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HONORABLE WHITMAN 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

AMENDED REPLY IN SUPPORT OF  
 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).

AMENDED REPLY IN SUPPORT OF MOTION TO DISMISS  
 FOR FAILURE TO STATE A CLAIM ON WHICH RELIEF  
 CAN BE GRANTED PURSUANT TO FEDERAL RULE  
 CIVIL PROCEDURE 12(b)(6) – Page 1

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1 Debtors SHC Medical Center – Yakima and SHC Medical Center – Toppenish  
2 (the “Defendants”), defendants herein, submit this reply in support of their Motion to  
3 Dismiss for Failure to State a Claim on Which Relief Can be Granted Pursuant to  
4 Federal Rule of Civil Procedure 12(b)(6) (the “Motion”). Capitalized terms herein  
5 have the meaning set forth in the Motion unless otherwise indicated.

6 Plaintiffs correctly acknowledge that “the instant adversary proceeding is  
7 brought pursuant to the parties’ contract.” Response at 4:16-17. The Complaint neither  
8 asserts prepetition breach of contract as a cause of action nor seeks a corresponding  
9 prepetition unsecured claim for damages as the requested relief.

10 Instead, Defendants’ Complaint seeks one avenue of relief: judgment “requiring  
11 the Defendants to *turn over* to Plaintiffs all funds the Defendants received resulting  
12 from cost reports for periods before the Asset Purchase Agreement became effective.”  
13 Complaint at 13-18. It is axiomatic that in order for this to be an available form of  
14 relief, Defendants must actually have the funds sought to be turned over. This fact  
15 remains unpled by Plaintiffs and thus, the Complaint does not state a claim upon which  
16 relief can be granted.

17 Plaintiffs assert that Defendants’ obligations are “akin to a bailment.” Response  
18 at 4:18. Notably, Plaintiffs did not assert a bailment in their Complaint, nor do they  
19 explain how that would entitle them to the relief requested in the Complaint absent  
20 Defendants’ possession of the funds. In any event, as noted by Plaintiffs, under  
21 Washington law, a bailment arises when personal property “is delivers it to another for  
22 some particular purpose with an express or implied contract to redeliver when the  
23 purpose has been fulfilled.” *Freeman v. Metro Transmission*, 12 Wn. App. 930, 931,

1 533 P.2d 130 (1975). These are not the facts alleged by Plaintiffs. The Complaint and  
2 Exhibit 1 thereto make clear that any payments to the Defendants on account of the  
3 Excluded Receivables were made by third parties, not the Plaintiffs, with no  
4 expectation of redelivery. *See* Complaint at ¶ 13 and APA at § 10.8. The situation  
5 does not constitute a bailment.

6 Plaintiffs further assert that Defendants conduct “could be characterized as  
7 conversion.” Response at 5:12. Defendants were free to, but did not, assert such a  
8 claim in their Complaint, likely because they are well aware that such a claim would  
9 give rise only to a prepetition general unsecured claim. Plaintiffs have already filed a  
10 proof of claim which will be administered by the Debtors in due course.

11 Defendants assert that factual allegations in the Complaint “state a plausible  
12 claim for relief.” Response at 3:6-7. The facts pled in the Complaint, if true, may  
13 support a prepetition general unsecured claim in favor of Plaintiffs for breach of  
14 contract. However, that is not the claim asserted nor the relief sought in the Complaint.  
15 There is nothing alleged in the Complaint that supports a claim that would entitle  
16 Plaintiffs to the relief *actually* requested, i.e., turnover of funds to the Plaintiffs post-  
17 petition, prior to all other prepetition unsecured creditors.

18 Defendants respectfully renew their request that the Court dismiss the Complaint  
19 pursuant to Federal Rule of Civil Procedure 12(b)(6).

20 DATED this 21<sup>st</sup> day of September, 2020.

21 BUSH KORNFIELD LLP

22 By /s/ Christine M. Tobin-Presser  
23 Christine M. Tobin-Presser, WSBA #27628  
Attorneys for Defendants