

1 Ethan P. Davis
2 Acting Assistant Attorney General
3 William D. Hyslop
4 United States Attorney
5 Brian M. Donovan
6 Assistant United States Attorney
7 Post Office Box 1494
8 Spokane, WA 99210-1494
9 Telephone: (509) 353-2767

8 Ruth A. Harvey
9 Marcus S. Sacks
10 Assistant Director
11 U.S. Department of Justice, Civil Division
12 PO Box 875
13 Ben Franklin Station
14 Washington, District of Columbia 20044
15 Telephone: (202) 307-1104

14 UNITED STATES DISTRICT COURT
15 EASTERN DISTRICT OF WASHINGTON

16 ASTRIA HEALTH, et al.,

17 Plaintiffs - Appellees,

18 v.

19 UNITED STATES SMALL
20 BUSINESS ADMINISTRATION
21 and JOVITA CARRANZA, in her
22 capacity as Administrator for the
23 United States Small Business
24 Administration,

25 Defendants - Appellants.

Case No. 1:20-cv-03089-RMP

MOTION FOR LEAVE TO FILE
DESIGNATION OF RECORD AND
STATEMENT OF ISSUES

Hearing: August 10, 2020 at 6:30 p.m.
Without Oral Argument

26 The United States of America, on behalf of the U.S. Small Business

27 Administration (“SBA”) and Jovita Carranza in her capacity as Administrator for the

28 MOTION FOR LEAVE - 1



1 SBA, hereby respectfully requests leave to file the designation of record on appeal and
2 statement of issues to be presented pursuant to Rule 8009(a)(1)(B) of the Federal
3 Rules of Bankruptcy Procedure.
4

5 On June 23, 2020, SBA timely filed its Notice of Appeal and Statement of
6 Election. ECF No. 1. Pursuant to FRBP 8009(a)(1)(B), SBA's designation of record
7 and statement of issues was due 14 days after filing notice of appeal, which was July
8 7, 2020. SBA failed to file the designation of record and statement of issues in a
9
10 within the required time.

11 SBA respectfully requests that the Court to accept the untimely filing of SBA's
12 Designation of Record on Appeal and Statement of the Issues to be Presented filed
13 with the Bankruptcy Court on July 10, 2020, a copy of which is attached hereto. There
14 is no prejudice to Plaintiffs-Appellees as the filing is only three days overdue and
15 Plaintiffs-Appellees filed a cross-appeal of the same order at issue in this appeal,
16
17 which was transmitted to this Court on July 8, 2020. Ad. Proc. ECF No. 34.
18

19 RESPECTFULLY SUBMITTED: July 10, 2020.
20

21 ETHAN P. DAVIS
22 Acting Assistant Attorney General

23 WILLIAM D. HYSLOP
24 United States Attorney

25 /s/ Brian M. Donovan
26 BRIAN M. DONOVAN
27 Assistant United States Attorney

28 RUTH A. HARVEY

MARCUS S. SACKS
Commercial Litigation Branch
Civil Division
United States Department of Justice
P.O. Box 875
Ben Franklin Station
Washington D.C. 20044
Tel. (202) 307-1104
marcus.s.sacks@usdoj.gov

Attorneys for the United States

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CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2020, I electronically filed the attached document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Sam Alberts
sam.alberts@dentons.com

James L Day
jday@bskd.com

And via email to the following non CM/ECF participants:

Samuel R Maizel
samuel.maizel@dentons.com

Geoffrey M. Miller
geoffrey.miller@dentons.com

Sarah M. Schrag
sarah.schrag@dentons.com

s/Brian M. Donovan

Assistant United States Attorney

1 Ethan P. Davis
2 Acting Assistant Attorney General
3 William D. Hyslop
4 United States Attorney
5 Brian M. Donovan
6 Assistant United States Attorney
7 Post Office Box 1494
8 Spokane, WA 99210-1494
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12 Assistant Director
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14 PO Box 875
15 Ben Franklin Station
16 Washington, District of Columbia 20044
17 Telephone: (202) 307-1104

18 UNITED STATES BANKRUPTCY COURT
19 EASTERN DISTRICT OF WASHINGTON

20 In Re:

21 ASTRIA HEALTH, et al.¹
22 Debtors and Debtors in Possession,

23 _____
24 ASTRIA HEALTH, et al.,
25 Plaintiffs,
26 v.

