
Subject: 20-80016-WLH Certification that Record is Complete

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UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF WASHINGTON

Notice of Electronic Filing

The following transaction was received from NNU entered on 8/18/2020 at 10:29 AM PDT and filed on 8/18/2020

Case Name: Astria Health et al v. United States Small Business Administration and Jo

Case Number: [20-80016-WLH](#)

Document Number: 46

Docket Text:

CERTIFICATION that Record is Complete to Clerk of the District Court RE: Case Number 20-cv-03109-RMP. Deputy Clerk (NNU) of the US Bankruptcy Court for the Eastern District of Washington hereby certifies, pursuant to FRBP 8006(b), the record is complete for the purposes of appeal. Pursuant to FRBP 8010(b), this serves as notice the designated records are available electronically (RE: Notice of Appeal and Statement of Election[28], Statement of Issues[38], Statement of Issues[44]). (NNU)

The following document(s) are associated with this transaction:

20-80016-WLH Notice will be electronically mailed to:

Sam Alberts on behalf of Plaintiff Astria Health
sam.alberts@dentons.com,
docket.general.lit.wdc@dentons.com,erin.bass@dentons.com,kathryn.howard@dentons.com

Sam Alberts on behalf of Plaintiff Glacier Canyon, LLC
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docket.general.lit.wdc@dentons.com,erin.bass@dentons.com,kathryn.hov



Sam Alberts on behalf of Plaintiff Kitchen and Bath Furnishings, LLC
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Sam Alberts on behalf of Plaintiff Oxbow Summit, LLC
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Sam Alberts on behalf of Plaintiff SHC Medical Center - Toppenish
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Sam Alberts on behalf of Plaintiff Sunnyside Community Hospital Home Medical Supply, LLC
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Sam Alberts on behalf of Plaintiff Yakima HMA Home Health, LLC
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James L Day on behalf of Plaintiff Astria Health
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Brian M Donovan on behalf of Defendant United States Small Business Administration and Jovita Carranza, in her capacity as Administrator for the United States Small Business Administration
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20-80016-WLH Notice will not be electronically mailed to:

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Sarah M. Schrag on behalf of Plaintiff Astria Health
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17 Telephone: (202) 307-1104

18 UNITED STATES BANKRUPTCY COURT
19 EASTERN DISTRICT OF WASHINGTON

20 In Re:

21 ASTRIA HEALTH, et al.¹

22 Debtors and Debtors in Possession,

23 _____
24 ASTRIA HEALTH, et al.,

25 Plaintiffs,

26 v.

27 Lead Case No. 19-01189-11

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

NOTICE OF APPEAL

PRELIMINARY INJUNCTION
APPEAL

29 ¹ 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).

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

5 Defendants.

6
7 **NOTICE OF APPEAL UNDER 28 U.S.C. § 158(a)(1)**
8 **AND STATEMENT OF ELECTION**

9 **Part 1: Identify the appellant**

10 1. Name(s) of appellant(s):

11
12 United States Small Business Administration and Jovita Carranza, in her
13 capacity as Administrator for the United States Small Business
Administration

14 2. Position of appellant(s) in the adversary proceeding or bankruptcy case that is the
15 subject of this appeal:

16 For appeals in an adversary proceeding.

17 ☐ Plaintiff

18 ☒ Defendant

19 ☐ Other (describe)

20 **Part 2: Identify the subject of this appeal**

21 1. Describe the judgment, order, or decree appealed from:

22
23 *Order Granting Preliminary Injunction, Denying Stay Pending Appeal,*
24 *and Certifying Issues to the Ninth Circuit* (ECF No. 22); Transcript of
25 Hearing Held 06/03/2020 (ECF No. 22 at Exhibit A); Minute Entry Re;
26 Motion for Temporary Restraining Order and Use of PPP Funds. HELD
(ECF No. 19).

2. State the date on which the judgment, order, or decree was entered:

The preliminary injunction order was entered on June 10, 2020 (ECF No. 22).

Part 3: Identify the other parties to the appeal

List the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their attorneys (attach additional pages if necessary):

Party:
See attached

Attorneys:
See attached

Part 4: Optional election to have appeal heard by District Court (applicable only in certain districts)

If a Bankruptcy Appellate Panel is available in this judicial district, the Bankruptcy Appellate Panel will hear this appeal unless, pursuant to 28 U.S.C. § 158(c)(1), a party elects to have the appeal heard by the United States District Court. If an appellant filing this notice wishes to have the appeal heard by the United States District Court, check below. Do not check the box if the appellant wishes the Bankruptcy Appellate Panel to hear the appeal.

☒ Appellant(s) elect to have the appeal heard by the United States District Court rather than by the Bankruptcy Appellate Panel.

RESPECTFULLY SUBMITTED: June 23, 2020.

