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

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

13 In re:
14 ASTRIA HEALTH, *et al.*,
15 Debtors and Debtors in
Possession.

16 Washington State Nurses Association,
17 Plaintiff,

18 v.

18 SHC Medical Center-Yakima, Astria
19 Health,
20 Defendants.

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

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

**DEBTORS' EX PARTE MOTION TO
FILE CERTAIN EXHIBIT UNDER
SEAL**

21 **EX PARTE MOTION
TO SEAL**



1 **EX PARTE MOTION**

2 The above-captioned debtors and debtors in possession (the “Debtors”),
3 including Defendants Astria Health (“Astria”) and SHC Medical Center-Yakima
4 (“ARMC” or the “Medical Center”) (collectively, “Defendants”), hereby submit this
5 *ex parte* motion (the “Motion”) for the entry of an order authorizing the Debtors to
6 file the Settlement Agreement¹ (Exhibit A to the Underlying Motion) (the “Exhibit”
7 or the “Settlement Agreement”) under seal, pursuant to §§ 105(a) and 107(b) of title
8 11 of the United States Code (the “Bankruptcy Code”), Rule 9018 of the Federal
9 Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 9018-1 of the
10 Local Bankruptcy Rules of the United States Bankruptcy Court for the Eastern
11 District of Washington (“LBR”). The basis for the relief requested in this Motion,
12 which seeks to maintain the confidentiality of certain confidential commercial
13 information, as well as certain private financial information of individuals, is set forth
14 below and in the Declaration of John M. Gallagher (the “Declaration”), attached
15 hereto.

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19 ¹ All terms not otherwise defined herein shall have the meanings ascribed to them in
20 the *Debtors’ and WSNA’s Joint Motion to for an Order Approving Settlement*
21 *Pursuant to Fed. Bankr. P. 9019 and Resolving Adversary Proceeding* (the
“Underlying Motion”), filed contemporaneously herewith.

EX PARTE MOTION
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JURISDICTION, VENUE AND PREDICATES FOR RELIEF

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

The statutory predicates for the relief requested herein are §§ 105(a) and 107(b) and (c) of the Bankruptcy Code, Bankruptcy Rule 9018 and LBR 9018-1.

STATEMENT OF FACTS²

1. On May 6, 2019 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, thereby commencing these chapter 11 cases (the “Chapter 11 Cases”). The Chapter 11 Cases are currently being jointly administered before this Court (the “Court”) [Docket No. 10]. The Debtors are currently operating their businesses as debtors in possession pursuant to §§1107 and 1108 of the Bankruptcy Code.

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

² A more fulsome background regarding the relief sought in the Underlying Motion is set forth in the Underlying Motion, and is incorporated fully as if set forth herein.

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

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

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

9 6. On January 10, 2020, WSNA filed its Emergency Motion for
10 Reconsideration of the Order Authorizing Closure of the Medical Center [Docket No.
11 876], which was denied by the Bankruptcy Court [Docket No. 897].

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

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

16 9. On January 31, 2020 WSNA filed a complaint (the “Complaint”) in the
17 Bankruptcy Court and thereby commenced the Adversary Proceeding, which is
18 designated as Adv. Pro. No. 20-80005, in which WSNA sought damages, fees and
19 expenses from the Defendants based upon the assertion that Defendants failed to
20 provide sufficient notice in advance of the closure of ARMC to WSNA Members who

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1 were separated from employment due to the Closure (the “WARN Act Claim”) under
2 the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101-09 (the
3 “WARN Act”) and for failure to pay unused paid time off (“PTO”) on their last day
4 of employment (the “PTO Claim”) under the Washington Wage Payment and
5 Collection Act, RCW 49.48.010-900 (the “Payment Act”) and the Washington Wage
6 Rebate Act, RCW 49.52.010-090 (the “Rebate Act”).

7 10. The Debtors and WSNA seek approval of the Settlement Agreement by
8 the Underlying Motion, such that the Adversary Proceeding may be fully and
9 completely resolved.

10 11. As supported by the Declaration, the Debtors seek leave to file the
11 Exhibit under seal. The Debtors seek this relief to protect confidential information
12 relating to their business operations. The Debtors have contacted counsel for WSNA
13 and WSNA has no objection to the relief sought in the Motion.

14 **REQUEST FOR SEALING**

15 Section 107(b) of the Bankruptcy Code authorizes the Court to issue orders that
16 will protect entities, patients, creditors and other constituents from potential harm
17 caused by premature disclosure of confidential information. Specifically, § 107(b)
18 provides:

19 (b) On request of a party in interest, the bankruptcy court shall, and on
20 the bankruptcy court’s own motion, the bankruptcy court may—

21 ***EX PARTE MOTION
TO SEAL***

1 (1) protect an entity with respect to a trade secret or confidential
2 research, development, or commercial information

3 “Section 107(b) [makes] it mandatory for a [bankruptcy] court to protect
4 documents falling into one of the enumerated exceptions.” *In re Khan*, 2013 WL
5 6645436, at *3 (B.A.P. 9th Cir. Dec. 17, 2013) (citations omitted). Moreover, “[t]he
6 types of information that can be protected by the court are unlimited.” 2 COLLIER
7 ON BANKRUPTCY ¶ 107.04[1]. Indeed, § 107 of the Bankruptcy Code codifies
8 “the rule that the public's right to access [information in a case is] far from absolute.”
9 *In re JMS Auto. Rebuilders, Inc.*, 2002 WL 32817517, at *3 (C.D. Cal. Jan. 15, 2002)
10 (citation omitted).

