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*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 and Debtors in  
 Possession.<sup>1</sup>

ASTRIA HEALTH, *et al.*,

Plaintiffs,

v.

Chapter 11  
 Lead Case No. 19-01189-11  
 Jointly Administered

**Adv. Proc. Case No. 20-80016-  
 WLH**

**OPPOSITION TO MOTION FOR  
 MANDATORY WITHDRAWAL  
 OF REFERENCE**

<sup>1</sup> The Debtors, along with their case numbers, are as follows: Astria Health (19-01189-11), Glacier Canyon, LLC (19-01193-11), Kitchen and Bath Furnishings, LLC (19-01194-11), Oxbow Summit, LLC (19-01195-11), SHC Holdco, LLC (19-01196-11), SHC Medical Center - Toppenish (19-01190-11), SHC Medical Center - Yakima (19-01192-11), Sunnyside Community Hospital Association (19-01191-11), Sunnyside Community Hospital Home Medical Supply, LLC (19-01197-11), Sunnyside Home Health (19-01198-11), Sunnyside Professional Services, LLC (19-01199-11), Yakima Home Care Holdings, LLC (19-01201-11), and Yakima HMA Home Health, LLC (19-01200-11).

**OBJECTION TO MANDATORY  
 WITHDRAWAL OF REFERENCE**

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1 UNITED STATES SMALL BUSINESS  
2 ADMINISTRATION and JOVITA  
3 CARRANZA, in her capacity as  
4 Administrator for the United States Small  
Business Administration,  
Defendants.

[Related Docket No. 26]

5 Debtor Astria Health (“Astria”), Debtor SHC Medical Center - Toppenish,  
6 doing business as Astria Toppenish Hospital (“Toppenish”), both Washington  
7 nonprofit corporations under § 501(c)(3) of title 26 of the United States Code, and  
8 Debtor Yakima HMA Home Health LLC doing business as Astria Home Health &  
9 Hospice-Yakima (“Astria Home Health”), also a Washington corporation, along with  
10 the above-referenced affiliated debtors (collectively, the “Debtors”), the debtors and  
11 debtors in possession in the above-captioned chapter 11 bankruptcy cases  
12 (collectively, the “Chapter 11 Cases”), hereby file this opposition (the “Opposition”)  
13 to the *Motion for Mandatory Withdrawal of Reference* [Docket No. 26] (the  
14 “Motion”) filed by Defendant United States Small Business Administration (the  
15 “SBA”) acting through Defendant Jovita Carranza in her capacity as the  
16 Administrator of the SBA (the “Administrator”, and together with the SBA, the  
17 “Defendants”), as follows:

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**OBJECTION TO MANDATORY  
WITHDRAWAL OF REFERENCE**

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I.

INTRODUCTION

The Defendants' Motion should be denied because (a) it is a violation of the parties' agreement, and the Bankruptcy Court's order, to stay all litigation pending final resolution of any appeal (the "Standstill Agreement"), as memorialized in the *Stipulated [Proposed] Order* [Adv. Pro. Docket No. 25] (filed before the Defendants filed the Motion), and as approved by the Bankruptcy Court in the *Stipulated Order* (the "Standstill Order") [Adv. Pro. Docket No. 33]; (b) the underlying proceeding and issues are core issues in a bankruptcy proceeding; (c) mandatory withdrawal of the reference requires more than mere application of the non-bankruptcy law, while this adversary proceeding required nothing more than the mere application of the Administrative Procedures Act; (d) the claims are neither complex nor beyond the jurisdiction of the Bankruptcy Court; and (e) it would be highly inefficient, and a waste of judicial resources, to require the United States District Court for the Eastern District of Washington (the "District Court") to acquire the intimate familiarity with the facts that are at the heart of the underlying causes of action and that are necessary to adjudicate the adversary proceeding, when the matter may be resolved in the pending SBA appeal of the Bankruptcy Court's order granting a preliminary injunction. For all these reasons, as discussed more fully herein and on the record in the Adversary Proceeding, the Motion should be denied.

