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Attorneys for Defendants

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

In re:

ASTRIA HEALTH, *et al.*,

Debtors and Debtors in
 Possession.

Chapter 11

Lead Case No. 19-01189-11

Jointly Administered

Adv. Proc. Case No. 20-80005-WLH

Washington State Nurses Association,

Plaintiff,

v.

SHC Medical Center-Yakima, Astria
 Health,

Defendants.

ANSWER

ANSWER

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1 Defendants Astria Health (“Astria”) and SHC Medical Center-Yakima (the
2 “Medical Center”) (collectively, “Defendants”), answers the Washington State
3 Nurses Association’s (“WSNA”) Adversary Proceeding Complaint as follows. To
the extent any allegation is not specifically admitted, it is denied.

4 1. Defendants admit that WSNA is the collective bargaining
5 representative of certain nurses formerly employed by the Medical Center and that
6 WSNA is the collective bargaining representative of certain nurses currently
7 employed by other debtors in jointly-administered bankruptcy cases under Lead
8 Case No. 19-01189-11. Defendants admit that the Medical Center is an indirect
9 subsidiary of Astria. Defendants deny the remaining allegations in Paragraph 1 of
10 WSNA’s Complaint.

11 2. Defendants deny the allegations in Paragraph 2 of WSNA’s
12 Complaint.

13 3. Defendants deny the allegations in Paragraph 3 of WSNA’s
14 Complaint.

15 4. Defendants assert that no answer is required to Paragraph 4 as it
16 asserts conclusions of law, which neither require nor warrant a response. To the
17 extent a response is required, Defendants deny the allegations in Paragraph 4.

18 5. Defendants assert that no answer is required to Paragraph 5 as its
19 allegations concern only WSNA’s Second and/or Third Causes of Action, which
20 the Court dismissed with prejudice. To the extent a response is required,
21 Defendants deny the allegations in Paragraph 5.

6. Defendants assert that no answer is required to Paragraph 6 as its
allegations concern only WSNA’s Second and/or Third Causes of Action, which
the Court dismissed with prejudice. To the extent a response is required,
Defendants deny the allegations in Paragraph 6.

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JURISDICTION AND VENUE

7. Defendants admit the allegations in Paragraph 7 of WSNA's Complaint.

8. Defendants admit that this Court has jurisdiction over WSNA's Complaint.

9. Defendants assert that no answer is required to Paragraph 9 as its allegations concern only WSNA's Second and/or Third Causes of Action, which the Court dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in Paragraph 9.

10. Defendants admit that venue is proper.

11. Defendants admit the allegations in Paragraph 11 of WSNA's Complaint.

THE PARTIES

12. Defendants admit that WSNA is the collective bargaining representative under the National Labor Relations Act of certain registered nurses formerly employed by the Medical Center. Whether WSNA may sue on those nurses behalf under the WARN Act asserts a conclusion of law to which no response is required; to the extent a response is required, Defendants deny the allegation. Defendants lack sufficient information to form a belief as to the truth of the remaining allegations in Paragraph 12 and therefore deny the same.

13. Defendants assert that no answer is required to Paragraph 13(a)-(d) as those Paragraphs' allegations concern only WSNA's Second and/or Third Causes of Action, which the Court dismissed with prejudice. To the extent a response is required, Defendants deny the allegations in Paragraph 13(a)-(d).

14. Defendants admit the allegations in Paragraph 14 of WSNA's Complaint.

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1 15. Defendants admit the allegations in Paragraph 15 of WSNA's
2 Complaint.

3 16. Defendants admit the allegations in Paragraph 16 of WSNA's
4 Complaint.

5 17. Astria admits that it is a Washington nonprofit corporation and that its
6 principal office is located in Yakima, Washington. Astria denies the remaining
7 allegations in Paragraph 17 of WSNA's Complaint.

8 18. Defendants assert that no answer is required to Paragraph 18 as it
9 asserts conclusions of law, which neither require nor warrant a response. To the
10 extent a response is required, Defendants deny the allegations in Paragraph 18.

11 19. Defendants assert that no answer is required to Paragraph 19 as its
12 allegations concern only WSNA's Second and/or Third Causes of Action, which
13 the Court dismissed with prejudice. To the extent a response is required,
14 Defendants deny the allegations in Paragraph 19.

