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HONORABLE WHITMAN L. HOLT

Hearing Date: August 25, 2020
Time: 1:30 p.m. (Pacific Time)
Location: Telephonic only
Phone Number: 1-877-402-9757
Conference Code: 7036041

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

In re:

ASTRIA HEALTH, *et al.*,

Debtors and Debtors in
Possession.

Washington State Nurses Association,

Plaintiff,

v.

SHC Medical Center-Yakima, Astria Health,

Defendants.

Chapter 11

Lead Case No. 19-01189-11

Jointly Administered

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

**NOTICE OF DEBTORS' AND WSNA'S
JOINT MOTION AND DEBTORS' AND
WSNA'S JOINT MOTION FOR AN
ORDER APPROVING SETTLEMENT
PURSUANT TO FED. R. BANKR. P. 9019
AND RESOLVING ADVERSARY
PROCEEDING**

9019 MOTION

20-80005-WLH Doc 34 Filed 07/30/20 Entered 07/30/20 23:06

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1 **PLEASE TAKE NOTICE** that at the above-referenced date, time and
2 location, the above-captioned debtors and debtors in possession (the “Debtors”) in
3 the above-captioned chapter 11 bankruptcy cases (the “Cases”) and the Washington
4 State Nurses Association (“WSNA” and together with the Debtors, the “Parties”,
5 and each a “Party”) will jointly move (the “Motion”) the Court for entry of an order,
6 pursuant to Federal Rule of Bankruptcy Procedure (“Bankruptcy Rule”) 9019,
7 authorizing the Parties to enter into that certain settlement agreement (the
8 “Settlement Agreement”), filed separately under seal, thereby completely and fully
9 resolving the above-captioned adversary proceeding (the “Adversary Proceeding”).

10 **PLEASE TAKE FURTHER NOTICE** that this Motion is based on this
11 Notice of Motion and Motion, as well as the attached Declaration of Michael Lane,
12 supporting statements, arguments and representations of counsel who will appear at
13 the hearing on the Motion, if any, the record in this case, and any other evidence
14 properly brought before the Court in all other matters of which this Court may
15 properly take judicial notice.

16 **PLEASE TAKE FURTHER NOTICE** that any party opposing or
17 responding to the Motion must file a response (“Response”) with the Bankruptcy
18 Court and serve a copy of it upon the Debtors, WSNA and the United States Trustee
19 not later than 21 days from the date of this Notice. A Response must be a complete
20 written statement of all reasons in opposition to the Motion or in support,
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1 declarations and copies of all evidence on which the responding party intends to
2 rely, and any responding memorandum of points and authorities.

3 **PLEASE TAKE FURTHER NOTICE** that the failure to file and serve a
4 timely objection to the Motion may be deemed by the Court to be consent to the
5 relief requested herein.

1 Dated: July 30, 2020

DENTONS US LLP
SAMUEL R. MAIZEL
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4 By /s/ Sam J. Alberts
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5 Attorneys for the Defendants and the
6 Chapter 11 Debtors and Debtors In
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INTRODUCTION

The above-captioned debtors and debtors in possession (the “Debtors”), including Defendants Astria Health (“Astria”) and SHC Medical Center-Yakima (“ARMC” or the “Medical Center”) (collectively, “Defendants”), and the Washington State Nurses Association (“WSNA” and together with the Debtors, the “Parties”, and each a “Party”) by and through their undersigned counsel, hereby jointly file this motion (the “Motion”) to enter into the Settlement Agreement (the “Settlement Agreement”), filed separately under seal, thereby completely and fully resolving the above-captioned adversary proceeding (the “Adversary Proceeding”).

JURISDICTION

This Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

STATEMENT OF FACTS

1. On May 6, 2019 (the “Petition Date”), the Debtors each filed separate petitions for relief under Chapter 11¹ of the Bankruptcy Code (the “Bankruptcy Cases”) in the United States Bankruptcy Court for the Eastern District of

¹ Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and all “Rule” references are to the Federal Rules of Bankruptcy Procedure.

1 Washington (the “Bankruptcy Court”), and since that date, the Debtors have been
2 operating as debtors in possession.

3 2. ARMC and WSNA are signatories to a Collective Bargaining
4 Agreement dated April 9, 2019 (the “CBA”).

