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

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

THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS' MOTION (I) TO TERMINATE THE DEBTORS' EXCLUSIVITY PERIODS TO PERMIT THE COMMITTEE TO FILE A PLAN OF LIQUIDATION, AND (II) FOR LEAVE, STANDING AND AUTHORITY TO COMMENCE, PROSECUTE AND, IF APPROPRIATE, SETTLE CERTAIN CAUSES OF ACTION ON BEHALF OF THE DEBTORS' ESTATES

The Official Committee of Unsecured Creditors (the "**Committee**") appointed in the above-captioned proceedings (the "**Chapter 11 Cases**") of Curae Health, Inc., *et al.* (the "**Debtors**") hereby moves, pursuant to sections 1103(c), 1109(b) and 1121(d)(1) of title 11 of the United States Code (the "**Bankruptcy Code**"): (i) to terminate the Debtors' exclusivity periods for "cause" to permit the Committee to file a plan of liquidation, and (ii) for leave, standing and authority to commence, prosecute and, if appropriate, settle certain causes of action on behalf of the Debtors' estates against the Debtors' current and former directors, officers, trustees, and/or managers (including Strategic Healthcare Resources, LLC, a management company owned by one of the Debtors' insiders ("**Strategic**") and any directors, trustees, and/or officers provided by Strategic) (collectively with Strategic, the "**Potential Defendants**") for, among other things,

[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).

breaches of fiduciary duties (the "**Proposed Claims**"). As grounds therefor and in support hereof, the Committee respectfully states as follows:

Preliminary Statement

1. During the first months of these Chapter 11 Cases, the Debtors appeared to be working with the Committee in a collaborative manner in an attempt to maximize value for all of their stakeholders. Indeed, from November 2018 forward, the Debtors and the Committee engaged in good-faith discussions concerning the filing and submission of a joint plan of liquidation. Unfortunately, those good-faith discussions and the spirit of collaboration ended abruptly on January 22, 2019, when the Debtors unilaterally elected to file their own plan of liquidation (the "**Debtors' Plan**") and accompanying disclosure statement (the "**Debtors' Disclosure Statement**") without even a whisper of notice to the Committee.

2. In short, on December 17, 2018, the Committee sent the Debtors a form of plan, which the Debtors provided comments to on January 8, 2019. The Debtors' comments primarily focused on obtaining releases for the Debtors' insiders, including its officers and directors and Strategic, a management company owned by the Debtors' chief executive officer. In response, the Committee quickly advised the Debtors that releases for benefit of the Debtors' insiders were inappropriate and inconsistent with bedrock precedent pronounced by the United States Court of Appeals for the Sixth Circuit. The Committee further questioned how granting gratuitous releases to the Debtors' insiders was consistent with the Debtors' fiduciary duties in these Chapter 11 Cases. In response, the Debtors gave the Committee the proverbial "back of the hand" and, without warning, proceeded to file the Debtors' Plan and Debtors' Disclosure Statement – which were largely modeled[2] on the documents drafted by the Committee, with the

[2] In effect, the Debtors took the Committee's work product and made it their own by adding releases.

notable exception of including broad third party releases and releases for the benefit of the Debtors' insiders.[3]

3. Under these circumstances – where the Debtors appear to utilizing the chapter 11 plan process to benefit their insiders at the expense of creditors herein – exclusivity should be immediately terminated and the Committee should be permitted to file its own plan, which is already drafted, and which will preserve all estate-based claims for the benefit of the Debtors' creditors.[4] It is time to let creditors decide their own fate and not allow the Debtors to utilize the exclusivity provisions of the Bankruptcy Code to subvert the interests of creditors.

4. Separately, the Committee should be granted leave, standing and authority to commence, prosecute and, if appropriate, settle the Proposed Claims against the Potential Defendants. Based on its investigation to date, the Committee believes that numerous potential causes of action against the Potential Defendants exist that could return millions of dollars in value to the Debtors' estates. In particular, as discussed below, it appears that the Potential Defendants may have mismanaged the Debtors' businesses and facilitated fraudulent transfers and treated separate Debtor-entities as interchangeable piggybanks to the detriment of the certain creditors and other stakeholders. Further, the circumstances regarding the acquisitions of the various hospitals by the Debtors herein raise significant questions based on the dramatic differential in value paid by the Debtors to CHS and that received through the chapter 11 sales process conducted in these cases. Similarly, since Strategic was a for profit manager of certain

[3] Surprisingly, the Debtors' motion in support of the Debtors' Disclosure Statement still refers to the Debtors' Plan as a "joint" plan, which may confuse parties who may be entitled to vote on the Debtors' Plan.

[4] Although the Committee has already drafted a plan and disclosure statement and is prepared to file such documents as soon as the Exclusivity Periods (as defined below) are terminated, in recognition of decisions such as In re Charles St. African Methodist Episcopal Church of Boston, 499 B.R. 126 (Bankr. D. Mass. 2013), the Committee did not include its plan and disclosure statement as attachments hereto and will not file such documents until the Exclusivity Periods are terminated or absent further order of this Court so as to avoid potentially violating the Debtors' right of exclusivity.

of the Debtors' assets, the facts and circumstances related to that relationship need to be investigated and pursued by an independent party and not forfeited for no value as contemplated by the Debtors.

5. Mindful of the need to be parsimonious during these Chapter 11 Cases, the Committee has not yet completed its investigation of the Proposed Claims (it recently requested additional discovery from the Debtors in this regard). However, because the Debtors now seek to release the Potential Defendants under the Debtors' Plan, the Committee should be granted an opportunity to conduct a comprehensive investigation of these matters to ensure that valuable claims of the Debtors' estates are not eviscerated for no consideration.

6. This is particularly true because the Debtors – who are controlled by certain of the Potential Defendants – cannot be entrusted to investigate *themselves*. Moreover, because the Debtors have already sold, or are in the process of selling, substantially all of their assets, the Committee and its constituency are the true stakeholders in these Chapter 11 Cases and are best positioned to pursue these matters to a just end.

7. In sum, although the Proposed Claims could have a profound and positive effect on the Debtors' estates, the Debtors have decided to forego these claims and, instead, are seeking to absolve the Potential Defendants from further scrutiny by granting them broad releases in a manner inconsistent with current law. The Debtors' refusal to bring these claims is unjustifiable and the Committee should be granted standing to pursue the Proposed Claims for the benefit of the Debtors' estates.