15 GENERAL ALLEGATIONS

16 20. Defendants admit that the Medical Center has recognized WSNA as
17 the collective bargaining representative of certain nurses formerly employed by the
18 Medical Center since 2017, and that Astria Health acquired the Medical Center
19 from Community Health Systems, Inc. in 2017. Defendants admit that the Medical
20 Center's collective bargaining agreement with WSNA is dated April 9, 2019, and
21 expires on March 31, 2022.

22 21. Defendants admit that on May 9, 2016, they filed voluntary petitions
under Chapter 11 of the Bankruptcy Code. Defendants admit that they initially
sought to reorganize when they filed those petitions.

23 22. Defendants admit that the board of trustees of Astria Health adopted a
resolution on December 3, 2019, and that John M. Gallagher is the President and
Chief Executive Officer of Astria Health. Defendants state that the resolution

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1 speaks for itself and therefore deny the remaining allegations of Paragraph 22 of
2 WSNA's Complaint.

3 23. Defendants state that the resolution speaks for itself and therefore deny
4 the allegations of Paragraph 23 of WSNA's Complaint.

5 24. Defendants admit that as of December 3, 2019, Astria Health's board
6 of trustees had reviewed recommendations from senior management, including Mr.
7 Gallagher. Defendants deny the remaining allegations of Paragraph 24 of WSNA's
8 Complaint.

9 25. Defendants admit that the board of trustees of the Medical Center
10 adopted a resolution on December 3, 2019. Defendants state that the resolution
11 speaks for itself and therefore deny the remaining allegations of Paragraph 25 of
12 WSNA's Complaint.

13 26. Defendants state that the resolution speaks for itself and therefore deny
14 the allegations of Paragraph 26 of WSNA's Complaint.

15 27. Defendants admit that they did not publicly disclose Astria's or
16 ARMC's Board of Trustees' December 3, 2019 resolutions on December 3, 2019.

17 28. Defendants admit that on December 13, 2019, the Debtors in the in the
18 main bankruptcy case, Lead Case No. 19-01189-11, filed an *Emergency Motion of*
19 *Debtors for Order (I) Authorizing the Debtors to Obtain Replacement Postpetition*
20 *Financing on Substantially Similar Terms as Original Postpetition Financing ...*
21 (among other requests for relief). [Bankr. Docket No. 818.] Defendants admit that
Paragraph 28 of WSNA's Complaint accurately quotes from a portion of page 13 of
that motion. Defendants admit that, in December 2019, the Astria hospital system
had the only open-heart surgery and elective cardiac catheterization programs in
Yakima County, and that those two programs were located at the Medical Center.
Defendants deny the remaining allegations in Paragraph 28 of WSNA's Complaint.

29. Defendants admit that on January 3, 2020, the Debtors in the main

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1 bankruptcy case, Lead Case No. 19-01189-11, filed *Debtors' Ex Parte Motion to*
2 *File Certain Motion and Declaration in Support Thereof, Under Seal*. [Bankr.
3 Docket No. 866] ("Motion to File Under Seal"). Defendants aver that the Motion
4 to File Under Seal speaks for itself. The Motion to File Under Seal did state that "if
5 the relief sought under the Underlying Motion is disclosed prematurely," that "the
6 health and safety of patients ... could be adversely affected."

7 30. Defendants admit that the Court denied the Debtors' Motion to File
8 Under Seal on January 8, 2020. [Bankr. Docket No. 874.] Defendants admit that
9 the Underlying Motion was not publicly available until January 8, 2020, to the
10 extent that publicly available means that it was not authorized to be disclosed to the
11 general public. Defendants deny the remaining allegations in Paragraph 30 of
12 WSNA's Complaint.

13 31. Defendants deny that they "deliberately deprived WSNA and its
14 counsel of notice of that hearing [on the Underlying Motion] to deprive the nurses
15 of advanced notice of the closure." Defendants lack sufficient information to form
16 a belief as to the truth of the remaining allegations in Paragraph 31 and therefore
17 deny the same.

18 32. Defendants admit WSNA was sent a Notice Pursuant to Worker
19 Adjustment and Retraining Notification Act ("WARN Notice") via Les
20 Abercrombie's email on January 8, 2020, at approximately 3:30 p.m. PST.
21 Defendants deny the remaining allegations in Paragraph 32 of WSNA's Complaint.

