectively, the “**Employee Plans and Programs**”); and (iii) pay prepetition claims and honor obligations incurred or related to the Affiliate Compensation Obligations.

51. To enable the Debtors to carry out the relief requested, the Debtors also request that the Court authorize all applicable banks and financial institutions (collectively, the “**Banks**”), and LBMC (together with the Banks, the “**Processors**”), to receive, process, honor, and pay all checks presented for payment and all electronic payment requests made by the Debtors relating to the Employee Obligations and the Employee Plans and Programs, whether such checks were presented or electronic-payment requests were submitted prior to or after the Petition Date.³

BASIS FOR RELIEF

52. The Debtors’ ability to successfully operate is contingent on a reliable and loyal Workforce. It is essential to assure the Employees that the Debtors will honor the Employee Obligations and continue and maintain the Employee Plans and Programs in the ordinary course of business throughout these Chapter 11 Cases. A failure to promptly do so will create concern and discontent among the Employees and could lead to resignations or, in the case of Contractors, the decision to not complete work for the Debtors or accept future hiring proposals.

³ Concurrently herewith, the Debtors have filed a motion for authority to, *inter alia*, continue using their cash management system.

The loss of even a few key personnel would immediately and irreparably harm the Debtors' ability to maintain operations to the detriment of all interested parties.

53. Therefore, pursuant to Bankruptcy Code sections 105(a), 363, 507, 1107(a), and 1108, the Debtors seek authority to pay the Employee Obligations, in consultation with the DIP Lender, and to maintain and continue the Employee Plans and Programs, in consultation with the DIP Lender, and in the ordinary course of business, in the exercise of their business judgment. This relief is necessary to retain the Workforce, the loss of which would disable the Debtors' business operations.

A. A Significant Portion of the Employee Obligations is Entitled to Priority Treatment

54. Bankruptcy Code section 507(a)(4)(A) grants priority status to up to \$12,850 for employee claims for “wages, salaries, or commission, including vacation, severance, and sick leave pay” earned within 180 days before the Petition Date. *See* 11 U.S.C. § 507(a)(4)(A). Similarly, Bankruptcy Code section 507(a)(5) grants priority to contributions to employee benefit plans, up to an aggregate amount of \$12,850 multiplied by the number of employees covered, less any amounts paid to such employees under Bankruptcy Code section 507(a)(4).

55. Indeed, “[w]age priority has been a feature of the bankruptcy law since 1898.” *In re Garden Ridge Corp.*, No. 04-10324 (KJC), 2006 WL 521914, at *2 (Bankr. D. Del. Mar. 2, 2006) (citing 4 Alan N. Resnick & Henry J. Sommer, *Collier on Bankruptcy* ¶ 507.05[1] (15th ed. 2005)). Its purpose is to “alleviate hardship on workers . . . who may have no other source of income and “to encourage employees to stand by an employer in financial difficulty.” *Id.* (citing *Collier on Bankruptcy* ¶ 507.05[1]). This priority extends to certain other “benefits that are considered akin to compensation, such as vacation, severance and sick leave pay.” *Id.*

56. The Debtors believe that a substantial portion of the Employee Obligations relating to the period prior to the Petition Date constitutes priority claims under Bankruptcy Code

sections 507(a)(4) and (5). Amounts that are paid on account of priority claims for the majority of the Employee Obligations would not otherwise be available for distribution to unsecured creditors. Therefore, the Debtors' unsecured creditors will not be prejudiced by permitting priority obligations to be satisfied in the ordinary course of business during the Chapter 11 Cases rather than at the conclusion of the Chapter 11 Cases. Indeed, the Debtors submit that payment of Employee Obligations at this time enhances value for the benefit of the Debtors and all interested parties by retaining the Workforce. The Debtors believe that honoring the Employee Obligations is important to sustain morale for the current Workforce and ensure their retention.

