

So Ordered.

Dated: May 9th, 2019



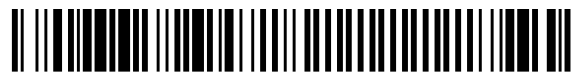
Frank L. Kurtz
Frank L. Kurtz
Bankruptcy Judge

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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON**

<p>IN RE:</p> <p>ASTRIA HEALTH, et al.</p> <p>Debtors.¹</p>	<p>Chapter 11</p> <p>Lead Case No. 19-01189-11</p> <p>Jointly Administered</p> <p>ORDER GRANTING EMERGENCY MOTION OF DEBTORS FOR AUTHORITY TO: (1) CONTINUE USING EXISTING CASH MANAGEMENT SYSTEM, BANK ACCOUNTS AND BUSINESS FORMS; (2) IMPLEMENT CHANGES TO THE CASH MANAGEMENT SYSTEM IN THE ORDINARY COURSE OF BUSINESS; (3) CONTINUE INTERCOMPANY TRANSACTIONS; (4) PROVIDE ADMINISTRATIVE EXPENSE PRIORITY FOR POSTPETITION INTERCOMPANY CLAIMS; AND (5) OBTAIN RELATED RELIEF [re: Docket No. 22]</p>
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¹ The Debtors, along with their case numbers, are as follows: Astria Health (19-01189-11), Glacier Canyon, LLC (19-01193-11), Kitchen and Bath Furnishings, LLC (19-01194-11), Oxbow Summit, LLC (19-01195-11), SHS Holdco, LLC (19-01196-11), SHC Medical Center - Toppenish (19-01190-11), SHC Medical Center - Yakima (19-01192-11), Sunnyside Community Hospital Association (19-01191-11), Sunnyside Community Hospital Home Medical Supply, LLC (19-01197-11), Sunnyside Home Health (19-01198-11), Sunnyside Professional Services, LLC (19-01199-11), Yakima Home Care Holdings, LLC (19-01201-11), and Yakima HMA Home Health, LLC (19-01200-11).



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2 Upon the motion, dated May 6, 2019, of Astria Health and the above-
3 referenced affiliated debtors (collectively, the “Debtors”), the debtors and debtors in
4 possession in the above-captioned chapter 11 bankruptcy cases (collectively, the
5 “Chapter 11 Cases”), for the entry of an order, pursuant to §§ 105, 363, 364, 503 and
6 507 of title 11 of the United States Code (the “Bankruptcy Code”),² authorizing the
7 Debtors, subject to the requirements imposed on the Debtors pursuant to any interim
8 or final orders (including any related budgets) authorizing the Debtors’ entry into
9 postpetition debtor in possession financing and use of cash collateral (each, a “DIP
10 Document”), to: (1) continue to use their cash management system, including the
11 continued maintenance of their existing bank accounts (including credit card
12 accounts) and business forms; (2) implement changes to their cash management
13 system in the ordinary course of business, including opening new or closing existing
14 bank accounts; (3) continue to perform under and honor intercompany transactions
15 in the ordinary course of business, in their business judgment and in their sole
16 discretion; (4) provide administrative expense priority for postpetition intercompany
17 claims, all as set forth in more detail below; and (5) obtain related relief (the

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21 ² All references to “§” or “sections” herein are to sections of the Bankruptcy Code.

1 “Motion”)³ [Docket No. 22], all as more fully set out in the Motion; and upon
2 consideration of the Declaration of John Gallagher in support of the Motion; it further
3 appearing that the Court has jurisdiction over this matter; and it further appearing that
4 notice of the Motion as set forth therein is sufficient under the circumstances, and
5 that no other or further notice need be provided; and it further appearing that the relief
6 requested in the Motion is in the best interests of the Debtors, their estates and their
7 creditors; and after due deliberation and sufficient cause appearing therefor, it is
8 hereby

9 ORDERED that notice of the Motion was appropriate under the circumstances
10 and in compliance with the Bankruptcy Code, Bankruptcy Rules, and Local
11 Bankruptcy Rules; and it is further

12 ORDERED that the Motion is granted on an interim basis pending final
13 hearing; and it is further

14 ORDERED that:

15 1. The Debtors are authorized and empowered pursuant to sections 105(a),
16 363, 364, 503 and 507 to continue using their integrated cash management system
17 described in the Motion (the “Cash Management System”) and to collect,

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20 ³ Capitalized terms not otherwise defined herein have the meanings ascribed to
21 them in the Motion.

