

James L. Day, WSBA #20474  
 Christine M. Tobin-Presser, WSBA #27628  
 BUSH KORNFIELD LLP  
 601 Union Street, Suite 5000  
 Seattle, WA 98101  
 Tel.: (206) 292-2110  
 Fax: (206) 292-2104  
 Email: [jday@bskd.com](mailto:jday@bskd.com)  
 Email: [ctobin@bskd.com](mailto:ctobin@bskd.com)  
*Attorneys for Defendants SHC Medical  
 Center – Yakima and SHC Medical Center –  
 Toppenish*

HONORABLE WILLIAM L. HOLT

UNITED STATES BANKRUPTCY COURT  
 EASTERN DISTRICT OF WASHINGTON

In re

ASTRIA HEALTH, et al.,<sup>1</sup>

Debtor.

Case No. 19-01189-WHL11

YAKIMA HMA, LLC and YAKIMA HMA  
 PHYSICIAN MANAGEMENT, LLC,

Plaintiffs,

v.

SHC MEDICAL CENTER – YAKIMA and  
 SHC MEDICAL CENTER – TOPPENISH,

Defendants.

Adv. No.: 20-80018-WLH

MOTION TO DISMISS FOR  
 FAILURE TO STATE A CLAIM ON  
 WHICH RELIEF CAN BE  
 GRANTED PURSUANT TO  
 FEDERAL RULE OF CIVIL  
 PROCEDURE 12(b)(6)

<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), 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).

MOTION TO DISMISS FOR FAILURE TO STATE A  
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BUSH KORNFIELD LLP  
 LAW OFFICES

601 Union St., Suite 5000



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1 Debtors SHC Medical Center – Yakima and SHC Medical Center – Toppenish  
2 move the Court pursuant to Federal Rule of Civil Procedure 12(b)(6) for an order  
3 dismissing the above-captioned adversary proceeding on the basis that Plaintiffs have  
4 failed to state a claim on which relief can be granted.

5 1. Plaintiffs' Complaint alleges that Defendants and Plaintiffs entered into an  
6 asset purchase agreement pursuant to which Defendants agreed to purchase and  
7 Plaintiffs agreed to sell certain assets. Complaint at ¶¶ 8 and 10.

8 2. The Complaint further alleges that certain receivables due to Plaintiffs that  
9 Defendants would later collect were excluded from the sale and that, upon receipt,  
10 Defendants were required to remit the payments on the Excluded Receivables (the  
11 "Excluded Funds") to Plaintiffs. Complaint at ¶¶ 11-16.

12 3. The Complaint further alleges that Defendants received the Excluded  
13 Funds in 2016, almost four years ago, and, although the Complaint does not explicitly  
14 so state, it implies that Defendants failed to remit the Excluded Funds to Plaintiffs.  
15 Complaint at ¶¶ 18 and 22-25.

16 4. The Complaint seeks a judgment requiring Defendants to turn over the  
17 Excluded Funds to Plaintiffs. *See* Complaint at 7:13-20.

18 5. Assuming all of the allegations in the Complaint to be true, Plaintiffs fail  
19 to allege any facts that would support a theory, or even assert that Defendants still have  
20 possession of the Excluded Funds that would be subject to turnover.<sup>2</sup> Without this,

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<sup>2</sup> While not relevant to the legal analysis of this Motion, which relies solely on the facts and law set forth in the Complaint, Defendants have provided Plaintiffs the documentation reflecting that any Excluded Funds received by Plaintiffs would have been swept by Defendants' secured lender within 24 hours of receipt.

1 there are no funds to be turned over. Plaintiffs may be entitled to a general unsecured  
2 claim for the Excluded Funds, but that is not alleged or sought in the Complaint.

### 3 LEGAL DISCUSSION

4 A plaintiff's failure to allege sufficient facts under a cognizable legal theory is a  
5 basis for dismissal under Rule 12(b)(6). *Balistreri v. Pacific Police Dep't*, 901 F.2d  
6 691, 699 (9<sup>th</sup> Cir. 1988).

7 Turnover is the sole legal theory set forth in the Complaint. Plaintiffs have not  
8 alleged (and cannot in good faith allege) that Defendants are in possession of the  
9 Excluded Funds such that they are available to be turned over to Plaintiffs. The Court  
10 cannot supply facts that Plaintiffs have failed to plead. *See Pena v. Gardner*, 976 F.2d  
11 469, 471 (9<sup>th</sup> Cir. 1991).

### 12 CONCLUSION

13 Defendants respectfully request that the Court dismiss the Adversary Proceeding  
14 pursuant to Federal Rule of Civil Procedure 12(b)(6).

15 DATED this 31<sup>st</sup> day of August, 2020.

16 BUSH KORNFIELD LLP

17  
18 By /s/ Christine M. Tobin-Presser  
Christine M. Tobin-Presser, WSBA #27628  
19 Attorneys for Defendants  
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