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*Proposed Attorneys for the Chapter 11 Debtors
and Debtors In Possession*

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

IN RE:

ASTRIA HEALTH, et al.

Debtors.¹

Chapter 11

Lead Case No. 19-01189-11

Jointly Administered

**EMERGENCY MOTION FOR ORDER: (I)
AUTHORIZING DEBTORS TO (A) PAY
PREPETITION EMPLOYEE WAGES,
SALARIES, AND AGENCY FEES, AND (B) PAY
AND HONOR EMPLOYEE BENEFITS AND
OTHER WORKFORCE OBLIGATIONS; AND (II)
AUTHORIZING AND DIRECTING THE
APPLICABLE BANKS TO PAY ALL CHECKS
AND ELECTRONIC PAYMENT REQUESTS
MADE BY THE DEBTORS RELATING TO THE
FOREGOING; MEMORANDUM OF POINTS
AND AUTHORITIES**

***WITH REQUEST TO SHORTEN TIME FOR
NOTICE AND OBJECTIONS & REQUEST FOR***

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), 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).



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1 **EMERGENCY HEARING**

2 **EMERGENCY HEARING:**

Date: Wednesday, May 8, 2019

Time: 10:00 a.m.

Place: 402 East Yakima Ave., Suite 200, Yakima, WA

4 **EMERGENCY MOTION**

5 Astria Health ("Astria") and the above-referenced affiliated debtors
6 (collectively, the "Debtors"), the debtors and debtors in possession in the above-
7 captioned chapter 11 bankruptcy cases (collectively, the "Chapter 11 Cases"),
8 hereby move, on an emergency basis (the "Motion"), pursuant to §§ 105(a), 363(b),
9 507(a), 1107(a) and 1108 of title 11 of the United States Code (the "Bankruptcy
10 Code"),² for the entry of an order: (i) authorizing the Debtors, in their discretion, to
11 (a) pay prepetition employee wages, salaries, and leased employee fees, and (b) pay
12 and honor employee benefits and other workforce obligations (including remitting
13 withholding obligations, maintaining workers' compensation and benefits
14 programs, paying related administration obligations, making contributions to
15 retirement plans, and paying reimbursable employee expenses) (collectively, the
16 "Employee Obligations"); and (ii) authorizing and directing the applicable bank to
17 pay all checks and electronic payment requests made by the Debtors relating to the
18 foregoing. In support of the Motion, the Debtors have separately filed the
19 Declaration of John M. Gallagher in Support of Emergency First-Day Motions (the
20 "Gallagher Declaration").

21 ² All references to "§" or "sections" herein are to sections of the Bankruptcy Code.

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SUMMARY OF REQUESTED RELIEF

The Debtors request that the relief sought herein be granted on an emergency basis because they will suffer irreparable harm without the relief requested in this Motion. The Debtors’ employees are vital to the operation of the Debtors’ hospitals and its medical clinics, and to the health, welfare, safety and security of the patients who seek medical care therein. Payment of, and otherwise honoring, the Employee Obligations are necessary to prevent employees from terminating their employment with the Debtors and to maintain the employees’ morale pending resolution of these Cases. Therefore, the Debtors request that this Motion be heard on an emergency basis.

ADDITIONAL INFORMATION

The Motion is based on the Notice of Emergency Motions that will be filed and served after a hearing date for the Debtors’ “First Day Motions” has been obtained, the attached Memorandum of Points and Authorities, the Gallagher Declaration, and the arguments of counsel and other admissible evidence properly brought before the Court at or before the hearing regarding the Motion. In addition, the Debtors request that the Court take judicial notice of all documents filed with the Court in these Cases.

Counsel to the Debtors will serve this Motion, the attached Memorandum of Points and Authorities, the Gallagher Declaration and the Notice of Emergency Motions on: (i) the Office of the United States Trustee (the “U.S. Trustee”); (ii)

1 any alleged secured creditors; (iii) the fifty largest general unsecured creditors
2 appearing on the list filed in accordance with Rule 1007(d) of the Federal Rules of
3 Bankruptcy Procedure (the “Bankruptcy Rules”); (iv) the United States of America
4 and the State of Washington; and (v) any parties that file with the Court and serve
5 upon the Debtors requests for notice of all matters in accordance with Bankruptcy
6 Rule 2002(i). To the extent necessary, the Debtors request that the Court waive
7 compliance with Rules 9073-1(b)(1) and 2002-1(b)(3) and (c)(1) of the Local Rules
8 of the United States Bankruptcy Court for the Eastern District of Washington
9 (“LBR”) and approve service (in addition to the means of services set forth in such
10 LBR) by overnight delivery. Among other things, the Notice of Emergency
11 Motions will provide that any opposition or objection to the Motion may be
12 presented at any time before or at the hearing regarding the Motion, but that failure
13 to timely object may be deemed by the Court to constitute consent to the relief
14 requested herein.

15 In the event that the Court grants the relief requested by the Motion, the
16 Debtors shall provide notice of the entry of the order granting such relief upon each
17 of the foregoing parties and any other parties in interest as the Court directs. The
18 Debtors submit that such notice is sufficient and that no other or further notice be
19 given.

20 **WHEREFORE**, for all the foregoing reasons and such additional reasons as
21 may be advanced at or prior to the hearing regarding this Motion, the Debtors

1 respectfully request that the Court enter an order providing for the following relief:
2 (i) authorizing the Debtors, in their discretion, to (a) pay prepetition employee
3 wages, salaries, and leased employee fees, and (b) pay and honor employee benefits
4 and other workforce obligations (including remitting withholding obligations,
5 maintaining workers' compensation and benefits programs, paying related
6 administration obligations, making contributions to retirement plans and paying
7 reimbursable employee expenses); (ii) authorizing and directing the applicable bank
8 to pay all checks and electronic payment requests made by the Debtors relating to
9 the foregoing; and (iii) granting such other and further relief as is just and proper
10 under the circumstances.

11 Dated: May 6, 2019

12 _____
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15 pending)
16 SAM J. ALBERTS (WSBA #22255)
DENTONS US LLP

17 *Proposed Attorneys for the Chapter 11*
18 *Debtors and Debtors In Possession*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**
3 **INTRODUCTION**

4 The Debtors request, pursuant to §§ 105(a), 363(b), 507(a), 1107(a) and
5 1108, entry of an order on an emergency basis in these Cases: (i) authorizing, but
6 not directing, the Debtors, in their discretion, to (a) pay or honor prepetition wages,
7 salaries, employee benefits, and other compensation, as well as leased employee
8 fees, (b) remit withholding obligations, (c) maintain workers' compensation and
9 benefits programs, (d) pay related administration obligations, (e) make
10 contributions to retirement plans and (f) pay reimbursable employee expenses
11 (collectively, the "Employee Obligations"); and (ii) authorizing and directing the
12 applicable bank to pay all checks and electronic payment requests made by the
13 Debtors relating to the foregoing.

