

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

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

THE DEADLINE FOR FILING A TIMELY RESPONSE IS: No deadline.
THE HEARING WILL BE: March 12, 2019, at 1:00 p.m. Central Daylight Time, in Courtroom 2, 2nd Floor Customs House, 701 Broadway, Nashville, TN 37203.

MEDHOST’S OBJECTION TO DEBTORS’ EXPEDITED MOTION FOR ENTRY OF ORDER (I) AUTHORIZING PAYMENT OF DIP OBLIGATIONS, (II) AUTHORIZING USE OF CASH COLLATERAL, (III) GRANTING ADEQUATE PROTECTION, (IV) MODIFYING THE AUTOMATIC STAY, AND (V) GRANTING RELATED RELIEF, AND OBJECTION TO EXPEDITED CONSIDERATION OF SAID MOTION

Come MEDHOST of Tennessee, Inc., its wholly-owned subsidiary, MEDHOST Direct, Inc., and MEDHOST Cloud Services, Inc., formerly known as YourCareUniverse, Inc., sometimes referred to herein collectively as “MEDHOST,” and respectfully object to the 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 (hereinafter, the “Expedited Motion”), filed Friday evening, March 8, 2019 (Docket No. 847). By Order entered Friday night, March 8, 2019 (Docket No. 851), an expedited hearing on the Expedited Motion was scheduled for Tuesday, March 12, 2019, at 1:00 p.m. Respectfully, MEDHOST further objects

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

to the scheduling and consideration of a hearing on the Expedited Motion on one business day's notice. Any hearing which addresses and adjudicates the rights and interests of the parties to the Debt Service Reserve Fund (defined in the Expedited Motion and below) must be continued until such time as the issues can be identified, discovery conducted, and the relevant legal issues addressed sufficiently.

PRELIMINARY STATEMENT

Initially, MEDHOST does not oppose, and in fact supports, the efforts of the Debtors and ServisFirst Bank ("ServisFirst") to pay down the DIP Obligations to MidCap Financial Trust ("MidCap"). However, the Debtors proposal to use funds from a "Debt Service Reserve Fund" to pay down the DIP Obligations is objectionable and cannot be approved. MEDHOST has interests in certain of those funds that are superior to all other parties, including the Debtors, ServisFirst, MidCap, and Shumacher Clinical Partners.

The Debtor Curae Health, Inc., ServisFirst and MEDHOST are parties to an agreement (the "Release Agreement," described below) which directly affects one of the components of the "Payoff Amount" described in Paragraphs 15 and 16 of the Expedited Motion. By virtue of that Release Agreement, MEDHOST has interests superior to all parties to as much as \$622,442.52 of the Debt Service Reserve Fund described in Paragraph 16.b. of the Expedited Motion. The Expedited Motion seeks an immediate adjudication of the application of the funds in the Debt Service Reserve Fund, with no meaningful opportunity for any other parties asserting interests or rights in those funds to be heard. In this regard, the relief requested in the Expedited Motion is unfair and unreasonable. Because the Debt Service Reserve Fund and the funds therein are not property of these bankruptcy estates, the appropriate forum for adjudicating the rights and

interests in said funds is likely not the Bankruptcy Court. And even if the Bankruptcy Court is the proper forum, because the proper interpretation of the aforementioned agreement involves the determination of the validity, priority or extent of liens or other interests, an Adversary Proceeding would have to be filed pursuant to Rule 7001(2) of the Rules of Bankruptcy Procedure. Discovery will no doubt be required.

Respectfully, if the Debtors are permitted to use funds in the Debt Service Reserve Fund as requested in the Expedited Motion, such use will have the effect of adjudicating once and for all the various rights and interests of certain parties to such funds, with no meaningful opportunity to raise legal and factual objections to such use.