1 II.

2 BACKGROUND

3 A. General Background

4  
5 The Debtors filed voluntary petitions for relief under chapter 11 of title 11 of  
6 the United States Code, §§ 101 *et seq.* (the “Bankruptcy Code”)<sup>2</sup> on May 6, 2019 (the  
7 “Petition Date”) in the United States Bankruptcy Court for the Eastern District of  
8 Washington (the “Bankruptcy Court”). These Chapter 11 Cases are currently being  
9 jointly administered before the Bankruptcy Court. [Lead Docket No. 10].

10 Since the Petition Date, the Bankruptcy Court has considered more than 1,400  
11 docket entries, adjudicated hundreds of disputes, and is considering multiple  
12 adversary proceedings. Moreover, the record developed in the Bankruptcy Court  
13 includes all facts central to resolving the above-captioned adversary proceeding (the  
14 “Adversary Proceeding”).

15 B. The SBA Adversary Proceeding

16 This Adversary Proceeding arises out of Banner Bank’s previous denial, at the  
17 direction of the SBA acting through the Administrator, of two of the Debtors’  
18 applications for loans under the Paycheck Protection Program (“PPP”) because the  
19 applicants are debtors in bankruptcy, . Through the Adversary Proceeding, the  
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21 <sup>2</sup> All references to “§” herein are to sections of the Bankruptcy Code.

1 Debtors sought to have the SBA and the Administrator enjoined from their improper  
2 and unlawful administration of PPP, which Congress enacted and the President  
3 signed as part of the Coronavirus Aid, Relief, and Economic Security Act (the  
4 “CARES Act”), Public Law 116-136.<sup>3</sup> The CARES Act included stimulus funds  
5 designed to assist businesses, including for-profits and 501(c)(3) nonprofits, and to  
6 ensure that American workers continue to be paid despite the economic impact of the  
7 Novel Coronavirus (“Covid-19”) and social distancing measures. Section 1102 of  
8 the CARES Act establishes PPP as a convertible loan program under § 7(a) of the  
9 Small Business Act, codified in 15 U.S.C § 636. While nominally called a “loan,”<sup>4</sup>  
10 PPP disbursements are treated as grants—and there are no repayment obligations—  
11 if, among other things, a certain percentage of PPP funds are used for payroll and  
12 wage expenses, interest on mortgages, rent, or utilities. Importantly, neither the  
13 CARES Act, the Small Business Act, nor any other applicable law or regulation  
14 prohibits the granting of PPP funds to bankruptcy debtors, with the exception of an  
15 SBA rule issued and published after the Debtors submitted their PPP applications.

16  
17 <sup>3</sup> A full text of the CARES Act can be found at  
18 <https://www.govtrack.us/congress/bills/116/hr748/text> (last visited on July 7, 2020).

19 <sup>4</sup> The Debtors’ use of the term “loan” or “loans” herein is not intended to waive or  
20 diminish its contention that PPP is in reality a support/grant program.

1 Nevertheless, the Defendants denied the Debtors access to PPP disbursements on the  
2 sole basis that the Debtors are in bankruptcy, and in so doing exceeded their statutory  
3 authority and improperly, unfairly, arbitrarily, capriciously, and unlawfully  
4 discriminated against the Debtors—in violation of § 525(a) of the Bankruptcy Code  
5 and Administrative Procedure Act (the “APA”), 5 U.S.C. § 706.<sup>5</sup>

6 After notice and hearing, the Bankruptcy Court granted the Debtors’ request  
7 for an order requiring the Defendants and all agents, servants, employees, and any  
8 parties acting in concert with any of the foregoing (the “Restrained Parties”) to  
9 consider the Debtors’ PPP applications and any related forms, applications, or other  
10 documents<sup>6</sup> without any consideration of the involvement of the Debtors or any  
11 owner of the Debtors in any bankruptcy. *Order Granting Preliminary Injunction,*  
12 *Denying Stay Pending Appeal, and Certifying Issues to the Ninth Circuit of Appeals*  
13 *[Adv. Proc. Docket No. 22]* (the “Preliminary Injunction Order”) on the grounds that  
14 the Defendants violated the § 706 of the APA.<sup>7</sup> Contrary to the Defendants’

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16 <sup>5</sup> The Debtors’ allegations are set forth more fully in the Complaint [Adv. Pro. Docket  
17 No. 1].