14 The Debtors' goals in these Cases are to facilitate an orderly administration
15 of their Cases and to maintain efficient and seamless operations for the benefit of
16 the patients (the "Patients") who seek medical care in the Hospitals (defined below)
17 and medical clinics operated by the Debtors in order to maximize the value of their
18 assets for the benefit of all stakeholders. Accordingly, it is imperative to the
19 accomplishment of the Debtors' goals in these Cases that the Debtors minimize any
20 adverse impact of the chapter 11 filing on the Debtors' workforce, on the Patients,
21 on the operations of the Hospitals and medical clinics, and on the orderly
administration of these Cases. Any disruption to payment of the payroll in the

1 ordinary course, or to the continued implementation of employee programs in the
2 Debtors' discretion, would adversely affect the Debtors' goals in this case because
3 such events could cause some employees to terminate their employment with the
4 Debtors, could cause employees to be distracted from their duties to care for the
5 Patients and the operations of the Hospitals and medical clinics, and could hurt
6 employee morale at a particularly sensitive time for all employees. Failure to honor
7 payroll and employee benefits obligations could have severe repercussions on the
8 Debtors' ability to preserve their assets and administer their estates, to the detriment
9 of all constituencies. Accordingly, the Debtors respectfully request that the Court
10 grant the Motion.

11 **II.**
12 **JURISDICTION**

13 The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and
14 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The venue of
15 the Cases is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

16 **III.**
17 **STATEMENT OF FACTS**

18 **A. General Background**

19 1. On May 6, 2019 (the "Petition Date"), each of the Debtors filed a
20 voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Chapter
21 11 Cases are currently being jointly administered before this Court [Docket No.

1 ____]. The Debtors are operating their businesses as debtors in possession pursuant
2 to §§ 1107 and 1108.

3 2. Debtor Astria, a Washington nonprofit corporation, is the direct or
4 indirect corporate member of entities that make it the largest non-profit healthcare
5 system based in Eastern Washington. The Astria Health system is headquartered in
6 the heart of Yakima Valley, Washington, with facilities in Yakima, Sunnyside, and
7 Toppenish, Washington.

8 3. The Astria system includes three hospitals: Astria Regional Medical
9 Center, a 214-bed hospital in Yakima, Washington (“Yakima”); Astria Sunnyside
10 Hospital, a 38-bed critical access hospital in Sunnyside, Washington (“Sunnyside”);
11 and Astria Toppenish Hospital, a 63-bed hospital in Toppenish, Washington
12 (“Toppenish,” and referred to collectively with Sunnyside and Yakima as the
13 “Hospitals”). In addition to collectively having 315 licensed beds, the Hospitals
14 have three active emergency rooms and a host of medical specialties. The Astria
15 system also has outpatient Astria Health Centers (14 medical clinics and 24
16 specialty clinics), the Ambulatory Surgical Center, Astria Hearing and Speech, and
17 Astria Home Health and Hospice.³

18 ³ Collectively, the system provides the following services: allergy testing and
19 treatment program, ambulatory surgery, audiology, behavioral health/psychiatry,
20 breast health center, cancer care, cardiac electrophysiology, cardiac rehabilitation,
21 cardiothoracic surgery, catheterization lab, colorectal surgery, critical care

1 4. The Astria system provides medical treatments to approximately
2 346,400 patients annually, including approximately 7,344 who spend at least one
3 night in its Hospitals during the year. Astria's necessity to the health and welfare of
4 the people of the Yakima Valley is evidenced by several facts, including having
5 the:

- 6 • *only* open-heart surgery program in Yakima County;
- 7 • *only* neurosurgery program in Yakima County;

8
9 medicine, diabetes education, diagnostic imaging and radiology, ear, nose and
10 throat, emergency services, endocrinology, family medicine, gastroenterology,
11 gynecological surgery, heart care, hand surgery, heart failure, home health, hospice,
12 hospitalists, inpatient behavioral health, internal medicine, interventional
13 cardiology, laboratory, life transitions intensive out-patient program, maternity
14 services, medical withdrawal management, nephrology, neurosurgery, spine care,
15 nutritional services, obstetrics and gynecology, occupational medicine, orthopedics,
16 orthopedic surgery, outpatient palliative care, speech therapy, physical therapy,
17 pediatrics, pharmacy, plastic and reconstructive surgery, podiatry, rehabilitation,
18 inpatient rehabilitation, rheumatology, senior services, sleep medicine, sports
19 medicine, stroke care, surgical services, robotic surgery, general surgery, telehealth,
20 urology, urological surgery, walk-in care, women's health, vascular medicine, and
21 wound care center.

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- *only* elective cardiac catheterization program in Yakima County;
- *only* hospital in Sunnyside, Washington;
- *only* hospital in Toppenish, Washington; and
- *only* obstetric services in the Lower Valley (both at Sunnyside and Toppenish).

5. The system employs approximately 1,547 employees (making it one of the largest employers in the Yakima Valley), plus an additional 172 contract personnel, and approximately 600 doctors have privileges at the Hospitals.

6. To date, the U.S. Trustee has not appointed an Official Committee of Unsecured Creditors in these Chapter 11 Cases.

B. Relevant Background to Motion

1. The Debtors' Employees

7. As set forth in the concurrently filed Gallagher Declaration, altogether, the Debtors employ approximately 1,547 “regular” employees, including 1,230 full-time, 70 part-time, and 247 *per diem*. Both full-time and part-time (“core”) employees are regularly scheduled to work every pay period whereas *per diem* employees are used on an as-needed basis. *Per diem* employees are called in whenever Hospitals would not otherwise meet their core staffing requirements in line with certain staff-to-patient ratios—for example, when core employees are sick or on vacation, or there is a spike in patient census.

1 8. For W-2 tax and payroll purposes, the Debtors are divided into two
2 sets of six employer entities:

3 (a) Yakima, as of the Petition Date, employs approximately 731
4 employees, of which 583 are full-time, 43 are part-time and 105 are
employed on a “*per diem*” basis;

5 (b) Toppenish, as of the Petition Date, employs approximately 239
6 employees, of which 186 are full-time, 8 are part-time and 45 are
employed on a “*per diem*” basis;

7 (c) Yakima Home Care Holdings, LLC (“Yakima Home Care,” and
8 together with Yakima and Toppenish, “Yakima/Toppenish”), as of the
9 Petition Date, employs approximately 31 employees (collectively with
the Yakima and Toppenish employees, the “Yakima/Toppenish
Employees”), of which 23 are full-time, 3 are part-time and 5 are
employed on a “*per diem*” basis;

10 (d) Sunnyside, as of the Petition Date, employs approximately 540
11 employees, of which 433 are full-time, 15 are part-time and 92 are
employed on a “*per diem*” basis;

12 (e) Sunnyside Community Hospital Home Medical Supply, LLC
13 (“Sunnyside Home Medical Supply”), as of the Petition Date employs
approximately 3 employees, of which 2 are full-time and 1 is
14 part-time.

15 (f) Sunnyside Home Health d/b/a Astria Home Health (“Home
16 Health,” and together with Sunnyside and Sunnyside Home Medical
Supply, the “Sunnyside Entities”), as of the Petition Date, employs
17 approximately 3 employees (collectively with the Sunnyside and
Sunnyside Home Medical Supply employees, the “Sunnyside
Employees,” and the Sunnyside Employees collectively with the
18 Yakima/Toppenish Employees, the “Employees”), all of whom are
full-time.

