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

In re. . .

**ASTRIA HEALTH, et al.,**

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

Jointly Administered Under:  
Lead Case No. **19-01189-WLH11**  
Chapter **11**

**NOTICE OF REQUEST FOR  
ALLOWANCE AND PAYMENT OF  
ADMINISTRATIVE EXPENSE  
CLAIM OF CERNER  
CORPORATION**

<sup>1</sup> The Debtors and their respective 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).



1 PLEASE TAKE NOTICE THAT Cerner Corporation, on behalf of itself and its  
2 affiliates (collectively, “Cerner”), creditors and parties-in-interest of Astria Health, *et al.*  
3 (“Debtors”), by and through undersigned counsel, has filed a Request For Allowance And  
4 Payment Of Administrative Expense Claim Of Cerner Corporation (the “Request”),  
5 pursuant to Section 503(b) of Title 11 of the United States Code, for allowance of an  
6 administrative expense claim in the amount of \$2,125,497.75 against the Debtors. In  
7 summary, the Request seeks entry of an Order: (a) allowing Cerner’s administrative expense  
8 claim in the amount of \$2,125,497.75; (b) directing payment of the full balance to Cerner;  
9 and (c) granting such other and further relief as this Court deems just and equitable.  
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### 13 **BACKGROUND**

14 1. On May 6, 2019 (“Petition Date”), the Debtors each filed a Petition for relief  
15 under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 – 1532 (the  
16 “Bankruptcy Code”), in the United States Bankruptcy Court for the Eastern District of  
17 Washington.  
18

19 2. Prior to the Petition Date, debtor Astria Health, as Regional Health, entered  
20 into a Cerner Business Agreement with Cerner. Since the execution of the Cerner Business  
21 Agreement, Astria Health has entered into various additional contracts, sales orders,  
22 amendments, schedules and arrangement letters with Cerner (collectively with the Cerner  
23 Business Agreement, these contracts, sales orders, amendments, schedules and arrangement  
24 letters are referred to as the “Agreement”). Under the terms of the Agreement, the Debtors  
25

1 licensed from Cerner certain software solutions necessary to the operations of the Debtors'  
2 hospital facilities. Through the Agreement, the Debtors also purchased various professional  
3 services and ordered software support associated with the healthcare information software  
4 licensed through the Agreement.  
5

6 3. SHC Medical Center-Yakima (“ARMC”) was a “Permitted Facility” receiving  
7 services through the Agreement.  
8

9 4. After the Petition Date, the Debtors have continued to operate Cerner's  
10 software under the license granted by Cerner and Cerner continued to provide healthcare  
11 information technology and services to the Debtors, including to ARMC. The Debtors have  
12 not stayed current in their payments to Cerner for post-petition use of the licenses or  
13 services.  
14

15 5. On June 5, 2020, the Debtors filed a Motion for Entry of an Order (I) Fixing  
16 the First Interim Bar Date for Filing Certain Postpetition Administrative Expense Claims  
17 and (II) Approving the Form of Notice of the Administrative Expense Claims Bar Date  
18 [Dkt. No. 1350] (the “Admin Bar Date Motion”). An order granting the Admin Bar Date  
19 Motion was entered on June 17, 2020 [Dkt. No. 1416].  
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22 6. The Admin Bar Date Motion excludes from those who must file  
23 administrative expense claims providers of goods and services to the Debtors in the ordinary  
24 course of business. However, vendors of goods and services to ARMC are not included  
25 within the exception.

1           7.     For the period from the Filing Date through June 17, 2020, the Debtors owe  
2 Cerner \$2,125,497.75 for equipment, software, maintenance, support, licensing fees and  
3 related obligations provided to ARMC under the Agreement. *See* Account Summary,  
4 attached as Exhibit A to the Request.<sup>2</sup>

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6                                   **RELIEF REQUESTED AND BASIS THEREFORE**  
7