5 3. WSNA is the bargaining representative of certain employees who
6 worked at ARMC (collectively the “WSNA Members” and each a “WSNA
7 Member”).

8 4. On January 3, 2020 the Debtors filed a motion seeking to close ARMC
9 on an emergency basis [Docket No. 867] (the “Closure Motion”).

10 5. On January 8, 2020, the Bankruptcy Court granted the Closure Motion
11 [Docket No. 874] and thereafter, in January, ARMC closed and has no longer
12 provided medical care as an operating hospital to patients (the “Closure”).

13 6. On January 10, 2020, WSNA filed its Emergency Motion for
14 Reconsideration of the Order Authorizing Closure of the Medical Center [Docket
15 No. 876], which was denied by the Bankruptcy Court [Docket No. 897].

16 7. Due to the closure of ARMC, the WSNA Members were separated
17 from employment at ARMC.

18 8. Certain WSNA Members were retained by other Debtor facilities (each
19 a “Rehired Employee” and all collectively, the “Rehired Employees”).

20 9. On January 31, 2020 WSNA filed a complaint (the “Complaint”) in the
21 Bankruptcy Court and thereby commenced the Adversary Proceeding, which is

1 designated as Adv. Pro. No. 20-80005, in which WSNA sought damages, fees and
2 expenses from the Defendants based upon the assertion that Defendants failed to
3 provide sufficient notice in advance of the closure of ARMC to WSNA Members
4 who were separated from employment due to the Closure (the “WARN Act Claim”)
5 under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101-
6 09 (the “WARN Act”) and for failure to pay unused paid time off (“PTO”) on their
7 last day of employment (the “PTO Claim”) under the Washington Wage Payment
8 and Collection Act, RCW 49.48.010-900 (the “Payment Act”) and the Washington
9 Wage Rebate Act, RCW 49.52.010-090 (the “Rebate Act”).

10 10. The Defendants (and other Debtors) dispute the merits of the
11 Complaint.

12 11. After the filing of the Complaint, the Debtors paid to each WSNA
13 Member who was terminated from ARMC due to the Closure (each an “Eligible
14 Member” and, collectively, the “Eligible Members”) (i) all unused and previously
15 unpaid PTO earned after the Petition Date; and (ii) all unused and previously unpaid
16 PTO earned within the 180-day period prior to the Petition Date up to the remaining
17 available individual balance under 11 U.S.C. § 507(a)(4).

18 12. Upon a motion to dismiss filed by the Defendants, the Bankruptcy
19 Court dismissed WSNA’s causes of action brought under the Payment Act and
20 Rebate Act but did not dismiss the WARN Act claim.

1 13. WSNA and the Debtors have engaged in good-faith, arm's length
2 negotiations in an effort to resolve the remaining issues underlying the Complaint
3 and the remaining claims thereunder.

4 14. The Parties desire to avoid the costs of further discovery and litigation
5 at this time on the terms set forth in the Settlement Agreement, certain material
6 provisions of which are summarized below²:

7 (a) In addition to the amounts already paid by the Debtors, the Debtors will
8 make payments that total in the maximum an aggregate amount agreed to by
9 the Parties and provided to the Court (the "Settlement Payment")³ with
10 respect to and for the benefit of each Eligible Member in complete
11 satisfaction of any WARN Act or other claim that was asserted or could have
12 been asserted under the Complaint arising from or related to the Closure or
13 that might otherwise exist concerning the Debtors' activities with respect to
14 ARMC.

15 (b) WSNA will provide to the Debtors the identity of and the amount for
16 distribution of the Settlement Payment to each Eligible Member (each, a
17 "Member Share"), and WSNA will bear sole responsibility thereof and the
18 Debtors shall not be liable for any inclusion or omission of any recipient.

19 (c) Each Member Share shall be made payable by check (less all applicable
20 deductions and withholdings under federal, state and local law, to the extent
21 known by the Debtors) to each Eligible Member and each check shall be
22 given to WSNA within fifteen (15) business days after entry of a Bankruptcy
23 Court order approving the Agreement that is not subject to a stay, and WSNA
24 shall distribute each check to each Eligible Member, only after the execution

25 ² In the event the terms of this Motion and the Settlement Agreement conflict, the
26 Settlement Agreement shall control.