19 Astria does not have any employees of its own. All corporate “employees” are
20 management level personnel contracted through Astria Health Management, Inc.
21 (“AHM”).

1 152 currently Leased Employees, 69 provide services to Yakima, 44 to Toppenish,
2 and 39 to Sunnyside.

3 **C. Prepetition Wages, Payroll and Associated Benefits**

4 11. The Employees are paid their wages and salaries (the “Wages”)
5 bi-weekly, in arrears, either five or six days after the end of every 14-day pay
6 period, through direct deposit or by check. In addition to their normal hourly rates,
7 certain regular hourly-paid employees are eligible for overtime premiums. The
8 Debtors’ average bi-weekly gross payroll is approximately \$4 million, which
9 includes approximately \$1.2 million for withholding obligations (relating to various
10 taxes, claims and other obligations) and \$130,000 for retirement plan contribution
11 matching.

12 12. Because the Debtors contract all executives from AHM, the payroll
13 amount itself does not include any executive compensation, nor does this Motion
14 include any request to pay individual “insiders” (as defined in § 101(31)) any
15 prepetition compensation. However, the Debtors do seek to continue contracting
16 their executives through AHM under the AHM Agreement—and other personnel
17 leased from the Agencies—in the ordinary course of business. For avoidance of
18 doubt, pursuant to LBR 3016-1, the Debtors intend to serve a separate Notice of
19 Intent to Compensate Insiders with respect to any insiders upon any determination
20 that they qualify as such.

21

1 1. The Debtors' Direct, Bifurcated, Payroll System

2 13. The Debtors are organized into two sets of employers, who manage the
3 Debtors' payroll in a bifurcated process, creating a constant pay cycle for two
4 rotating groups, with Yakima/Toppenish paying their Employees on the odd weeks
5 (e.g., 1, 3, . . . 49, 51) and the Sunnyside Entities paying their Employees on the
6 even weeks (e.g., 2, 4, . . . 50, 52), in each case on a Friday for the preceding 14-
7 day pay period running from either Sunday to Saturday (for Yakima/Toppenish) or
8 Monday to Sunday (for the Sunnyside Entities). The Debtors process payroll
9 directly, using payroll software licensed by Optimum. For the Sunnyside Entities,
10 Sunnyside manually transfers funds from its primary depository and accounts
11 payable ("A/P") bank account to its designated payroll accounts the week of
12 payroll; Yakima/Toppenish submits a ball rolling base certificate to MidCap
13 Financial Trust ("MidCap") one day before payday (i.e., Thursdays) to request that
14 its payroll account be funded to cover the next day's payroll.⁴

15 ⁴ By separate and contemporaneous motion, the Debtors are requesting authority to
16 continue operating their cash management system in the ordinary course of
17 business, which, among other things, would permit them to continue transferring
18 funds between bank accounts to fund payroll. Furthermore, by yet another separate
19 and contemporaneous motion, the Debtors are requesting debtor-in-possession
20 financing that they propose to use, in part, to pay all outstanding prepetition
21 obligations owed to MidCap, which would eliminate MidCap from

1 14. The date on which the Yakima/Toppenish Employees were last paid
2 was April 26, 2019 for the two-week period ending April 20, 2019. Their next
3 routine payroll is scheduled for May 10, 2019 (the “May 10th Payroll”), and is
4 expected to include approximately \$1.7 million (the “May 10th Prepetition-Accrued
5 Payroll”), which covers Wages earned through May 4, 2019. These Employees are
6 thereafter scheduled for routine payroll on May 24, 2019 (the “May 24th Payroll”),
7 and is expected to include approximately \$121,000 attributable to Wages earned
8 prepetition on May 5, 2019 (the “May 24th Prepetition-Accrued Payroll, and
9 together with the May 10th Prepetition-Accrued Payroll, the “Yakima/Toppenish
10 Prepetition-Accrued Payroll”).

11 15. The date on which the Sunnyside Employees were last paid was May
12 3, 2019 for the two-week period ending April 28, 2019. These Employees’ next
13 routine payroll is scheduled for May 17, 2019 (the “May 17th Payroll”), and is
14 expected to be approximately \$1,414,000, which covers Sunnyside Employee
15 Wages earned through May 12, 2019—approximately \$695,000 of which amount is
16 attributable to prepetition payroll (the “Sunnyside Prepetition-Accrued Payroll,”
17 and together with the Yakima/Toppenish Prepetition-Accrued Payroll, the
18 “Debtors’ Prepetition-Accrued Payroll”).

19
20 Yakima/Toppenish’s accounting processes, including the payroll funding
21 mechanism.

1 16. Accordingly, the Debtors seek authority to pay the Debtors’
2 Prepetition-Accrued Payroll in the amount of \$2,516,000 on account of prepetition
3 Wages. The Debtors’ Prepetition-Accrued Payroll does not exceed \$12,850 per
4 Employee. The Debtors further seek to continue to pay Wages to the Employees of
5 the Debtors incurred postpetition in the ordinary course of the Debtors’ business.

6 17. In addition, the Employees represented by SEIU are entitled under
7 their CBAs to identify and resolve any errors in payroll, which the Debtors are
8 required to correct “as soon as practicable” (the “SEIU Lookback”); accordingly,
9 the Debtors further seek to pay any additional amounts identified as of the Petition
10 Date through the SEIU Lookback.

11 18. Although not technically “Wages,” the Debtors further seek to pay the
12 monthly fees owed to the third party agencies on account of the services performed
13 for the Debtors by the Leased Employees. The Debtors believe that these third-
14 party agencies will likely terminate services if they are not paid amounts owing and
15 that such termination would be significantly detrimental to the Debtors’ businesses.
16 As such, the next monthly payment under the AHM Agreement will come due on
17 May 31, 2019, for approximately \$580,000, an estimated \$97,000 (the “AHM
18 Prepetition-Accrued Fees”) of which will be attributable to the prepetition period
19 (i.e., May 1-5). The Debtors estimate the monthly charges due to the Agencies for
20 May services total approximately \$388,000 (“Agencies Monthly Fee”), but the
21 Debtors do not yet know how much of that is attributable to prepetition services.

1 Accordingly, the Debtors seek authority to pay (a) AHM for the Prepetition-
2 Accrued Fees, and (b) the Agencies for the prepetition services of their
3 corresponding Leased Employees, up to the full amount of the Agencies Monthly
4 Fee (but likely closer to the pro rata amount of approximately \$63,000). The
5 Debtors further seek to continue to pay AHM and the Agencies postpetition in the
6 ordinary course of the Debtors' business.

7 2. The Debtors' Withholding Obligations

8 19. In the ordinary course of their business, the Debtors routinely withhold
9 from the Wages certain amounts that the Debtors are required to transmit to the
10 government and certain third parties for purposes such as Social Security and
11 Medicare withholdings, federal and state or local income taxes, contributions to the
12 Debtors' benefit plans, retirement plan contributions, union dues, garnishment,
13 child support or other similar obligations pursuant to court order or law
14 (collectively, the "Withholding Obligations"). The Debtors owe approximately
15 \$915,700 for Withholding Obligations—including payments for tax obligations (the
16 "Employer Tax Obligations") such as FICA and Social Security—in connection
17 with the Requested Prepetition Payroll. Accordingly, the Debtors seek authority to
18 pay the prepetition Withholding Obligations in the amount of \$915,700 on account
19 of prepetition Wages; and to continue to pay Withholding Obligations incurred
20 postpetition in the ordinary course of the Debtors' business.