18 <sup>6</sup> This includes a lender application.

19 <sup>7</sup> The Defendants appealed the Preliminary Injunction Order to the District Court.  
20 *See Notice of Appeal Under 28 U.S.C. §158(a)(1) and Statement of Election, Adv.*

1 assertions that the Debtors' claims "require the Bankruptcy Court to interpret new  
2 non-bankruptcy law," the Bankruptcy Court merely applied the APA to the facts  
3 before it.

4 Just before the Defendants were set to file their Answer to the Complaint, the  
5 parties reached the Standstill Agreement, which would allow the parties to forego the  
6 expense of litigation on the merits pending an appeal of the Preliminary Injunction  
7 Order. However, within hours of filing the *Stipulated [Proposed] Order* [Adv. Pro.  
8 Docket No. 25], the Defendants filed the Motion, needlessly increasing litigation  
9 costs to the detriment of the Debtors. At no point during the parties' Standstill  
10 Agreement discussions did the Defendants mention they were planning to file the  
11 Motion. The Debtors agreed to a stay of all litigation pending the appeal, in good  
12 faith and with the understanding that the Standstill Agreement applied to everything  
13 other than the appeal itself. The Motion is not a part of the appeal, and is thus a  
14 violation of the parties' agreement, and the Standstill Order.

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18 Pro. Docket No. 28; *see also* App. Case No. 20-cv-03089. The Debtors cross-  
19 appealed. Adv. Pro. Docket No. 34. As of the date of this filing, neither sides' brief  
20 is yet due to be filed.

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### III.

## ARGUMENT

#### A. The Motion Should Be Denied Because It Violates the Bankruptcy Court's Order

The Motion should be denied as it violates the terms of the Standstill Agreement between the Defendants and the Debtors and, in turn, violates the Standstill Order [Adv. Pro. Docket No. 33]. That agreement says: "The parties hereby agree to stay this Adversary Proceeding pending the United States' appeal of the Order Granting Preliminary Injunction. Such stay shall only apply to further litigation of this Adversary Proceeding on the merits and does not stay the Order Granting Preliminary Injunction." That language captures the Motion, which is clearly violating the Standstill Agreement and Standstill Order to "stay the Adversary Proceeding pending the United State' appeal." As such, the Defendants are in civil contempt for ignoring the Standstill Order staying the Adversary Proceeding, when there is no fair ground of doubt as to whether the Standstill Order barred the Defendants from filing the Motion. *Taggart v. Lorenzen*, 139 S. Ct. 1795 (June 3, 2019) (A bankruptcy court may hold a creditor in civil contempt for attempting to collect on a debt that has been discharged in bankruptcy "if there is *no fair ground of doubt* as to whether the order barred the creditor's conduct."); *Suh v. Anderson (In re Jeong)*, 2020 WL 1277575 (B.A.P. 9th Cir. Mar. 16, 2020) (Panel applied the



1 *Taggart* standard in upholding a bankruptcy court order granting a chapter 7 trustee's  
2 request for contempt sanctions for a willful violation of the stay.). Here the Debtors  
3 do not seek sanctions for violating the standstill agreement and the Bankruptcy Court  
4 order other than denial of the Motion and enforcement of the Standstill Agreement.