Lead Case No. 19-01189-11

Adv. Proc. Case No. 20-80016-WLH

APPELLANT’S DESIGNATION OF
RECORD ON APPEAL AND
STATEMENT OF THE ISSUES TO
BE PRESENTED

27 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), SHC 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).

28 APPELLANT’S DESIGNATION OF RECORD ON APPEAL AND STATEMENT OF THE
ISSUES TO BE PRESENTED - 1

1 UNITED STATES SMALL
2 BUSINESS ADMINISTRATION
3 and JOVITA CARRANZA, in her
4 capacity as Administrator for the
5 United States Small Business
6 Administration,

7 Defendants.

8 **APPELLANTS' DESIGNATION OF RECORD ON APPEAL AND**
9 **STATEMENT OF THE ISSUES TO BE PRESENTED**

10 The United States of America (the "United States"), on behalf of the U.S. Small
11 Business Administration ("SBA"), and Jovita Carranza, in her capacity as
12 Administrator for the SBA, pursuant to Rule 8009(a) of the Federal Rules of
13 Bankruptcy Procedure, hereby designates the following items to be included in the
14 record on appeal and states the issues to be presented on appeal from the *Order*
15 *Granting Preliminary Injunction, Denying Stay Pending Appeal, and Certifying Issues*
16 *to the Ninth Circuit Court of Appeals* [Docket No. 22]:

17 **Statement of Issues Presented on Appeal**

- 18
- 19 1. Whether the bankruptcy court erred in enjoining the SBA and Jovita Carranza,
20 in her capacity as Administrator for the SBA.
 - 21 2. Whether the bankruptcy court erred in awarding injunctive relief in the absence
22 of a waiver of sovereign immunity by the United States.
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28 APPELLANT'S DESIGNATION OF RECORD ON APPEAL AND STATEMENT OF THE
ISSUES TO BE PRESENTED - 2

3. Whether the bankruptcy court erred in holding that it has authority to issue a preliminary injunction with respect to Plaintiffs’ Administrative Procedure Act (“APA”) claims.
4. Whether the bankruptcy court erred in concluding that the Plaintiffs proved that they were likely to succeed on the merits of their claim that SBA and Ms. Carranza violated the APA.
5. Whether the bankruptcy court erred in concluding that SBA and Ms. Carranza exceeded their statutory authority and acted arbitrarily and capriciously by excluding debtors in bankruptcy from the PPP.
6. Whether the bankruptcy court erred in concluding that the Plaintiffs demonstrated irreparable harm.
7. Whether the bankruptcy court erred in finding the Plaintiffs had met their burden of proof with respect to their motion for preliminary injunction.

Designation of Items for Record on Appeal²

1	05/15/2020	Adversary case 20-80016. COMPLAINT. Fee Amount \$350. Nature of Suit: (91 (Declaratory judgment)) (72 (Injunctive relief - other)) (21 (Validity, priority or extent of lien or other interest in property)) (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Alberts, Sam) (Entered: 05/15/2020)
2	05/15/2020	MOTION for Temporary Restraining Order and Request for Hearing and Briefing Schedule With Respect for a Preliminary Injunction. Filed by Sam Alberts on behalf of Astria Health, Glacier Canyon, LLC, Kitchen and Bath Furnishings, LLC, Oxbow Summit, LLC, SHC Holdco, LLC, SHC Medical Center - Toppenish, SHC Medical Center - Yakima, Sunnyside Community Hospital Association, Sunnyside Community Hospital Home Medical Supply, LLC,

² Each item designated in this Record on Appeal includes any exhibits that are attached thereto.