B. The Debtors Should be Authorized to Pay the Employee Obligations Under Bankruptcy Code Sections 1107(a) and 1108

57. The Debtors, operating their businesses as debtors in possession under Bankruptcy Code sections 1107(a) and 1108, are fiduciaries “holding the bankruptcy estate and operating the business for the benefit of its creditors and (if the value justifies) equity owners.” *In re CoServ, LLC*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). “Implicit in the duties” of a chapter 11 debtor in possession is the duty “to protect and preserve the estate, including an operating business’s going-concern value.” *Id.*; *See also Official Comm. of Unsecured Creditors of Cybergenics Corp. ex rel. Cybergenics Corp. v. Chinery*, 330 F.3d 548, 573 (3d Cir. 2003); *In re Mushroom Transp. Co., Inc.*, 382 F.3d 325, 339 (3d Cir. 2004).

58. Courts have noted that there are instances in which a debtor in possession can fulfill its fiduciary duty “only . . . by the preplan satisfaction of a prepetition claim.” *In re CoServ*, 273 B.R. at 497. The *CoServ* court specifically noted that preplan satisfaction of prepetition claims is a valid exercise of a debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate.” *Id.* The court provided a three-pronged

test for determining whether a preplan payment on account of a prepetition claim is a valid exercise of a debtor's fiduciary duty:

First, it must be critical that the debtor deal with the claimant. Second, unless it deals with the claimant, the debtor risks the probability of harm, or, alternatively, loss of economic advantage to the estate or the debtor's going concern value, which is disproportionate to the amount of the claimant's prepetition claim. Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim.

Id. at 498.

59. Payment of the Employee Obligations as set forth herein meets each element of the *CoServ* court's standard. The Debtors' operations are complex and rely on the skill and expertise of their Employees. The Employees possess unique knowledge regarding specific aspects of the Debtors' operations, which would be virtually irreplaceable should such Employees be lost through a failure to pay the Employee Obligations. In addition, any failure by the Debtors to pay the Employee Obligations as set forth herein would negatively impact the morale of the Workforce at a critical time for the Debtors and their business when the Workforce is most needed. The Workforce is also critical to the Debtors' ability to maintain their operations consistent with past practices, which would be impossible without the continued efforts of the Workforce. The damage to the value of the Debtors' businesses and, hence, the ability of the Debtors to continue to serve their respective communities would be jeopardized if the Employee Obligations were not met. In short, the potential harm and economic disadvantage that would stem from the failure to pay the Employee Obligations as set forth herein greatly outweighs the amount of any prepetition claims that the Debtors are seeking authorization to pay.

60. After careful consideration in consultation with their advisors, the Debtors have determined in their business judgment that to avoid significant disruption to their business operations there exists no practical or legal alternative to the payment of the Employee

Obligations as set forth herein. Therefore, the Debtors can meet their fiduciary duties as debtors in possession under Bankruptcy Code sections 1107(a) and 1108 only by payment of the Employee Obligations as set forth herein.

C. Payment of the Employee Obligations is Warranted Pursuant to Bankruptcy Code Section 363

61. Bankruptcy Code section 363(b)(1) provides that a debtor may “after notice and a hearing, use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). A debtor’s decision to use, sell, or lease assets outside the ordinary course of business must be based upon the sound business judgment of that debtor. *See Official Comm. of Unsecured Creditors of LTV Aerospace & Def. Co. v. LTV Co. (In re Chateaugay Corp.)*, 973 F.2d 141, 143 (2d Cir. 1992) (holding that a court determining an application pursuant to section 363(b) must find from the evidence a good business reason to grant such application); *see also In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989) (standard for determining a section 363(b) motion is whether the debtor has a “good business reason” for the requested relief). “Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). Consistent with a debtor’s fiduciary duties, where there is a sound business purpose for the payment of prepetition obligations, and where the debtor is able to “articulate some business justification, other than the mere appeasement of major creditors,” courts have authorized debtors to make such payments under Bankruptcy Code section 363(b). *See, e.g., In re Ionosphere Clubs*, 98 B.R. at 175 (accepting debtor’s argument that payment of employee wage claims was “critical . . . in order to preserve and protect its business and ultimately reorganize, retain its currently working

employees and maintain positive employee morale,” and finding that the debtor had “clearly demonstrated sound business reasons to justify such payments”).