5 **B. The Proceeding Is Core**

6 The Adversary Proceeding raise two issues, both of which are core matters.  
7 The cause of action asserting relief under § 525 is a core proceeding because it asserts  
8 a right based expressly and solely on a Bankruptcy Code provision. More  
9 importantly, the cause of action related to the Administrative Procedures Act  
10 violation is also a core matter, because of the nature of the issue presented. Here the  
11 issue is whether the SBA could exclude debtors in bankruptcy from participation in  
12 the PPP. It is an issue that can only arise in the context of a bankruptcy case, because  
13 the exclusion would not apply outside of a bankruptcy case. Moreover, it could not  
14 have existed prepetition, as absent a bankruptcy case it would not exist, and the  
15 Debtors' rights are significantly affected as a result of the bankruptcy filing. Thus,  
16 this cause of action is core. *Kirk v. Hendon (In re Heinsohn)*, 247 B.R. 237 (E.D.  
17 Tenn. 2000) (proceeding is "core" if it invokes substantive right provided by title 11  
18 or if it is a proceeding that, by its nature, could arise only in the context of  
19 bankruptcy); *Houbigant, Inc. v. ACB Mercantile, Inc. (In re Houbigant, Inc.)*, 185  
20 B.R. 680 (S.D.N.Y. 1995) (proceeding is core if it invokes a substantive right  
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1 provided by the Bankruptcy Code or by nature could arise only in the context of a  
2 bankruptcy case); *Hudgins v. Shah (In re Sys. Eng'g & Energy Mgmt. Assocs., Inc.)*,  
3 252 B.R. 635 (Bankr. E.D. Va. 2000) (among factors that courts may consider in  
4 deciding whether claim is "core" are the following: (1) whether claim existed  
5 prepetition; (2) whether claim would continue to exist independent of provisions of  
6 title 11; and (3) whether parties' rights, obligations, or both are significantly affected  
7 as result of debtor's bankruptcy filing).

8 The Defendants mistakenly cite the Ninth Circuit as supporting their argument.  
9 See Motion at 13-14 (citing *In re Ray*, 624 F.3d 1124, 1131 (9th Cir. 2010) ("a core  
10 proceeding is one that 'invokes a substantive right provided by title 11 or ... a  
11 proceeding that, by its nature, could arise only in the context of a bankruptcy  
12 case,'")). The Defendants somehow insinuate that this Adversary Proceeding could  
13 arise in any context outside of bankruptcy. However, this logic is flawed as the  
14 Defendants unambiguously admit that they discriminated against the Debtors solely  
15 because of their status as debtors in bankruptcy. See *Defendants Brief in Opposition*  
16 *to Plaintiffs' Motion for Temporary Restraining Order (ECF No. 2) Request for*  
17 *Preliminary Injunction (ECF No. 1)* [Adv. Pro. Docket No. 14] at 15:13-14 ("Here,  
18 the status quo is that plaintiffs are excluded from the PPP program because they are  
19 in bankruptcy."). Moreover, the Debtors claims for violations of § 525(a) of the  
20 Bankruptcy Code can arise only in bankruptcy.

1 **C. Withdrawal of the Reference is Not Mandated**

2 Federal courts have “original and exclusive jurisdiction of all cases under title  
3 11,” which they may refer to the Bankruptcy Court. *See* 28 U.S.C. §§ 157(a) and  
4 1334(a). In select circumstances, though, the District Court must withdraw that  
5 reference “if the court determines that resolution of the proceeding requires  
6 consideration of both title 11 and other laws of the United States regulating  
7 organizations or activities affecting interstate commerce.” *Id.* § 157(d); *see also Sec.*  
8 *Farms v. Int’l Bhd. of Teamsters*, 124 F.3d 999, 1008 (9th Cir. 1997).

