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

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

**EXPEDITED MOTION OF DEBTORS FOR ENTRY OF AN ORDER (I) AUTHORIZING PAYMENT OF THE DIP OBLIGATIONS, (II) AUTHORIZING THE USE OF CASH COLLATERAL, (III) GRANTING ADEQUATE PROTECTION, (IV) MODIFYING THE AUTOMATIC STAY, AND (V) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (the "**Debtors**") hereby move (the "**Motion**"), pursuant to sections 105, 361, 362, 363, 506, 507, and 552(b) of title 11 of the United States Code (the "**Bankruptcy Code**"); and Rules 2002, 4001, 6004(h), 7062 and 9014 of Federal Rules of Bankruptcy Procedure ("**Bankruptcy Rules**"); for entry of an order, substantially in the form filed contemporaneously herewith (the "**Proposed Order**"), (i) authorizing the Debtors to pay the DIP Obligations (defined below); (ii) authorizing the use Cash Collateral (defined below) of ServisFirst (defined below) in accordance with the budget, attached to the Proposed Order as Exhibit 1 (the "**Budget**"); (iii) granting adequate protection upon the terms set forth in the Proposed Order, (iv) modifying the automatic stay, and (v) granting such other and further relief as the Court deems just and appropriate. In support of the Motion, the Debtors respectfully represent as follows:

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are Curae Health, Inc. (5638); Amory Regional Medical Center, Inc. (2640); Batesville Regional Medical Center, Inc. (7929); and Clarksdale Regional Medical Center, Inc. (4755); Amory Regional Physicians, LLC (5044); Batesville Regional Physicians, LLC (4952); Clarksdale Regional Physicians, LLC (5311).

## 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). The Debtors consent to entry of a final order under Article III of the United States Constitution.

2. Venue is proper in this District under 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105, 361, 362, 363, 506, 507, and 552(b), and Bankruptcy Rules 2002, 4001, 6004(h), 7062 and 9014.

## BACKGROUND

### General Background

4. On August 24, 2018 (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 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] (the "**First Day Declaration**") and fully incorporated herein by reference.

5. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in the Chapter 11 Cases. On September 6, 2018, the official committee of unsecured creditors was appointed.

6. As of the Petition Date, the Debtors operated three hospitals in Mississippi that provide much needed inpatient and outpatient medical services to their respective communities (each a "**Hospital**", and collectively, the "**Hospitals**"). Debtors filed these Chapter 11 Cases to

keep the Hospitals open for the benefit of their respective communities and transition operations of the Hospitals to new operators.

7. On March 7, 2019, the Court entered its *Order (I) Approving Disclosure Statement; (II) Establishing Forms and Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan; (III) Establishing Deadline and Procedures for Filing Objections to the Confirmation of the Plan; and (IV) Granting Related Relief* [Docket No. 841] (the "**Disclosure Statement Order**"). Pursuant to the Disclosure Statement Order, the Court set a hearing for May 9, 2019 at 9:00 a.m. (prevailing Central Time) (the "**Confirmation Hearing**") to consider confirmation of the *Joint Chapter 11 Plan of Liquidation* filed by the Debtors and the Committee on March 4, 2019 [Docket No. 834] (the "**Plan**").

**DIP Financing and Events of Default under the Final DIP Order**[2]

8. On the Petition Date, Debtors filed their *Expedited Motion of Debtors for Entry of Proposed and Final Orders: (I) Authorizing the Debtors to (A) Obtain Postpetition Secured Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Status, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, and (V) Scheduling a Final Hearing* [Docket No. 10] (the "**DIP Motion**"), pursuant to which, among other things, Debtors sought authorization to obtain DIP Financing, enter into a DIP Credit Agreement, use "cash collateral" (as defined in section 363(a) of the Bankruptcy Code, "**Cash Collateral**") and borrow amounts pursuant to an Interim DIP Loan and Final DIP Loan (as defined in the DIP Motion). The DIP Motion is fully incorporated herein by reference.

9. On August 29, 2018 the Court entered the *Interim Order (I) Authorizing the Debtors to (A) Obtain Postpetition Secured Financing and (B) Utilize Cash Collateral,*

[2] All capitalized terms used in this subsection but not otherwise defined shall have the meaning ascribed to them in the Final DIP Order.

*(II) Granting Liens and Superpriority Administrative Expense Status, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, and (V) Scheduling a Final Hearing* [Docket No. 60] (the "**Interim DIP Order**"). On November 14, 2018 the Court entered the *Final Order (I) Authorizing the Debtors to (A) Obtain Postpetition Secured Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Status, (III) Granting Adequate Protection, and (IV) Modifying the Automatic Stay* [Docket No. 455] (the "**Final DIP Order**").