1		Sunnyside Home Health, Sunnyside Professional Services, LLC, Yakima HMA Home Health, LLC, Yakima Home Care Holdings, LLC (Attachments: # 1 Exhibits A through F) (Alberts, Sam) Hearing scheduled 5/19/2020 at 11:00 AM at (877) 402-9757, Access 7036041 - Yakima. DEPUTY Clerk Note: Hearing information added and entry clarified. Modified on 5/18/2020 (CMR). (Entered: 05/15/2020)	
2	3	05/15/2020	ORDER Uploaded. Filed by Alberts, Sam. (RE: 2) (Entered: 05/15/2020)
3	8	05/19/2020	ORDER Uploaded. Filed by Alberts, Sam. (RE: 2) (Entered: 05/19/2020)
4	9	05/19/2020	PDF with attached Audio File. Court Date & Time [5/19/2020 11:15:17 AM]. File Size [3756 KB]. Run Time [00:15:39]. (NydiaUrlacher). (Entered: 05/19/2020)
5	12	05/19/2020	MINUTE Entry Re: Motion for Temporary Restraining Order. HELD. The parties reached an agreement and submitted a proposed agreed order. Court finds the schedule outlined is appropriate and will sign/enter order (RE: 2 Motion for Temporary Restraining Order) Appearances: Samuel Maizel, Thomas Buford, Sarah Schrag, Attorneys for Plaintiff; Brian Donovan, Attorney for Defendant United States Small Business Administration. Other parties: John Gallagher with Astria Health; Michael Lane with Astria Health; Gary Dyer, Attorney for US Trustee; Ryan Jareck, Attorney for Lapis Advisers; William Kannel, Attorney for UMB Bank, Lapis Advisers; David Leigh, Attorney for Med One Capital Funding LLC; Richard Hyatt, Attorney for TIAA Commercial Finance Inc; Boris Mankovetskiy, Jane Pearson and Andrew Sherman, Attorneys for the Unsecured Creditors Committee; Darin Dalmat, Attorney for Washington State Nurses Assc; Michael Siderius, Attorney for GE Precision Healthcare LLC (NNU) (Entered: 05/19/2020)
6	13	05/20/2020	AGREED ORDER Regarding Scheduling and Reservation of PPP Funds (RE: Motion for Temporary Restraining Order 2). Hearing scheduled 6/3/2020 at 11:00 AM at (877) 402-9757, Access 7036041 - Yakima. (CMR) (Entered: 05/20/2020)
7	14	05/26/2020	BRIEF signed by Brian M. Donovan. Filed by Brian M Donovan on behalf of United States Small Business Administration and Jovita Carranza, in her capacity as Administrator for the United States Small Business Administration (RE: Motion for Temporary Restraining Order 2). (Attachments: # 1 Exhibit A # 2 Exhibit 1 # 3 Exhibit 2 # 4 Exhibit 3 # 5 Exhibit 4 # 6 Exhibit 5 # 7 Exhibit 6 # 8 Exhibit 7 # 9 Exhibit 8 # 10 Exhibit 9 # 11 Exhibit 10 # 12 Exhibit 11 # 13 Exhibit 12 # 14 Exhibit 13)(Donovan, Brian) (Entered: 05/26/2020)
8	16	06/01/2020	REPLY signed by Samuel R. Maizel (RE: Brief 14). Filed by Sam Alberts on behalf of Astria Health, Glacier Canyon, LLC, Kitchen and Bath Furnishings, LLC, Oxbow Summit, LLC, SHC Holdco, LLC, SHC Medical Center - Toppenish, SHC Medical Center - Yakima, Sunnyside Community Hospital Association, Sunnyside Community Hospital Home Medical Supply, LLC, Sunnyside Home Health, Sunnyside Professional Services, LLC, Yakima HMA Home