62. In addition, the Debtors pay the Employee Obligations in the ordinary course of business, as permitted by Bankruptcy Code section 363(c). However, to the extent the Court finds that approval is necessary, and in an abundance of caution, the Debtors request that the Court grant the relief requested herein and enter an order authorizing them to pay the Employee Obligations, consistent with their compensation, vacation, and other benefit policies and plans, and to permit, but not require, the Debtors, in their discretion, to maintain and continue the Employee Plans and Programs for their Employees as those practices, programs, policies, and plans were in effect as of the Petition Date, as such may be modified, terminated, amended, or supplemented from time to time hereafter.

D. Payment of Certain Withholding Obligations is Appropriate Under Bankruptcy Code Section 541

63. The Debtors also seeks authority to pay the Withholding Obligations to the appropriate entities. These amounts principally represent the Employees’ earnings that governments, the Employees, and the judicial authorities have designated for deduction from the Employees’ paychecks. Indeed, certain Withholding Obligations are not property of the Debtors’ estates because the Debtors have withheld such amounts from Employees’ paychecks on another party’s behalf. *See* 11 U.S.C. § 541; *see also City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95 (3d Cir. 1994) (observing the “well-settled principle that debtors do ‘not own an equitable interest in property . . . [they] hold[] in trust for another,’ and that therefore funds held in trust are not ‘property of the estate’”) (quoting *Begier v. IRS*, 496 U.S. 53, 59 (1990)).

64. Further, federal and state laws require the Debtors to withhold certain tax payments from Employees’ paychecks and to pay such amounts to the appropriate taxing

authority. *See* 26 U.S.C. §§ 6672 and 7501(a); *see also* *City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95–97 (3d Cir. 1994) (finding that state law requiring a corporate debtor to withhold city income tax from its employees’ wages created a trust relationship between debtor and the city for payment of withheld income taxes); *In re DuCharmes & Co.*, 852 F.2d 194, 196 (6th Cir. 1988) (noting that individual officers of a company may be held personally liable for failure to pay trust fund taxes). A failure to pay over these amounts could subject the Debtors and their officers and directors to liability. *See, e.g.*, John F. Olson, et al., *Director & Officer Liability: Indemnification and Insurance* § 3:21 (2003). To avoid the potential of such liability, and because the Withholding Obligations are not property of the Debtors’ estates, the Debtors request that the Court authorize them to remit these amounts to the appropriate parties in the ordinary course of business.

E. Payment of the Employee Obligations is Warranted Pursuant to Bankruptcy Code Section 105(a) and Under the Doctrine of Necessity

65. Courts have also authorized payment of prepetition claims in appropriate circumstances pursuant to Bankruptcy Code section 105(a). Section 105(a), which codifies the inherent equitable powers of the bankruptcy court, empowers the bankruptcy court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Under Bankruptcy Code section 105(a), courts may permit pre-plan payments of prepetition obligations when such payments are essential to the continued operation of the debtor’s business and, in particular, where nonpayment of a prepetition obligation would trigger a withholding of goods or services essential to the debtor’s business reorganization plan. *See, e.g., In re Ionosphere Clubs*, 98 B.R. at 177 (finding that section 105 empowers bankruptcy courts to authorize payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor).

66. Numerous courts have used their section 105(a) powers under the “doctrine of necessity” to authorize payment of prepetition obligations where, as here, such payment is an essential element of the preservation of the debtor in possession’s potential for rehabilitation. *See In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (reasoning that because the debtor-in-possession has fiduciary duties it must meet, it is logical that the bankruptcy court may “use Section 105(a) of the [Bankruptcy] Code to authorize satisfaction of the prepetition claim in aid of preservation or enhancement of the estate”); *In re Synteen Techs., Inc.*, No. 00-02203-W, 2000 WL 33709667, at *2 (Bankr. D.S.C. Apr. 14, 2000) (courts have permission to “allow payment of a prepetition claim when essential to the continued operation of the debtor”) (citation omitted); *In re Just For Feet, Inc.*, 242 B.R. 821, 824 (D. Del. 1999) (“[C]ourts have used their equitable power under section 105(a) . . . to authorize the payment of pre-petition claims when such payment is deemed necessary to the survival of a debtor in a chapter 11 reorganization.”); *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (“Under [section 105] the court can permit pre-plan payment of a prepetition obligation when essential to the continued operation of the debtor”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured claims of tool makers as “necessary to avert a serious threat to the Chapter 11 process”); *In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) (“[P]ayment by a debtor-in-possession of pre-petition claims outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code,” but “[a] general practice has developed . . . where bankruptcy courts permit the payment of certain pre-petition claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment.”).