10. The Final DIP Order granted the DIP Lender first-priority security interests in and liens on all of the Debtors' real and personal property. Pursuant to ordering paragraph 2(d) of the Final DIP Order, the DIP Lender was granted:

> first-priority security interests and liens (which shall immediately be valid, binding, permanent, continuing, enforceable, perfected and non-avoidable) on all of the Debtors' real and personal property, including, without limitation, the Prepetition Collateral, including Cash Collateral, the property defined in Schedule 9.1 to the DIP Credit Agreement and the proceeds thereof, including, without limitation, the Sale Proceeds, the Sale Escrow, the Fee Escrow, accounts receivable, and all other rights to payment, whether arising before or after the Petition Date (collectively, the "**DIP Collateral**," and all such liens and security interests granted on or in the DIP Collateral pursuant to this Final Order and the DIP Financing Documents, the "**DIP Liens**").

11. Pursuant to the Final DIP Order, ServisFirst Bank ("**ServisFirst**") has security interests in and liens (the "**ServisFirst Liens**") on substantially all of Debtors' assets (collectively, the "**Collateral**"). The ServisFirst Liens are subordinate to the DIP Liens.

12. Section 10.1 of the DIP Credit Agreement describes certain Events of Default. Pursuant to ordering paragraph 16 of the Final DIP Order, "[t]he occurrence of an 'Event of Default' pursuant to Section 10.1 the DIP Credit Agreement shall constitute an event of default under th[e] Final Order." Ordering paragraph 16 of the Final DIP Order provides additional Events of Default in the form of the Bankruptcy Milestones.

13. Ordering paragraph 17 of the Final DIP Order provides the DIP Lender certain rights and remedies should an Event of Default occur, including termination of the automatic stay. Ordering paragraph 17 provides in relevant part as follows:

> Any otherwise applicable automatic stay is hereby modified so that after the occurrence of any Event of Default and at any time thereafter during the continuance of such Event of Default, upon three (3) business day's prior written notice of such occurrence (the "Remedies Notice Period"), in each case given to each of the Debtors, counsel for the Committee, if any, counsel for ServisFirst and CHS, and the U.S. Trustee, the DIP Lender shall be entitled to exercise its rights and remedies with respect to the Debtors and the DIP Collateral in accordance with the DIP Financing Documents . . . .
>
> [I]mmediately following the giving of notice by the DIP Lender of the occurrence of an Event of Default: (i) the Debtors shall continue to deliver and cause the delivery of the proceeds of DIP Collateral to the DIP Lender as provided in the DIP Credit Agreement and this Final Order; (ii) the DIP Lender shall continue to apply such proceeds in accordance with the provisions of this Final Order and of the DIP Credit Agreement; (iii) the Debtors shall have no right to use any of such proceeds, nor any other Cash Collateral other than towards the satisfaction of the DIP Obligations and the Carve-Out, as provided in the DIP Financing Documents; and (iv) any obligation otherwise imposed on the DIP Lender to provide any loan or advance to the Debtors pursuant to the DIP Financing Documents shall immediately be suspended . . . .
>
> If the Debtors or the Committee or ServisFirst do not, within the Remedies Notice Period, contest the right of the DIP Lender to exercise its remedies based upon whether an Event of Default has occurred, the automatic stay, as to the DIP Lender, shall automatically terminate at the end of the Remedies Notice Period.

14. On March 6, 2019, the DIP Lender sent Debtors that certain Notice of Events of Default, Demand for Payment, and Reservation of Rights (the "**DIP Demand Letter**"), a copy of which is attached hereto as Exhibit A and fully incorporated herein by reference. Pursuant to the DIP Demand Letter, the DIP Lender alleges that various Current Events of Default have occurred and demands that the Debtors immediately pay the outstanding balance of the DIP Obligations. The DIP Demand Letter further provides that the DIP Lender has elected to institute the Default Rate of Interest pursuant to Section 10.5 of the DIP Credit Agreement as of March 1,

2019. Debtors are further responsible for the payment of all costs and expenses incurred by the DIP Lender in connection with the Current Events of Default.

15. On March 8, 2019, the DIP Lender sent the Debtors that certain Draft DIP Loan Payoff Letter (the "**Payoff Letter**"). Pursuant to the Payoff Letter, the estimated outstanding amount due and owing to the DIP Lender is approximately $6,800,000 (the "**Payoff Amount**").