OBJECTIONS TO EXPEDITED MOTION

1. Beginning in July, 2015, MEDHOST began providing portal hosting, patient and doctor scheduling, and other electronic health care software services to Curae Health, Inc., at certain licensed medical facilities, which as of July 2017, included Amory Medical Center, Panola Memorial Hospital and Clarksdale Medical Center (collectively, the “Mississippi Hospitals”). MEDHOST also provided such services to three (3) Debtor-affiliated hospitals in Alabama, including a hospital in Russellville, Alabama. Two (2) of the Alabama hospitals were sold prior to the filing of the bankruptcy petitions herein. The Russellville Hospital (defined below) had not been sold as of the petition date.

2. Specifically, as of the petition date, Debtor Curae Health, Inc. was the sole member and organizational sponsor of Russellville Hospital, Inc. (“Russellville”), a Tennessee nonprofit PUBLIC BENEFIT corporation, that owned and operated a 100-bed acute care facility

in Russellville, Alabama (the “Russellville Hospital”). Russellville is not one of the Debtors in these jointly administered cases. As of mid-November, 2018, the Debtors had located a potential buyer for the Russellville Hospital. In order to close that transaction, the Debtors filed on November 15, 2018 a motion to enter into a “Member Substitution Agreement” with respect to the Russellville Hospital (the “Substitution Motion”) (Docket No. 461), and the Court granted the Substitution Motion by Order entered November 30, 2018 (the “Russellville Order”) (Docket No. 511). The effect of the Russellville Order was to authorize the substitution of Dava Foundation, Inc. for Curae Health, Inc., as the sole member of Russellville. MEDHOST is advised that the Member Substitution Agreement as to the Russellville Hospital was closed within the last few weeks.

3. In December 2014, ServisFirst agreed to extend to Curae’s three (3) Alabama hospitals two loans (the “Alabama Hospital Loans”), both of which were guaranteed by Curae Health, Inc. As additional security, the loan agreement (Section 5.10) required the borrowers to create the Debt Service Reserve Fund in the initial amount of Two Million Dollars (\$2,000,000.00). Effectively, proceeds of the Alabama Hospital Loans were used to fund the Debt Service Reserve Fund. (In connection with Curae Health, Inc.’s acquisition of the Mississippi Hospitals, ServisFirst made a separate loan to them and Curae Health, Inc. (the “Mississippi Hospital Loan”). The Alabama Hospital Loans and the Mississippi Hospital Loan are not cross-collateralized.)

4. Prior to the petition date herein, and under date of March 20, 2018, Curae Health, Inc., ServisFirst and MEDHOST entered into an agreement titled “Authorization to Release Debt Service Reserve Fund” (the “Release Agreement”). A true copy of the Release Agreement is attached as Exhibit A hereto. At the time of its execution, Curae Health, Inc. was indebted to

MEDHOST for unpaid services provided to Curae's newly-acquired Mississippi hospitals in an amount exceeding \$600,000.00, in addition to amounts owed MEDHOST for services provided to Curae's Alabama hospitals. ServisFirst maintained the Debt Service Reserve Fund, which at that time held approximately \$950,020.00. Pursuant to the Release Agreement, Curae Health, Inc. and ServisFirst agreed that, upon the occurrence of the sale of all the Alabama hospitals and the payoff of a ServisFirst loan, a portion of the Debt Service Reserve Fund maintained by ServisFirst would be paid to MEDHOST. The portion of that reserve that the parties agreed would be paid to MEDHOST was up to \$622,442.52 (the "MEDHOST Funds").

5. None of the funds in the Debt Service Reserve Fund, including the MEDHOST Funds, are funds of these bankruptcy estates, and the Debtors have confirmed that fact in their sworn Statement of Financial Affairs filed herein. Attached as Exhibit B hereto is Page 9 of the Debtor Curae Health, Inc.'s Statement of Financial Affairs (Docket No. 225), filed on September 21, 2018. At Question 21 of the Statement of Financial Affairs, the Debt Service Reserve Fund is listed as "Property the Debtor Holds or Controls That the Debtor Does Not Own." Debtors confirmed that the Debt Service Reserve Fund is not an asset of these estates when Curae Health, Inc. filed its Amended Statement of Financial Affairs on February 21, 2019, wherein the Debt Service Reserve Fund was again listed as "Property the Debtor Holds or Controls That the Debtor Does Not Own." Attached as Exhibit C hereto is Page 9 of the Debtor Curae Health, Inc.'s Statement of Financial Affairs (Docket No. 779), filed February 21, 2019.