67. The “doctrine of necessity” is frequently invoked early in reorganization cases, during the so-called “breathing spell,” when preservation of the estate is most critical and often extremely difficult. *See* 2 Collier on Bankruptcy ¶ 105.02[4][a] (16th ed.) (discussing cases in which courts have relied upon the “doctrine of necessity” or the “necessity of payment” rule to pay prepetition claims immediately). For example, in *In re Structurlite Plastics Corp.*, the court embraced “the principle that a bankruptcy court may exercise its equity powers under section 105(a) to authorize payment of prepetition claims where such payment is necessary to ‘permit the greatest likelihood of survival of the debtor[.]’” *In re Structurlite Plastics Corp.*, 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988) (quoting *In re Chateaugay Corp.*, 80 B.R. 279, 287 (S.D.N.Y. 1987)). The court explained that “a per se rule proscribing the payment of prepetition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the Code.” *Id.* at 932. Flexibility of payment is particularly critical when the prepetition creditor provides vital goods or services to the debtor.

68. Here, many of the Employees rely on their compensation, benefits, and reimbursement of expenses to satisfy their daily living expenses and maintain their health and well-being. Consequently, these Employees will be exposed to significant financial hardships if the Debtors are not permitted to honor the Employee Obligations. If the Debtors are unable to satisfy such obligations, Employee morale and loyalty will suffer at a time when Employee support is critical. Further, if the Court does not authorize the Debtors to honor their various obligations under the Employee Benefits Plans, the Employees’ health coverage could be threatened, potentially burdening individual Employees with the costs of health care. At a minimum, the loss of health care coverage, or uncertainty regarding coverage, would result in considerable anxiety for the Employees at a time when the Debtors need their Employees to

perform their jobs at peak efficiency. For all of the foregoing reasons, a sound business purpose exists to pay the Employee Obligations.

69. In the absence of such payments, the Debtors believe that their Employees may seek alternative employment opportunities, perhaps with the Debtors' competitors. Such a development would deplete the Workforce, hinder the Debtors' ability to service their patients, and likely diminish creditor and counterparty confidence in the Debtors. Moreover, the loss of valuable Employees and the recruiting efforts that would be required to replace such Employees would be a substantial and costly distraction at a time when the Debtors must focus on sustaining their operations. Accordingly, the Debtors must be able to pursue all reasonable measures to retain the Employees by, among other things, continuing to honor wages, benefits, and related obligations, including those that accrued prior to the Petition Date, consistent with the terms set forth in the Order attached hereto.

70. Taken together, the nature of the Employee Obligations, the substantial harm to the Debtors' business that would be caused if those obligations were not honored, the related potential for loss of value in the Debtors' estates, and the fact that a significant portion of the obligations in question relates to priority wage claims, lead to the conclusion that the Employee Obligations fall well within the scope of obligations whose payments may be authorized pursuant to the doctrine of necessity.

71. The relief requested herein is commonly granted by bankruptcy courts. Accordingly, for all of the foregoing reasons, the relief requested herein will benefit the Debtors' estates, the communities served by the Debtors, and creditors by allowing the Debtors' business operations to continue without interruption and should therefore be approved.