21

1 **D. Business Expense and Educational Reimbursements**

2 20. The Debtors customarily reimburse Employees who incur business
3 expenses in the ordinary course of performing their duties on behalf of the Debtors.
4 Such expenses typically include, but are not limited to, business-related travel
5 expenses (including mileage), business meals, relocation allowances, tuition
6 reimbursement, and other items specified in the CBAs (the “Reimbursement
7 Obligations”). Expense reports detailing the Reimbursement Obligations are
8 submitted for reimbursement by the Employees and generally must be supported by
9 copies of receipts.

10 21. It is difficult for the Debtors to determine the exact amount of
11 Reimbursement Obligations that is due and owing for any particular time period
12 since the expenses incurred by Employees on behalf of the Debtors throughout the
13 year vary on a monthly basis and because there may be some delay between when
14 an Employee incurs an expense and submits the corresponding expense report for
15 processing. Based on historical experience, the Debtors anticipate that, as of the
16 Petition Date, the Debtors owe an estimated \$10,000 in Reimbursement
17 Obligations. Accordingly, the Debtors seek authority to pay \$10,000 in
18 Reimbursement Obligations to their Employees. The Debtors further seek to
19 continue to pay Reimbursement Obligations incurred postpetition in the ordinary
20 course of the Debtors’ business.

21

1 **E. Paid Time Off, Vacation, Paid Sick Leave, and Extended Sick Leave**

2 22. The Debtors provide full-time and part-time Employees with Paid
3 Time Off (“PTO”), Vacation (“VAC”), Paid Sick Leave (“PSL”), and Extended
4 Illness Time (“EIT,” and together with PTO, VAC, and PSL, “Paid Leave”).⁵ PTO
5 is time off due to vacation, holiday, personal, injury, or incidental sick time for
6 either the Employee or a qualified family member. Employees begin accruing PTO
7 from the beginning date of employment, but become eligible to use it on the
8 Employee’s 90th day of employment (when they become “Leave-Eligible
9 Employees”). *Per diem* Employees are not Leave-Eligible Employees.⁶

10 23. Leave-Eligible Employees accrue Paid Leave hourly, and the number
11 of hours they can accrue increases in successive years.⁷ Paid Leave is subject to
12 respective maximum amounts, and when these various caps are reached, no further
13 PTO, VAC, PSL, or EIT will accrue until the Employee uses some of the

14 ⁵ The Debtors also provide Employees with the opportunity to take further leaves of
15 absence for certain enumerated reasons that are unpaid but without loss of accrued
16 benefits.

17 ⁶ Although per diem Employees are not eligible for paid leave through the Debtors,
18 all Employees—including per diem—are eligible for Washington State Sick Leave,
19 which is otherwise included in PSL.

20 ⁷ The specific hours vary depending on the relevant CBA governing the
21 Represented Employee’s employment.

1 corresponding accrued hours. As of the Petition Date, the Debtors are carrying
2 approximately \$4.8 million on their books for 136,300 hours of accrued and unused
3 PTO. Leave-Eligible Employees are permitted to cash out their unused (a) PTO,
4 only after one year, and in the amount of 85% of accrued hours; and (b) VAC, for
5 the full 100% for registered nurses, and 50% for everyone else. As of the Petition
6 Date, the Debtors are carrying approximately 68,345 hours on their books of
7 accrued and unused PSL, and approximately 179,472 hours of accrued and unused
8 EIT. Employees may not cash out their unused PSL or EIT.

9 24. The Debtors seek authority to honor their existing Paid Leave policies
10 to the extent it would permit continuing Employees to use their prepetition accrued
11 leave in the ordinary course of business, and going forward. The Debtors are not,
12 by this Motion, seeking permission to cash out any accrued and unused PTO or
13 VAC (or other Paid Leave) of continuing Employees but do seek the authority, in
14 the Debtors' discretion, to pay the Employees for unused PTO and VAC, as
15 permitted per Hospital policy and relevant CBA terms, that accrued within the 180
16 days prior to the Petition Date so long as the total of the payments already then
17 made for prepetition Employee Obligations and the PTO and/or VAC does not
18 exceed the statutory limit for priority claims of \$12,850.

19 **F. Employee Benefits**

20 25. The Debtors also offer Employees the opportunity to participate in a
21 number of insurance and benefit programs, including, among other things, medical,

1 dental and vision plans, life insurance, long-term disability insurance, workers'
2 compensation, retirement plans and other insurance plans and benefits as described
3 below (collectively, the "Employee Benefits"). Full-time and part-time Employees
4 become eligible to receive Employment Benefits following 30 days of employment
5 (when they become "Benefits-Eligible Employees"). *Per diem* Employees are not
6 Benefits-Eligible Employees.

7 1. Medical, Vision and Dental Insurance

8 26. The Debtors offer all Benefits-Eligible Employees and their eligible
9 dependents (collectively, the "Dependents") medical, dental and vision insurance,
10 which are self-insured by the Debtors.

11 27. For medical, the Debtors offer a single self-insured preferred provider
12 organization (PPO) plan called the Astria Employee Health Plan (the "Health
13 Plan"). UMR (United Medical Resources Inc.) is the third-party administrator for
14 all medical, prescription drug, dental, and vision claims against the Health Plan.

15 28. The Debtors bear approximately 90% of the costs of the Health Plan,
16 depending on (a) which Debtor Employer, (b) whether the Eligible Employee is a
17 Represented Employee—and, if so, under which CBA, and (c) whether and how
18 many Dependents are covered.

19 29. The Health Plan is on a self-bill model, whereby the Debtors pay to
20 UMR: (a) a monthly administration fee (on average, less than \$50,000 across all
21 Debtors), paid monthly; (b) a monthly pass-through stop-loss insurance fee (on

1 average, less than \$160,000 across all Debtors, based on the number of insured
2 Employees in the prior month), paid monthly, and (c) actual medical claims, paid
3 weekly as they come in (historically averages \$150,000 per week). As of the
4 Petition Date, the Debtors believe they do not owe any prepetition administration
5 fees to UMR. As of the Petition Date, the Debtors owed approximately \$1.7
6 million to UMR on account of accrued and unpaid prepetition claims against the
7 Medical Plans.

8 30. The Debtors believe that they are current on the administration fees
9 and premiums related to the Health Plan. To the extent they are not, however, the
10 Debtors seek authority to pay their portion of any premiums or administration fees
11 for the Health Plan that accrued and remain unpaid as of the Petition Date. The
12 Debtors also seek authority to continue to pay, in their discretion and in the
13 ordinary course of their business, the administration fees and claims under the
14 Health Plan incurred postpetition.

15 31. Furthermore, and for similar reasons, the Debtors seek to continue to
16 perform any obligations under § 4980B of the Internal Revenue Code to administer
17 Continuation Health Coverage (“COBRA”) (*see* 26 U.S.C. § 4980B) in respect to
18 former employees. The Debtors believe that any prepetition costs related to
19 COBRA coverage benefits are *de minimis*, but nonetheless, to maintain Employee
20 morale and ensure the orderly administration of the estates, the Debtors request
21 authority to pay in their discretion any such prepetition costs.

