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10 *Attorneys for Steven D Sass LLC, in its*  
 11 *capacity as GUC Distribution Trustee*

12 IN THE UNITED STATES BANKRUPTCY COURT  
 13 FOR THE EASTERN DISTRICT OF WASHINGTON

14 In re:

ASTRIA HEALTH,

15 Remaining Debtor.<sup>1</sup>

Chapter 11

Lead Case No. 19-01189-11

16  
 17 <sup>1</sup> The jointly administered cases of Glacier Canyon, LLC (19-01193-11), Kitchen  
 and Bath Furnishings, LLC (19-01194-11), Oxbow Summit, LLC (19-01195-11),  
 18 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  
 19 Supply, LLC (19-01197-11), Sunnyside Home Health (19-01198-11), Sunnyside  
 Professional Services, LLC (19-01199-11), Yakima Home Care Holdings, LLC  
 20 (19-01201-11), and Yakima HMA Home Health, LLC (19-19-01200-11) were

21 COMPLAINT TO AVOID AND RECOVER  
 TRANSFERS, DISALLOW CLAIMS, AND  
 OBJECTION TO CLAIMS - 1

*SCHWEET LINDE & COULSON, PLLC*



STEVEN D SASS LLC, in its  
capacity as GUC Distribution Trustee,

Plaintiff,

vs.

OWENS & MINOR, INC., a Virginia  
corporation; OWENS & MINOR  
DISTRIBUTION, INC., a Virginia  
corporation,

Defendants.

Jointly Administered

Adv. Proc. No. 22-

**COMPLAINT TO AVOID AND  
RECOVER TRANSFERS  
PURSUANT TO 11 U.S.C. §§ 547  
& 550, TO DISALLOW  
CLAIMS PURSUANT TO 11  
U.S.C. § 502, OBJECTION TO  
CLAIMS, AND FOR  
TURNOVER OF PROPERTY  
OF THE ESTATE PURSUANT  
TO 11 U.S.C. §542**

Plaintiff, Steven D Sass LLC, solely in its capacity as GUC Distribution Trustee for the Astria Health GUC Distribution Trust (the “**Plaintiff**”), duly appointed in the above-referenced chapter 11 case of Astria Health and its affiliated debtors (the “**Debtors**”), by and through its undersigned counsel, for its *Complaint to Avoid and Recover Transfers Pursuant to 11 U.S.C. §§ 547 and 550, to Disallow Claims Pursuant to 11 U.S.C. § 502, and Objection to Claims* (the “**Complaint**”) against the above-captioned defendants (the “**Defendants**”), successors, and assigns, alleges as follows:

**NATURE OF THIS ACTION**

closed through the entry of a Final Decree, but the Remaining Debtor’s case remains pending for final adjudication of remaining matters. *See* Lead Case ECF Dkt. 2590.

COMPLAINT TO AVOID AND RECOVER  
TRANSFERS, DISALLOW CLAIMS, AND  
OBJECTION TO CLAIMS - 2

***SCHWEET LINDE & COULSON, PLLC***

575 S. MICHIGAN ST.  
SEATTLE, WA 98108

P (206) 275-1010 F (206) 381-0101

1. The Plaintiff seeks to avoid and recover from the Defendants, or from any other person or entity for whose benefit the transfers were made, all preferential transfers of property that occurred during the ninety (90) day period prior to the commencement of the bankruptcy case of the Debtors pursuant to sections 547 and 550 of chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”).

2. In addition, the Plaintiff objects to any claim filed or otherwise asserted by or scheduled on behalf of the Defendants and seeks to disallow, pursuant to sections 502(d) and (j) of the Bankruptcy Code, any claim that the Defendants have filed or asserted against the Debtors or that has been scheduled for the Defendants.

3. Finally, the Plaintiff seeks turnover, pursuant to section 542 of the Bankruptcy Code, of all or any portion of \$428,386.29 that Defendants are holding to the extent that such funds are funds that a trustee may use, sell, or lease under section 363 of the Bankruptcy Code .