F. The Court Should Authorize Applicable Banks and Other Processors to Honor Checks and Electronic Fund Transfers in Accordance with the Motion

72. In connection with the foregoing, the Debtors respectfully request that the Court (a) authorize all applicable Processors to receive, process, honor, and pay all checks and transfers issued by the Debtors in accordance with this Motion, without regard to whether any checks or transfers were issued before or after the Petition Date; (b) provide that all Processors may rely on the representations of the Debtors with respect to whether any check or transfer issued or made by the Debtors before the Petition Date should be honored pursuant to this Motion (such Banks and other Processors having no liability to any party for relying on such representations by the Debtors provided for herein); and (c) authorize the Debtors to issue replacement checks or transfers to the extent any checks or transfers that are issued and authorized to be paid in accordance with this Motion are dishonored or rejected by the Processors.

G. Immediate Relief is Justified

73. Pursuant to Bankruptcy Rule 6003, the Court may grant relief within 21 days after the filing of the petition regarding a motion to “use, sell, lease, or otherwise incur an obligation regarding property of the estate” only if such relief is necessary to avoid immediate and irreparable harm. Fed. R. Bankr. P. 6003(b). Immediate and irreparable harm exists where the absence of relief would impair a debtor’s ability to reorganize or threaten the debtor’s future as a going concern. *See In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 36 n.2 (Bankr. S.D.N.Y. 1990) (discussing the elements of “immediate and irreparable harm” in relation to Bankruptcy Rule 4001).

74. Moreover, Bankruptcy Rule 6003 authorizes the Court to grant the relief requested herein to avoid harm to the Debtors’ patients and other third parties. Unlike Bankruptcy Rule 4001, Bankruptcy Rule 6003 does not condition relief on imminent or

threatened harm to the estate alone. Rather, Bankruptcy Rule 6003 speaks of “immediate and irreparable harm” generally. *Cf.* Fed. R. Bankr. P. 4001(b)(2), (c)(2) (referring to “irreparable harm to the estate”). Indeed, the “irreparable harm” standard is analogous to the traditional standards governing the issuance of preliminary injunctions. *See* 9 Collier on Bankruptcy ¶ 4001.07[b][3] (discussing source of “irreparable harm” standard under Rule 4001(c)(2)). Courts will routinely consider third-party interests when granting such relief. *See, e.g., Capital Ventures Int’l v. Argentina*, 443 F.3d 214, 223 n.7 (2d Cir. 2006); *see also Linnemeir v. Bd. of Trs. of Purdue Univ.*, 260 F.3d 757, 761 (7th Cir. 2001).

75. As described herein and in the First Day Declaration, the Debtors will suffer immediate and irreparable harm without Court authorization to pay the Employee Obligations and other related relief requested herein. Accordingly, Bankruptcy Rule 6003 has been satisfied, and the relief requested herein should be granted.

WAIVER OF BANKRUPTCY RULES

76. To the extent that any aspect of the relief sought herein constitutes a use of property under Bankruptcy Code section 363(b), the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay under Bankruptcy Rule 6004(h), to the extent applicable. *See* Fed. R. Bankr. P. 6004(a), (h). As described above, the relief that the Debtors seeks in this Motion is immediately necessary in order for the Debtors to be able to continue to operate their businesses and preserve the value of their estates. The Debtors respectfully request that the Court waive the notice requirements imposed by Bankruptcy Rule 6004(a) and the 14-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

RESERVATION OF RIGHTS

77. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtors, a waiver of the Debtors' rights to dispute any claim, or an approval or assumption of any agreement, contract, or lease under Bankruptcy Code section 365. The Debtors expressly reserve their rights to dispute any claim asserted by a member of the Workforce under applicable law and to assume or reject any Workforce agreements in accordance with the applicable provisions of the Bankruptcy Code. Likewise, if this Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

NOTICE

78. Notice of this Motion will be given to: (a) the Office of the United States Trustee for the Middle District of Tennessee; (b) Centers for Medicare and Medicaid Services; (c) State of Tennessee Department of Health Division of Licensure and Regulation Office of Health Care Facilities; (d) Mississippi State Department of Health; (e) those parties listed on the consolidated list of creditors holding the thirty (30) largest unsecured claims against the Debtors; (f) counsel to any official committee(s) establish in these cases pursuant to Section 1102 of the Bankruptcy Code; (g) ServisFirst Bank and its counsel; (h) Midcap Financial Trust and its counsel; (i) CHS/Community Health Systems, Inc. and its counsel (j) all Tennessee local counsel having entered a notice of appearance in these cases; (k) the Internal Revenue Service; (l) the Tennessee Attorney General's Office; (m) the Mississippi Attorney General's Office; (n) the Tennessee Secretary of State; and (o) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, under the circumstances, no other or further notice is required.