1 2. Employee Life, Disability and Workers' Compensation

2 32. The Debtors offer all Employees premium-based group life insurance
3 for 2x salary ("Life Insurance") through Sunlife.⁸ The Debtors also offer
4 Employees who are managers, mid-level practitioners, or physicians
5 premium-based long term disability ("LTD") and accidental death and
6 dismemberment ("AD&D") coverage through Sunlife. The premiums and other
7 related charges for life insurance and LTD are paid 100% by the Debtors and total
8 approximately \$84,000 monthly.

9 33. The Debtors also provide workers' compensation insurance through
10 state-sponsored programs⁹ (the "Workers' Compensation Insurance"). For Yakima,
11 Toppenish, and Yakima Home Care, the amount of the annual premium paid to the
12 Washington State L&I fund is approximately \$1,042,000, which is paid quarterly in
13 the amount of approximately \$260,500. Sunnyside uses Washington Hospital
14 Workers Compensation Trust and pays an estimated annual fee of \$732,000, which
15 the Debtors pay in monthly installments, in advance of each month, of
16 approximately \$61,000.

17 34. The Debtors believe that they are current on all the above-mentioned
18 insurance policies and claims obligations. To the extent they are not, however, the
19 Debtors seek authority, in their discretion, to pay any accrued and unpaid
20 prepetition premiums and related charges and to continue the above benefits

21 ⁸ Employees may also upgrade their coverage at their own cost.

⁹ Specifically, one state program and one state trust.

1 postpetition and to deliver the Employees' portion of any accrued and unpaid
2 prepetition premiums to the corresponding administrators in connection with the
3 payment of the Wages and Withholding Obligations.

4 3. Retirement Plan

5 35. The Debtors offer all Employees (including *per diem*) the opportunity
6 to participate in an IRC § 401(k) defined contribution retirement plan, which allows
7 for voluntary employee pre-tax deferrals and matching employer-provided
8 contributions and employer provided contributions (the "Retirement Plan"). The
9 Debtors have established a modest and limited matching program to induce all
10 Employees to participate in this valuable resource (the "Matching Obligations").

11 36. Employees participating in the Retirement Plan may contribute up to
12 the federal statutory cap per year. The Debtors deduct the employees' pre-tax
13 deferrals from their paychecks. The Matching Obligations are as follows: 100% up
14 to the first 3% of contribution and 0.5% for the fourth and fifth percent of
15 contribution (i.e., up to a maximum match of 4% the employee's own contribution).
16 Employee contributions are remitted immediately following each pay date. Failure
17 to timely forward the Employees' Retirement Plan deductions may be a violation of
18 the Employee Retirement Income Security Act of 1974, as amended ("ERISA"),
19 resulting in potential personal liability for the Debtors' officers for such deducted
20 amounts. The Debtors believe that maintaining the Retirement Plan is critical to
21

1 maintaining Employee morale. Furthermore, certain of these retirement benefits
2 are required by CBAs.

3 37. The Debtors seek authority to pay their Matching Obligations that
4 accrued and remain unpaid as of the Petition Date for the Retirement Plan and to
5 deliver the Employee contributions in connection with the payment of Wages and
6 Withholding Obligations described above. Administration fees for the Retirement
7 Plan are paid by the Employee participants. The Debtors also seek authority to
8 continue to pay, in their discretion and in the ordinary course of their business, their
9 Matching Obligations incurred postpetition. The Debtors do not believe these
10 additional payments will increase the total of the payments already then made for
11 prepetition Employee Obligations to exceed the statutory limit for priority claims of
12 \$12,850; however, if that is not the case, the Debtors believe that any prepetition
13 costs related to these retirement benefits are *de minimis*, and the Debtors request
14 authority to pay in their discretion any such prepetition costs to maintain Employee
15 morale and ensure the orderly administration of the estates.

16 4. Miscellaneous Employee Benefit Plans

17 38. The Debtors offer their Employees the opportunity to utilize a
18 healthcare reimbursement account, administered through UMR. This program is
19 100% funded by the Employees and are paid for through payroll deductions. The
20 Debtors request authority to continue to honor this program, in their discretion, and
21 to continue distributing to third-parties the payments for this program in connection

1 with the payment of Wages and Withholding Obligations as described above,
2 including the distributions of payments that are for prepetition amounts due.

3
4 **IV.**
DISCUSSION

5 Sections 105(a) and 363(b)(1) and (c)(1) provide statutory support for the
6 requested relief. Specifically, § 363(b)(1) of the Bankruptcy Code authorizes a
7 debtor in possession to use property of the estate other than in the ordinary course
8 of business after notice and a hearing; and § 363(c)(1) of the Bankruptcy Code
9 authorizes a debtor in possession to enter into transactions in the ordinary course of
10 business without notice and a hearing.

11 Moreover, the Employee Obligations that the Debtors request authority to
12 pay and/or honor are entitled to priority in payment under §§ 507(a)(4), (5) and
13 (8)(D). If the aggregate prepetition Employee Obligations that accrued within the
14 180 days prior to the Petition Date exceed the sum of \$12,850 allowable as a
15 priority claim under §§ 507(a)(4) and (5) for any individual Employee, the Debtors
16 are not requesting, by this Motion, authority to pay any such excess amounts. Thus,
17 the Debtors request authority to pay or honor all Employee Obligations in the
18 ordinary course of business but only up to the \$12,850 priority cap.

19 **A. This Court Has Authority Pursuant to §§ 105(a) and 363(b)(1) and (c)(1)**
to Grant the Relief Requested

20 Pursuant to § 105(a), “the court may issue any order, process, or judgment
21 that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C.

1 § 105(a). Essentially, § 105(a) provides a statutory counterpart to the bankruptcy
2 court's otherwise inherent and discretionary equitable powers. *See In re Sasson*,
3 424 F.3d 864, 874 (9th Cir. 2005); *In re Halvorson*, 581 B.R. 610, 636 n.91 (Bankr.
4 C.D. Cal. 2018).

5 Utilizing § 105(a), bankruptcy judges in this Circuit have recognized “the
6 critical need to pay prepetition wage and commission claims to employees and
7 specified independent contractors so that they continue to work for the debtor and
8 render services to the debtor to help it continue operations as a going concern and to
9 reorganize in a Chapter 11 bankruptcy case.” *In re EcoSmart, Inc.*, Case No. 15-
10 27139 (RK), 2015 WL 9274245, at *4 (Bankr. C.D. Cal. Dec. 18, 2015) (“Most
11 courts allow payment of prepetition employee wages up to the priority amount
12 under the ‘*necessity of payment*’ doctrine, which permits immediate payment of
13 creditors who will not supply services or material essential to the conduct of the
14 business until their prereorganization claims are paid.”) (emphasis in original)).