33. Defendants assert that the WARN Notice to WSNA speaks for itself.
Defendants deny the remaining allegations in Paragraph 33 of WSNA's Complaint.

34. Defendants assert that the WARN Notice to WSNA speaks for itself.
Defendants deny the remaining allegations in Paragraph 34 of WSNA's Complaint.

35. Defendants assert that the WARN Notice to WSNA speaks for itself.
Defendants deny the remaining allegations in Paragraph 35 of WSNA's Complaint.

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1 36. Defendants deny the allegations in Paragraph 36 of WSNA's
2 Complaint.

3 37. Defendants deny the allegations in Paragraph 37 of WSNA's
4 Complaint.

5 38. Defendants assert that no answer is required to Paragraph 38 as its
6 allegations concern only WSNA's Second and/or Third Causes of Action, which
7 the Court dismissed with prejudice. To the extent a response is required,
8 Defendants deny the allegations in Paragraph 38.

9 39. Defendants assert that no answer is required to Paragraph 39 as its
10 allegations concern only WSNA's Second and/or Third Causes of Action, which
11 the Court dismissed with prejudice. To the extent a response is required,
12 Defendants deny the allegations in Paragraph 39.

13 **FIRST CAUSE OF ACTION:**

14 **VIOLATION OF WARN ACT**

15 40. Defendants incorporate by reference their responses to Paragraphs 1-
16 39 of WSNA's Complaint.

17 41. Defendants deny the allegations in Paragraph 41 of WSNA's
18 Complaint.

19 42. Defendants assert that no answer is required to Paragraph 42 as it
20 asserts conclusions of law, which neither require nor warrant a response. To the
21 extent a response is required, Defendants deny the allegations in Paragraph 42.

43. Defendants deny the allegations in Paragraph 43 of WSNA's
Complaint.

44. Defendants deny the allegations in Paragraph 44 of WSNA's
Complaint.

45. Defendants deny the allegations in Paragraph 44 of WSNA's
Complaint.

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1 46. Defendants assert that no answer is required to Paragraph 46 as it
2 asserts conclusions of law, which neither require nor warrant a response. To the
3 extent a response is required, Defendants deny the allegations in Paragraph 46.

4 47. Defendants deny the allegations in Paragraph 47 of WSNA's
5 Complaint.

6 48. Defendants deny the allegations in Paragraph 48 of WSNA's
7 Complaint.

8 a. Defendants deny the allegations in Paragraph 48(a) of WSNA's
9 Complaint.

10 b. Defendants deny the allegations in Paragraph 48(b) of WSNA's
11 Complaint.

12 c. Defendants deny that Astria closed the Medical Center, but
13 admit that the Medical Center did not close on account of a natural disaster.

14 d. Defendants deny the allegations in Paragraph 48(d) of WSNA's
15 Complaint.

16 49. Defendants deny the allegations in Paragraph 49 of WSNA's
17 Complaint.

18 **SECOND CAUSE OF ACTION:**
19 **VIOLATION OF PAYMENT ACT**

20 50. Defendants incorporate by reference their responses to Paragraphs 1-
21 49 of WSNA's Complaint.

51. Defendants assert that no answer is required to Paragraph 51 as its
allegations concern only WSNA's Second and/or Third Causes of Action, which
the Court dismissed with prejudice. To the extent a response is required,
Defendants deny the allegations in Paragraph 51.

52. Defendants assert that no answer is required to Paragraph 52 as its
allegations concern only WSNA's Second and/or Third Causes of Action, which

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1 the Court dismissed with prejudice. To the extent a response is required,
2 Defendants deny the allegations in Paragraph 52.

3 53. Defendants assert that no answer is required to Paragraph 53 as its
4 allegations concern only WSNA's Second and/or Third Causes of Action, which
5 the Court dismissed with prejudice. To the extent a response is required,
6 Defendants deny the allegations in Paragraph 53.

7 54. Defendants assert that no answer is required to Paragraph 54 as its
8 allegations concern only WSNA's Second and/or Third Causes of Action, which
9 the Court dismissed with prejudice. To the extent a response is required,
10 Defendants deny the allegations in Paragraph 54.

11 55. Defendants assert that no answer is required to Paragraph 55 as its
12 allegations concern only WSNA's Second and/or Third Causes of Action, which
13 the Court dismissed with prejudice. To the extent a response is required,
14 Defendants deny the allegations in Paragraph 55.