27 ³ The Debtors have obtained approval of the Settlement Agreement from their
28 largest secured lender. The Parties submit that no other person or entity need be
29 privy to the terms of the Settlement Agreement.

and delivery by WSNA of waivers and general releases, as set forth more fully in the Settlement Agreement.

(d) With respect to PTO, each Eligible Member who is not a Rehired Employee and who provides a timely waiver and release as described in the Settlement Agreement, in addition to all amounts already paid to such Eligible Member and the Member Share, shall have an allowed general unsecured claim for their remaining hours of accrued and unused PTO.

(e) Any unused PTO of an Eligible Member who is a Rehired Employee shall be transferred to Rehired Employee's PTO/Vacation Leave account with the new Debtor employer (the "Transferred PTO"). The Transferred PTO may be used by or paid to such Rehired Employee in accordance with the policy of the new Debtor. For the avoidance of doubt, any and all other amounts not included in the Member Shares, whether or not previously paid to WSNA and/or an Eligible Member, will be treated as a general unsecured claim only, and not as priority claim or administrative expense.

(f) Any Member Share that is not cashed or otherwise negotiated within 180 days of the date of mailing of such Member Share shall a) render the Member Share void, b) permanently nullify that person's status as an Eligible Member, and c) cause the amount of the Member Share to permanently revert to back to the Debtor; provided that collective reversions of up to \$20,000 shall be paid to WSNA Foundation for use for educational purposes. Any Eligible Member who does not execute and deliver to the Debtors a general release and waiver shall forfeit his/her Member Share, which shall permanently revert to the Debtors or WSNA Foundation.

(g) WSNA agrees that it will dismiss the Adversary Proceeding, with prejudice, within ten (10) business days after the date of entry of an order approving the Settlement Agreement that is not subject to a stay.

(h) WSNA shall be solely responsible for distributing general releases/waivers to Eligible Members.

(i) WSNA agrees that upon approval by the Bankruptcy Court of this Agreement, the CBA is cancelled, rejected and terminated and shall have no further application or effect.

(j) WSNA agrees to support any Plan of the Debtors that does not contradict the material terms of this Agreement. WSNA further agrees to

support and not otherwise oppose any sale or disposition of ARMC or its assets.

(k) The terms of this Agreement supersede any prior agreement(s) between the Parties as to the disposition of the Released Claims (as defined in the Settlement Agreement) or the other matters covered by the Settlement Agreement.

(l) The Parties expressly agree that the Settlement Agreement shall extend and apply to all unknown, unsuspected and unanticipated damages and hereby waive and release any and all rights under any law providing for the contrary.

DISCUSSION

The authority granted a trustee or debtor in possession to compromise a controversy or agree to a settlement is set forth in Bankruptcy Rule 9019(a), which provides in pertinent part that “[o]n motion by the [debtor in possession] and after hearing on notice to creditors . . ., the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). Bankruptcy Rule 9019(a) affords the Bankruptcy Court “great latitude in approving compromise agreements” proposed by a debtor and may approve a proposed compromise so long as it is fair and equitable. *Woodson v. Fireman’s Fund Ins. Co. (In re Woodson)*, 839 F.2d 610, 620 (9th Cir. 1987).

“The purpose of a compromise agreement is to allow the [debtor in possession] and the creditors to avoid the expenses and burdens associated with litigating sharply contested and dubious claims.” *Martin v. Kane (In re A & C Props.)*, 784 F.2d 1377, 1380-81 (9th Cir. 1986), *cert. denied sub nom., Martin v. Robinson*, 479 U.S. 854 (1986). Accordingly, in approving a settlement agreement,

1 the Court need not conduct an exhaustive investigation of the claims sought to be
2 compromised. *United States v. Alaska National Bank (In re Walsh Constr., Inc.)*,
3 669 F.2d 1325, 1328 (9th Cir. 1982). Rather, it is sufficient that the Court find that
4 the settlement was negotiated in good faith and is reasonable, fair, and equitable. *A*
5 *& C Props.*, 784 F.2d at 1381.