15 Bankruptcy judges in the Ninth Circuit routinely grant motions to pay
16 prepetition wages that are entitled to priority. *See, e.g., In re Wahluke*, Case No.
17 16-899-FPC11, Docket No. 22 (Bankr. E.D. Wash. Mar. 25, 2016) (granting
18 request for payment for certain insiders and other employees); *see also In re Verity*
19 *Health Sys. of Cal., Inc.*, Case No. 18-20151, Docket No. 75 (Bankr. C.D. Cal. Sep.
20 5, 2018); *In re Gardens Reg'l Hosp. & Med. Ctr., Inc.*, Case No. 16-17463-ER,
21 Docket No. 68 (Bankr. C.D. Cal. June 10, 2016); *In re Walker Land & Cattle, LLC*,

1 Case No. 13-41437 JDP, 2013 WL 7087184, at *1 (Bankr. D. Idaho Dec. 02,
2 2013); *In re Gordian Med., Inc.*, Case No. 12-12399-MW, Docket No. 57 (Bankr.
3 C.D. Cal. Mar. 5, 2012); *In re Farmington Center Salem*, Case No. 09-60059-
4 FRA11, 2011 WL 5566663 (Bankr. D. Or. Nov. 04, 2011); *In re Victor Valley*
5 *Cnty. Hosp.*, Case No. 10-39537-CB, Docket No. 30 (Bankr. C.D. Cal. Sep. 17,
6 2010); *In re Downey Reg'l Med. Ctr.-Hosp., Inc.*, Case No. 09-34714-BB, Docket
7 No. 37 (Bankr. C.D. Cal. Sep. 17, 2009); *In re Pleasant Care Corp.*, Case No. 07-
8 12312-EC, Docket No. 47 (Bankr. C.D. Cal. Mar. 27, 2007). Thus, as long as the
9 Debtors “demonstrate . . . the priority status of wage, salary and commission claims
10 of its employees and independent contractors under 11 U.S.C. § 507(a)(4)(A) and
11 (B),” such demonstration will “warrant immediate payment in advance of general
12 distribution on prepetition claims.” *EcoSmart*, 2015 WL 9274245, at *9. That is
13 the extent of the relief the Debtors are requesting in this Motion.

14 Moreover, the U.S. Supreme Court, in *Czyzewski v. Jevic Holding Corp.*, has
15 recognized that courts “approve[] interim distributions that violate ordinary priority
16 rules,” generally when there are “significant Code-related objectives that the
17 priority-violating distributions serve,” including “payment of employees’
18 prepetition wages.” 137 S.Ct. 973, 985 (2017).

19 For a number of reasons, the Bankruptcy Code affords special treatment to
20 certain prepetition claims of employees. Compared to a typical claim in
21 bankruptcy, wages represent a large part of an employee’s wealth. In addition,

1 unlike an ordinary trade creditor, the typical employee does not have other sources
2 of income and thus cannot diversify the risk of the employer's default.

3 Due to the timing of the commencement of these Cases, the Employees are
4 owed accrued prepetition Wages for which payment is due on May 10, 17, and 24,
5 2019. These Wages cannot be paid without the approval of this Court. The failure
6 of the Debtors to pay the Wages timely in the ordinary course of their business
7 would result in a blow to Employee morale that in all likelihood would lead to
8 employee turnover and other serious and irreparable disruptions of the Debtors'
9 operations as well as possible harm to the Patients. Any significant number of
10 Employee departures or deterioration in morale, especially at this sensitive time,
11 will substantially and adversely impact the Debtors' ability to operate the Hospitals
12 and medical clinics and result in immediate and irreparable harm to the Debtors'
13 estates.

14 The Debtors submit that the amounts to be paid pursuant to this Motion are
15 comparatively small in light of the importance and necessity of preserving the
16 Employees' services and morale and the difficulties and losses the Debtors will
17 suffer if Employee morale is low or if they leave in significant numbers. The
18 Debtors further submit that there is ample justification for their belief that even the
19 slightest delay in providing this relief to their Employees will hamper operations
20 and damage the Debtors' estates. As a consequence, the Debtors are anxious to
21 reassure their Employees.

1 Many Employees live from paycheck to paycheck and rely exclusively on
2 receiving their full compensation or reimbursement of their expenses in order to
3 continue to pay their daily living expenses. These Employees may be exposed to
4 significant financial and healthcare related problems if the Debtors is not permitted
5 to pay and/or honor the Employee Obligations, and the expenses associated
6 therewith in the ordinary course of the Debtors' business. It is critical, therefore,
7 that the Debtors be permitted to pay outstanding, non-discretionary prepetition
8 Wages that would otherwise constitute priority claims against the Debtors' estates,
9 to honor their prepetition Paid Leave policies regarding the use of accrued Paid
10 Leave and the payment for PTO upon termination, and to continue to fund their
11 Employee Benefits. To fail to do so would be devastating to the Employees'
12 morale and could lead to the loss of key Employees at this critical time, which
13 could impact patient care.

14 Additionally, the Withholding Obligations do not constitute property of the
15 Debtors' estates. They principally represent Employee earnings that governments
16 (in the case of taxes), Employees (in the case of voluntary Withholding
17 Obligations) and judicial authorities (in the case of involuntary Withholding
18 Obligations), have designated for deduction from Employee paychecks. The failure
19 to transfer these withheld funds could result in hardship to certain Employees and
20 liability for the Debtors. The Debtors expect that if these Withholding Obligations
21 are not paid, the Debtors will receive inquiries from garnishors regarding the

1 Debtors' failure to submit, among other things, child support and alimony
2 payments, which are not the Debtors' property but, rather, have been withheld from
3 Employee paychecks. Moreover, if the Debtors cannot remit these amounts, the
4 Debtors and their Employees may face legal action due to the Debtors' failure to
5 remit these payments.

6 These proposed payment procedures are beneficial to the estates. The
7 Debtors seek only to honor the Employee Obligations which would constitute
8 priority claims pursuant to § 507. Such claims would otherwise be required to be
9 paid prior to general unsecured claims in any subsequent distribution of assets.
10 However, if the Debtors do not honor such Employee Obligations now, the Debtors
11 run a serious risk of losing Employees, and the loss of Employees would be
12 severely detrimental to the Debtors' business, which translates to a risk to the well-
13 being of the Patients, to any prospect of reorganization and to the Debtors' goal of
14 maximizing a recovery for unsecured creditors.

15 Because the Debtors contract all executives from AHM, this Motion does not
16 include any request to pay individual insiders any prepetition compensation
17 directly. However, the Debtors do seek to continue contracting their executives
18 through AHM under the AHM Agreement—in the ordinary course of business.
19 The Debtors believe that these third-party agencies will likely terminate services if
20 they are not paid amounts owing and that such termination would be significantly
21 detrimental to the Debtors' businesses. For avoidance of doubt, pursuant to LBR

1 3016-1, the Debtors intend to serve a separate Notice of Intent to Compensate
2 Insiders with respect to any insiders upon any determination that they qualify as
3 such.

4 The Debtors only seek authority to: (i) pay and/or honor all prepetition
5 Wages of the Employees; and (ii) honor accrued Paid Leave and other Employee
6 Benefits in the ordinary course of business, provided that no Employee shall receive
7 more than \$12,850 in value on account of prepetition claims for Employee
8 Obligations.