6. By virtue of the Release Agreement, MEDHOST has and asserts an interest in the Debt Service Reserve Fund and the funds therein. MEDHOST believes and asserts that the Release Agreement may qualify as a deposit account control agreement under Section 9-327 of the Uniform Commercial Code. [MEDHOST cannot be prepared to present its arguments on this

legal issue on one day's notice, but it will be an issue going forward.] If MEDHOST is correct, MEDHOST would hold a lien that is superior to any lien or priority asserted by ServisFirst, MidCap, the Debtors, Shumacher Clinical Partners (a creditor herein), or any other party. Even if MEDHOST is not correct on this point, both the Debtors and ServisFirst are contractually obligated to turn over the MEDHOST Funds to MEDHOST now that the Russellville Hospital has been sold, and the Alabama Hospital Loans have been paid in full.

7. Early in these Chapter 11 cases, the Debtors and ServisFirst were put on notice of MEDHOST's interest in the Debt Service Reserve Fund and the Release Agreement. Specifically, on September 14, 2018 and October 4, 2018, counsel for MEDHOST conferred with Debtors' counsel and advised counsel of MEDHOST's position with respect to the Release Agreement and the MEDHOST Funds. The subject of the Debt Service Reserve Fund was addressed at the October 3, 2018 Section 341 meeting of creditors. MEDHOST's counsel also addressed the Release Agreement with ServisFirst's counsel shortly after the meeting of creditors. MEDHOST is also advised that Shumacher Clinical Partners, a creditor, also may claim an interest in some portion of the Debt Service Reserve Fund.

8. To date, there has been no adjudication of the various interests in the Debt Service Reserve Fund (which includes the MEDHOST Funds). According to Debtors' counsel, several parties (including ServisFirst, MEDHOST, Shumacher, the Debtors and perhaps MidCap) have asserted interests in or liens on all or a portion of the Debt Service Reserve Fund. Such an adjudication will likely require the filing of an action in an appropriate state court, since the Debt Service Reserve Fund is not property of the Debtors' estates. Even if the Debtors somehow contend that their purported interest in the Debt Service Reserve Fund brings such an adjudication before this Court, a determination of the priorities of the parties' interests as to such

funds would require the filing of an Adversary Proceeding under Bankruptcy Rule 7001(2) (“An adversary proceeding is governed by the rules of this Part VII. The following are adversary proceedings: (2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property...”). Neither the Debtors nor any other party has initiated a state court action or an Adversary Proceeding with respect to the Debt Service Reserve Fund.

9. The reasons MEDHOST has not initiated an action regarding the Debt Service Reserve Fund and/or the MEDHOST Funds are two-fold. First, MEDHOST is advised that the closing of the Member Substitution Agreement as to the Russellville Hospital occurred only recently, and the triggering event to pay the MEDHOST Funds to MEDHOST was the sale of the final Alabama hospital and the payoff of the balances of the Alabama Hospital Loans. Second, MEDHOST continues to provide hosting and other software services to the Debtors, and MEDHOST has sought to avoid conflict with the Debtors and others while the remaining two (2) hospitals are operating and are being marketed for sale.

10. The Debtors have forced MEDHOST to file this Objection. In the Expedited Motion, the Debtors, perhaps with encouragement from ServisFirst and MidCap, have effectively taken the position that MEDHOST’s interest in the Release Agreement is somehow inferior to others’ interests. As noted, the relative priorities of the parties are not yet determined, but the filing of the Expedited Motion on an emergency basis has brought the issue to the front burner. Scheduling such an important matter on one day’s notice is, respectfully, not appropriate. A proper adjudication of the issues requires a meaningful period for any needed discovery and to brief the issues.