Jurisdiction, Venue, and Statutory Predicates

8. This Court has jurisdiction over this motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue is proper under 28 U.S.C. §§ 1408

and 1409. The statutory predicates for relief requested herein are sections 105(a), 1103(c), 1109(b) and 1121(d) of the Bankruptcy Code.

Background

9. On August 24, 2018 (the "**Petition Date**"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Middle District of Tennessee (the "**Bankruptcy Court**"), commencing the Chapter 11 Cases.

10. The general factual background regarding the Debtors, including their business operations and capital structure, and the events leading to the filing of the Chapter 11 Cases, is set forth in the *Declaration of Stephen N. Clapp, Chief Executive Officer of Curae Health, Inc., in Support of Chapter 11 Petitions and First Day Pleadings* (the "**First Day Declaration**") [Docket No. 49].

11. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession under sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in the Chapter 11 Cases. On September 6, 2018, the Office of the United States Trustee for the Middle District of Tennessee appointed the Committee [Docket No. 112].

12. On September 21, 2018, Curae Health, Inc. ("**Curae**") filed its Statement of Financial Affairs [Docket No. 225]. In response to question 4 (payments to insiders), Curae lists Strategic as an insider, but fails to disclose all the payments to Strategic within 1 year of the Petition Date. Also, Curae states that Strategic "is not an affiliate or insider of Curae Health, Inc. or any of its affiliated Debtors." This assertion is directly at odds with the definition of affiliate in section 101(2)(C) of the Bankruptcy Code (entity that operates the business or substantially all of the Debtor under a lease or operating agreement) and section 101(31)(B)(iii) (person in

control).[5] See *Debtors' Motion for Entry of an Order (I) Authorizing Debtors to Enter into the Sixth Amendment to Hospital Management Agreement Effective January 1, 2019, and (II) Granting Related Relief* [Docket No. 598]. However, in response to question 3 of the statement of financial affairs (90 day payments), Curae lists aggregate transfers of $490,978.58 to Strategic (although the specific transfers and dates are not listed). Paragraph 10 of Docket 598 herein states, "Prior to December 2018, the monthly management fee was approximately $47,000.00."

13. On November 30, 2018, the Bankruptcy Court entered the *Order (i) Authorizing, Approving, and Directing the Sale of Substantially All of the Assets of Gilmore Medical Center to North Mississippi Health Services, Inc. Free and Clear of All Liens, Claims, Encumbrances, and Other Interests; (ii) Authorizing and Approving the Gilmore APA; (iii) Approving the Debtors' Marketing and Sale Process; and (iv) Granting Related Relief* [Docket No. 506], which approved the sale (the "**Gilmore Sale**") of substantially all of the assets of Gilmore Medical Center, located in Amory, Mississippi, and formerly owned and operated by Amory Regional Medical Center, Inc., to North Mississippi Health Services, Inc. The Gilmore Sale closed on December 31, 2018.

14. On January 22, 2019, the Bankruptcy Court approved the sale of substantially all of the assets of Panola Hospital, located in Batesville, Mississippi, and owned and operated by Batesville Regional Medical Center, Inc., to Progressive Medical Management of Batesville, LLC on the terms set forth in the form of revised asset purchase agreement filed with the Bankruptcy Court at docket number 662.

15. On December 13, 2018, the Bankruptcy Court entered the *Order (i) Authorizing the Debtors to Enter Into the Interim Management Services Agreement with Clarksdale HMA,*

[5] Article 1 of the parties' management agreement dated December 31, 2014 refers to the duties as "a full range of day-today operational and administrative senior-level management services"…

LLC, Coahoma County, and CHS/Community Health Systems, Inc. and (ii) Granting Related Relief [Docket No. 558], which approved the interim management services agreement referred to therein. Pursuant to the agreement, Clarksdale Regional Medical Center, Inc. is transitioning the ownership and operation of Clarksdale Medical Center, located in Clarksdale Mississippi, to Coahoma County (defined below), CHS/Community Health Systems, Inc. ("**CHS**"), or another third party. As of December 16, 2018, Clarksdale HMA, LLC has assumed responsibility for all operating expenses. It is contemplated that CHS will purchase the Clarksdale Medical Center assets and assume the Clarksdale Medical Center lease with Coahoma County. However, if a closing does not occur and no motion to approve a sale to CHS or another third party has been filed by January 25, 2019, the interim management services agreement will be terminated effective thirty (30) days thereafter, and Coahoma County will assume responsibility for the operation and finances of Clarksdale Medical Center on the terms set forth in the interim management services agreement. As of the date hereof, a closing has not occurred and no motion to approve a sale to CHS or another third party has been filed.

16. On December 20, 2018, the Debtors filed the *Motion of the Debtors for Entry of an Order Extending the Exclusivity Periods for the Filing of a Chapter 11 Plan and Solicitation of Acceptances Thereof* [Docket No. 588] (the "**Exclusivity Motion**"), pursuant to which, the Debtors sought to extend the exclusive period for them to: (i) file a plan to February 20, 2019, and (ii) solicit acceptances of such plan to April 21, 2019 (together, the "**Exclusivity Periods**"). On January 16, 2019, the Bankruptcy Court entered an order granting the Exclusivity Motion [Docket No. 667].

17. On January 22, 2019, the Debtors filed the Debtors' Plan [Docket No. 698], which includes broad third party releases for the benefit of the Debtors' insiders.

Relief Requested

18. The Committee respectfully requests that the Bankruptcy Court: (i) terminate the Debtors' Exclusivity Periods and permit the Committee to file a plan of liquidation, and (ii) grant the Committee leave, standing and authority to commence, prosecute, and, if appropriate, settle the Proposed Claims on behalf of the Debtors' estates.

Basis for Relief

I. Cause Exists to Terminate the Debtors' Exclusivity Periods Because the Debtors Filed a Patently Unconfirmable Plan

19. Bankruptcy Code section 1121(d)(1) provides for the termination of a debtor's exclusive periods for filing a plan and soliciting acceptances thereof for "cause." 11 U.S.C. § 1121(d)(1). "Cause" is not defined in the Bankruptcy Code, reflecting Congress' intention that "cause" "be determined by the facts and circumstances in each individual case." In re Sharon Steel Corp., 78 B.R. 762, 764 (Bankr. W.D. Pa. 1987). Accordingly, the decision "to terminate exclusivity for cause is within the discretion of the bankruptcy court, and is fact-specific." In re Adelphia Commc'ns Corp., 352 B.R. 578, 586 (Bankr. S.D.N.Y. 2006); see also Geriatrics Nursing Home v. First Fidelity Bank, N.A. (In re Geriatrics Nursing Home), 187 B.R. 128, 132 (D.N.J. 1995) (section 1121(d)(1) "grants great latitude to the Bankruptcy Judge in deciding, on a case-specific basis, whether to modify the exclusivity period on a showing of 'cause'").