## THE PARTIES

4. On May 6, 2019 (the “**Petition Date**”), each of the Debtors filed a voluntary petition for relief under the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Washington (the “**Bankruptcy Court**”). The Debtors’ cases were jointly administered under Case No. 19-01189-

1           5.       On December 23, 2020, the Bankruptcy Court entered an order [Bankr.  
2 Docket No. 2217] (the “**Confirmation Order**”) confirming the *Modified Second*  
3 *Amended Joint Chapter 11 Plan of Reorganization of Astria Health and Its Debtor*  
4 *Affiliates* [Bankr. Docket No. 2196] (the “**Plan**”) and approving the GUC  
5 Distribution Trust Agreement [Bankr. Docket No. 2043] (the “**Trust Agreement**”),  
6 which together provided for the establishment of the GUC Distribution Trust (the  
7 “**Trust**”) for the benefit of holders of certain claims as set forth in the Plan.

8           6.       The Plaintiff was duly appointed GUC Distribution Trustee  
9 (“**Trustee**”) under the Plan and Trust Agreement. The Trustee is authorized by the  
10 Plan, the Trust Agreement, and the Bankruptcy Code to prosecute certain estate  
11 causes of action transferred to the Trust pursuant to the Plan, including causes of  
12 action for the avoidance and recovery under sections 547 and 550 of the Bankruptcy  
13 Code of preferential payments made by the Debtors.

14           7.       Upon information and belief, the Defendants are entities formed under  
15 the laws of the Commonwealth of Virginia.

## 16                                   **JURISDICTION AND VENUE**

17           8.       The United States Bankruptcy Court for the Eastern District of  
18 Washington has jurisdiction over this adversary proceeding under the Bankruptcy  
19 Code pursuant to 28 U.S.C. §§ 157(a) and 1334(a) and LCivR 83.5 of the United  
20 States District Court for the Eastern District of Washington.

1           9.       This proceeding is a core proceeding within the meaning of 28 U.S.C.  
2 § 157(b) and the Bankruptcy Court may enter final orders for the matters contained  
3 in this Complaint.

4           10.      Pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure  
5 (the “**Bankruptcy Rules**”), the Plaintiff affirms its consent to the entry of final  
6 orders or judgments by the Bankruptcy Court.

7           11.      Venue in this District is proper pursuant to 28 U.S.C. §§ 1408 and  
8 1409(a).

9                                   **BASIS FOR RELIEF REQUESTED**

10          12.      This adversary proceeding is initiated pursuant to Rule 7001(1) of the  
11 Bankruptcy Rules and sections 502, 542, 547, and 550 of the Bankruptcy Code, to  
12 avoid and recover certain avoidable transfers that were made by the Debtors to the  
13 Defendants on or within ninety (90) days before the Petition Date (the “**Preference**  
14 **Period**”), to disallow any claim filed or otherwise asserted by or scheduled on  
15 behalf of the Defendants until any judgment entered in favor of the Plaintiff is paid  
16 in full, and for turnover of property of the estate.

17                                   **FACTS**

18          13.      Prior to the Petition Date, the Debtors made certain payments to the  
19 Defendants for goods and/or services provided to the Debtors pursuant to invoices,  
20 statements or other documents submitted by the Defendants to the Debtors,

1 including but not limited to the transactions between the parties identified on  
2 **Exhibit A** attached hereto.

3 14. During the Preference Period, one or more of the Debtors made  
4 payments or transfers of an interest of one or more Debtors in property to or for the  
5 benefit of the Defendants, including those payments identified on **Exhibit A**  
6 attached hereto (collectively, the “**Transfers**”). **Exhibit A** sets forth the details of  
7 each of the Transfers, including the Debtor that made the Transfers, check or  
8 payment number, payment date, payment amount, invoice number, invoice date,  
9 and invoice amount. The aggregate amount of the Transfers is not less than  
10 \$596,204.89.

11 15. Defendant Owens & Minor, Inc. filed Proof of Claim 44 on or about  
12 July 30, 2019 with the Bankruptcy Court in the case of SHC Medical Center –  
13 Yakima, one of the affiliated debtors, indicating it was holding \$428,386.29 in  
14 “unapplied cash”.