11. As noted above, despite the assumptions made in the Expedited Motion, the Debtors are not the owner(s) of the Debt Service Reserve Fund. Russellville was and is a

separate non-profit, public benefit corporation, with its own property, accounts payable, books and records. Russellville is not a debtor in these cases. On multiple occasions the Debtors have represented to the Court that the assets and debts of Russellville are entirely separate from those of the Debtors. (See, for example, Docket No. 461, Paragraph 8 (page 3), and the supporting Declaration of Stephen N. Clapp, Paragraphs 7 and 8 (page 15 of Docket No. 461).) The funds in the Debt Service Reserve Fund are not assets of these bankruptcy estates. The Debtors cannot justify taking those funds of Russellville and giving them to MidCap to pay down the MidCap Obligations.

12. On Wednesday, March 6, 2019, Debtors' counsel phoned MEDHOST's counsel to inquire whether MEDHOST continues to assert a superior interest to the funds in the Debt Service Reserve Fund. MEDHOST's counsel confirmed that MEDHOST does, in fact, assert an interest superior to all other parties as to the MEDHOST Funds (totaling \$622,422.52). Debtors' counsel suggested that MEDHOST's interest in the Debt Service Reserve Fund may be inferior to other interests because of the entry by the Court of the Russellville Order (entered November 30, 2018). Respectfully, such reliance on the Russellville Order to support the Expedited Motion is misplaced and inaccurate. The motion which was granted by the Russellville Order (the Substitution Motion identified in Paragraph 2 above) did not seek any relief as to the priorities or interests in the Debt Service Reserve Fund. As noted above, the purpose of the Substitution Motion was to seek approval for substituting Dava Foundation, Inc. for Curae Health, Inc. as the sole member of Russellville. The Release Agreement (between and among Curae Health, Inc., ServisFirst and MEDHOST) is not even mentioned in the Substitution Motion, and the Member Substitution Agreement itself (Exhibit B to the Substitution Motion) nowhere mentions the Debt Service Reserve Fund. The reality, as noted above, is that several parties assert rights/interests in

the Debt Service Reserve Fund. Both counsel for the Debtors and the Creditors Committee have acknowledged conflicting interests in these funds. The Russellville Order in no way adjudicates the various rights of the parties to the funds, and there is no foundation for asserting that it does.

13. MEDHOST respectfully objects not only to the relief requested in the Expedited Motion (at least to the extent it attempts to adjudicate the interests of the parties to the Debt Service Reserve Fund), but MEDHOST also objects to the hearing on the Expedited Motion on an expedited basis. As is evident in the discussion above, several parties assert rights or interests in the Debt Service Reserve Fund, and MEDHOST is entitled to conduct discovery of additional facts surrounding the execution of the Release Agreement and the intentions of the parties to that Release Agreement. Proof may be required at a properly-noticed hearing. MEDHOST respectfully suggests that the limited notice provided to MEDHOST and other parties regarding this important issue is insufficient and unfairly favors the Debtors, ServisFirst and MidCap. The Court should not consider any adjudication of the Debt Service Reserve Fund, or MEDHOST's rights to the MEDHOST Funds, on March 12, 2019.

WHEREFORE, MEDHOST does not oppose and actually supports the Debtors' and ServisFirst's efforts to pay down the MidCap Obligations. But the use of the Debt Service Reserve Fund to pay down the debt – with no meaningful opportunity for MEDHOST to assert its rights in the Fund – is unreasonable, prejudicial and unfair. The Expedited Motion should be denied. In the alternative, any hearing which addresses and adjudicates the rights and interests of the parties to the Debt Service Relief Fund must be continued until such time as the issues can be identified, discovery conducted, and the legal issues addressed sufficiently.

Respectfully submitted this 11th day of March, 2019.

/s/ Thomas H. Forrester

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MEDHOST Direct, Inc. and MEDHOST Cloud
Services, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on March 11, 2019, a true and correct copy of the foregoing document was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

/s/ Thomas H. Forrester

Thomas H. Forrester

EXHIBIT A

AUTHORIZATION TO RELEASE DEBT SERVICE RESERVE FUND

This Authorization to Release Debt Service Reserve Fund (this "Authorization") is made and entered into as of March 20, 2018 by and between CURAE HEALTH, INC. ("Curae"), SERVISFIRST BANK ("ServisFirst"), and MEDHOST OF TENNESSEE, INC. ("MedHost").