20. When deciding whether to terminate exclusivity, courts generally consider the following factors:

(1) the size and complexity of the case;

(2) the necessity of sufficient time to permit the debtor to negotiate a plan of reorganization and prepare adequate information;

(3) the existence of good faith progress toward reorganization;

(4) the fact that the debtor is paying its bills as they become due;

(5) whether the debtor has demonstrated reasonable prospects for filing a viable plan;

(6) whether the debtor has made progress in negotiations with its creditors;

(7) the amount of time which has elapsed in the case;

(8) whether the debtor is seeking an extension of exclusivity in order to pressure creditors to submit to the debtor's reorganization demands; and

(9) whether an unresolved contingency exists.

In re Dow Coming Corp., 208 B.R. 661, 664-65 (Bankr. E.D. Mich. 1997).

21. Courts caution, however, that when "determining whether to terminate a debtor's exclusivity, ***the primary consideration should be whether or not doing so would facilitate moving the case forward***. And that is a practical call that can override a mere toting up of the factors." Id. at 670 (emphasis added); see also Adelphia Commc'ns, 352 B.R. at 590 ("practical considerations, or other considerations in the interests of justice, could override . . . the result after analysis of the nine factors").

22. Moreover, a "debtor's use of [the] exclusivity period to force creditors to accept an unsatisfactory or unconfirmable plan" can constitute "cause" to terminate exclusivity. See In re Situation Mgmt. Sys., 252 B.R. 859, 863 (Bankr. D. Mass. 2000) (citations omitted); see also In re Homestead Partners, 197 B.R. 706, 714 (Bankr. N.D. Ga. 1996) ("if a confirmable plan may be reached only through the termination of the exclusivity period, such a measure should find ample justification in the policy as well as the text of the Bankruptcy Code") (citing United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 376, 98 L. Ed. 2d 740, 108 S. Ct. 626 (1988) ("inability to develop confirmable plan constitutes 'cause'")).

23. Here, because the Debtors' Plan contains release and exculpation provisions that violate applicable law, the Debtors' Plan is patently unconfirmable and "cause" exists to terminate the Debtors' Exclusivity Periods.

24. In particular, as to creditor releases of non-Debtor parties, Article XI.C.1 of the Debtors' Plan provides as follows:

> **1. Third Party Release**
>
> EFFECTIVE AS OF THE EFFECTIVE DATE, EACH OF THE RELEASING PARTIES CONCLUSIVELY, ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY, AND FOREVER RELEASES (AND EACH ENTITY SO RELEASED SHALL BE DEEMED RELEASED BY THE RELEASING PARTIES) EACH AND ALL OF THE RELEASED PARTIES,[6] AND THEIR RESPECTIVE PROPERTY FROM ANY AND ALL CLAIMS, INTERESTS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, CAUSES OF ACTION, REMEDIES, AND LIABILITIES WHATSOEVER (OTHER THAN FOR ILLEGAL CONDUCT, GROSS NEGLIGENCE, BAD FAITH, OR FRAUD), INCLUDING WITH RESPECT TO ANY RIGHTS OR CLAIMS THAT COULD HAVE BEEN ASSERTED AGAINST ANY OR ALL OF THE RELEASED PARTIES WITH RESPECT TO ANY DERIVATIVE CLAIMS, ASSERTED OR ASSERTABLE ON BEHALF OF THE DEBTORS, OR THE ESTATES, AS APPLICABLE, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING OR HEREINAFTER ARISING, IN LAW, EQUITY, OR OTHERWISE, THAT SUCH ENTITY WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT (WHETHER INDIVIDUALLY OR COLLECTIVELY), BASED ON OR RELATING TO, OR IN ANY MANNER ARISING FROM, IN WHOLE OR IN PART, THE DEBTORS, THE CHAPTER 11 CASES, THE PURCHASE, SALE, TRANSFER, OR RESCISSION OF THE PURCHASE, SALE, OR TRANSFER OF ANY DEBT, ASSET, RIGHT, OR INTEREST OF THE DEBTORS, THE SUBJECT MATTER OF, OR THE TRANSACTIONS OR EVENTS GIVING RISE TO, ANY CLAIM OR INTEREST THAT IS TREATED IN THE PLAN, THE BUSINESS OR CONTRACTUAL ARRANGEMENTS BETWEEN THE DEBTORS AND ANY RELEASED PARTY, THE RESTRUCTURING OR ANY ALLEGED RESTRUCTURING OR REORGANIZATION OF CLAIMS AND INTERESTS PRIOR TO OR IN THE CHAPTER 11 CASES, THE NEGOTIATION, FORMULATION, OR PREPARATION OF THE PLAN AND ANY OTHER AGREEMENTS OR DOCUMENTS EFFECTUATING THE PLAN, OR RELATED AGREEMENTS, INSTRUMENTS, OR OTHER DOCUMENTS (INCLUDING, FOR THE AVOIDANCE OF DOUBT, PROVIDING ANY LEGAL OPINION REQUESTED BY ANY ENTITY REGARDING ANY TRANSACTION, CONTRACT, INSTRUMENT, DOCUMENT, OR OTHER AGREEMENT CONTEMPLATED BY THE PLAN OR THE RELIANCE BY ANY RELEASED PARTY ON THE PLAN OR THE CONFIRMATION

[6] The Debtors' Plan defines "Released Parties" as: "(i) the Debtors, (ii) the Committee and its members, (iii) the POC and its members, (iv) the Liquidating Trustee, (v) Strategic, (vi) the Debtor Representative, and (vii) each of their respective officers, directors, attorneys, accountants, agents, and other professionals." See Debtors' Plan Article II.

ORDER IN LIEU OF SUCH LEGAL OPINION), AND ANY OTHER ACT OR OMISSION, TRANSACTION, AGREEMENT, EVENT, OR OTHER OCCURRENCE TAKING PLACE ON OR BEFORE THE EFFECTIVE DATE RELATING TO THE DEBTORS OR THE ESTATES.