16. The Debtors have enough cash to pay the DIP Obligations in full. The Debtors are in the process of reviewing and analyzing the Payoff Letter to confirm the accuracy of the Payoff Amount. Subject to such review and confirmation of the Payoff Amount, the Debtors propose to pay the Payoff Amount in the following manner:

a. MidCap shall apply to the Payoff Amount the $4,003,497 in escrowed funds MidCap is currently holding, leaving a balance of $2,796,503;

b. The Debtors shall pay to MidCap the $950,020.00 held in the "Debt Service Reserve Fund" as defined in the *Expedited Order (I) Authorizing the Debtors to Enter in the Member Substitution Agreement with Respect to the Russellville Hospital and (II) Granting Related Relief* [Docket No. 511] (the "**Russellville Order**"), leaving a balance of $1,846,483;

c. The Debtors shall pay to MidCap the $506,641 in disproportionate share proceeds received by the Debtors and currently held by Debtors' counsel relating to the transfer of the Russellville Hospital following entry of the Russellville Order, leaving a balance of $1,339,842;

d. The Debtors shall pay to MidCap the $782,320 in insurance receipts that serve as collateral for the MidCap Loan and that were in transit to MidCap but have not yet been paid over, leaving a balance of $557,522; and

e. The Debtors shall pay the balance from the $1,210,957 in proceeds obtained by the Debtors in the sale to CHS of the inventory of the Clarksdale Hospital.

**Sales of Debtors' Hospitals**

17. Debtors had been working under the assumption that they would not be operating any Hospitals as of March 1, 2019 and would not need the use of Cash Collateral to fund operations of the Hospitals after March 1, 2019.

18. The sale of Gilmore Medical Center closed effective December 31, 2018.

19. Pursuant to the *Order (I) Authorizing the Debtors to Enter into the Interim Management Services Agreement with Clarksdale HMA, LLC, Coahoma County, and CHS/Community Health Systems, Inc., and (II) Granting Related Relief* [Docket No. 558] (the "**Clarksdale IMSA Order**"), Debtors transferred operations of Northwest Mississippi Medical Center (the Hospital in Clarksdale, Mississippi) to CHS/Community Health Systems, Inc. ("**CHS**") on an interim basis to allow the Hospital to remain open for the benefit of its community. CHS continues to operate Northwest Mississippi Medical Center pursuant to the terms of the Interim Management Services Agreement. Debtors and CHS continue to negotiate the terms of the sale of Northwest Mississippi Medical Center; however, pursuant to the terms of the Clarksdale IMSA Order and the Interim Management Services Agreement, Debtors are not responsible for funding the operations of Northwest Mississippi Medical Center.

20. On January 22, 2019, the Court entered an order (the "**Sale Order**") [Docket No. 694] authorizing the sale (the "**Sale**") of Panola Medical Center and Panola Medical Center West (collectively, "**Panola Medical Center**") to Progressive Medical Management of Batesville, LLC ("**PMM**") and Panola Physicians Group, LLC ("**PPG**," and together with PMM, the

"**Purchaser**") pursuant to the terms of the Asset Purchase Agreement filed at docket number 662 (the "**APA**").

21. The closing (the "**Closing**") of the Sale was scheduled to occur effective as of 12:01 a.m. (prevailing Eastern Time) on March 1, 2019 (the "**Expected Closing Date**").

22. All conditions to Closing under the APA were satisfied as of 12:01 a.m. (prevailing Eastern Time) (the "**Effective Time**") on the Expected Closing Date.

23. The Debtors were ready, willing, and able to proceed with Closing as of the Effective Time on the Expected Closing Date.

24. In reliance on the Purchaser's representations regarding proceeding to Closing on the Expected Closing Date, *inter alia*, (i) the Debtors gave notice to Mississippi Emergency Physician Services, LLC ("**MEPS**") of their intent to reject the Emergency Department Agreement dated September 1, 2017, between MEPS and Debtor Batesville Regional Medical Center, Inc. d/b/a Panola Medical Center (as amended, the "**ED Contract**"), under which MEPS provided the emergency department doctors and other mid-level emergency medicine providers to the Panola Medical Center, and in furtherance thereof, agreed to a form of stipulation with MEPS providing for the rejection of the ED Contract effective March 1, 2019, which the parties intended would be filed in this bankruptcy case; (ii) the Debtors' postpetition financing was terminated, and the Debtors' postpetition financing obligations were scheduled to be repaid, as of the Expected Closing Date; and (iii) the Debtors' authority to continue using Cash Collateral in connection with the operation of Panola Medical Center expired.

25. Following the Purchaser's notification that it could not go forward with the Closing, the Debtors, on February 28, 2019, filed an emergency motion requesting an emergency

status conference, which was held on March 1, 2019 at 11:00 a.m. (prevailing Central Time). A second status conference was held on March 4, 2019 at 1:00 p.m. (prevailing Central Time).