JOSEPH H. HUNT
Assistant Attorney General

WILLIAM D. HYSLOP
United States Attorney

/s/ Brian M. Donovan
BRIAN M. DONOVAN
Assistant United States Attorney

DEFENDANTS' NOTICE OF APPEAL - 3

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Attorneys for the United States

EXHIBIT A – LIST OF OTHER PARTIES TO THE APPEAL

Party:

Astria Health 900 W Chestnut Ave
Yakima, WA 98902;
Glacier Canyon, LLC 900 W.
Chestnut Ave. Yakima, WA 98902;
Kitchen and Bath Furnishings, LLC
900 W Chestnut Ave Yakima, WA
98902;
Oxbow Summit, LLC 900 W
Chestnut Ave Yakima, WA 98902;
SHC Holdco, LLC 900 W Chestnut
Ave Yakima, WA 98902;
SHC Medical Center - Toppenish
900 W Chestnut Ave Yakima, WA
98902;
SHC Medical Center – Yakima 900
W Chestnut Ave Yakima, WA
98902;
Sunnyside Community Hospital
Association 900 W Chestnut Ave
Yakima, WA 98902;
Sunnyside Community Hospital
Home Medical Supply, LLC 900 W
Chestnut Ave Yakima, WA 98902;
Sunnyside Home Health 900 W
Chestnut Ave Yakima, WA 98902;
Sunnyside Professional Services,
LLC 900 W Chestnut Ave Yakima,
WA 98902;
Yakima Home Care Holdings, LLC
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WA 98902;
Yakima HMA Home Health, LLC
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DEFENDANTS' NOTICE OF APPEAL - 5

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DEFENDANTS' NOTICE OF APPEAL - 6

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In Re:

ASTRIA HEALTH, et al.¹

Debtors and Debtors in Possession,

ASTRIA HEALTH, et al.,

Plaintiffs,

v.

Lead Case No. 19-01189-11

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

APPELLANT'S DESIGNATION OF
RECORD ON APPEAL AND
STATEMENT OF THE ISSUES TO
BE PRESENTED

¹ 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).

APPELLANT'S DESIGNATION OF RECORD ON APPEAL AND STATEMENT OF THE
ISSUES TO BE PRESENTED - 1

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

6 Defendants.

7
8 **APPELLANTS' DESIGNATION OF RECORD ON APPEAL AND
STATEMENT OF THE ISSUES TO BE PRESENTED**

9 The United States of America (the "United States"), on behalf of the U.S. Small
10 Business Administration ("SBA"), and Jovita Carranza, in her capacity as
11 Administrator for the SBA, pursuant to Rule 8009(a) of the Federal Rules of
12 Bankruptcy Procedure, hereby designates the following items to be included in the
13 record on appeal and states the issues to be presented on appeal from the *Order*
14 *Granting Preliminary Injunction, Denying Stay Pending Appeal, and Certifying Issues*
15 *to the Ninth Circuit Court of Appeals* [Docket No. 22]:

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19 **Statement of Issues Presented on Appeal**

- 20 1. Whether the bankruptcy court erred in enjoining the SBA and Jovita Carranza,
21 in her capacity as Administrator for the SBA.
22
23 2. Whether the bankruptcy court erred in awarding injunctive relief in the absence
24 of a waiver of sovereign immunity by the United States.
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28 APPELLANT'S DESIGNATION OF RECORD ON APPEAL AND STATEMENT OF THE
ISSUES TO BE PRESENTED - 2

3. Whether the bankruptcy court erred in holding that it has authority to issue a preliminary injunction with respect to Plaintiffs' Administrative Procedure Act ("APA") claims.
4. Whether the bankruptcy court erred in concluding that the Plaintiffs proved that they were likely to succeed on the merits of their claim that SBA and Ms. Carranza violated the APA.
5. Whether the bankruptcy court erred in concluding that SBA and Ms. Carranza exceeded their statutory authority and acted arbitrarily and capriciously by excluding debtors in bankruptcy from the PPP.
6. Whether the bankruptcy court erred in concluding that the Plaintiffs demonstrated irreparable harm.
7. Whether the bankruptcy court erred in finding the Plaintiffs had met their burden of proof with respect to their motion for preliminary injunction.

Designation of Items for Record on Appeal²

1	05/15/2020	Adversary case 20-80016. COMPLAINT. Fee Amount \$350. Nature of Suit: (91 (Declaratory judgment)) (72 (Injunctive relief - other)) (21 (Validity, priority or extent of lien or other interest in property)) (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Alberts, Sam) (Entered: 05/15/2020)
2	05/15/2020	MOTION for Temporary Restraining Order and Request for Hearing and Briefing Schedule With Respect for a Preliminary Injunction. Filed by Sam Alberts on behalf of Astria Health, Glacier Canyon, LLC, Kitchen and Bath Furnishings, LLC, Oxbow Summit, LLC, SHC Holdco, LLC, SHC Medical Center - Toppenish, SHC Medical Center - Yakima, Sunnyside Community Hospital Association, Sunnyside Community Hospital Home Medical Supply, LLC,

² Each item designated in this Record on Appeal includes any exhibits that are attached thereto.