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE THIRD PARTY RELEASE, WHICH INCLUDES BY REFERENCE EACH OF THE RELATED PROVISIONS AND DEFINITIONS CONTAINED HEREIN, AND, FURTHER, SHALL CONSTITUTE THE BANKRUPTCY COURT'S FINDING THAT THE THIRD PARTY RELEASES ARE: (A) IN EXCHANGE FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE RELEASED PARTIES; (B) A GOOD FAITH SETTLEMENT AND COMPROMISE OF THE CLAIMS RELEASED BY THE RELEASING PARTIES; (C) IN THE BEST INTERESTS OF THE DEBTORS, THE ESTATES AND ALL HOLDERS OF CLAIMS AND INTERESTS; (D) FAIR, EQUITABLE AND REASONABLE; (E) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING; (F) CONSENSUAL; AND (G) A BAR TO ANY OF THE RELEASING PARTIES ASSERTING ANY CLAIM OR CAUSE OF ACTION RELEASED PURSUANT TO THE THIRD PARTY RELEASE.

25. Similarly, as to releases by the Debtors of non-Debtor parties, Article XI.C.2 of the Debtors' Plan provides as follows:

2. Debtor Releases

PURSUANT TO BANKRUPTCY CODE SECTION 1123(B), AND NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE PLAN OR THE CONFIRMATION ORDER, ON AND AFTER THE EFFECTIVE DATE, FOR GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY OF WHICH IS HEREBY CONFIRMED, THE RELEASED PARTIES SHALL BE DEEMED RELEASED BY THE DEBTORS AND THE ESTATES FROM ANY AND ALL CLAIMS, OBLIGATIONS, DEBTS, RIGHTS, SUITS, DAMAGES, CAUSES OF ACTION, REMEDIES, AND LIABILITIES WHATSOEVER (OTHER THAN FOR ILLEGAL CONDUCT, GROSS NEGLIGENCE, BAD FAITH, OR FRAUD), INCLUDING DERIVATIVE CLAIMS ASSERTED OR ASSERTABLE ON BEHALF OF THE DEBTORS OR THE ESTATES, AS APPLICABLE, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING OR HEREINAFTER ARISING, IN LAW, EQUITY, OR OTHERWISE, THAT ANY OF THE DEBTORS OR THE ESTATES, AS APPLICABLE, WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT IN ITS OWN RIGHT, OR ON BEHALF OF THE HOLDER OF ANY CLAIM OR INTEREST OR OTHER ENTITY, BASED ON OR RELATING TO, OR IN ANY MANNER ARISING FROM, IN WHOLE OR IN

PART, THE DEBTORS, THE CHAPTER 11 CASES, THE PURCHASE, SALE, TRANSFER, OR RESCISSION OF THE PURCHASE, SALE, OR TRANSFER OF ANY DEBT, CORPORATE INTEREST, ASSET, RIGHT, OR INTEREST OF THE DEBTORS, THE SUBJECT MATTER OF, OR THE TRANSACTIONS OR EVENTS GIVING RISE TO, ANY CLAIM OR CORPORATE INTEREST THAT IS TREATED IN PLAN, THE BUSINESS OR CONTRACTUAL ARRANGEMENTS BETWEEN THE DEBTORS AND ANY RELEASED PARTY, THE RESTRUCTURING OF CLAIMS AND INTERESTS PRIOR TO OR IN THE CHAPTER 11 CASES, THE NEGOTIATION, FORMULATION, OR PREPARATION OF THE PLAN AND ANY OTHER AGREEMENTS OR DOCUMENTS EFFECTUATING THE PLAN, OR RELATED AGREEMENTS, INSTRUMENTS, OR OTHER DOCUMENTS, AND ANY OTHER ACT OR OMISSION, TRANSACTION, AGREEMENT, EVENT, OR OTHER OCCURRENCE TAKING PLACE ON OR BEFORE THE EFFECTIVE DATE RELATING TO THE DEBTORS OR THE ESTATES. FOR PURPOSES OF THE RELEASES CONTAINED IN THE PLAN, THE LIQUIDATING TRUSTEE IS DEEMED TO BE A SUCCESSOR TO THE ESTATES AND, THEREFORE, IS BOUND BY THE RELEASES CONTAINED IN THE PLAN.

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE RELEASE OF THE RELEASED PARTIES BY THE DEBTORS AND THE ESTATES, WHICH INCLUDES BY REFERENCE EACH OF THE RELATED PROVISIONS AND DEFINITIONS CONTAINED HEREIN, AND FURTHER, SHALL CONSTITUTE THE BANKRUPTCY COURT'S FINDING THAT THE RELEASE OF THE RELEASED PARTIES BY THE DEBTORS AND THE ESTATES IS: (A) IN EXCHANGE FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE RELEASED PARTIES; (B) A GOOD FAITH SETTLEMENT AND COMPROMISE OF THE CLAIMS RELEASED BY THE DEBTORS OR THE ESTATES; (C) IN THE BEST INTERESTS OF THE DEBTORS, THE ESTATES AND ALL HOLDERS OF CLAIMS AND INTERESTS; (D) FAIR, EQUITABLE, AND REASONABLE; (E) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING; AND (F) A BAR TO THE DEBTORS OR THE ESTATES ASSERTING ANY CLAIM OR CAUSE OF ACTION RELEASED PURSUANT TO THE RELEASE BY THE DEBTORS OR THE ESTATES.

26. In addition, Article XI.B of the Debtors' Plan contains the following exculpation provision:

> Except as otherwise specifically provided in the Plan, none of the Exculpated Parties[7] shall have or incur any liability to any holder of a Claim or Corporate Interest (including Estate Claims) for any act or omission in connection with, related to, or arising out of the Chapter 11 Cases, the Plan, the Disclosure Statement, the pursuit of Confirmation, the consummation of the Plan, the administration of the Plan, the property to be liquidated and/or distributed under the Plan or any prepetition or postpetition act taken or omitted to be taken in connection with or in contemplation of the liquidation of the Debtors, except for their willful or gross negligence as determined by a Final Order of a court of competent jurisdiction, and in all respects shall be entitled to rely reasonably upon the advice of counsel with respect to their duties and responsibilities under the Plan.