APPELLANT'S DESIGNATION OF RECORD ON APPEAL AND STATEMENT OF THE ISSUES TO BE PRESENTED - 4

1		Health, LLC, Yakima Home Care Holdings, LLC (Alberts, Sam) (Entered: 06/01/2020)
2	17 06/03/2020	PDF with attached Audio File. Court Date & Time [6/3/2020 11:24:37 AM]. File Size [36135 KB]. Run Time [02:30:34]. (NydiaUrlacher). (Entered: 06/03/2020)
3		
4	19 06/03/2020	MINUTE Entry Re: Motion for Temporary Restraining Order and Use of PPP Funds. HELD. The court heard argument of counsel and for the reasons stated on the record, the court grants motion and delivers oral ruling. Proposed form of order to be circulated and submitted to the court for signature. (related document(s): 2 Motion for Temporary Restraining Order filed by Astria Health, Glacier Canyon, LLC, Kitchen and Bath Furnishings, LLC, Oxbow Summit, LLC, SHC Holdco, LLC, SHC Medical Center - Toppenish, SHC Medical Center - Yakima, Sunnyside Community Hospital Association, Sunnyside Community Hospital Home Medical Supply, LLC, Sunnyside Home Health, Sunnyside Professional Services, LLC, Yakima HMA Home Health, LLC, Yakima Home Care Holdings, LLC) Appearances: Sam Alberts, James Day, Samuel Maizel, Geoffrey Miller, Sarah Schrag, Attorneys for Astria/Plaintiff; Mark Sacks and Brian Donovan, Attorneys for US Small Business Administration/Defendant. Other Attendees: William Kannel, Attorney for UMB Bank, N.A., Lapis Advisers; Jane Pearson, Boris Mankovetskiy and Andrew Sherman, Attorneys for Unsecured Creditors Committee; Gary Dyer, Attorney for US Trustee; John Gallagher, CEO of Astria Health; Michael Lane, CRO of Astria Health.(NNU) (Entered: 06/08/2020)
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15	18 06/08/2020	STIPULATION. Signed by Samuel R. Maizel for the Debtors, William W. Kannel, Attorneys for UMB Bank, N.A., as Trustee and Lapis Advisers, L.P. and Ryan T. Jareck Attorneys for Lapis Advisers, L.P. and the filer.. Filed by Sam Alberts on behalf of Astria Health, Glacier Canyon, LLC, Kitchen and Bath Furnishings, LLC, Oxbow Summit, LLC, SHC Holdco, LLC, SHC Medical Center - Toppenish, SHC Medical Center - Yakima, Sunnyside Community Hospital Association, Sunnyside Community Hospital Home Medical Supply, LLC, Sunnyside Home Health, Sunnyside Professional Services, LLC, Yakima HMA Home Health, LLC, Yakima Home Care Holdings, LLC (Alberts, Sam) (Entered: 06/08/2020)
16		
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20	20 06/09/2020	ORDER Uploaded. Filed by Alberts, Sam. (RE: 2) (Entered: 06/09/2020)
21		
22	22 06/10/2020	ORDER Granting Preliminary Injunction, Denying Stay Pending Appeal, and Certifying Issues to the Ninth Circuit Court of Appeals (Related Doc # 2). (CMR) (Entered: 06/10/2020)
23		
24	23 06/23/2020	ORDER Uploaded. Filed by Alberts, Sam. (RE: 4) (Entered: 06/23/2020)
25		
26	24 06/23/2020	MOTION to Withdraw Reference . Filed by Brian M Donovan on behalf of United States Small Business Administration and Jovita Carranza, in her capacity as Administrator for the United States Small Business Administration (Donovan, Brian) DEPUTY Clerk Note: Fee amount removed from docket text - not applicable for US Attorney's Office. Modified on 6/24/2020 (CMR). (Entered: 06/23/2020)
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28 APPELLANT'S DESIGNATION OF RECORD ON APPEAL AND STATEMENT OF THE ISSUES TO BE PRESENTED - 5