26. On March 7, 2019, the Court entered the *Agreed Order Regarding Emergency Hearing on the Status of Sale of Panola Medical Center and Panola Medical Center West* [Docket No. 845] (the "**Emergency Panola Order**"), which is fully incorporated herein by reference. Pursuant to the Emergency Panola Order, an emergency hearing regarding the Panola Medical Center is set for March 12, 2019 at 1:00 p.m. (the "**Emergency Hearing**").

27. Contemporaneously herewith, Debtors filed the *Debtors' Status Report Regarding the Operation and Sale of Panola Medical Center*, which is fully incorporated herein by reference.

28. On the date hereof, Debtors received a copy of a financing commitment that could enable Purchaser to close pending satisfaction of certain conditions. If Purchaser cannot go forward with the Closing prior to the Emergency Hearing, Purchaser has agreed to continue operating Panola Medical Center on an interim basis provided that Debtors can fund the operations using their Cash Collateral.

29. In the event Purchaser is unable to close the Sale prior to the Emergency Hearing, Debtors would have an immediate need for the use of Cash Collateral to keep Panola Medical Center open and operating until such time as either: (i) Purchaser is able to go forward with the Closing, (ii) Debtors can identify another buyer that can purchase and operate Panola Medical Center, or (iii) Debtors can effect an orderly shutdown of Panola Medical Center without incurring millions of dollars of WARN Act liability.

**Debtors' Need to Pay the DIP Obligations and Use Cash Collateral**

30. Debtors have determined that Debtors have an immediate need to pay the DIP

Obligations in full. Pursuant to the Final DIP Order and DIP Financing Documents, Debtors are required to immediately pay the DIP Obligations. In addition, Debtors believe paying the DIP Obligations is in the best interests of the Debtors' estates and all creditors because doing so would prevent the estates from incurring further unnecessary expenses (*e.g.* payment of default interest and fees and expenses of the DIP Lender).

31. The Debtors have further determined that absent the use of Cash Collateral, there would be an immediate need to shut down the Panola Medical Center, irreparably harming the Debtors' estates and creditors. The Debtors' immediate access to Cash Collateral is necessary to preserve and maximize the value for the benefit of all parties in interest, including patients. The Debtors further have a need for the use of Cash Collateral to fund administrative expenses in these Chapter 11 Cases until the Plan can be confirmed at the Confirmation Hearing.

32. Debtors have been negotiating with ServisFirst to reach an agreement regarding payment of the DIP Obligations and the consensual use of Cash Collateral. As of the filing of this Motion, Debtors and ServisFirst have not yet reached such an agreement but will continue to work towards a consensual resolution prior to the Emergency Hearing.

33. In exchange for the use of Cash Collateral, the Debtors shall provide, and the Proposed Order provides, adequate protection in the form of, among other things, adequate protection liens, superpriority claims, and adequate protect payments that include fees, expenses, and reporting requirements to protect ServisFirst against any diminution in the value of its interests in the Cash Collateral resulting from the use, sale, or lease of the Cash Collateral. The Proposed Order also provides for the subordination of the ServisFirst's liens to the Carve-Out (as defined in the Proposed Order).

34. Payment of the DIP Obligations and access to existing Cash Collateral will provide the Debtors with the liquidity necessary to ensure that the Debtors have sufficient working capital and liquidity to operate the Panola Medical Center, maintain patient care, and thus preserve and maintain the value of the Debtors' estates. The Debtors further require the liquidity necessary to fund administrative expenses and confirm the Plan. Without access to such liquidity, the Debtors will face irreparable harm and the Plan cannot be confirmed.

## RELIEF REQUESTED

35. The Debtors respectfully request entry of the Proposed Order, pursuant to Bankruptcy Code sections 105, 361, 362, 363, 506, 507, and 552(b) and Bankruptcy Rules 2002, 4001, 6004(h), 7062 and 9014, (i) authorizing the Debtors to pay the DIP Obligations, (ii) authorizing the Debtors to use the Cash Collateral in accordance with the Budget, (iii) granting ServisFirst adequate protection upon the terms set forth in the Proposed Order, (iv) modifying the automatic stay, and (v) granting related relief. In the event Debtors and ServisFirst do not reach an agreement on the use of Cash Collateral prior to the Emergency Hearing, Debtors request that the Proposed Order be entered on an interim basis.

## BASIS FOR RELIEF

### A. Debtors Are Required to Pay the DIP Obligations

36. Pursuant to the Final DIP Order and the DIP Financing Documents, Debtors believe they are required to pay the DIP Obligations and can do so without the consent of ServisFirst or further order of the Court. Pursuant to the DIP Demand Letter, the DIP Lender alleges that various Current Events of Default have occurred and demands that the Debtors immediately pay the outstanding balance of the DIP Obligations. Debtors have not and do not dispute that certain of the Current Events of Default have occurred.