9 **B. The Prepetition Wages and Prepetition Employee Benefits Are Priority**
10 **Claims Under Bankruptcy Code §§ 507(a)(4) and (5)**

11 Pursuant to § 507(a)(4)(A), claims of Employees of the Debtors for “wages,
12 salaries, or commissions, including vacation, severance, and sick leave pay” earned
13 within 180 days before the Petition Date are afforded priority unsecured status to
14 the extent of \$12,850 per Employee. Similarly, § 507(a)(5) provides that
15 Employees’ claims for contributions to certain employee benefit plans are also
16 afforded priority unsecured status to the extent of \$12,850 per Employee covered
17 by such plan, less any amount paid pursuant to § 507(a)(4). The Debtors believe
18 that the Employee Obligations relating to the 180-day period prior to the Petition
19 Date constitute priority claims under §§ 507(a)(4) and (5). As priority claims, they
20 must be paid in full before any general unsecured obligations of the Debtors may be
21 satisfied. Accordingly, the relief requested may affect only the timing of the

1 payment of these priority obligations and will not prejudice the rights of general
2 unsecured creditors or other parties in interest.

3 With respect to prepetition Employee Obligations, no Employees will be paid
4 on account of claims above the \$12,850 amount stated in §§ 507(a)(4) and (5) of
5 the Bankruptcy Code, except as otherwise provided herein.

6 **C. Maintaining the Employee Benefits Is Within the Debtors' Business**
7 **Judgment**

8 The Debtors' relationships with the Employees, including the terms and
9 conditions of their employment, are matters subject to the Debtors' business
10 judgment and may be managed by the Debtors in the "ordinary course of business."
11 *See In re All Seasons Indus.*, 121 B.R. 822, 825-26 (Bankr. N.D. Ind. 1990); *In re*
12 *Pac. Forest Indus., Inc.*, 95 B.R. 740, 743 (Bankr. C.D. Cal. 1989) ("Employees do
13 not need court permissions to be paid and are usually paid as a part of the ongoing
14 operation of the business.") 4 COLLIER ON BANKRUPTCY ¶ 503.03[4] (Richard Levin
15 & Henry J. Sommer eds., 16th ed.) (including many payments to employees as
16 "ordinary course of business" expenses).

17 This doctrine also applies to accrued employee benefits such as paid time off
18 and leave policies. *See In re Canton Castings, Inc.*, 103 B.R. 874, 876 (Bankr.
19 N.D. Ohio 1989). Indeed, this Court has previously granted a similar request for
20 payment of employee benefits. *See, e.g., Order Authorizing Payment of Pre-*
21 *Petition Wages, Salaries and Employment Related Obligations & (B) to Authorize*
Continuance of Pre-Petition Employee Benefits, In re Wahluke, Case No. 16-899-

1 FPC11, at 3-4. The maintenance of the Debtors' benefit programs is an important
2 part of the Debtors' relationships with their employees that is within the Debtors'
3 business judgment.

4 Finally, the Withholding Obligations represent funds that the Debtors are not
5 entitled to hold for any protracted period, since the Debtors effectively holds these
6 amounts in trust and the Employees themselves hold a direct claim against such
7 funds.

8 **D. Honoring of Checks and Transfers Related to Employee Obligations and**
9 **Maintenance of Payroll Accounts**

10 The Debtors further request that their bank be authorized and directed to
11 receive, process, honor and pay all checks presented for payment and to honor all
12 transfer requests made by the Debtors related to Employee Obligations, whether
13 such checks were presented or funds transfer requests were submitted prior to or
14 after the Petition Date (including checks that have been presented and dishonored),
15 to the extent that the relevant accounts contain sufficient funds. The Debtors will
16 identify to the banks the checks that are to be honored pursuant to an order
17 approving this Motion. Accordingly, checks other than those for Employee
18 Obligations should not be honored inadvertently. Moreover, the Debtors expect to
19 have sufficient funds to pay all Employee Obligations, to the extent described
20 herein, on an ongoing basis and in the ordinary course of business.
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V.
CONCLUSION

WHEREFORE, for all the foregoing reasons and such additional reasons as may be advanced at or prior to the hearing on this Motion, the Debtors respectfully requests that this Court enter an order: (i) authorizing the Debtors, in their discretion, to (a) pay or honor prepetition Wages and Employee Benefits, and other compensation, plus the leased employee fees, (b) remit Withholding Obligations and pay Matching Contributions, (c) maintain Workers' Compensation and benefits programs, (d) pay related administration obligations, and (e) pay reimbursable employee expenses; (ii) authorizing and directing the applicable bank to pay all checks and electronic payment requests made by the Debtors relating to the foregoing; and (iii) granting such other and further relief as is just and proper under the circumstances.

Dated: May 6, 2019

JAMES L. DAY (WSBA #20474)
BUSH KORNFELD LLP

SAMUEL R. MAIZEL (*Pro Hac Vice*
pending)
SAM J. ALBERTS (WSBA #22255)
DENTONS US LLP

*Proposed Attorneys for the Chapter 11
Debtors and Debtors In Possession*

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

IN RE:

ASTRIA HEALTH, et al.

Debtors.¹⁰

Chapter 11

Lead Case No. 19-01189-11

Jointly Administered

**ORDER GRANTING EMERGENCY
MOTION FOR ORDER: (I)
AUTHORIZING DEBTORS TO (A) PAY
PREPETITION EMPLOYEE WAGES,
SALARIES, AND AGENCY FEES, AND
(B) PAY AND HONOR EMPLOYEE
BENEFITS AND OTHER WORKFORCE
OBLIGATIONS; AND (II)
AUTHORIZING AND DIRECTING THE
APPLICABLE BANKS TO PAY ALL
CHECKS AND ELECTRONIC
PAYMENT REQUESTS MADE BY THE
DEBTORS RELATING TO THE
FOREGOING**

¹⁰ 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)

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Upon the motion, dated May 6, 2019, of Astria Health and the above-referenced affiliated debtors (collectively, the “Debtors”), the debtors and debtors in possession in the above-captioned chapter 11 bankruptcy cases (collectively, the “Chapter 11 Cases”), for the entry of an order, pursuant to §§ 105(a), 363(b), 507(a), 1107(a) and 1108 of title 11 of the United States Code (the “Bankruptcy Code”):¹¹ (i) authorizing the Debtors, in their discretion, to (a) pay prepetition employee wages, salaries, and leased employee fees, and (b) pay and honor employee benefits and other workforce obligations (including remitting withholding obligations, maintaining workers’ compensation and benefits programs, paying related administration obligations, making contributions to retirement plans, and paying reimbursable employee expenses) (collectively, the “Employee Obligations”); and (ii) authorizing and directing the applicable bank to pay all checks and electronic payment requests made by the Debtors relating to the foregoing (the “Emergency Motion”)¹² [Docket No. ___], all as more fully set out in the Motion; and upon consideration of the Declaration of John Gallagher in support of the Motion; it further appearing that the Court has jurisdiction over this matter; and it further appearing that notice of the Motion as set forth therein is sufficient

¹¹ All references to “§” or “sections” herein are to sections of the Bankruptcy Code.
¹² Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Emergency Motion.