NO PRIOR REQUEST

79. No previous request for the relief sought herein has been made to this Court or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter the Order, substantially in the form attached hereto as Exhibit A, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: August 24, 2018
Nashville, Tennessee

Respectfully submitted,

POLSINELLI PC

/s/ Michael Malone
Michael Malone
401 Commerce Street, Suite 900
Nashville, TN 37219
Telephone: (615) 259-1510
Facsimile: (615) 259-1573
mmalone@polsinelli.com

-and-

David E. Gordon (*Pro Hac Vice* Pending)
Caryn E. Wang (*Pro Hac Vice* Pending)
1201 West Peachtree Street NW, Suite 1100
Atlanta, Georgia
Telephone: (404) 253-6000
Facsimile: (404) 684-6060
dgordon@polsinelli.com
cewang@polsinelli.com

*Proposed Counsel to the Debtors and
Debtors in Possession*

EXHIBIT A

Proposed Order

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

In re:)	
	)	Chapter 11
Curae Health, Inc.,	)	Case No. 18-05665
Amory Regional Medical Center, Inc.,	)	Case No. 18-05675
Batesville Regional Medical Center, Inc.,	)	Case No. 18-05676
Clarksdale Regional Medical Center, Inc.	)	Case No. 18-05678
Amory Regional Physicians, LLC	)	Case No. 18-05680
Batesville Regional Physicians, LLC	)	Case No. 18-05681
Clarksdale Regional Physicians, LLC	)	Case No. 18-05682
)	
1721 Midpark Road, Suite B200	)	Judge Walker
Knoxville, TN 37921)	
Debtors.	)	Joint Administration Pending

EXPEDITED ORDER AUTHORIZING PAYMENT OF: (I) CERTAIN PREPETITION WORKFORCE CLAIMS, INCLUDING WAGES, SALARIES, AND OTHER COMPENSATION; (II) CERTAIN EMPLOYEE BENEFITS AND CONFIRMING RIGHT TO CONTINUE EMPLOYEE BENEFITS ON POSTPETITION BASIS; (III) REIMBURSEMENT TO EMPLOYEES FOR PREPETITION EXPENSES; (IV) WITHHOLDING AND PAYROLL-RELATED TAXES; (V) WORKERS' COMPENSATION OBLIGATIONS, AND (VI) PREPETITION CLAIMS OWING TO ADMINISTRATORS AND THIRD-PARTY PROVIDERS

Upon the motion (the “**Motion**”)¹ of the Debtors for entry of a final order (this “**Final Order**”) authorizing payment of (i) certain prepetition workforce claims, including wages, salaries, and other compensation; (ii) certain employee benefits and confirming right to continue employee benefits on postpetition basis; (iii) reimbursement to employees for expenses incurred prepetition; (iv) withholding and payroll-related taxes; (v) workers’ compensation obligations; and (vi) prepetition claims owing to administrators and third-party providers; and the Court having reviewed the Motion and the First Day Declaration; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

venue of this proceeding and the Motion is this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefore, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED as set forth herein.
2. All objections to the entry of this Order, to the extent not withdrawn or settled, are overruled.
3. The Debtors are authorized, but not directed to: (i) pay prepetition claims and honor obligations incurred or related to the Employee Obligations; (ii) maintain, continue, and honor, in the ordinary course of business, the Employee Plans and Programs; and (iii) pay prepetition claims and honor obligations incurred or related to the Affiliate Compensation Obligations.
4. The Debtors are authorized, but not directed, to continue the programs and policies described in the Motion on a postpetition basis and to alter, modify or discontinue such programs and policies as they deem necessary or appropriate in the ordinary course of business, without further notice to or order of the Court.
5. Except as otherwise set forth herein, the Debtors are authorized, pursuant to Bankruptcy Code sections 105(a) and 363(b), but not obligated or directed, in the reasonable exercise of their business judgment and in the ordinary course of business, to pay and honor

amounts on account of Employee Compensation Obligations and Contractor Obligations (exclusive of Withholding Obligations).