37. Although Debtors believe they are required to pay the DIP Obligations and can do so without the consent of ServisFirst or further order of the Court, Debtors seek authority to pay the DIP Obligations in light of the exigent circumstances relating to Panola Medical Center. The DIP Lender has first priority security interests in and liens on all of the Debtors' real and personal property. Debtors propose to pay the DIP Obligations using collateral on which the DIP Lender has first priority liens. Debtors submit that in their business judgment, immediate payment of the DIP Obligations is in the best interests of the Debtors' estates and creditors, including ServisFirst. Immediate payment of the DIP Obligations would prevent the estates from incurring further default interest and other fees and expenses of the DIP Lender. Accordingly, Debtors request authority to pay the DIP Obligations in full as provided herein.

**B. Cash Collateral and Adequate Protection**

38. Bankruptcy Code section 363(c) provides that a debtor in possession may use cash collateral if all interested entities consent or the Court, after notice and a hearing, authorizes such use. 11 U.S.C. § 363(c). Bankruptcy Code section 363(e) provides that "on request of an entity that has an interest in property . . . proposed to be used, sold or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest." 11 U.S.C. § 363(e). *See also In re DeSardi*, 350 B.R. 790, 797 (Bankr. S.D. Tex. 2006) ("Adequate protection . . . is grounded in the belief that secured creditors should not be deprived of the benefit of their bargain"). The concept of adequate protection is designed to shield a secured creditor from diminution in the value of its interest in collateral during the period of a debtor's use. *See In re Carbone Cos.*, 395 B.R. 631, 635 (Bankr. N.D. Ohio 2008) ("The test is whether the secured party's interest is protected from diminution or decrease as a result of the proposed use of cash collateral); see also

*In re Cont'l Airlines, Inc.*, 154 B.R. 176, 180-81 (Bankr. D. Del. 1993) (holding that adequate protection for use of collateral under section 363 is limited to use-based decline in value).

39. Bankruptcy Code section 361 delineates non-exhaustive forms of adequate protection, which include periodic cash payments, additional liens, replacement liens and other forms of relief. Adequate protection is determined on a case-by-case basis and may take various forms. *See, e.g.*, *United Sav. Ass'n of Tex. V. Timbers of Inwood Forest Assocs., Ltd. (In re Timbers of Inwood Forest Assocs., Ltd.)*, 793 F.2d 1380, 1388 (5th Cir. 1986). *See also In re Self*, 239 B.R. 877, 881 (E.D. Tex. 1999) (noting that the adequate protection determination is not an "exact science"); *In re Continental Airlines, Inc.*, 154 B.R. 176, 180-81 (Bankr. D. Del. 1993); *MBank Dallas., N.A. v. O'Connor (In re O'Connor)*, 808 F.2d 1393, 1396-97 (10th Cir. 1987); *Martin v. U.S. (In re Martin)*, 761 F.2d 472, 474 (8th Cir. 1985); *In re Shaw Indus., Inc.*, 300 B.R. 861, 865 (Bankr. W.D. Pa. 2003). The focus of this requirement is to protect a secured creditor from diminution in the value of its interest in the particular collateral during the period of use. *See In re Swedeland Dev. Grp., Inc.*, 16 F.3d 552, 564 (3d Cir. 1994) ("The whole purpose of adequate protection for a creditor is to insure that the creditor receives the value for which he bargained prebankruptcy."). "[T]he debtor-in-possession has the burden of proof on the issue of adequate protection." *In re Cafeteria Operators, L.P.*, 299 B.R. 400, 406 (Bankr. N.D. Tex. 2003).

40. Here, although ServisFirst has not yet consented to the Debtors' use of Cash Collateral on the terms set forth in the Proposed Order, Debtors propose to provide adequate protection to ServisFirst in the form of, among other things, the Replacement Liens (as defined in the Proposed Order) and the Superpriority Administrative Claim (as defined in the Proposed Order), adequate protect payments that include fees, expenses, and reporting requirements. The

Debtors submit that the proposed adequate protection is appropriate and sufficient to protect ServisFirst from any diminution in value of the Collateral.