1 concentrate, and disburse cash in accordance with the Cash Management System,
2 including intercompany funding among Debtors and Debtor affiliates;

3 2. Notwithstanding anything to the contrary herein, any payment to be
4 made or authorization contained hereunder shall be subject to the requirements
5 imposed on the Debtors pursuant to the DIP Documents;

6 3. The Debtors are authorized to implement changes to their Cash
7 Management System in the ordinary course of business, including closing any
8 existing bank accounts or opening any new bank accounts (collectively, the “Bank
9 Accounts”) as they may deem necessary and appropriate in their sole discretion;
10 provided that such actions are not prohibited or restricted by the terms of any DIP
11 Document and three (3) business days’ notice in writing of the opening or closing of
12 any Bank Account provided to (a) counsel for the lender of the DIP under the DIP
13 Documents (the “DIP Lender”) (Arent Fox LLP, 1301 Avenue of the Americas, Floor
14 42, New York, NY 10019, Attn: Robert M. Hirsh, Esq. and Jordana L. Renert, Esq.);
15 (b) counsel to UMB Bank, N.A., as bond trustee, and Lapis Advisers, LP, as agent
16 (together, the “Lapis Secured Parties”) (Mintz, Levin, Cohn, Ferris, Glovsky and
17 Popeo, P.C., One Financial Center, Boston, Massachusetts 02111, Attn: William W.
18 Kannel, Esq., Ian A. Hammel, Esq., and Timothy J. McKeon, Esq.); and (c) the
19 Official Committee of Unsecured Creditors, once appointed in these chapter 11 cases
20 (the “Committee”); and provided further that any such new account is (i) with a bank
21 that is (A) insured with the Federal Deposit Insurance Corporation or the Federal

1 Savings and Loan Insurance Corporation and (B) designated as an authorized
2 depository pursuant to the UST Guidelines, and (ii) the Debtors provide notice to the
3 U.S. Trustee of the opening of such account;

4 4. The Debtors are authorized to (i) continue to use, with the same account
5 numbers, all of the Bank Accounts in existence as of the Petition Date, including
6 those Accounts identified on **Exhibit “A”** to the Motion, including (for the avoidance
7 of doubt), the credit card accounts; and (ii) treat the Bank Accounts for all purposes
8 as accounts of the Debtors as debtors in possession;

9 5. The Debtors are authorized to continue to use, in their present form, all
10 correspondence and business forms, as well as checks and all other documents related
11 to the Bank Accounts (collectively, the “Business Forms”) existing immediately
12 before the Petition Date, without reference to the Debtors’ status as debtors in
13 possession, until existing stock is exhausted; provided that in the event the Debtors
14 generate new Business Forms during the pendency of these chapter 11 cases, such
15 Business Forms shall include a legend referring to the Debtors as “Debtors in
16 Possession,” and, to the extent practicable, the Debtors shall print such legend on any
17 Business Forms electronically generated during these cases;

18 6. The Debtors are authorized and empowered to continue performing
19 under and honoring intercompany transfers (“Intercompany Transfers”) related to the
20 Cash Management System in the ordinary course of business, in their business
21 judgment and in their discretion subject to the terms of this Order; provided, however,

1 that notwithstanding anything contrary contained herein, the Debtors are not
2 authorized to make Intercompany Transfers to non-debtor affiliates of the Debtors;

3 7. The Debtors shall (a) maintain current records with respect to all
4 postpetition Intercompany Transfers and claims arising from such transfers
5 (“Intercompany Claims”), (b) put in place accounting procedures to identify and
6 distinguish between the prepetition and postpetition Intercompany Claims and to
7 track postpetition Intercompany Claims, and (c) provide reasonable access to such
8 records and procedures to counsel for the DIP Lender and counsel for the Committee;