6. The Debtors and any applicable third parties are authorized to continue to allocate and distribute Withholding Obligations to the appropriate third-party recipients or taxing authorities in accordance with the Debtors' stated policies and prepetition practices.

7. The Debtors are authorized, but not directed, to maintain the Incentive Programs in the ordinary course of business.

8. The Debtors are authorized, but not directed, to continue to honor their Reimbursable Expense Obligations including any prepetition obligations, and to continue in accordance with the Debtors' stated policies and prepetition practices, including utilization of the Corporate Cards; provided, however, that satisfaction of prepetition Reimbursable Expense Obligations shall only be allowed to the extent Employees have paid for such expenses directly from their own funds or are otherwise personally liable for such expenses.

9. The Debtors are authorized, but not directed, to honor the Employee Benefits Plans in the ordinary course of business and in accordance with the Debtors' prepetition policies and programs, and to make any necessary contributions to such programs and pay any unpaid premium, claim, or amount owed as of the Petition Date with respect thereto.

10. The Debtors are authorized, but not directed, (i) to continue the Debtors' Vacation, Sick Leave, and Holiday Pay policies in the ordinary course of business and (ii) to honor all obligations under the Debtors' Vacation, Sick Leave, and Holiday Pay policies, including payout of accrued Vacation in accordance with the Debtors' prepetition practice and applicable law.

11. The Debtors are authorized, but not directed, to pay Workers' Compensation Claims in the ordinary course of business.

12. The Debtors are authorized, but not directed, to pay all processing and administrative fees associated with and all costs and expenses incidental to payment of the Compensation Obligations and the Employee Benefits Obligations, including the Administrative Fee Obligations.

13. The Debtors are authorized, but not directed, to pay the Affiliate Compensation Obligations incurred in the ordinary course of business.

14. Nothing in the Motion or this Order, nor as a result of any payment made pursuant to this Order, shall be deemed or construed as an admission as to the validity or priority of any claim against the Debtors, an approval or assumption of any agreement, contract or lease pursuant to Bankruptcy Code section 365, or a waiver of the right of the Debtors, or shall impair the ability of the Debtors, or any other party in interest, to the extent applicable, to contest the validity and amount of any payment made pursuant to this Final Order.

15. Each of the Processors is authorized to receive, process, honor, and pay all checks and transfers issued or requested by the Debtors, to the extent that sufficient funds are on deposit in the applicable accounts, in accordance with this Final Order and any other order of this Court.

16. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests in connection with any Employee Obligations that are dishonored or rejected.

17. The Debtors are authorized to take such actions and to execute such documents as may be necessary to implement the relief granted by this Final Order.

18. The requirements set forth in Bankruptcy Rule 6004(a) are hereby waived.

19. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Final Order shall be effective and enforceable immediately upon entry hereof.

20. Nothing in the Motion or this Order shall be construed to authorize any severance payments to insiders in excess of the limits set forth in Bankruptcy Code section 503(c)(2).

21. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Order.

This Order Was Signed And Entered Electronically As Indicated At The Top Of The First Page

APPROVED FOR ENTRY:

POLSINELLI PC

/s/ Michael Malone

Michael Malone
401 Commerce Street, Suite 900
Nashville, TN 37219
Telephone: (615) 259-1510
Facsimile: (615) 259-1573
mmalone@polsinelli.com

-and-

David E. Gordon (*Pro Hac Vice* Pending)
Caryn E. Wang (*Pro Hac Vice* Pending)
1201 West Peachtree Street NW
Atlanta, Georgia
Telephone: (404) 253-6000
Facsimile: (404) 684-6060
dgordon@polsinelli.com
cewang@polsinelli.com

*Proposed Counsel to the Debtors and
Debtors in Possession*