41. The Cash Collateral will be used to fund the operations of Panola Medical Center and allow the Debtors to transition the Panola Medical Center to a new operator. Immediate access to this liquidity will permit the Debtors to fund payroll, pay vendors, provide patient care, and otherwise continue business in the ordinary course. If Cash Collateral is not available, Debtors will be forced to shut down the Panola Medical Center to the detriment of the ServisFirst and other stakeholders, including employees and patients. In a shutdown, the Debtors will likely incur in excess of $2 million in liabilities under the WARN Act. Thus, the use of Cash Collateral will protect ServisFirst's security interests by preserving the value of the Prepetition Collateral. *See In re Salem Plaza Assocs.*, 135 B.R. 753, 758 (Bankr. S.D.N.Y. 1992) (holding that a debtor's use of cash collateral to pay operating expenses, thereby "preserv[ing] the base that generates the income stream," provided adequate protection to the secured creditor). *See also Save Power Ltd. v. Pursuit Athletic Footwear, Inc. (In re Pursuit Athletic Footwear, Inc.)*, 193 B.R. 713, 716 (Bankr. D. Del. 1996); *In re 499 W. Warren St. Assocs., Ltd. P'ship*, 142 B.R. 53, 56 (Bankr. N.D.N.Y. 1992). Moreover, the use of Cash Collateral will provide the Debtors with funds in order to pay administrative expenses until confirmation of the Plan.

42. In light of the foregoing, the Debtors submit that the proposed adequate protection to be provided is appropriate and necessary to protect such party against any diminution in value and is also fair and appropriate under the circumstances of this case.

43. Based on the foregoing, the Debtors respectfully submit that entry of the Proposed Order authorizing the use of Cash Collateral.

### C. Modification of the Automatic Stay is Warranted

44. The relief requested by this Motion contemplates a modification of the automatic stay. 11 U.S.C. § 362. The automatic stay should be modified on a limited basis (to the extent applicable) as necessary to effectuate all terms and provisions of the Proposed Order, including, without limitation to: (a) permit the Debtors to grant the Replacement Liens and Superpriority Administrative Claim and to make the adequate protection payments; (b) permit the Debtors to perform such acts as ServisFirst may request to assure the perfection and priority of the liens granted in the Proposed Order; and (c) authorize the Debtors to make, and ServisFirst to retain and apply, payments made in accordance with the terms of the Proposed Order.

45. In addition, the Proposed Order provides for the termination of the automatic stay to permit ServisFirst to exercise, upon the occurrence and during the continuation of an Event of Default, and to take other remedies relating to the Cash Collateral without further order or application to the Court. ServisFirst is required to provide ten (10) business days' notice to the Debtors, U.S. Trustee, and counsel to the official committee of unsecured creditors.

46. Stay modifications of this kind are ordinary and standard terms of postpetition use by debtors in possession of prepetition collateral, and, in the Debtors' business judgment, is reasonable under the present circumstances.

47. Accordingly, the Debtors respectfully request that the Court authorize the modification of the automatic stay in accordance with the terms set forth in the Proposed Order.

## WAIVER OF BANKRUPTCY RULES

48. 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.

**NOTICE**

49. Concurrently with the filing of this Motion, the Debtors shall provide notice of this Motion 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) counsel to the official committee of unsecured creditors established in these cases pursuant to Section 1102 of the Bankruptcy Code; (f) ServisFirst Bank and its counsel; (g) Midcap Financial Trust and its counsel; (h) CHS/Community Health Systems, Inc. and its counsel (i) all Tennessee local counsel having entered a notice of appearance in these cases; (j) the Internal Revenue Service; (k) the Tennessee Attorney General's Office; (l) the Mississippi Attorney General's Office; (m) the Tennessee Secretary of State; (n) the patient care ombudsman and her counsel; (o) Medhost and its counsel; (p) Schumacher and its counsel; and (q) any party that has requested notice pursuant to Bankruptcy Rule 2002. Service is being executed via the Court's CM/ECF system, email, hand delivery, and/or overnight mail. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

50. The Debtors respectfully submit that such notice is sufficient and that no further notice of this Motion is required.

**WHEREFORE**, the Debtors respectfully request that the Court: (i) enter the Proposed

Order in substantially the same form filed contemporaneously herewith, granting the relief requested herein on either an interim or final basis; and (ii) provide such other relief as the Court deems appropriate and just.