9 8. The Debtors shall deliver a report to counsel to the DIP Lender and
10 counsel to the Committee, on a bi-weekly and confidential basis, describing the
11 Intercompany Transfers occurring during the two-week period preceding the report
12 date with sufficient detail with respect to the Debtor entities, the source and the time
13 period covered by each Intercompany Transfer;

14 9. The Debtors shall provide the Committee, counsel for the DIP Lender,
15 and counsel for the Lapis Secured Parties with notice of filing any records regarding
16 Intercompany Transfers and balances, including: (i) their schedules of assets and
17 liabilities and statements of financial affairs, and any amendments thereto; and (ii)
18 monthly operating reports created pursuant to the United States Trustee guidelines
19 and requests;

1 10. In accordance with sections 364(b), 503(b)(1) and 507(a)(2) of the
2 Bankruptcy Code, all postpetition Intercompany Claims shall be accorded
3 administrative expense priority;

4 11. Nothing in this Order shall be deemed or construed as a waiver of the
5 rights, if any, of the DIP Lender, the Committee, or the Office of the United States
6 Trustee, if any, to challenge the Debtors' allocations of expenses and revenues among
7 the Debtor entities, or the Debtors' rights to contest any such challenges; provided,
8 however, that such challenges shall be limited to the issue of allocation and not
9 priority;

10 12. Except as otherwise provided in this Order, all banks at which the Bank
11 Accounts are maintained (collectively, the "Banks") are authorized and directed to
12 continue to maintain, service and administer the Bank Accounts as accounts of the
13 Debtors as debtors in possession, without interruption and in the ordinary course of
14 business, and to receive, process, honor and pay any and all checks, drafts, wires, and
15 ACH payments issued by the Debtors and drawn on the Bank Accounts after the
16 Petition Date—whether issued before or after the Petition Date—to the extent the
17 Debtors have sufficient funds standing to their credit with such Bank;

18 13. To the extent any Banks have frozen any of the Bank Accounts, the
19 Banks—including Bank of America, Banner Bank, Heritage Bank, Lower Valley
20 Credit Union, US Bank, and Wells Fargo—are authorized and directed to
21 immediately unfreeze the Debtors' Bank Accounts;

1 14. In the event the Banks refuse to honor a check drawn or a transfer made
2 on an Account maintained by it (provided there are sufficient good funds in the
3 account to complete the transfer), the Banks are authorized and directed to
4 immediately turn over the deposits held in the applicable Account upon the Debtors'
5 request;

6 15. The Banks are authorized to charge and the Debtors are authorized to
7 pay and honor, both prepetition and postpetition service and other fees, costs,
8 charges, and expenses to which the Banks may be entitled under the terms of and in
9 accordance with their contractual arrangements with Debtors (collectively, the
10 "Service Charges");

11 16. Each of the Debtors' Banks is authorized to debit the Debtor's accounts
12 in the ordinary course of business without need for further order of this Court for: (i)
13 all checks, items, and other payment orders drawn on the Debtor's accounts which
14 are cashed at such Bank's counters or exchanged for cashier's checks by the payees
15 thereof prior to the Bank's receipt of notice of filing of the Petition; (ii) all checks,
16 automated clearing house entries, and other items deposited or credited to one of
17 Debtor's accounts with such Bank prior to filing of the Petition which have been
18 dishonored, reversed, or returned unpaid for any reason, together with any fees and
19 costs in connection therewith, to the same extent the Debtor was responsible for such
20 items prior to filing of the Petition; and (iii) all undisputed prepetition amounts
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1 outstanding as of the date hereof, if any, owed to any Bank as service charges for the
2 maintenance of the Cash Management System;

3 17. For the avoidance of doubt, each Bank is authorized to honor all items
4 presented against the Bank Accounts, whether originated prepetition or postpetition
5 and whether or not authorized by other orders;

6 18. Any of the Debtors' Banks may rely on the representations of the
7 Debtors with respect to whether any check, item, or other payment order drawn or
8 issued by the Debtors prior to filing of the Petition should be honored pursuant to this
9 or any other order of this Court and the DIP Documents, and such Bank shall not
10 have any liability to any party for relying on such representations by the Debtor as
11 provided for herein;