WITNESSETH:

WHEREAS, Curae and certain of its affiliates entered into that certain Loan Agreement with ServisFirst, dated December 31, 2014 (as amended from time to time, the "Loan Agreement"), pursuant to which ServisFirst required the establishment of a reserve fund (the "Debt Service Reserve Fund");

WHEREAS, Curae requires the services of MedHost in connection with the operations of its Mississippi affiliated hospitals and MedHost has requested that Curae direct ServisFirst to release a portion of the Debt Service Reserve Fund to MedHost subject to the terms hereof.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the above premises, the mutual covenants hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

1. Release of Debt Service Reserve Fund, ServisFirst is hereby authorized and directed to release up to \$622,442.52 of the Debt Service Reserve Fund directly to MedHost after the sale of Curae's Alabama affiliates are complete and the Loan Agreement is terminated.

2. Counterparts, This Authorization may be executed in one or more counterparts, each of which, when taken together, shall constitute one and the same document.

IN WITNESS WHEREOF, the parties have executed this Authorization as of the day and year first above written.

SERVISFIRST BANK

By: [Signature]
Name: Bill Bevel
Title: SUP

MEDHOST OF TENNESSEE, INC.

By: [Signature]
Name: Kenneth Misch
Title: CFO

CURAE HEALTH, INC.

By: [Signature]
Name: Tim S Brown
Title: CFO

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EXHIBIT B

Debtor Curae Health, Inc.
Name

Case number (if known) 18-05665

Part 11: Property the Debtor Holds or Controls That the Debtor Does Not Own

21. Property held for another

List any property that the debtor holds or controls that another entity owns. Include any property borrowed from, being stored for, or held in trust. Do not list leased or rented property.

None

Owner's name and address	Location of the property	Description of the property	Value
<u>Russellville Hospital</u> <small>Name</small> <u>15155 Hwy 43</u> <small>Street</small> <u>P.O. Box 1089</u> <u>Russellville AL 35653</u> <small>City State ZIP Code</small>	<u>850 Shades Creek Parkway</u> <u>Suite 200</u> <u>Birmingham, AL 35209</u>	<u>Collateral Deposit</u>	<u>\$ 949,301.64</u>

Part 12: Details About Environmental Information

For the purpose of Part 12, the following definitions apply:

- *Environmental law* means any statute or governmental regulation that concerns pollution, contamination, or hazardous material, regardless of the medium affected (air, land, water, or any other medium).
- *Site* means any location, facility, or property, including disposal sites, that the debtor now owns, operates, or utilizes or that the debtor formerly owned, operated, or utilized.
- *Hazardous material* means anything that an environmental law defines as hazardous or toxic, or describes as a pollutant, contaminant, or a similarly harmful substance.

Report all notices, releases, and proceedings known, regardless of when they occurred.

22. Has the debtor been a party in any judicial or administrative proceeding under any environmental law? Include settlements and orders.

- No
 Yes. Provide details below.

Case title	Court or agency name and address	Nature of the case	Status of case
_____	_____	_____	<input type="checkbox"/> Pending <input type="checkbox"/> On appeal <input type="checkbox"/> Concluded
<small>Case number</small> _____	<small>Name</small> _____ <small>Street</small> _____ <small>City State ZIP Code</small>	_____	

23. Has any governmental unit otherwise notified the debtor that the debtor may be liable or potentially liable under or in violation of an environmental law?

- No
 Yes. Provide details below.

Site name and address	Governmental unit name and address	Environmental law, if known	Date of notice
_____	_____	_____	_____
<small>Name</small> _____ <small>Street</small> _____ <small>City State ZIP Code</small>	<small>Name</small> _____ <small>Street</small> _____ <small>City State ZIP Code</small>	_____	_____