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2	26	06/23/2020
3		NOTICE of Appeal and Statement of Election to District Court. Filed by Brian M Donovan on behalf of United States Small Business Administration and Jovita Carranza, in her capacity as Administrator for the United States Small Business Administration (RE: 22 Temporary Restraining Order). (Donovan, Brian) DEPUTY Clerk Note: Fee amount removed from docket text - not applicable for US Attorney's Office. Modified on 6/24/2020 (CMR). (Entered: 06/23/2020)
4		
5	28	06/24/2020
6		PDF with attached Audio File. Court Date & Time [6/24/2020 1:36:08 AM]. File Size [2320 KB]. Run Time [00:09:40]. (NydiaUrlacher). (Entered: 06/24/2020)
7		
8	29	06/24/2020
9		MINUTE Entry Re: Scheduling Conference. HELD. Court will sign the proposed joint stipulated order submitted by counsel staying the adversary proceeding pending appeal in District Court. (RE: 4 Notice of Scheduling Conference) Appearances: Samuel Maizel, and Sarah Schrag, Attorneys for Plaintiff; Brian Donovan, Attorney for Defendant (NNU) (Entered: 06/24/2020)
10		
11	30	06/24/2020
12		APPEAL Transmittal to District Court. Appellant(s): United States Small Business Administration and Jovita Carranza, in her capacity as Administrator for the United States Small Business Administration. Appellee(s): Astria Health, et al (See Exhibit A of ECF 28). Case County: YAKIMA. Date Notice of Appeal Filed: 06/23/2020. Date of Entry of Order on Appeal: 06/10/2020. Date Bankruptcy Case Filed: 05/15/2020. Fee Paid: N/A. Notice of Appeal mailed N/A to N/A. All other parties, including the US Trustee, were electronically served. (RE: Temporary Restraining Order 22 , Notice of Appeal and Statement of Election 28). Certificate of Record due by 8/13/2020. (CMR) (Entered: 06/24/2020)
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14	31	06/25/2020
15		CASE Number from Appellate Court, District Court, Case Number: 20-cv-03089-RMP (RE: Notice of Appeal and Statement of Election 28). (CMR) (Entered: 06/25/2020)
16		
17	32	06/26/2020
18		STIPULATED Order (RE: Notice of Scheduling Conference 4). Status Hearing scheduled 8/25/2020 at 01:30 PM at (877) 402-9757, Access 7036041 - Yakima. (CMR) (Entered: 06/26/2020)
19		
20		07/07/2020
21		NOTICE of Cross Appeal and Statement of Election. Fee Amount \$298. Filed by Sam Alberts on behalf of Astria Health, SHC Medical Center - Toppenish, Yakima HMA Home Health, LLC (RE: 19 Minutes of Proceedings, 22 Temporary Restraining Order). Appellant Designation due by 07/21/2020. (Alberts, Sam) (Entered: 07/07/2020)
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23	33	07/07/2020
24		OBJECTION (RE: Motion to Withdraw Reference 26). Filed by Sam Alberts on behalf of Astria Health (Alberts, Sam) (Entered: 07/07/2020)
25		
26	34	07/08/2020
27		APPEAL Transmittal to District Court. Appellant(s): Astria Health, SHC Medical Center - Toppenish, and Yakima HMA Home Health Care, LLC. Appellee(s): United States Small Business Administration and Jovita Carranza, in her capacity as Administrator for the United States Small Business Administration. Case County: YAKIMA. Date Notice of Appeal Filed: 7/7/2020. Date of Entry of Order on Appeal: 6/10/2020. Date Bankruptcy Case Filed: 05/15/2020. Fee Paid: No.

28 APPELLANT'S DESIGNATION OF RECORD ON APPEAL AND STATEMENT OF THE ISSUES TO BE PRESENTED - 6

1		Transmittal of Notice of Appeal mailed N/A to N/A. All other parties, including the US Trustee, were electronically served. (RE: Temporary Restraining Order22 , Notice of Cross Appeal34). Certificate of Record due by 8/27/2020. (CMR) (Entered: 07/08/2020)
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4	35 07/09/2020	CASE Number from Appellate Court, District Court, Case Number: 20-cv-03098-RMP (RE: Notice of Cross Appeal34). (CMR) (Entered: 07/09/2020)
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6	36 07/09/2020	RECEIPT of Notice of Cross Appeal(20-80016-WLH) [appeal,crssapl] (298.00) Filing Fee. Receipt number A7648026. Fee amount 298.00 (RE: Notice of Cross Appeal34). (U.S. Treasury) (Entered: 07/09/2020)
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9 RESPECTFULLY SUBMITTED: July 10, 2020.

10 ETHAN P. DAVIS
11 Acting Assistant Attorney General

12 WILLIAM D. HYSLOP
13 United States Attorney

14 /s/ Brian M. Donovan
15 BRIAN M. DONOVAN
16 Assistant United States Attorney

17 RUTH A. HARVEY
18 MARCUS S. SACKS
19 Commercial Litigation Branch
20 Civil Division
21 United States Department of Justice
22 P.O. Box 875
23 Ben Franklin Station
24 Washington D.C. 20044
25 Tel. (202) 307-1104
26 marcus.s.sacks@usdoj.gov

27 *Attorneys for the United States*

28 APPELLANT'S DESIGNATION OF RECORD ON APPEAL AND STATEMENT OF THE ISSUES TO BE PRESENTED - 7