12 19. Those certain existing deposit agreements between the Debtors and each
13 of the Banks shall continue to govern the postpetition cash management relationship
14 between the Debtors and the Banks, and all of the provisions of such agreements,
15 including, without limitation, the termination and fee provisions, shall remain in full
16 force and effect, in accordance with the terms of any DIP Document;

17 20. The Debtors and the Banks may, without further Order of this Court—
18 but only after the DIP Lender, the Lapis Secured Parties, the Committee, and the U.S.
19 Trustee have been provided three (3) business days' notice in writing of, and (for the
20 DIP Lender, the Committee, and the U.S. Trustee only) the opportunity to object to,
21 the proposed changes—agree to and implement changes to the Cash Management

1 System and procedures in the ordinary course of business, including, without
2 limitation, the opening and closing of bank accounts;

3 21. The relief, rights, and responsibilities provided for in this Order shall be
4 deemed to apply to any and all Bank Accounts maintained in the Debtors' names,
5 including any new bank accounts, whether or not such Bank Accounts are identified
6 on **Exhibit A** to the Motion, and any Banks at which new accounts are opened shall
7 be subject to the rights and obligations of this Order;

8 22. Nothing contained in the Motion or this Order, nor any payment made
9 pursuant to the authority granted by this Order, is intended to be or shall be construed
10 as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver
11 of the Debtors' or any appropriate party in interest's rights to dispute the amount of,
12 basis for, or validity of any claim against the Debtors, (iii) a waiver of any claims or
13 causes of action which may exist against any creditor or interest holder, or (iv) an
14 approval, assumption, adoption, or rejection of any agreement, contract, lease,
15 program, or policy between the Debtors and any third party under section 365 of the
16 Bankruptcy Code;

17 23. Other than the specific items described in the Motion excusing the
18 moving of bank accounts, closing of prepetition bank accounts and the limited period
19 for the lack of designating the debtor in possession status on the business forms, the
20 U.S. Trustee requirements for the debtor in possession remain in place including §
21 345(b)(2).

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24. Nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by any party;

25. The Debtors are authorized to take all action necessary to effectuate the relief granted in this Order; and

26. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

///End of Order///

PRESENTED BY:

/s/ James L. Day
JAMES L. DAY (WSBA #20474)
BUSH KORNFELD LLP

SAMUEL R. MAIZEL (*Pro Hac Vice* pending)
SAM J. ALBERTS (WSBA #22255)
DENTONS US LLP

*Proposed Attorneys for the Chapter 11
Debtors and Debtors In Possession*

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atyClaire Taylor claire.taylor@stokeslaw.com
atyDina L Yunker Frank BCUYunker@atg.wa.gov
atyGary W Dyer Gary.W.Dyer@usdoj.gov
atyJames L Day
jday@bskd.com,malka.zeefe@dentons.com,sam.alberts@dentons.com,kathryn.howard@dentons.com,samuel.maizel@dentons.com
atyKevin ORourke kevin@southwellorourke.com,robert.hirsh@arentfox.com,jordana.renert@arentfox.com
atyMark Northrup mark.northrup@millernash.com
atyRichard J Hyatt hyatt@ryanlaw.com
atyShelley N Ripley snr@witherspoonkelley.com
atySusan Rae Fox fox@ryanlaw.com
atyThomas A Buford tbuford@bskd.com

TOTAL: 10

Recipients submitted to the BNC (Bankruptcy Noticing Center):

cr UMB Bank N.A. and Lapis Advisors LP c/o Mark D. Northrup 2801 Alaskan Way Suite
#300 Seattle, WA 98121
aty Ian A Hammel Mintz, Levin, Cohn, Ferris, Glovsky, and Popeo, PC One Financial
Center Boston, MA 02111
aty William W Kannel Mintz, Levin, Cohn, Ferris, Glovsky, and Popeo, PC One Financial
Center Boston, MA 02111
Geoffrey M Miller Dentons US LLP 233 South Wacker Drive Chicago, IL 60606

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