9 However, courts interpret this provision narrowly to prevent the very type of  
10 forum shopping being pursued here by the Defendants. *See In re Temecula Valley*  
11 *Bancorp, Inc.*, 523 B.R. 210, 214 (C.D. Cal. 2014) (citing *In re Vicars Ins. Agency,*  
12 *Inc.*, 96 F.3d 949, 952 (7th Cir. 1996)); *Lucore v. Guild Mortg. Co.*, No. 12-CV-  
13 1411-IEG WVG, 2012 WL 2921354, at \*2 (S.D. Cal. July 16, 2012) (“Congress  
14 intended for this language to be construed narrowly.”); *In re Roman Catholic Bishop*  
15 *of San Diego*, No. 07-1355, 2007 WL 2406899 (S.D. Cal. Aug. 20, 2007) (“Congress  
16 intended the mandatory withdrawal provision to be construed narrowly so as not to  
17 create an ‘escape hatch’ by which most bankruptcy matters could easily be removed  
18 to the district court.”); *see also Shurgrue v. Air Line Pilots Ass’n Intel (In re*  
19 *Ionosphere Clubs, Inc.)*, 922 F.2d 984, 995 (2d Cir. 1990). Indeed, withdrawal is  
20 rarely required, consistent with Congress’s clear intent behind enacting “a modern  
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1 bankruptcy system [that] places the basic rudiments of the bankruptcy process in the  
2 hands of an expert equitable tribunal.” *Granfinanciera, S.A. v. Nordberg*, 492 U.S.  
3 33, 94 (1989) (Blackmun, J., dissenting).

4 Given the high standard, a party seeking to withdraw the reference bears the  
5 burden of persuasion, and “must do more than merely suggest that novel issues of  
6 law could possibly arise in a bankruptcy proceeding.” *In re Tamalpais Bancorp*, 451  
7 B.R. 6, 8 (N.D. Cal. 2011); *see also Weinstein v. Kuhl*, No. 18-01351-HSG, 2018  
8 WL 4904901, at \*3 (N.D. Cal. Oct. 9, 2018). As set forth below, the Defendants  
9 have not satisfied their burden, and the circumstances here do not warrant  
10 withdrawal.

11 To avoid forum shopping, a majority of courts have found that mandatory  
12 withdrawal is proper only where “substantial and material consideration of non-  
13 Bankruptcy Code federal statutes is necessary for the resolution of the proceeding.”  
14 *In re Ionosphere Clubs, Inc.*, 922 F.2d 984, 995 (2d Cir. 1990). In most courts,  
15 including most courts in the Ninth Circuit, this standard -- the substantial and material  
16 consideration of the non-bankruptcy statutes -- has been articulated as “mandatory  
17 withdrawal is required only when [non-title 11] issues require the interpretation, as  
18 opposed to mere application, of the non-title 11 statute, or when the court must  
19 undertake analysis of significant open and unresolved issues regarding the non-title  
20 11 law.” *Tamalpais Bancorp*, 451 B.R. at 8 (citing *In re Vicars Ins. Agency, Inc.*, 96

1 F.3d at 954 and collecting cases in the Ninth Circuit adopting this standard); *see also*  
2 *Smails v. City of Pittsburgh Sch. Dist.*, No. 15-1489, 2016 WL 110029, at \*2 (M.D.  
3 Pa. Jan. 11, 2016); *In re Nortel Networks, Inc.*, 539 B.R. 704, 709 (D. Del. 2015);  
4 *One Longhorn Land I, L.P. v. Presley*, 529 B.R. 755, 759-60 (C.D. Cal. 2015); *In re*  
5 *IndyMacBancorp Inc.*, No. CV 11-03969-RGK, 2011 WL 2883012, at \*2 (C.D. Cal.  
6 July 15, 2011); *United States v. Delfasco, Inc.*, 409 B.R. 704, 707 (D. Del. 2009); *In*  
7 *re G-I Holdings, Inc.*, 295 B.R. 222, 224 (D.N.J. 2003).