15 16. The Plaintiff has performed its own reasonable due diligence  
16 evaluation in the circumstances of these chapter 11 cases, including the review of  
17 records provided by the Debtors, of the Defendants’ known or reasonably knowable  
18 affirmative defenses to avoidance of the Transfers under section 547(c) of the  
19 Bankruptcy Code. Based on this due diligence, the Plaintiff has identified any  
20 potential partial “ordinary course” and/or “new value” defenses that may be

1 available under sections 547(c)(2) and (4) of the Bankruptcy Code as set forth on  
2 **Exhibit A**. The Plaintiff also sent an advance demand letter to the Defendants  
3 requesting that the Defendants identify any potential defenses the Defendants  
4 believes they may have.

5 17. Notwithstanding the potential defenses identified by the Plaintiff on  
6 **Exhibit A**, the Defendants bear the burden of proof pursuant to section 547(g) of  
7 the Bankruptcy Code to establish those and any other defenses it may have under  
8 section 547(c) of the Bankruptcy Code. Nothing in this Complaint or in **Exhibit A**  
9 is an admission that the Defendants are entitled to or has proven a defense it may  
10 have under section 547(c) of the Bankruptcy Code, and the Plaintiff reserves all  
11 rights under section 547(g) of the Bankruptcy Code and otherwise.

12 18. Plaintiff and Defendants agreed to the tolling of the statute of  
13 limitations on the claims asserted herein by Plaintiff would be tolled through and  
14 including 11:59 pm on March 1, 2022.

15 19. During the course of this adversary proceeding, the Plaintiff may learn  
16 (through discovery or otherwise) of additional transfers made to the Defendants  
17 during the Preference Period. The Plaintiff intends to avoid and recover all transfers  
18 made by the Debtors of an interest of the Debtors in property and to or for the benefit  
19 of the Defendants or any other transferee. The Plaintiff reserves its right to amend  
20 this original Complaint to include: (i) further information regarding the Transfer(s),

(ii) additional transfers, (iii) modifications of and/or revision to the Defendants' name, (iv) additional defendants, and/or (v) additional causes of action authorized by the Plan (collectively, the "Amendments"), that may become known to the Plaintiff at any time during this adversary proceeding, through formal discovery or otherwise, and for the Amendments to relate back to this original Complaint.

**FIRST CLAIM FOR RELIEF**  
**(Avoidance of Preferential Transfers—11 U.S.C. § 547)**

20. The Plaintiff repeats and realleges the allegations contained in each preceding paragraph of this Complaint as though set forth fully herein.

21. During the Preference Period, the Debtors made the Transfers to the Defendants in the total amount of \$596,204.89, as more specifically described in Exhibit A.

22. Each of the Transfers to the Defendants were a transfer of property of the Debtors.

23. Each of the Transfers to the Defendants were made to or for the benefit of the Defendants.

24. The Defendants were creditors (within the meaning of section 101(10) of the Bankruptcy Code) of the Debtor making the Transfer at the time each of the Transfers was made or, alternatively, received the Transfers for the benefit of a creditor or creditors of the Debtors.



1        25. Each of the Transfers to the Defendants were made on account of an  
2 antecedent debt owed by the particular Debtor to the Defendants before the Transfer  
3 was made.

4        26. Each of the Transfers was made while the Debtors were insolvent. The  
5 Debtors are presumed to be insolvent on and during the 90 days preceding the  
6 Petition Date pursuant to section 547(f) of the Bankruptcy Code.

7        27. Each of the Transfers enabled the Defendants to receive more than the  
8 Defendants would have received if (i) these cases were cases under chapter 7 of the  
9 Bankruptcy Code, (ii) the transfers and/or payments had not been made, and (iii)  
10 the Defendants received payment on account of the debt paid by each of the  
11 Transfers to the extent provided by the Bankruptcy Code.

12        28. As of the date hereof, the Defendants have not returned any of the  
13 Transfers to the Plaintiff.

14        29. The Plaintiff is entitled to an order and judgment under section 547 of  
15 the Bankruptcy Code that the Transfers are avoided.