6 The Ninth Circuit has identified the following factors for consideration in
7 determining whether a proposed settlement agreement is reasonable, fair, and
8 equitable:

- 9 (a) the probability of success in the litigation;
- 10 (b) the difficulties, if any, to be encountered in the matter of collection;
- 11 (c) the complexity of the litigation involved, and the expense,
12 inconvenience, and delay necessarily attending it; and
- 13 (d) the paramount interest of the creditors and a proper deference to their
14 reasonable views in the premises.
15

16 *Id.* at 1381 (the “*A & C Factors*”).

17 A court should not substitute its own judgment for the judgment of the debtor
18 in possession. *Matter of Carla Leather, Inc.*, 44 B.R. 457, 465 (Bankr. S.D.N.Y.
19 1984). A court, in reviewing a proposed settlement, is not to decide the numerous
20 questions of law and fact but rather to canvass the issues to determine whether the
21 settlement falls below the lowest point in the range of reasonableness. *In re W.T.*

1 *Grant & Co.*, 699 F.2d 599, 608 (2nd Cir. 1983); accord *Newman v. Stein*, 464 F.2d
2 689, 693 (2d Cir. 1972). The court should not conduct a “mini-trial” on the merits
3 of the underlying cause of action. *Matter of Walsh Const., Inc.*, 669 F.2d 1325,
4 1328 (9th Cir. 1982); *In re Blair*, 538 F.2d 849 (9th Cir. 1976). It is well established
5 that compromises are favored in bankruptcy.” *In re Lee Way Holding Co.*, 120 B.R.
6 881, 891 (Bankr. S.D. Ohio 1990). In addition to the *A & C* Factors, it is also well
7 established that the law favors compromise. *Blair*, 538 F.2d at 851.

8 The Parties believe that the Settlement Agreement is reasonable, fair and
9 equitable and is in the best interests of the Debtors’ estates. A review of the *A & C*
10 Factors supports Court approval of the Settlement Agreement as follows:

11 (a) **The probability of success in the litigation.**

12 While the Debtors and WSNA respectively maintain that each Party would
13 ultimately prevail if the Adversary Proceeding were to proceed further, the nature of
14 the litigation process is inherently uncertain. The approval of the Settlement
15 Agreement allows the Parties to avoid such uncertainty and reach an efficient, fair
16 and reasonable resolution to the dispute. This factor supports approval of the
17 Settlement Agreement.

1 (b) The difficulties, if any, to be encountered in the matter of
2 collection.

3 Certain Debtors comprise the Defendants in the Adversary Proceeding. As
4 such, the Debtors are not seeking to collect funds under the Adversary Proceeding.
5 Therefore, this element does not factor into an analysis regarding whether the
6 Settlement Agreement should be approved from the Debtors' perspective.

7 While WSNA does not have a reason to believe it would encounter any
8 difficulties in collecting from the Defendants, approval of the Settlement Agreement
9 removes all doubt. This factor supports approval of the Settlement Agreement from
10 WSNA's perspective.

11 (c) The complexity of the litigation involved, and the expense,
12 inconvenience and delay necessarily attending it.

13
14 The Parties are major entities represented by able, sophisticated counsel who
15 have actively negotiated and litigated against each other. Litigation of the
16 Adversary Proceeding requires an in depth analysis of copious employment records
17 and the interpretation and intricate application of both labor and bankruptcy law.
18 Additionally, further litigation of the Adversary Proceeding will result in
19 unnecessary additional expense for both the Debtors' estates, and WSNA.
20 Furthermore, litigation of the Adversary Proceeding to its conclusion will
21 necessarily delay any resolution and cause a substantial inconvenience to the

Debtors' estates, especially now as the Debtors approach confirmation of a plan. This factor supports approval of the Settlement Agreement.

