UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

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

THE DEADLINE FOR FILING A TIMELY RESPONSE IS: January 2, 2019.
THE HEARING WILL BE: January 11, 2019, at 9:00 a.m. Central Standard Time in Courtroom 2, 2nd Floor Customs House, 701 Broadway, Nashville, TN 37203.

OBJECTION TO STALKING HORSE PURCHASER'S INTENT TO ASSUME AND BE ASSIGNED EXECUTORY CONTRACTS REGARDING SALE OF PANOLA 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 Stalking Horse Purchaser's Intent to Assume Executory Contracts and Unexpired Leases (Docket No. 549) (the "Purchaser's Notice"), regarding the proposed purchase of Panola Assets, and respectfully submit this limited objection to the proposed cure amount with respect to the MEDHOST Agreements (as defined below).

1. The Panola Sale Order was entered by the Court on November 30, 2018 (Docket No. 507) (the "Panola Sale Order"), Pursuant to Paragraph 3 of the Notice of Debtors' Intent to Assume and Assign Certain Executory Contracts dated November 30, 2018 (Docket No. 513) (the "Panola Assumption Notice"), any objection on any basis to the proposed assumption 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); Clarksdale Regional Center, Inc. (4755); Amory Regional Physicians, LLC (5044); Batesville Regional Physicians, LLC (4952); and Clarksdale Regional Physicians, LLC (5311).

assignment of an executory contract or lease (identified in Exhibit 1 to the Panola Assumption Notice), including objections to cure amounts, were to be filed by December 10, 2018. On December 7, 2018, MEDHOST filed its Limited Objection to the Proposed Sale of the Panola Assets and the Assumption, Assignment and Cure of Executory Contracts Pursuant to the Proposed Sale of Panola Medical Center Assets (Docket No. 533) (the "MEDHOST Limited Objection"). As noted in the MEDHOST Limited Objection, 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 objected to the proposed sale.

2. On December 11, 2018, Progressive Medical Management of Batesville, LLC, the proposed Stalking Horse Purchaser (the "Stalking Horse Purchaser"), filed its Notice of Stalking Horse Purchaser's Intent to Assume Executory Contracts and Unexpired Leases (Docket No. 549) (the "Purchaser's Assumption Notice"). As with the MEDHOST Limited Objection, 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 Purchaser's Assumption Notice.

3. 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.

4. 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.

5. 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.

6. Collectively, the agreements described in numbered paragraphs 3 through 5 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.

7. Exhibit A to the Purchaser's Assumption Notice designates the contracts and leases which the Stalking Horse Purchaser intends to be assigned. The section of Exhibit A which applies to MEDHOST indicates that an executory contract is with the Debtor known as Curae Health, Inc. That is correct: The parties to the MEDHOST Agreements are the MEDHOST entities and Curae Health, Inc. None of the other Debtors is a counterparty to an executory contract with a MEDHOST entity. No subsidiary of Curae Health, Inc. is a party to any of the MEDHOST Agreements, though some are Licensed Sites thereunder. A pre-petition

amount is owed MEDHOST under each of the three MEDHOST Agreements. The MEDHOST Agreements cannot be severed without the consent of MEDHOST, and such consent has not been given. To the extent the Purchaser's Assumption Notice implies that one amount is owed, to only one MEDHOST entity, the Purchaser's Assumption Notice is inaccurate, and MEDHOST objects.

8. Further, the "Proposed Cure Amount" stated for the contract described as the "MedHost Service Agreement" is $0.00. That is incorrect. 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, Inc.'s defaults 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 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 at 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 Panola Memorial Hospital facility and provide the successful purchaser with a tape of all records of the Panola Memorial Hospital facility in the system's native file format. Further, if, as of the date of closing, the Stalking Horse Purchaser has not been properly assigned the MEDHOST Agreements and complied with all cure requirements, the Stalking Horse Purchaser will have no valid rights to the software licenses or hosting facilities, and its access to all affected systems at the Panola Memorial Hospital facility shall be limited to "read only" access to clinical data for patients. Such access will be only for a limited transition period. Furthermore, MEDHOST will condition any such access on confirmation from the Court that the Stalking Horse Purchaser is legally entitled to access such records, and to the execution of a mutually agreeable Business Associate Agreement governing such access.

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 and the Purchaser's 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 27th day of December, 2019.

/s/ Thomas H. Forrester
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CERTIFICATE OF SERVICE

I hereby certify that on December 27, 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