16                    **SECOND CLAIM FOR RELIEF**  
17                    **(Recovery of Property -- 11 U.S.C. § 550)**

18        30. The Plaintiff repeats and realleges the allegations contained in each  
19 preceding paragraph of this Complaint as though set forth fully herein.  
20

1        31.     Based on the foregoing facts, the Plaintiff is entitled to avoid the  
2 Transfers pursuant to section 547(b) of the Bankruptcy Code.

3        32.     The Defendants are either (a) the initial transferee of the Transfers or  
4 the entity for whose benefit the Transfers were made, or (b) an immediate or  
5 mediate transferee of the initial transferee.

6        33.     Pursuant to section 550(a) of the Bankruptcy Code, the Plaintiff is  
7 entitled to recover from the Defendants each Transfer or the amount thereof, plus  
8 interest thereon from the date of payment, as well as costs of this action.

9                                    **THIRD CLAIM FOR RELIEF**  
10                                  **(Objection to Claim of the Defendants and Request for Disallowance**  
   **Under 11 U.S.C. Section 502)**

11        34.     The Plaintiff repeats and realleges the allegations contained in each  
12 preceding paragraph of this Complaint as though set forth fully herein.

13        35.     The Defendants are a transferee of Transfers avoidable pursuant to  
14 section 547 of the Bankruptcy Code, which property is recoverable under section  
15 550 of the Bankruptcy Code.

16        36.     The Defendants have not paid the amount of the Transfers or turned  
17 over such property for which the Defendants are liable under section 550 of the  
18 Bankruptcy Code.

19        37.     Upon information and belief, the Defendants are or may be the holder  
20 of a general unsecured claim against the Debtors (a “**Claim**”).

1        38. Pursuant to section 502(d) of the Bankruptcy Code, any and all Claims  
2 against the Debtors must be disallowed until such time as the Defendants pay the  
3 Plaintiff the amount equal to the aggregate amount of all of the Transfers, plus  
4 interest thereon and costs.

5        39. Pursuant to 11 U.S.C. § 502(j), any and all previously allowed Claims  
6 of the Defendants against the Debtors, including any and all Claims assigned by the  
7 Defendants, must be reconsidered and disallowed until such time as the Defendants  
8 pay to the Plaintiff the amount equal to the aggregate amount of all of the Transfers,  
9 plus interest thereon and costs.

10                                **FOURTH CLAIM FOR RELIEF**  
11                                **(Turnover of Property of the Estate—11 U.S.C. § 542)**

12        40. The Plaintiff repeats and realleges the allegations contained in each  
13 preceding paragraph of this Complaint as though set forth fully herein.

14        41. Defendants are in possession of \$428,386.29 in unapplied cash, all or  
15 a portion of which may be funds that a trustee may use, sell, or lease pursuant to  
16 section 363 of the Bankruptcy Code.

17        42. Pursuant to section 542(a) of the Bankruptcy Code Defendants have a  
18 statutory duty to deliver such property to Plaintiff to the extent that such property is  
19 property that a trustee may use, sell, or lease pursuant to section 363 of the  
20 Bankruptcy Code.

1       **WHEREFORE**, the Plaintiff prays for judgment as follows:

2           a.       On the First Claim for Relief, for a determination that each of the  
3 Transfers is avoidable pursuant to section 547 of the Bankruptcy Code, and that the  
4 Plaintiff is entitled to recover each of the Transfers or the value thereof;

5           b.       On the Second Claim for Relief, for judgment in favor of the Plaintiff  
6 and against the Defendants determining that the Plaintiff is entitled to recover the  
7 Transfers or their value for the benefit of the Trust, pursuant to section 550 of the  
8 Bankruptcy Code;

9           c.       On the Third Claim for Relief, for disallowance of any Claim in  
10 accordance with section 502 of the Bankruptcy Code pending payment by the  
11 Defendants to the Plaintiff of any avoidable and recoverable Transfers;

12           d.       On the Fourth Claim for Relief, an order requiring Defendants to  
13 turnover any property a trustee may use, sell, or lease under section 363 of the  
14 Bankruptcy Code pursuant to section 542 of the Bankruptcy Code.