27. Lastly, Article XI.E of the Debtors' Plan contains the following injunction:

> FROM AND AFTER THE EFFECTIVE DATE, TO THE EXTENT OF THE EXCULPATIONS, LIMITATIONS OF LIABILITY, AND RELEASES GRANTED IN THIS PLAN, ALL PARTIES SHALL BE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER AGAINST THE EXCULPATED PARTIES, THE RELEASED PARTIES, OR PARTIES WHOSE LIABILITY IS LIMITED (COLLECTIVELY, THE **"PROTECTED PARTIES"**), AND THEIR RESPECTIVE ASSETS AND PROPERTIES, AS THE CASE MAY BE, ANY SUIT, ACTION, OR OTHER PROCEEDING ON ACCOUNT OF OR RESPECTING ANY CLAIM, DEMAND, LIABILITY, OBLIGATION, DEBT, RIGHT, CAUSE OF ACTION, INTEREST, OR REMEDY WITH RESPECT TO WHICH SUCH PROTECTED PARTIES ARE EXCULPATED OR RELEASED OR WITH RESPECT TO WHICH SUCH PROTECTED PARTIES' LIABILITY IS OTHERWISE LIMITED.

28. The Bankruptcy Code prohibits the release and permanent injunction of claims against non-debtors in most circumstances. See 11 U.S.C. § 524(e) ("Except as provided in subsection (a)(3) . . . discharge of a debt of a debtor does not affect the liability of any other entity on, or property of any other entity for, such debt."). While the Sixth Circuit has not categorically barred third party releases, it recognizes that they are only appropriate in rare circumstances. See Class Five Nev. Claimants v. Dow Corning Corp. (In re Dow Corning

[7] The Debtors' Plan defines "Exculpated Parties" as: "(i) the Debtors, (ii) the Committee and its members, (iii) the POC and its members, (iv) the Liquidating Trustee, (v) Strategic, (vi) the Debtor Representative, and (vii) each of their respective officers, directors, attorneys, accountants, agents, and other professionals." See Debtors' Plan Article II.

Corp.), 280 F.3d 648, 658 (6th Cir. 2002) ("Because such an injunction is a dramatic measure to be used cautiously, we follow those circuits that have held that enjoining a non-consenting creditor's claim is only appropriate in '***unusual circumstances***'") (citation omitted; emphasis added). In particular, under Sixth Circuit precedent, a "bankruptcy court may enjoin a non-consenting creditor's claims against a non-debtor" only "when the following seven factors are present:"

(1) There is an identity of interests between the debtor and the third party, usually an indemnity relationship, such that a suit against the non-debtor is, in essence, a suit against the debtor or will deplete the assets of the estate;

(2) The non-debtor has contributed substantial assets to the reorganization;

(3) The injunction is essential to reorganization, namely, the reorganization hinges on the debtor being free from indirect suits against parties who have indemnity or contribution claims against the debtor;

(4) The impacted class, or classes, has overwhelmingly voted to accept the plan;

(5) The plan provides a mechanism to pay for all, or substantially all, of the class or classes affected by the injunction;

(6) The plan provides an opportunity for those claimants who choose not to settle to recover in full; and

(7) The bankruptcy court made a record of specific factual findings that support its conclusions.

Id. (citations omitted).

29. Here, the Debtors are liquidating, not reorganizing, so the proposed releases are inherently ***not*** necessary for the Debtors' reorganization, and the proposed beneficiaries of the releases are providing no consideration whatsoever to the estates. Moreover, many of the proposed released parties are the exact parties whose prepetition conduct the Committee is investigating. Accordingly, the proposed releases render the Debtors' Plan unconfirmable.

30. Moreover, "the preliminary consideration" before the Bankruptcy Court — moving these cases to a prompt and equitable resolution — counsels strongly in favor of terminating the Exclusivity Periods so the Committee can file and solicit votes on a confirmable plan – which it has already drafted. Indeed, terminating exclusivity would not merely "move the case forward," it would usher in the prompt conclusion of these cases in a manner that will maximize the value of the Debtors' estates for the benefit of their creditors. In contrast, allowing the Debtors' Plan to move forward would countenance the self-interest endemic in that document and would unnecessarily expose these already stressed estates to further litigation costs and delay through a contested confirmation process.

31. For all of the foregoing reasons, the Committee respectfully submits that "cause" exists to terminate the Debtors' Exclusivity Periods.

II. The Committee Satisfies the Test for Derivative Standing

A. The Legal Standard for Derivative Standing is Satisfied

32. It is well settled that a court may allow a committee to pursue causes of action on behalf of an estate. See Canadian Pac. Forest Prods. v. J.D. Irving, Ltd. (In re Gibson Group), 66 F.3d 1436, 1446 (6th Cir. 1995); Liberty Mut. Ins. Co. v. Official Unsecured Creditors' Comm. (In re Spaulding Composites Co.), 207 B.R. 899, 904 (B.A.P. 9th Cir. 1997); Official Comm. of Unsecured Creditors of Cybergenics Corp. v. Chinery, 330 F.3d 548, 580 (3d Cir. 2003); La. World Exposition v. Fed. Ins. Co., 858 F.2d 233, 247 (5th Cir. 1988); Unsecured Creditors Comm. v. Noyes (In re STN Enters.), 779 F.2d 901, 904 (2d Cir. 1985).

33. Further, the Committee is statutorily authorized to "perform such other services as are in the interest of those represented." 11 U.S.C. § 1103(c)(5). To that end, "a party in interest, including . . . a creditors' committee . . . may raise and may appear and be heard on any

issue in a case under this chapter." 11 U.S.C. § 1109(b). The right "to appear and be heard" includes the right to assert claims when the debtor refuses a demand to do so. See, e.g., Official Comm. of Unsecured Creditors v. Derf II (In re Catwil Corp.), 175 B.R. 362, 364 (Bankr. E.D. Cal. 1994) ("Although the Code does not contain a parallel section that authorizes a creditors' committee to initiate adversary proceedings, courts have held that sections 1103(c)(5) and 1109(b) imply such a right.").

34. In the Sixth Circuit, before a committee may bring an action on behalf of an estate, it generally must demonstrate: (1) that it "made a request of the debtor-in-possession regarding the initiation or prosecution of an action," (2) "that the request has been refused," (3) "that a colorable claim exists which, if successful would benefit the estate," and (4) "that the debtor-in-possession's inactivity on the claim is unjustifiable or abusive of their discretion." In re LTV Steel Co., 333 B.R. 397, 406 (Bankr. N.D. Ohio 2005) (citing In re Gibson Group, 66 F.3d at 1446).

