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Objections due by: August 12, 2019
 Preliminary hearing date: 8/15/19
 Hearing Time: 1:30 p.m.
 Location: Telephonic (888)273-3658
 Access Code: 5423885

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 Counsel for Dr. David Becerril

UNITED STATES BANKRUPTCY COURT
 EASTERN DISTRICT OF WASHINGTON

In re: ASTRIA HEALTH,
 Debtor.

Case No. 19-01189 (Administratively
 Consolidated)

**MOTION FOR ANNULMENT AND
 RELIEF FROM THE AUTOMATIC
 STAY**

TO THE HONORABLE FRANK L. KURTZ, THE OFFICE OF THE UNITED STATES
 TRUSTEE, , THE DEBTORS, AND COUNSEL TO THE DEBTORS:

In accordance with Federal Rule of Bankruptcy Procedure 4001 and Local Bankruptcy
 Rules 4001-1 and 4001-3, David A. Becerril, M.D., moves the Court for an order annulling the
 automatic stay effective as of May 28, 2019, thereby giving effect to the exercise of his
 contractual rights to terminate his employment contract with the Debtor without cause on
 providing 90 days' notice to the Debtor, and to otherwise grant him relief from the stay so that he
 may commence providing medical services to the underserved population of central Washington.

This Motion is made pursuant to Bankruptcy Code (the "Code") § 362(d)(2) that the
 Debtor has no equity in the contractual rights that is the subject of stay and those contractual
 rights are not necessary to an effective reorganization of the Debtor and 2) for cause, as a matter
 of public policy that continued enforcement of the employment contract does nothing more than
 delay Dr. Becerril's departure from the Debtor's employment to the detriment of the public



1 interest or medically underserved residents in central Washington. The Motion is based upon the
2 following grounds:

3 1. On or about June 8, 2017 Dr. Becerril that certain Physician Employment Agreement
4 dated June 6, 2017 (the “Agreement”).

5 2. The Agreement is for a term of thirty-six months and provides that the agreed
6 compensation is to be adjusted commencing after the first year of the Agreement.

7 3. Section 4.2 of the Agreement is captioned “Termination without Cause”, and
8 provides:

9 The Agreement may be terminated by either party for no cause upon ninety (90)
10 days written notice to the other party . . . (*emphasis added*)

11 4. The Employer’s consolidated bankruptcy case was filed on May 6, 2019

12 5. On May 30, 2019, Dr. Becerril delivered his resignation letter to John Gallagher and
13 Joe Ketterer via mail and e-mail (the “Resignation Notice”). A true and correct copy of that
14 letter is attached as Exhibit “1” to the Declaration of Dr. David Becerril IN Support of Motion
15 Annulment of the Automatic Stay (the “Becerril Declaration”) and is incorporated herein by
16 reference.

17 6. Absent the imposition of the automatic stay the effect of the Resignation Notice
18 would be to terminate the Agreement as of August 28, 2019.

19 7. On June 13, 2019, Dr. Becerril provided Gallagher and Ketterer an amendment to his
20 notice of resignation, a true and correct copy of which is attached as Exhibit “2” to the Becerril
21 Declaration and is incorporated herein by reference. The amendment clarifies that Dr.
22 Becerril’s employment with Yakima Neighborhood Health Services does not violate the non-
23 compete provisions incorporated into the Agreement.

24 8. On June 11, 2019, Dr. Becerril executed an agreement to go to work for Yakima
25 Neighborhood Health Services.

26 9. In connection with his planned new employment, Dr. Becerril requested in his
27 Resignation Notice that Astria waive the 90 day notice of termination requirement.

1 10. Dr. Becerril was thereafter advised in several text messages during the month of June
2 2019 that that Astria was working on letting him leave in accordance with a requested early
3 termination date. Text correspondence assured him that Astria was in the process of “finalizing
4 approval from legal team to submit an exit plan to you very soon. Outlines timeline proposal,
5 noncompete, and payoff of debt.”

6 11. On July 8, 2019 when Dr. Becerril texted Ketterer the question of when he would
7 receive the promised paperwork the response was “Waiting on legal. Can’t change 90 day notice
8 until we get something formal to release.”

9 12. When he then requested clarification as to what was meant by a “formal release”, the
10 response was “Legal document to release you from 90 day notice requirement for termination of
11 contract.”

12 13. When Dr. Becerril then requested whether the Debtor’s the legal department would
13 be providing that document, the response he received from Ketterer was “That’s what I’m
14 waiting on. Will get to you ASAP.”

15 14. On July 9, 2019, Dr Becerril then provided Ketterer and Gallagher with notice of
16 material breach under section 4.4 of the Agreement, which provides for termination in 30 days.
17 He additionally sent a copy of the notice of breach to the address provided for Astria’s counsel in
18 the contract.

19 15. It was not until July 18, 2019 that he was then advised by Ketterer that he had been
20 provided the wrong contact information and was thereafter advised to contact Samuel Maizel.

21 16. Ketterer additionally advised him that Astria intended to enforce the Agreement
22 through provisions of the bankruptcy law.

23 WHEREFORE, based upon the foregoing, Dr Becerril respectfully requests that this
24 Court enter an order:

25 A. Annulling the automatic stay effective as of May 28, 2019;

26 B. In the alternative, granting immediate relief from the automatic say; and
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1 C. Granting such other and further relief as the Court may deem just and appropriate
2 under the facts and circumstances of these cases.
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4 DATED this 1th day of August, 2019.
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6 KIMEL LAW OFFICES
7 By /s/ Metiner G Kimel
8 WSBA No. 21280
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