15 **THIRD CAUSE OF ACTION:**
16 **VIOLATION OF REBATE ACT**

17 56. Defendants incorporate by reference their responses to Paragraphs 1-
18 55 of WSNA's Complaint.

19 57. Defendants assert that no answer is required to Paragraph 57 as its
20 allegations concern only WSNA's Second and/or Third Causes of Action, which
21 the Court dismissed with prejudice. To the extent a response is required,
Defendants deny the allegations in Paragraph 57.

58. Defendants assert that no answer is required to Paragraph 58 as its
allegations concern only WSNA's Second and/or Third Causes of Action, which
the Court dismissed with prejudice. To the extent a response is required,
Defendants deny the allegations in Paragraph 58.

59. Defendants assert that no answer is required to Paragraph 59 as its

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1 allegations concern only WSNA's Second and/or Third Causes of Action, which
2 the Court dismissed with prejudice. To the extent a response is required,
3 Defendants deny the allegations in Paragraph 59.

4 **PLAINTIFF'S REQUEST FOR RELIEF**

5 Defendants assert that no answer is required to WSNA's Request for Relief,
6 which merely sets forth the type of relief sought by WSNA. To the extent an
7 answer is required, Defendants deny each and every allegation and alleged entitled
8 to relief set forth under the heading Request for Relief and deny that WSNA is
9 entitled to any relief.

10 **DEFENSES**

11 Without waiving or excusing WSNA's burden of proof or admitting that
12 Defendants have any burden of proof, Defendants assert the following Defenses.
13 Defendants have not completed their investigation into WSNA's allegations and
14 reserves the right to supplement these defenses.

15 1. WSNA's claims are barred, in whole or in part, because WSNA's
16 Complaint fails to state a claim upon which relief may be granted.

17 2. WSNA's claims are barred, in whole or in part, because Defendants
18 were not "employers" within the meaning of the WARN Act, 29 U.S.C. § 2101 *et*
19 *seq.* during the relevant time period.

20 3. WSNA's claims are barred, in whole or in part, because at the time
21 notice would have been required under the WARN Act, Defendants were actively
seeking capital that would have avoided or postponed a closure, Defendants had a
good faith and reasonable belief that giving notice would have prevented
Defendants from obtaining the capital, and Defendants gave as much notice as was
practicable.

4. WSNA's claims are barred, in whole or in part, because Astria did not
employ the nurses WSNA represents who worked at the Medical Center and Astria

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1 is not a single employer with the Medical Center.

2 5. WSNA's claims are barred, in whole or in part, because at least some
3 of the nurses WSNA represents who worked at the Medical Center did not suffer
4 employment losses within the meaning of the WARN Act, *e.g.*, 29 U.S.C. §§
2101(a)(6), 2101(b)(2), 2104(a).

5 6. WSNA's claims are barred, in whole or in part, because the Medical
6 Center made payments to nurses WSNA represents during the period of the alleged
violation.

7 7. WSNA's claims are barred, in whole or in part, because at least some
8 of the nurses WSNA represents were employed for less than 120 days.

9 8. WSNA's claims are barred, in whole or in part, because neither
WSNA nor the nurses WSNA represents suffered actual damages.

10 9. WSNA's claims are barred, in whole or in part, because WSNA's
11 damages are speculative and unascertainable.

12 10. WSNA's claims may be barred, in whole or in part, by the doctrines of
waiver, estoppel, unclean hands, and laches.

13
14 WHEREFORE, Defendants pray that:

15 A. WSNA's Complaint be dismissed in its entirety with prejudice, or in
16 the alternative, that Defendants be awarded judgment in their favor and against
WSNA;

17 B. WSNA and the nurses WSNA represents take nothing by this action;

18 C. Defendants be awarded their costs and attorneys' fees under 29 U.S.C.
§ 2104(a)(6) and other applicable state and federal laws;

19 D. Defendants be awarded such further relief as the Court deems just and
20 proper.

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Dated: May 5, 2020

DENTONS US LLP

/s/ Sam J. Alberts
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CERTIFICATE OF SERVICE

I, XXX, declare under penalty of perjury that on the date noted below, I served the foregoing document, **Defendants' Answer**, on the following individuals in the manner indicated below:

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Dated this 5th day of May, 2020.

s/ XXX

Legal Secretary

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