35. Here, each of these requirements is satisfied and the Committee should be allowed to pursue the Proposed Claims. The Proposed Claims appear to be meritorious; prosecuting them could significantly benefit the Debtors' estates; the Committee asked the Debtors to pursue the Proposed Claims; and the Debtors unjustifiably refused to do so. Unfortunately, the Debtors' unjustifiable refusal to act – and, indeed, their affirmative effort to "cleanse" their insiders at the expense of their creditors – has forced the Committee to seek this Court's leave to prosecute the Proposed Claims.

B. The Proposed Claims Are Colorable

36. When evaluating whether to grant a committee's standing motion, a primary consideration for the court is whether a colorable claim exists. It is "relatively easy" to satisfy

the threshold for showing that claims are colorable. Adelphia Commc'ns Corp. v. Bank of Am., N.A. (In re Adelphia Commc'n Corp.), 330 B.R. 364, 376 (Bankr. S.D.N.Y. 2005). "A colorable claim is defined as one which is ***plausible*** or 'not without merit.'" In re LTV Steel, 333 B.R. at 406 (emphasis added). Standing to assert claims "should be denied only if the claims are 'facially defective.'" In re Adelphia Commc'n Corp.), 330 B.R. at 376; see also Official Comm. of Unsecured Creditors v. Hudson United Bank (In re Am.'s Hobby Ctr., Inc.), 223 B.R. 275, 282 (Bankr. S.D.N.Y. 1998). The inquiry is "much the same as" evaluating a motion to dismiss a complaint for failure to state a claim. In re Am.'s Hobby Ctr., 223 B.R. at 280; In re LTV Steel, 333 B.R. at 406. There is no need for a court to conduct a mini-trial. In re STN Enters., 779 F.2d at 905. Rather, a court should simply determine whether the suit is likely to benefit the debtor's estate by weighing the "probability of success and financial recovery," as well as the anticipated costs of litigation. In re Am.'s Hobby Ctr., 223 B.R. at 282.

37. The Proposed Claims easily meet this threshold and the Committee should be granted standing to further investigate and pursue these claims. The Proposed Claims are based upon the following:[8]

- **Breach of Fiduciary Duty in Connection with the Acquisitions of the Mississippi Hospitals**

    - In 2017 (*i.e.*, before the Petition Date), Debtors Curae Health, Inc. ("**Curae**") Amory Regional Medical Center, Inc. ("**Amory Medical**"), Batesville Regional Medical Center, Inc. ("**Batesville Medical**"), and Clarksdale Regional Medical Center, Inc. ("**Clarksdale Medical**") acquired three Mississippi hospitals from Community Health Systems, Inc. ("**CHS**") for an approximately $51 million purchase price and operated them as follows: (i) Amory Medical owned and operated a 95-bed hospital in Amory, Mississippi (the "**Gilmore Medical Center**"); (ii) Batesville Medical owned and operated a 112-bed hospital and certain other healthcare-related facilities

[8] The allegations contained herein are based upon the documents and information available to the Committee as of the date hereof, and are subject to clarification, amendment, revision, or other modification in light of new documents and information, obtained through subsequent discovery or otherwise. No statement herein is intended to waive or impair any right of the Committee or the Debtors' estates. All rights of the Committee and the Debtors' estates are expressly reserved.

in Batesville, Mississippi (collectively, the "**Panola Hospital**"); and (iii) Clarksdale Medical owned and operated a 181-bed regional medical center in Clarksdale, Mississippi (the "**Clarksdale Medical Center**", and together with the Gilmore Medical Center and the Panola Hospital, the "**Mississippi Hospitals**") in facilities leased from Coahoma County, Mississippi ("**Coahoma County**").

- Substantial questions exist as to: (a) whether the obligations incurred by the Debtors in connection with the acquisition of these assets from CHS were for reasonably equivalent value, (b) whether the Debtor' officers and directors breached their fiduciary duties in connection with these transactions, and (c) why the Debtors are now seeking to absolve these parties for no consideration.[9] In addition, after the Debtors acquired Gilmore Medical Center and Panola Hospital, there were many questions regarding the value of the assets and the representations by CHS in connection with those transactions. Despite those concerns, the Potential Defendants did not assert any claims or causes of action against CHS, but rather proceeded to purchase Clarksdale Medical Center in the face of known concerns about CHS. Through the Clarksdale acquisition, the Debtors effectively "doubled down" and further increased the insolvency of the Debtors' estates.

- The Debtors commenced these Chapter 11 Cases with the intention of selling the Mississippi Hospitals and the results of such efforts, as detailed below, amplify the foregoing concerns.

- Gilmore Medical Center Sale. On November 30, 2018, the Bankruptcy Court entered an order approving the sale of Gilmore Medical Center to North Mississippi Health Services, Inc. for consideration including: (i) $15 million in cash, subject to adjustments based on the amount of net working capital and certain assumed lease obligations, and (ii) the assumption of certain liabilities.

- Panola Hospital Sale. On January 11, 2019, the Bankruptcy Court approved the sale of the Panola Hospital to Progressive Medical Management of Batesville, LLC for consideration including (i) $2.5 million in cash, and (ii) the assumption of certain liabilities.

- Clarksdale Medical Center Transfer. On October 12, 2018, in the face of mounting operating losses and a lack of immediate sale prospects, the Debtors filed an emergency motion to (i) shut down Clarksdale Medical Center and reject related unexpired leases and contracts or, in the alternative, (ii) transfer Clarksdale Medical Center's operations to a new operator and assume the lease with Coahoma County and other related unexpired leases and contracts. As a result of negotiations among the relevant parties, the motion was granted on an interim basis on November 2, 2018, and Coahoma County agreed to provide certain financial assistance to ensure

[9] Notably, when the Debtors commenced these Chapter 11 Cases, they requested permission to continue their insurance policy for Executive Liability (D&O Coverage) and to pay the associate premiums. It is therefore surprising for them to now seek to release the beneficiaries of this policy. Apparently, the Debtors paid for something and will receive no benefit in return – this may be a common theme in the Debtors' management.

continued operation. Subsequently, on December 13, 2018, the Bankruptcy Court authorized the Debtors to enter into an interim management services agreement [Docket No. 558] with Clarksdale HMA, LLC ("**Clarksdale HMA**"), Coahoma County, and CHS to provide for the transition of Clarksdale Medical Center's operations to Coahoma County and Clarksdale HMA, with Clarksdale HMA assuming responsibility for all operating expenses from and after December 16, 2018, until the earlier of (a) the closing a sale of the assets and assumption of the lease of Clarksdale Medical Center or (b) termination of the agreement. It is contemplated that CHS will purchase the assets and assume the lease of Clarksdale Medical Center, and upon the closing, CHS would assume, and be financially responsible, for all operations of Clarksdale Medical Center. In the absence of a closing of a sale and assumption to CHS and motion to approve a sale and assumption to CHS or another party by January 25, 2019, the interim management services agreement may be terminated. As of the date hereof, a closing has not occurred and no motion to approve a sale to CHS or another third party has been filed.