15           e.       Awarding to the Plaintiff pre-judgment interest at the maximum legal  
16 rate running from the date of this Complaint to the date of judgment herein;

17           f.       Awarding to the Plaintiff post-judgment interest at the maximum legal  
18 rate running from the date of judgment herein until the date the judgment is paid in  
19 full;

20           g.       Awarding to the Plaintiff the costs of suit incurred herein; and

1 h. For such other and further relief as the Bankruptcy Court may deem  
2 just and proper.

3  
4  
5 Dated: March 1, 2022

SCHWEET LINDE & COOULSON PLLC

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9 -and-

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17 *Attorneys for Steven D Sass LLC, in its*  
18 *capacity as GUC Liquidating Trustee*

19  
20  
21 COMPLAINT TO AVOID AND RECOVER  
TRANSFERS, DISALLOW CLAIMS, AND  
OBJECTION TO CLAIMS - 13

***SCHWEET LINDE & COULSON, PLLC***

575 S. MICHIGAN ST.  
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## Exhibit A - Payments

Check No	Payor Name	Payee Name	Check Date	Amount
7514	SHC Med Ctr-Toppenish	OWENS & MINOR	02/11/2019	\$ 5,728.69
7530	SHC Med Ctr-Toppenish	OWENS & MINOR	02/08/2019	\$ 2,821.31
7739	SHC Med Ctr-Toppenish	OWENS & MINOR	03/18/2019	\$ 12,640.92
7889	SHC Med Ctr-Toppenish	OWENS & MINOR	04/01/2019	\$ 12,572.56
8065	SHC Med Ctr-Toppenish	OWENS & MINOR	04/26/2019	\$ 7,266.81
8106	SHC Med Ctr-Toppenish	OWENS & MINOR	05/03/2019	\$ 3,912.53
8121	SHC Med Ctr-Toppenish	OWENS & MINOR	04/11/2019	\$ 16,715.70
<b>Total Transfers Made in 90-Days Before Petition Date</b>				<b>\$ 61,658.52</b>

Preference transfers net of estimated potential available defenses, subject to Defendant's burden of proof under 11 U.S.C. § 547(g)	<b>\$ 1,696.00</b>
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276959	Sunnyside Community Hosp Assn	OWENS & MINOR	02/13/2019	\$ 29,765.48
277010	Sunnyside Community Hosp Assn	OWENS & MINOR	02/21/2019	\$ 33,656.00
277063	Sunnyside Community Hosp Assn	OWENS & MINOR	02/28/2019	\$ 29,372.68
<b>Total Transfers Made in 90-Days Before Petition Date</b>				<b>\$ 92,794.16</b>

Preference transfers net of estimated potential available defenses, subject to Defendant's burden of proof under 11 U.S.C. § 547(g)	<b>\$ 54,473.00</b>
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7513	SHC Medical Center-Yakima	OWENS & MINOR	02/11/2019	\$ 15,432.88
7529	SHC Medical Center-Yakima	OWENS & MINOR	02/08/2019	\$ 31,853.24
7683	SHC Medical Center-Yakima	OWENS & MINOR	03/06/2019	\$ 50,231.67
7738	SHC Medical Center-Yakima	OWENS & MINOR	03/18/2019	\$ 34,680.77
7804	SHC Medical Center-Yakima	OWENS & MINOR	03/22/2019	\$ 47,050.44
7888	SHC Medical Center-Yakima	OWENS & MINOR	04/01/2019	\$ 77,520.17
8105	SHC Medical Center-Yakima	OWENS & MINOR	05/03/2019	\$ 112,415.60
8120	SHC Medical Center-Yakima	OWENS & MINOR	04/11/2019	\$ 72,567.44
<b>Total Transfers Made in 90-Days Before Petition Date</b>				<b>\$ 441,752.21</b>

Preference transfers net of estimated potential available defenses, subject to Defendant's burden of proof under 11 U.S.C. § 547(g)	<b>\$ 223,033.00</b>
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<b>Total Aggregate Preference Transfers</b>	<b>\$ 596,204.89</b>
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Total aggregate preference transfers net of estimated potential available defenses, subject to Defendant's burden of proof under 11 U.S.C. § 547(g)	<b>\$ 279,202.00</b>
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