Dated: March 8, 2019
Nashville, Tennessee

**POLSINELLI PC**
*/s/ Michael Malone*
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-and-

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*Proposed Counsel to the Debtors and Debtors in Possession*

**EXHIBIT A**

**DIP Demand Letter**

MidCap Funding IV Trust
c/o MidCap Financial Services, LLC, as Servicer
7255 Woodmont Avenue, Suite 200
Bethesda, MD 20814
www.midcapfinancial.com

March 6, 2019

**VIA ELECTRONIC MAIL AND OVERNIGHT COURIER**

Clarksdale Regional Medical Center, Inc.
c/o Curae Health, Inc.
1712 Midpark Road
Knoxville, TN 37921
Attn: Stephen N. Clapp
Email: steve.clapp@curaehealth.org
Facsimile: (865)888-9328

**Re: Notice of Events of Default, Demand for Payment, and Reservation of Rights**

Dear Mr. Clapp:

Reference is hereby made to that certain Debtor In Possession Revolving Credit and Security Agreement dated as of August 29, 2018 (as amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), by and among CLARKSDALE REGIONAL MEDICAL CENTER, INC., a Tennessee non-profit corporation ("**Borrower Representative**"), AMORY REGIONAL MEDICAL CENTER, INC., a Tennessee non-profit corporation, BATESVILLE REGIONAL MEDICAL CENTER, INC., a Tennessee non-profit corporation, CLARKSDALE REGIONAL PHYSICIANS, LLC, a Tennessee limited liability company, AMORY REGIONAL PHYSICIANS, LLC, a Tennessee limited liability company, and BATESVILLE REGIONAL PHYSICIANS, LLC, a Tennessee limited liability company, (together with the Borrower Representative, collectively referenced herein as the "**Borrowers**"), MIDCAP FUNDING IV TRUST, a Delaware statutory trust (as successor-by-assignment to MidCap Financial Trust) (as agent for Lenders, "**Agent**"), and the financial institutions and other entities from time to time parties thereto as Lenders, and that *Final Order (I) Authorizing The Debtors to (A) Obtain Postpetition Secured Financing And (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Status, (III) Granting Adequate Protection, And (IV) Modifying The Automatic Stay* (Dkt NO. 455) (the "**DIP Order**"), which was entered in that Bankruptcy Case styled: *In re Curae Health, Inc., et al*., Case No. 18-05665 (Jointly Administered), pending in the United States Bankruptcy Court for the Middle District of Tennessee. All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Credit Agreement and the DIP Order. This notice is being delivered to Borrower Representative pursuant to the terms of Section 2.9 of the Credit Agreement and Paragraph 17 of

the DIP Order. Copies of this Notice are also being provided to Counsel for the Committee, Counsel for ServisFirst, counsel for CHS, the U.S. Trustee, and the Patient Care Ombudsman pursuant to Paragraph 17 of the DIP Order.

I. Notice of Events of Default

Please be advised that the following Events of Default have occurred and are continuing (collectively, the "**Current Events of Default**"):

(a) an Event of Default under Section 10.1(b) of the Credit Agreement resulting from Borrowers' non-compliance with Section 6.1 of the Credit Agreement by failing to maintain Minimum Liquidity of at least $500,000;

(b) an Event of Default under Section 10.1(n) of the Credit Agreement resulting from the occurrence of certain facts, events and circumstances, including, without limitation, the expiration of GL/PL insurance at BRMC, termination of the contract at BRMC respecting emergency room physicians, and failure to close on the sale of BRMC sale, each one of which has resulted in a Material Adverse Effect;

(c) an Event of Default under Section 10.1(p) of the Credit Agreement resulting from the default or event of default under the Asset Purchase Agreement relating to the sale of BRMC;

(d) an Event of Default under Section 10.1(s) of the Credit Agreement resulting from a material adverse change in the financial condition or business prospects of Borrower and BRMC due, among other things, the expiration of GL/PL insurance at BRMC, the termination of the contract at BRMC respecting emergency room physicians, and the failure to close on the sale of BRMC sale pursuant to the terms of the Asset Purchase Agreement and order approving it;

(e) an Event of Default under Section 10.1(z) of the Credit Agreement resulting from Borrower's failure to comply with the terms, conditions, covenants, and other obligations under the DIP Order;

(f) an Event of Default under Section 10.1(ee) resulting from Buyer's failure to close on the Asset Purchase Agreement for BRMC pursuant to the terms and conditions of the Asset Purchase Agreement and the order approving it; and

(g) an Event of Default under Section 10.1(jj) of the Credit Agreement resulting from Borrowers' failure to maintain disbursements and receipts as required per the Budget within such variances as permitted thereby, as well as expiration of the Budget.

Each of the Current Events of Default has occurred, is continuing, has not been waived and is not capable of being cured.

II. Institution of Default Rate of Interest; Fees

As a result of the existence of the Current Events of Default, Agent is entitled to institute the default rate of interest as provided by Section 10.5 of the Credit Agreement (the "**Default Rate of Interest**"). As a result, commencing March 1, 2019, and continuing for so long as the

Current Events of Default shall exist and the DIP Obligations remain outstanding, Agent elects to institute and charge the Default Rate of Interest. Accordingly, the Loans and DIP Obligations shall bear interest at rates that are five percent (5.0%) per annum in excess of the rates otherwise payable under the Credit Agreement commencing on March 1, 2019, unless and until the Current Events of Default are waived in writing by the Agent or Required Lenders or the DIP Obligations are paid in full. Agent and Required Lenders reserve the right and remedy to elect to charge the Default Rate of Interest as of some other date than set forth above.