- In short, after paying approximately $51 million for the Mississippi Hospitals less than two years ago, the Debtors' efforts to sell such assets in connection with these Chapter 11 Cases yielded less than $18 million in cash, reinforcing concerns that the acquisitions of the Mississippi Hospitals may have constituted fraudulent transfers, that the Debtors' officers and directors breached their fiduciary duties by entering into the Mississippi Hospitals transactions, and that it would be inappropriate and harmful to the Debtors' estates to release the Debtors' officers and directors as proposed. The Committee raised these concerns with this Court on various occasions. Nevertheless, the Debtors' Plan seeks to grant broad releases to the key decision-makers before the Committee can investigate their conduct and the decisions that led to the loss of tens of millions of dollars in value.

- **Breach of Fiduciary Duty Claims Relating to the Mismanagement of the Debtors' Businesses and Potential Self-Dealing**

  - As detailed by the Debtors in the Debtors' Disclosure Statement, between 2013 and 2018, the Debtors' annual net revenue declined by more than $23 million. See Debtors' Disclosure Statement Article II.C.

  - For most of this period of declining revenues, Strategic, a management company owned by the Debtors' chief executive officer, was retained by the Debtors to provide various hospital management services. Specifically, on December 31, 2014, the Debtors and Strategic entered into that certain Hospital Management Agreement, pursuant to which Strategic agreed to render certain management, administration, consulting and purchasing services and support, and all other reasonably necessary management support needed for the Mississippi Hospitals, in exchange for a monthly fee, which, prior to the Petition Date, approximated $47,000 per month. See *Debtors' Motion for Entry of an Order (I) Authorizing Debtors to Enter into the Sixth Amendment to Hospital Management Agreement Effective January 1, 2019, and (II) Granting Related Relief* [Docket No. 598], ¶¶ 9-10.

- As set forth above, Curae has not disclosed all payments to Strategic in the 1 year preceding the commencement of these cases and the Committee (like all other parties in interest in these cases) is unable to determine the legitimacy of all such payments as the Debtors (for unknown reasons) have asserted that Strategic is neither an insider nor affiliate of the Debtors. However, Curae did disclose that almost $500,000 was transferred to Strategic in the 90 days prior to the Petition Date (although the dates and amounts of such transfers have not been disclosed) which amount appears to be inconsistent with the Debtors' representation in paragraph 10 of Docket No. 598 that, prior to December 2018, the monthly management fee was approximately $47,000.

- Mindful of the need to conserve estate resources during these Chapter 11 Cases, the Committee has not yet fully investigated the circumstances surrounding the steep drop in the Debtors' revenues, why there was "higher-than-anticipated information system costs" or their decision to pay millions of dollars to a company controlled by the Debtors' chief executive officer and which oversaw the Debtors' slide into bankruptcy. However, now that the Debtors seek to release these parties under the Debtors' Plan, the Committee should be granted an opportunity to investigate these matters to ensure that valuable claims of the Debtors' estates are not eviscerated for no consideration for the benefit of the insiders herein.

- **Causes of Action Relating to the Debtors' Failure to Maintain Corporate Separateness and Aiding and Abetting Fraudulent Conveyances**

  - As detailed in the Committee's *Complaint for Avoidance of Fraudulent Transfers, Avoidance of Preferential Transfers, Determination and/or Disallowance of Claims, Declaratory Relief, and Related Relief* (the "**ServisFirst Complaint**") [Docket No. 669], which is incorporated herein by reference, it appears that the Debtors executed numerous fraudulent transfers and treated separate Debtor entities as interchangeable piggybanks, all of which was overseen and/or approved by the Debtors' officers and directors. See also *Declaration of Stephen N. Clapp, Chief Executive Officer of Curae Health, Inc., in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 49], ¶¶ 56-64 (describing commingling inherent in the Debtors' cash management system).

  - For instance, on December 13, 2017, Amory, Batesville and Clarksville, as borrowers, Curae, as guarantor, and ServisFirst Bank ("**ServisFirst**"), as lender, entered into a First Amendment to Term Note and Second Amendment to Loan Agreement (the "**December 2017 Amendment**") purporting to add Clarksdale, which had not been a borrower under the initial May 2017 loan agreement or term note, as a borrower and render Clarksdale jointly and severally liable for over $18 million owed thereunder (the "**Term Debt**"). Upon information and belief, Clarksdale did not receive any funds or other value from ServisFirst in connection with this transaction and, as a result of the transaction: (i) the liabilities of Clarksdale exceeded the value of its assets; (ii) Clarksdale was left inadequately capitalized; and/or (iii) Clarksdale could not pay its obligations as they became due.

- As set forth in the ServisFirst Complaint, similar questions exist with respect to, among other things, Curae's purported acceptance of joint and several liability as guarantor of the Term Debt and other debts, as well as Amory and Batesville's purported joint and several liability with respect to such debts, all of which may constitute fraudulent transfers to the extent that those entities did not receive reasonably equivalent value in exchange for the obligations they incurred.

- Likewise, on March 6, 2018, Amory Regional Physicians, LLC ("**ARP**"), Batesville Regional Physicians, LLC ("**BRP**") and Clarksdale Regional Physicians, LLC ("**CRP**" and, collectively with ARP and BRP, the "**Physician Group Debtors**") executed a guaranty (the "**March 2018 Guaranty**") under which the Physician Group Debtors purported to guarantee the Term Debt, in exchange for which those entities do not appear to have received any funds or other value from ServisFirst.

- In addition, it appears that the Debtors, presumably with the oversight and/or approval of their officers and directors, may have taken approximately $5 million from a prepetition sale of certain Batesville assets, which could have been paid to the creditors of Batesville, and utilized those funds to acquire Clarksdale, pay other entities, or for other improper purposes.

C. The Debtors Unjustifiably Refused to Bring the Action

38. The next factors in the derivative standing test are whether the committee made a demand on the debtor to bring the action and whether the debtor refused unjustifiably to pursue the claim. Here, the Committee requested that the Debtors bring the Proposed Claims, and the Debtors refused to do so. Accordingly, the Committee, as the representative of the true economic stakeholders in these Chapter 11 Cases, requests that the Court grant the Committee standing to pursue the Proposed Claims.

