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 In Possession*

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

In re:

ASTRIA HEALTH, *et al.*,

Debtors and  
 Debtors in  
 Possession.<sup>1</sup>

Chapter 11  
 Lead Case No. 19-01189-11  
 Jointly Administered

**DEBTORS' RESPONSE TO THE LIMITED  
 OBJECTION OF FIRST CHOICE HEALTH  
 NETWORK, INC. TO THE MOTION TO REJECT,  
 PURSUANT TO 11 U.S.C. § 365(A), CERTAIN  
 AGREEMENTS WITH FIRST CHOICE HEALTH  
 NETWORK *NUNC PRO TUNC* TO NOVEMBER  
 18, 2019 [RELATED DOCKET NOS. 761, 764, 832]**

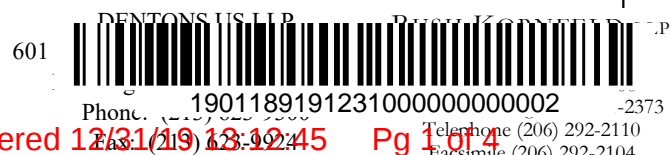
<sup>1</sup> The Debtors, along with their case numbers, are as follows: Astria Health (19-01189-11), Glacier Canyon, LLC (19-01193-11), Kitchen and Bath Furnishings, LLC (19-01194-11), Oxbow Summit, LLC (19-01195-11), SHS Holdco, LLC (19-01196-11), SHC Medical Center - Toppenish (19-01190-11), SHC Medical 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).

**RESPONSE IN SUPPORT OF MOTION  
 TO REJECT FIRST CHOICE  
 AGREEMENTS**

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1 Astria Health, a Washington nonprofit public benefit corporation (“Astria”),  
2 and the above-referenced affiliated debtors and debtors in possession (the “Debtors”),  
3 hereby respond to the Limited Objection<sup>2</sup> filed by First Choice Health Network, Inc.  
4 (“First Choice”) to the Debtors’ Motion<sup>3</sup> to reject certain executory contracts with  
5 First Choice. First Choice’s Limited Objection should be rejected because it is  
6 untimely and without legal support.

7 The Court should strike or otherwise overrule the Limited Objection as  
8 untimely because it was filed well after objection deadline. The Notice of Motion<sup>4</sup>  
9 expressly provides that

10 if you object to the entry of an Order approving the Motion, please do  
11 so by filing a written objection with the Court and serve a copy upon  
12 the undersigned within twenty-one (21) days of the date of [the Notice  
of Motion]. Should you fail to timely and properly object to the Motion,  
the Court may enter an Order approving the Motion without a hearing  
and without further notice to you.

13 Notice of Motion, p. 2. First Choice was served with the Notice of Motion on  
14 November 19, 2019 [*see* Certificate of Service, Docket No. 767]. First Choice did  
15

16 <sup>2</sup> The “Limited Objection” means the *Limited Objection to Debtor’s Motion to Reject  
Certain Agreements With First Choice Health Network* [Docket No. 832].

17 <sup>3</sup> The “Motion” means *Debtors’ Motion to Reject, Pursuant to 11 U.S.C. § 365(A),  
Certain Agreements with First Choice Health Network Nunc Pro Tunc to November  
18 18, 2019* [Docket No. 761].

19 <sup>4</sup> The “Notice of Motion” means the *Notice of Debtors’ Motion to Reject, Pursuant  
20 to 11 U.S.C. § 365(a), Certain Agreements with First Choice Health Network Nunc  
Pro Tunc to November 18, 2019* [Docket No. 764].

21 **RESPONSE IN SUPPORT OF  
MOTION TO REJECT FIRST  
CHOICE AGREEMENTS**

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1 not file any response within the twenty-one day objection deadline (or by December  
2 10, 2019). Although First Choice ultimately filed the Limited Objection on  
3 December 18, 2019, it did not seek authority to file its pleading out of time and did  
4 not otherwise seek an extension from the Debtors. First Choice also provides no  
5 justification for its untimely filing of the Limited Objection. Thus, the Court should  
6 strike the Limited Objection as untimely and enter an order approving the Motion.  
7 *See In re Frank's Oilfield Serv., Inc.*, No. 11-06-10826 TF, 2013 WL 4048604, at \*4  
8 (Bankr. D.N.M. Aug. 9, 2013) (striking untimely objection because “[t]o do  
9 otherwise would mean that objections deadlines in this district would have little or  
10 no meaning . . .”).

11 First Choice also fails to include any explanation or legal authority in support  
12 of its Limited Objection. First Choice contends, without support, that “[t]he rejection  
13 of the First Choice agreements should be effective no sooner than December 10,  
14 2019, which is 21 days after the Notice of Motion (Doc No. 764).” Limited  
15 Objection, ¶ 4. However, First Choice does not provide any explanation why the  
16 effective date of rejection must be no sooner than December 10, 2019. To the  
17 contrary, as explained in the Motion, it is appropriate to grant rejection of the First  
18 Choice agreements *nunc pro tunc* to November 18, 2019, the date the Motion was  
19 filed. *See In re At Home Corp.*, 392 F.3d 1064 (9th Cir. 2004) (approving retroactive  
20

1 rejection of lease to date of motion to reject). Accordingly, the Limited Objection  
2 should also be rejected on this point.

3 No other objections to the Motion have been filed to date.

4 WHEREFORE, the Debtors request that the Court reject the Limited Objection  
5 and enter an order approving the Motion.

6 Dated: December 31, 2019

DENTONS US LLP  
SAMUEL R. MAIZEL  
SAM A. ALBERTS

8  
9 By /s/ Samuel R. Maizel  
SAMUEL R. MAIZEL

10 Attorneys for the Chapter 11 Debtors  
and Debtors In Possession

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21 **RESPONSE IN SUPPORT OF  
MOTION TO REJECT FIRST  
CHOICE AGREEMENTS**

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