(d) **The paramount interest of the creditors and a proper deference to their reasonable views in the premises.**

The paramount interest of creditors strongly weighs in favor of approving the Settlement Agreement. Generally, the fourth *A & C* Factor requires a court to take into account "not only the desire of creditors to obtain the maximum possible recovery, but also their competing desire that recovery occur in the least amount of time. This factor is thus interwoven with considerations of expense, delay, and risk." *In re Marples*, 266 B.R. 202, 207 (Bankr. D. Idaho 2001). As mentioned above, further litigation of the Adversary Proceeding would result in unnecessary and avoidable cost to the Debtors' Estates, while delaying the progression of these bankruptcy cases. Furthermore, no ultimate result of this Adversary Proceeding is a certainty. The Settlement Agreement is a product of good faith, arms' length, negotiations between the Parties and represents a fair and equitable result, which is in the best interests of the Debtors and their estates. The decision to enter into the Settlement Agreement is a proper exercise of the Debtors' reasonable business judgment, and therefore should be approved by the Bankruptcy Court.

CONCLUSION

Based on the foregoing, the Parties request the (i) the entry of an order granting the Motion and approving the Settlement Agreement, and (ii) granting such other and further relief as is just and proper.

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1 Dated: July 30, 2020

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DECLARATION OF MICHAEL LANE

I, Michael Lane, declare, that if called as a witness, I would and could competently testify thereto, of my own personal knowledge, as follows:

1. I submit this declaration (the “Declaration”)¹ in support of the Motion.
2. I am the Chief Restructuring Officer of Astria Health (“CRO”). I was appointed CRO by the Astria Health Board of Directors.
3. I have been involved in the healthcare industry representing hospitals for more than 40 years as a financial and strategic advisor, CRO, interim Chief Executive Officer (“CEO”) as well as a commercial and investment banker. I am a non-practicing certified public accountant and hold a BS and MBA from Southeast Missouri State University. In the past ten years alone, I have represented numerous distressed hospitals as CRO, interim CEO, financial and strategic advisor including numerous Chapter 11 proceedings involving acute care and behavioral organizations. In addition, I have been involved in asset-based lending to healthcare organizations and actively participated in numerous merger and acquisition assignments over the past decades.
4. The statements herein are based upon my personal knowledge of the facts and information gathered by me in my capacity as CRO for Astria Health.

¹ Unless otherwise defined herein, capitalized terms shall have the same meanings ascribed to them in the Motion.

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

6 6. At the Petition Date, the Astria system included three hospitals: Astria
7 Regional Medical Center (“ARMC”), a 214-bed hospital in Yakima, Washington;
8 Sunnyside Community Hospital Association doing business as Astria Sunnyside
9 Hospital, a 38-bed critical access hospital in Sunnyside, Washington (“Sunnyside”);
10 and SHC Medical Center – Toppenish doing business as Astria Toppenish Hospital,
11 a 63-bed hospital in Toppenish, Washington (“Toppenish,” and referred to
12 collectively with ARMC and Sunnyside as the “Hospitals”). As detailed in
13 numerous filings before this Court, the Debtors have long been troubled financially.

14 7. In January 2020, the Debtors sought and obtained Bankruptcy Court
15 permission to close ARMC. It is now a closed facility.

16 8. In connection with the Closure, the WSNA commenced the Adversary
17 Proceeding.

1 9. In order to resolve their disputes without extensive litigation, the
2 Debtors and WSNA have engaged in settlement discussions and have reached an
3 agreement (the “Settlement Agreement”), a copy of which is being filed separately
4 under seal.

5 10. I believe that the Settlement Agreement is fair and equitable, and in the
6 best interests of the Debtors, the Debtors’ estates and their creditors. While I
7 believe the Debtors would ultimately prevail if the Adversary Proceeding were
8 litigated to its conclusion, such a result is uncertain. The approval of the Settlement
9 Agreement allows the Debtors to resolve the Adversary Proceeding on terms
10 palatable to them, and avoid the cost, delay and uncertainty that would arise should
11 the Adversary Proceeding progress further. In light of the Debtors’ desire to
12 achieve speedy confirmation of a Plan, the Settlement Agreement is especially
13 appropriate. It is the reasonable business judgment of the Debtors that approval of
14 the Settlement Agreement would be in the best interests of the Debtors, their estates
15 and their creditors.

16 I declare under penalty of perjury and of the laws in the United States of
17 America, the foregoing is true and correct.

Executed this 30th day of July, 2020, at Yakima, Washington.



MICHAEL LANE

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