8           8.     Section 503 of the Bankruptcy Code states that an entity shall be allowed an  
9 administrative expense claim for the “actual, necessary costs and expenses of preserving the  
10 estate....” 11 U.S.C. § 503(b)(1)(A). An administrative expense claim will be allowed  
11 where the expense “(1) arose from a transaction with the debtor-in-possession as opposed to  
12 the preceding entity (or, alternatively, that the claimant gave consideration to the debtor-in-  
13 possession); and (2) directly and substantially benefited the estate.” *Microsoft Corp. v. DAK*  
14 *Indus. (In re DAK Indus.)*, 66 F.3d 1091, 1094 (9th Cir. Cal. 1995).  
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17           9.     For the period from the Petition Date to the date the order approving the  
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19 <sup>2</sup> The documentary evidence that supports this Request is too voluminous to attach to the Request,  
20 and contains, in part, confidential information. The evidence should be part of the Debtors’  
21 business records, but copies will be provided to the Debtors (or to others with appropriate  
22 confidentiality measures) upon request. As shown in the Summary of Open Invoices attached as  
23 Exhibit B to the Request, the total postpetition amount currently owed Cerner for services  
24 provided under the Agreement is \$5,135,736.00. In reliance on the exclusion in the Admin Bar  
25 Date Motion for providers of goods and services in the ordinary course of business to the  
Debtors other than ARMC, Cerner is only including the amounts allocated to ARMC in this  
Request. The Summary of Account attached as Exhibit A to the Request is an excerpt from the  
totals shown on Exhibit B to the Request. Correspondingly, although as counterparty to and  
“Client” under the Agreement, Astria Health is liable for the entire postpetition balance, Cerner  
is filing this Request in abundance of caution based on services that were provided to ARMC as  
a Permitted Facility under the Agreement.

1 Admin Bar Date Motion was entered, the Debtors owe Cerner \$2,125,497.75 under the  
2 Agreement for services provided to ARMC, which have not been paid. Through the  
3 equipment and software acquired, and use of the licensed technology authorized under the  
4 terms of the Agreement, ARMC was able to operate the hospital and care for its patients.  
5 These licenses and services were essential to the successful operation of the facility.  
6

7  
8 10. Cerner provided the software solutions to ARMC in the ordinary course of the  
9 debtor's business as post-petition services necessary to preserve the value of the debtor's  
10 estate and to allow ARMC to explore the possibility of a sale of its facility as a going  
11 concern. Accordingly, the services were "actual, necessary" costs of preserving the estate  
12 and pursuant to §503(b)(1)(A) of the Bankruptcy Code, Cerner is entitled to allowance of its  
13 post-petition claim in the amount of \$2,125,497.75 as an administrative expense claim,  
14 which administrative expense claim is entitled to priority distribution pursuant to §  
15 507(a)(2) of the Bankruptcy Code.  
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18 11. Cerner submits the Request as required to preserve its rights under the order  
19 approving the Admin Bar Date Motion. Cerner has a right to arbitrate any disputes under  
20 the Agreement, and is not waiving and reserves the right to enforce such provisions in  
21 accordance with relevant law.  
22

23 **NOTICE**

24 PLEASE TAKE FURTHER NOTICE that any opposition to the above Request must  
25 be in writing, must be filed with the Clerk of the United States Bankruptcy Court, West 904

1 Riverside Avenue, Spokane, Washington 99210, and must be served upon the undersigned  
2 counsel not later than **twenty-four (24)** days from the date of this Notice. If no objection is  
3 timely filed and served, the relief requested may be granted without a hearing.  
4

5 Pursuant to Local Rule 2002-1(f)(1) and (2), any objection shall state briefly the  
6 grounds therefore. If an objection states no grounds, the Court may strike the objection on  
7 ex parte motion of the moving party. The moving party, however, may make such ex parte  
8 motion to strike only after the objecting party fails within seven (7) days to respond to a  
9 request by the moving party for a brief statement of the grounds for the objection. If an  
10 objection is filed, and a hearing is set, the opposing party must comply with FRBP 9006(d),  
11 which states, in part, that any written response shall be served not later than one (1) day  
12 before the hearing, unless the Court permits otherwise.  
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15 DATED this 22<sup>nd</sup> day of July 2020.

16 DAVIDSON BACKMAN MEDEIROS PLLC

17 /s/ Barry W. Davidson

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