8 Here, the SBA argues that the withdrawal is required because the Bankruptcy  
9 Court would have to review the CARES Act or some other new and novel body of  
10 law. But that is a “red herring.” The Bankruptcy Court’s decision applies the  
11 Administrative Procedures Act, a law which was passed in 1946, more than 70 years  
12 ago, to establish uniform procedures for federal agencies to propose and establish  
13 regulations. *See, e.g., Franklin v. Massachusetts*, 505 U.S. 788, 796 (1992) (the APA  
14 “sets forth the procedures by which federal agencies are accountable to the public  
15 and their actions subject to review by the courts”); *United States v. Morton Salt Co.*,  
16 338 U.S. 632, 644 (1950) (discussing legislative purpose of the APA); *Sequoia*  
17 *Orange Co. v. Yeutter*, 973 F.2d 752, 758 (9<sup>th</sup> Cir. 1992) (“The procedural safeguards  
18 of the APA help ensure that government agencies are accountable and their decisions  
19 are reasoned.”).

1 The standards governing the application of the APA are well established and  
2 understood and the application of them is clear, especially with regard to whether  
3 decisions are arbitrary and capricious. *See e.g., Dep't of Homeland Sec. v. Regents*  
4 *of the U. of Cal.*, 591 U. S. \_\_\_\_ (2020) (“The basic rule here is clear: An agency  
5 must defend its actions based on the reasons it gave when it acted. This is not the  
6 case for cutting corners to allow [the agency] to rely upon reasons absent from its  
7 original decision.”); *Motor Vehicles Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*,  
8 463 U.S. 29, 43 (1983). . This is not a case requiring a novel interpretation of the  
9 APA or an interpretation of the CARES Act, but merely the application of the APA’s  
10 well established body of law and well recognized standards to the facts before the  
11 Bankruptcy Court. Here, the Bankruptcy Court correctly found that the  
12 administrative record is wholly lacking any substantive reasoning or explanation.  
13 Where the court is merely applying settled law, as the Bankruptcy Court was doing  
14 here with regard to the APA, withdrawal is not appropriate. *LTV Steel Co. v. Union*  
15 *Carbide Corp. (In re Chateaugay Corp.)*, 193 B.R. 669 (S.D.N.Y. 1996) (withdrawal  
16 of reference not required if consideration of non-Code law entails straightforward  
17 application of settled law to facts of particular case); *In re E & S Facilities, Inc.*, 181  
18 B.R. 369, 372 (S.D. Ind. 1995) (withdrawal requires either (1) complicated issues of  
19 first impression requiring significant interpretation of Federal law, or (2) substantial  
20 and material conflicts between the Bankruptcy Code and non-title 11 laws), *aff’d*, 96

1 F.3d 949 (7th Cir. 1996); *In re Philadelphia Training Ctr. Corp.*, 155 B.R. 109 (E.D.  
2 Pa. 1993) (mandatory withdrawal not required where only routine application of  
3 established legal standards is required); *Am. Body Armor & Equip., Inc. v. Clark (In*  
4 *re Am. Body Armor & Equip., Inc.)*, 155 B.R. 588 (M.D. Fla. 1993) (mandatory  
5 withdrawal only for cases of first impression or where “substantial and material  
6 conflicts” exist between Bankruptcy Code and other Federal law); *Wittes v. Interco,*  
7 *Inc.*, 137 B.R. 328 (E.D. Mo. 1992) (where issues required no more than  
8 “straightforward application,” and not significant interpretation of ADEA,  
9 reference not withdrawn).

10 **D. Conclusion**

11 Based on the foregoing, the Motion should be denied because it violates the  
12 Bankruptcy Court’s Standstill Order, asks to withdraw the reference to deal with two  
13 core matters under the Bankruptcy Code, and fails to satisfy the requirements for  
14 mandatory withdrawal of the reference, because it merely presents the application of  
15 well settled legal precedent related to the APA to the facts of this case.  
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1 Dated: July 7, 2020

DENTONS US LLP

By /s/ Sam J. Alberts

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