1 under the circumstances, and that no other or further notice need be provided; and it
2 further appearing that the relief requested in the Motion is in the best interests of the
3 Debtors, their estates and their creditors; and after due deliberation and sufficient
4 cause appearing therefor, it is hereby

5 ORDERED that the notice of the Emergency Motion was appropriate under
6 the circumstances and in compliance with the Bankruptcy Code, Bankruptcy Rules,
7 and Local Bankruptcy Rules; and it is further

8 ORDERED that the Emergency Motion is granted; and it is further

9 ORDERED that the Debtors are authorized, in their sole discretion, to do the
10 following:

11 1. To honor and pay all Yakima, Toppenish, and Yakima Home Care
12 prepetition-accrued wages, payable (a) May 10, 2019, totaling approximately \$1.7
13 million, and (b) May 24, 2019, totaling approximately \$121,000;

14 2. To honor and pay all Sunnyside, Sunnyside Home Medical Supply,
15 and Home Health prepetition-accrued wages, payable May 17, 2019, totaling
16 approximately \$695,000;

17 3. To honor the collective bargaining agreements (“CBA”) with SEIU,
18 and remedy, through payment, any error identified by any Employee represented by
19 SEIU regarding payroll made on April 26, May 3, May 10, May 17, and May 24,
20 2019, on account of prepetition Wages; provided, however, that the Employee shall
21 identify such errors by May 31, 2019;

1 4. To pay to AHM, postpetition, the fees due that are attributable to
2 prepetition services, totaling approximately \$97,000;

3 5. To pay to the Agencies, postpetition, the fees due that are attributable
4 to prepetition services, not to exceed \$388,000;

5 6. To honor and pay all accrued and unpaid prepetition Withholding
6 Obligations (whenever payable) totaling approximately \$915,700;

7 7. To honor and pay all unpaid prepetition Reimbursement Obligations to
8 Employees totaling approximately \$10,000;

9 8. To honor and pay the Paid Time Off (“PTO”), Paid Sick Leave
10 (“PSL”), and Extended Illness Time (“EIT”) obligations that accrued prepetition,
11 allowing Employees to utilize postpetition all prepetition PTO, PSL, and EIT in the
12 ordinary course of the Debtors’ business;

13 9. To pay, in the Debtors’ sole discretion, Employees for unused PTO, as
14 permitted per Hospital policy and relevant CBA terms, that accrued within 180 days
15 prepetition so long as the total of payments already then made for prepetition
16 Employee Obligations plus the PTO does not exceed \$12,850 per Employee;

17 10. To pay accrued and unpaid prepetition amounts relating to employee
18 health insurance as follows: (a) approximately \$1.7 million to UMR for claims
19 against the self-insured medical plans; and (b) any administration fees and
20 premiums to the extent outstanding, and to deliver the Employees’ portion of any
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1 accrued and unpaid prepetition premiums to the corresponding administrators in
2 connection with the payment of the Wages and Withholding Obligations;

3 11. To maintain the Debtors' self-insured medical, dental and vision
4 insurance plan (the "Health Plan"), including to continue to pay, in their discretion
5 and in the ordinary course of their business, the administrative fees, medical, dental,
6 and vision claims for the Health Plan incurred postpetition; and to deliver the
7 Employees' portion of any premiums to the corresponding administrators in
8 connection with the payment of the Wages and Withholding Obligations;

9 12. To pay postpetition (when payable) any amounts that accrued
10 prepetition for Continuation Health Coverage ("COBRA"), and to continue to
11 perform any obligations related thereto in the ordinary course of business;

12 13. To pay Sunlife (when payable) (a) the amount of approximately
13 \$84,000 for Employee life, long-term disability, and accidental death and disability
14 ("AD&D") insurance; and (b) any amounts held in trust from Employee
15 contributions for supplemental insurance coverage and voluntary programs;

16 14. To continue to honor their workers' compensation insurance
17 obligations, including paying quarterly payments of approximately \$260,500 to
18 Washington State L&I fund, and monthly payments of approximately \$61,000 to
19 Washington Hospital Workers Compensation Trust, in the ordinary course of their
20 business;

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1 15. To pay matching contributions of approximately \$130,000 that accrued
2 and remain unpaid as of the Petition Date for the Retirement Plan and to deliver the
3 Employee contributions and administration fees held by the Debtors in trust;

4 16. To the extent not expressly identified above, prepetition wages and
5 benefits, including contributions that may be due or arise on the Retirement Plan,
6 may be paid as a priority claim to the extent there is availability of under the
7 priority cap of §§ 507(a)(4) and (a)(5);

8 17. To continue to honor, in their discretion and in the ordinary course of
9 their business, miscellaneous employee benefit programs that are Employee-
10 funded, and to distribute to third-parties the payments for these programs in
11 connection with the payment of Wages and Withholding Obligations; and

12 18. To continue to pay, in the ordinary course of their business, all
13 Employee-related expenses and obligations described in the Motion and this
14 Order—including the AHM and Agency fees for Leased Employees—that accrue
15 postpetition in the ordinary course of the Debtors' business; and it is further

16 ORDERED that all the Debtors' banks—including Bank of America, Banner
17 Bank, Heritage Bank, Lower Valley Credit Union, US Bank, and Wells Fargo—are
18 authorized *and directed* to do the following:

19 1. To the extent they have frozen any of Debtors' accounts, to unfreeze
20 the Debtors' accounts, including their payroll and other Employee-related
21 disbursement accounts;

1 2. With regard to the foregoing obligations, to debit the Debtors'
2 accounts in the ordinary course of business without need for further order of this
3 Court for: (i) all checks, items, and other payment orders drawn on the Debtors'
4 accounts which are cashed at such bank's counters or exchanged for cashier's
5 checks by the payees thereof prior to the bank's receipt of notice of filing of the
6 Debtors' chapter 11 petitions; (ii) all checks, automated clearing house entries, and
7 other items deposited or credited to one of Debtors' accounts with such bank prior
8 to filing of the Debtors' chapter 11 petitions which have been dishonored, reversed,
9 or returned unpaid for any reason, together with any fees and costs in connection
10 therewith, to the same extent the Debtors were responsible for such items prior to
11 filing of their chapter 11 petitions; and (iii) all undisputed prepetition amounts
12 outstanding as of the date hereof, if any, owed to any bank as service charges for
13 the maintenance of the Debtors' cash management system;

14 3. For the avoidance of doubt, to honor all items presented against the
15 Debtors' bank accounts, whether originated prepetition or postpetition and whether
16 or not authorized by other orders; and

17 4. To rely on the representations of the Debtors with respect to whether
18 any check, item, or other payment order drawn or issued by the Debtors prior to
19 filing of their chapter 11 petitions should be honored pursuant to this or any other
20 order of this Court and the DIP Documents, and such Bank shall not have any
21

1 liability to any party for relying on such representations by the Debtors as provided
2 for herein.

3 //End of Order//

4 PRESENTED BY:

5 _____
6 JAMES L. DAY (WSBA #20474)
7 BUSH KORNFELD LLP

8 SAMUEL R. MAIZEL (*Pro Hac Vice* pending)
9 SAM J. ALBERTS (WSBA #22255)
10 DENTONS US LLP

11 *Proposed Attorneys for the Chapter 11*
12 *Debtors and Debtors In Possession*

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