11 Furthermore, Section 107(c) of the Bankruptcy Code provides:

12 (c)(1) The bankruptcy court, for cause, may protect an individual, with
13 respect to the following types of information to the extent the court finds
14 that disclosure of such information would create undue risk of identity
15 theft or other unlawful injury to the individual or the individual's
16 property:

17 (A) Any means of identification (as defined in section 1028(d) of
18 title 18) contained in a paper filed or to be filed, in a case under
19 this title.

20 (B) Other information contained in a paper described in
21 subparagraph (A).

22 Bankruptcy Rule 9018 sets forth the procedure by which a party may move for
23 relief under § 107 of the Bankruptcy Code. In particular, Bankruptcy Rule 9018 states
24 that the court “may make any order which justice requires (1) to protect the estate or

25 **EX PARTE MOTION
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1 any entity in respect of trade secrets [or] confidential ... information....” Fed. R.
2 Bankr. P. 9018. Because of the term “shall,” “§ 107(b) [makes] it mandatory for a
3 [bankruptcy] court to protect documents falling into one of the enumerated
4 exceptions.” *Khan*, 2013 WL 6645436, at *3 (B.A.P. 9th Cir. Dec. 17, 2013) (citations
5 omitted); *see also Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion*
6 *Pictures Corp.)*, 21 F.3d 24, 27 (2d Cir. 1994).

7 The Debtors seek to file the Exhibit under seal because:

- 8 i. The Settlement Agreement contains sensitive settlement terms that they
9 would not agree to if made public.
- 10 ii. The Debtors do not wish to file documents that contain confidential
11 commercial information at this juncture; and
- 12 iii. The Debtors do not wish to disclose certain private individual financial
13 information.

14 Applying § 107(b), courts have stated that § 107(b) is not a “narrow exception,
15 [but is] designed to adapt the common law rule to the business realities of Chapter
16 11” and that § 107(b) “is a pretty strong statement by Congress that confidential
17 information should be protected” for information that “[c]ompanies don’t go around
18 publishing, internally let alone externally.” *In re Energy Future Holdings Corp.*, No.
19 14-10979 [Docket No. 2375] (Hr’g Tr. at 29:7-30:23) (Bankr. D. Del. Oct. 8, 2014)
20 (available at Docket 718-1 in these Cases).

21 Here, the “business realities” support sealing the Exhibit from the public and
parties that might seek to wield the Exhibit against the Debtors. The Debtors strongly

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1 believe that it would be highly prejudicial and harmful to the estates should the
2 Exhibit become a matter of public record. Moreover, the Debtors seek to maintain
3 the confidentiality of private individual financial information, that should not be
4 disclosed to the general public. Accordingly, the interests of the Debtors' estates and
5 the Debtors' constituents are best served by filing the Exhibit under seal at this time.

6 Notwithstanding the foregoing, Debtors will serve a copy of the Exhibit on: (i)
7 any party in interest who have signed non-disclosure agreements, per the Debtors'
8 discretion and (ii) the Office of the United States Trustee (together with the parties
9 referenced in subsection (i), (the "Disclosure Parties").

10 CONCLUSION

11 **WHEREFORE**, the Debtors respectfully request that this Court issue an
12 order:

13 (a) Allowing the Debtors to file the Exhibit under seal, with service to the
14 Disclosure Parties; and

15 (b) Granting such other and further relief as the Court deems just and
16 proper.

17 Dated: July 30, 2020

DENTONS US LLP
SAMUEL R. MAIZEL
SAM J. ALBERTS

18 By /s/ Sam J. Alberts
19 SAM J. ALBERTS

20 *Attorneys for the Chapter 11 Debtors
21 and Debtors In Possession*

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1 **DECLARATION OF JOHN M. GALLAGHER**

2 I, John M. Gallagher, submit this Declaration in support of the *Debtors’ Ex*
3 *Parte Motion to File Certain Exhibit Under Seal* (the “Motion”),¹ and hereby state
4 as follows:

5 1. I am the President and Chief Executive Officer (“CEO”) of Astria Health
6 (“Astria”). I am employed by AHM, Inc. (“AHM”), a nondebtor entity that provides
7 management services to Astria and its affiliated debtors and debtors in possession
8 (collectively, the “Debtors”) in these chapter 11 cases (the “Chapter 11 Cases”).

9 2. I have read the Motion and agree with the factual representations
10 contained therein.

11 3. I support the filing under seal of the Exhibit. The Exhibit contains
12 information that, if made public, could disrupt operations, patient care and creditor
13 recovery. Additionally, the Exhibit contains certain confidential commercial
14 information, as well as certain confidential financial information of individuals.

15 4. The Debtors seek to seal the Exhibit to protect certain confidential
16 information, not as any litigation tactic. The Debtors could be harmed if any
17 confidential information is obtained by competitors and/or other parties.

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¹ Capitalized terms not otherwise defined in this Declaration have the definitions set
21 forth in the Motion.

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