D. Prosecution of the Proposed Claims Would Benefit Estate

39. In determining whether a debtor "unjustifiably" failed to pursue the claim, the court should consider whether the proposed claim is likely to benefit the reorganization estate. In re STN, 779 F.2d at 905; see also In re Spaulding Composites Co., 207 B.R. at 904 ("So long as the bankruptcy court exercises its judicial oversight and verifies that the litigation is indeed necessary and beneficial, allowing a creditors' committee to represent the estate presents no undue concerns."). In making this evaluation, the court must "assure itself that there is a

sufficient likelihood of success to justify the anticipated delay and expense to the bankruptcy estate that the initiation and continuation of litigation will likely produce." In re STN, 779 F.2d at 906.

40. Here, prosecution of the Proposed Claims could significantly benefit the Debtors' estates and the claims are colorable. While a precise amount of the Proposed Claims is not yet known, the Proposed Claims could be extremely valuable – potentially worth millions of dollars or more – and thus have the potential to yield a significant recovery for the Debtors' estates. If the Proposed Claims are not pursued, it is certain that the claims will be valueless.

E. The Debtors Are Conflicted

41. Additionally, courts have noted that where a conflict of interest prevents a debtor from pursuing certain claims, it would benefit the estate to allow a creditors' committee to pursue such claims. Louisiana World Exposition v. Fed. Ins. Co., 858 F.2d 233, 251 (5th Cir. 1988) ("where a debtor-in-possession possesses a cause of action – and, because the estate will benefit as a result, must assert that cause of action – yet is unable, because of a conflict of interest, to bring that action, allowing a creditors' committee to pursue the suit on the debtor-in-possession's behalf will often prove beneficial to the estate"). Thus, derivative standing "may be necessary to avoid the inherent conflict of interest that exists when those with the power to pursue a claim are those who may be the target of such a claim." Smart World Techs., LLC v. Juno Online Servs. (In re Smart World Techs., LLC), 423 F.3d 166, 177 (2d Cir. 2005). For obvious reasons, "conflicts of interest can often cloud debtors' judgment – it is difficult to objectively determine whether a potential action is meritorious when one would be a defendant in that action." Cybergenics, 330 F.3d at 575.

42. The Debtors' Board is inherently conflicted due to the integral role that the Board played in the events and transactions underpinning the Proposed Claims. Because of its conflicts

and clear attempt to cleanse the Debtors' insiders, the Debtor's Board cannot exercise independent or sound business judgment in determining whether to prosecute and on what terms to settle with the Potential Defendants.

43. Based on such conflicts of interest, it would be impossible for the Debtors to objectively and effectively prosecute the Proposed Claims, as it would call their own conduct into question. Considering the foregoing, it is not surprising that the Debtors refused to pursue the Proposed Claims. However, such refusal is unjustified, as prosecution of the Proposed Claims will benefit the Debtors' estates and their creditors, given the likelihood of a substantial recovery.

44. The Committee should be authorized to prosecute and settle the Proposed Claims, subject to the approval of the Bankruptcy Court. It is undeniable that settlement of the Proposed Claims could have a significant impact on the Debtors' unsecured creditors, whose interests are represented by the Committee. See In re Planned Protective Servs., Inc., 130 B.R. 94, 96 (Bankr. C.D. Cal. 1991) (courts must consider "the paramount interest of the creditors and a proper deference to their reasonable views" when evaluating whether a proposed settlement is fair and equitable and should be approved).

Reservation of Rights

The Committee reserves its right to amend or supplement this motion, or to file additional motions, to seek authority to commence and prosecute other claims and or/causes of action against the Potential Defendants on behalf of the Debtors' estates, and to seek discovery and/or present evidence at any hearing on the motion.

Conclusion

WHEREFORE, the Committee respectfully requests that the Bankruptcy Court: (i) terminate the Debtors' Exclusivity Periods and permit the Committee to file a plan of liquidation, (ii) grant the Committee leave, standing and authority to commence, prosecute, and, if appropriate, settle the Proposed Claims on behalf of the Debtors' estates, and (iii) grant the Committee such other and further relief as is just and proper.

Dated: January 30, 2019

/s/ Michael E. Collins

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CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2019, a copy of the foregoing was sent via ECF to all parties registered to receive electronic notice in the case and via U.S. mail, postage prepaid, to the parties listed on the mailing matrix attached as Exhibit B.

/s/ Robert W. Miller
Robert W. Miller

EXHIBIT A

Proposed Order

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

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

ORDER GRANTING THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS' MOTION (I) TO TERMINATE THE DEBTORS' EXCLUSIVITY PERIODS TO PERMIT THE COMMITTEE TO FILE A PLAN OF LIQUIDATION, AND (II) FOR LEAVE, STANDING AND AUTHORITY TO COMMENCE, PROSECUTE AND, IF APPROPRIATE, SETTLE CERTAIN CAUSES OF ACTION ON BEHALF OF THE DEBTORS' ESTATES

Upon consideration of *The Official Committee of Unsecured Creditors' Motion (I) to Terminate the Debtors' Exclusivity Periods to Permit the Committee to File a Plan of Liquidation, and (II) for Leave, Standing and Authority to Commence, Prosecute and, if Appropriate, Settle Certain Causes of Action on Behalf of the Debtors' Estates* (the "**Motion**"),[2] and good cause appearing therefor, it is hereby:

ORDERED, ADJUDGED, AND DECREED:

1. The Motion is granted.

2. All objections, if any, to the Motion or the relief requested therein that have not been withdrawn, waived or settled are overruled.

[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).

[2] Capitalized terms used but not defined herein have the meanings ascribed to them in the Motion.

3. The Debtors' exclusivity periods to file a plan and solicit acceptances thereof are terminated for cause pursuant to 11 U.S.C. § 1121(d)(1).

4. The Committee is authorized to file a plan and take any and all further actions consistent with the Bankruptcy Code to seek confirmation of such plan.

5. The Committee is granted leave, standing and authority to commence, prosecute and settle the Proposed Claims, on behalf of the Debtors' estates against the Potential Defendants.

6. The terms and conditions of this Order are immediately effective and enforceable upon its entry.

7. The Bankruptcy Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

This Order Was Signed and Entered Electronically as Indicated At the Top of the First Page

APPROVED FOR ENTRY:

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