Acceptance heretofore or hereafter of payments from Borrowers or any other Person at any time in respect of amounts due after the occurrence and during the continuance of an Event of Default (including the Current Events of Default) shall not constitute a waiver of the right to receive payment of the Default Rate of Interest or any other fees, costs or other amounts that are due or may become due under Section 10.5 or otherwise under the Credit Agreement, the other Financing Documents and/or applicable law.

Borrowers are responsible for the payment of all costs and expenses incurred by Agent and Lenders, including, without limitation, fees and disbursements of legal counsel (including in-house counsel), in connection with the Current Events of Default and Agent's and the Lenders' exercise of their rights and remedies, which shall be payable on demand.

## III. Demand for Payment

Agent's and the Lenders' commitments under the Credit Agreement have terminated, the Borrowers' authority to borrow and use Cash Collateral under the Credit Agreement and DIP Order has ceased, and all of the DIP Obligations are immediately due and payable. Accordingly, Agent hereby makes demand on Borrowers to immediately pay the outstanding balance of the DIP Obligations, including all outstanding principal, accrued interest, fees, expenses, and other charges to which Lenders are entitled under the Credit Agreement and DIP Order.

## IV. Reservation of Rights

As a result of the existence of the Current Events of Default, Agent and Lenders are entitled to exercise any and all rights and remedies available under the Financing Documents, applicable law (including, without limitation, the UCC) or otherwise, including the retroactive implementation of the Default Rate of Interest. Please be advised that the exercise of any such rights and remedies shall not constitute or be deemed to be a waiver of any other rights, remedies or claims of Agent and Lenders or otherwise waive or affect the Current Events of Default or any other Default or Event of Default that may exist or hereafter arise. All such rights, remedies and claims available to Agent and Lenders are expressly reserved and preserved in their entirety and may be exercised or pursued at any time and from time to time in the sole and absolute discretion of Agent and Lenders in accordance with the Credit Agreement and the other Financing Documents.

To the extent that Agent and Lenders elect, in their sole discretion, to make or to continue to make extensions of credit to Borrowers under the Credit Agreement or elect to participate in discussions with Borrowers or their representatives concerning potential resolution of the

Current Events of Default, Agent's and Lenders' forbearance from the exercise of any remedy or any other aspect of the financing arrangements to which they may be entitled shall not be deemed a waiver of any Current Event of Default and shall be without prejudice to Agent's and Lenders' rights, claims, options and remedies. Nothing herein will operate as a forbearance of any kind or a waiver of any right, power or remedy of Agent or Lenders, nor constitute a waiver of any other provision of, or any Default or Event of Default currently existing under, the Credit Agreement or any other Financing Document. Further, Agent's and Lenders' reservation of their respective rights, claims and remedies shall not impair Agent's or Lenders' abilities under the Credit Agreement or other Financing Documents to elect at any time to enforce any such right, claim or remedy provided under the Credit Agreement or any other Financing Document or at law or in equity.

Other Defaults or Events of Default may exist and nothing herein is intended as a statement that the Current Events of Default are the only outstanding Defaults or Events of Default under the Credit Agreement. Agent and Lenders hereby reserve the right to declare any events, circumstances or conditions as Defaults or Events of Default, as applicable, in accordance with the Credit Agreement at any time in the future and hereby reserve all of their rights and remedies under the Credit Agreement and the other Financing Documents, and at law and in equity with regard thereto. Any failure to specify any such events, occurrences or conditions in this letter shall not constitute a waiver of any Default or Event of Default resulting from such events, occurrences or conditions.

As of the date of this letter, there are no offers outstanding from Agent and Lenders to the Borrowers nor are there any oral agreements among Agent, Lenders and the Borrowers concerning the Obligations. Rather, all agreements concerning the Obligations are expressed only in the existing Financing Documents, and the respective duties and obligations of the Borrowers, Agent, and Lenders shall be only as set forth in the Financing Documents.

Should you have any questions regarding the foregoing, please do not hesitate to contact David Lemke at Waller Lansden Dortch & Davis, LLP, at (615) 850-8655.

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Respectfully,

**MIDCAP FUNDING IV TRUST**

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: _____
Name: Maurice Amsellem
Title: Authorized Signatory

cc: DGordon@Polsinelli.com