		Sunnyside Home Health, Sunnyside Professional Services, LLC, Yakima HMA Home Health, LLC, Yakima Home Care Holdings, LLC (Attachments: # 1 Exhibits A through F) (Alberts, Sam) Hearing scheduled 5/19/2020 at 11:00 AM at (877) 402-9757, Access 7036041 - Yakima. DEPUTY Clerk Note: Hearing information added and entry clarified. Modified on 5/18/2020 (CMR). (Entered: 05/15/2020)
3	05/15/2020	ORDER Uploaded. Filed by Alberts, Sam. (RE: 2) (Entered: 05/15/2020)
8	05/19/2020	ORDER Uploaded. Filed by Alberts, Sam. (RE: 2) (Entered: 05/19/2020)
9	05/19/2020	PDF with attached Audio File. Court Date & Time [5/19/2020 11:15:17 AM]. File Size [3756 KB]. Run Time [00:15:39]. (NydiaUrlacher). (Entered: 05/19/2020)
12	05/19/2020	MINUTE Entry Re: Motion for Temporary Restraining Order. HELD. The parties reached an agreement and submitted a proposed agreed order. Court finds the schedule outlined is appropriate and will sign/enter order (RE: 2 Motion for Temporary Restraining Order) Appearances: Samuel Maizel, Thomas Buford, Sarah Schrag, Attorneys for Plaintiff; Brian Donovan, Attorney for Defendant United States Small Business Administration. Other parties: John Gallagher with Astria Health; Michael Lane with Astria Health; Gary Dyer, Attorney for US Trustee; Ryan Jareck, Attorney for Lapis Advisers; William Kannel, Attorney for UMB Bank, Lapis Advisers; David Leigh, Attorney for Med One Capital Funding LLC; Richard Hyatt, Attorney for TIAA Commercial Finance Inc; Boris Mankovetskiy, Jane Pearson and Andrew Sherman, Attorneys for the Unsecured Creditors Committee; Darin Dalmat, Attorney for Washington State Nurses Assc; Michael Siderius, Attorney for GE Precision Healthcare LLC (NNU) (Entered: 05/19/2020)
13	05/20/2020	AGREED ORDER Regarding Scheduling and Reservation of PPP Funds (RE: Motion for Temporary Restraining Order 2). Hearing scheduled 6/3/2020 at 11:00 AM at (877) 402-9757, Access 7036041 - Yakima. (CMR) (Entered: 05/20/2020)
14	05/26/2020	BRIEF signed by Brian M. Donovan. Filed by Brian M Donovan on behalf of United States Small Business Administration and Jovita Carranza, in her capacity as Administrator for the United States Small Business Administration (RE: Motion for Temporary Restraining Order 2). (Attachments: # 1 Exhibit A # 2 Exhibit 1 # 3 Exhibit 2 # 4 Exhibit 3 # 5 Exhibit 4 # 6 Exhibit 5 # 7 Exhibit 6 # 8 Exhibit 7 # 9 Exhibit 8 # 10 Exhibit 9 # 11 Exhibit 10 # 12 Exhibit 11 # 13 Exhibit 12 # 14 Exhibit 13)(Donovan, Brian) (Entered: 05/26/2020)
16	06/01/2020	REPLY signed by Samuel R. Maizel (RE: Brief 14). Filed by Sam Alberts on behalf of Astria Health, Glacier Canyon, LLC, Kitchen and Bath Furnishings, LLC, Oxbow Summit, LLC, SHC Holdco, LLC, SHC Medical Center - Toppenish, SHC Medical Center - Yakima, Sunnyside Community Hospital Association, Sunnyside Community Hospital Home Medical Supply, LLC, Sunnyside Home Health, Sunnyside Professional Services, LLC, Yakima HMA Home

APPELLANT'S DESIGNATION OF RECORD ON APPEAL AND STATEMENT OF THE ISSUES TO BE PRESENTED - 4

1		Health, LLC, Yakima Home Care Holdings, LLC (Alberts, Sam) (Entered: 06/01/2020)
2	17 06/03/2020	PDF with attached Audio File. Court Date & Time [6/3/2020 11:24:37 AM]. File Size [36135 KB]. Run Time [02:30:34]. (NydiaUrlacher). (Entered: 06/03/2020)
3		
4	19 06/03/2020	MINUTE Entry Re: Motion for Temporary Restraining Order and Use of PPP Funds. HELD. The court heard argument of counsel and for the reasons stated on the record, the court grants motion and delivers oral ruling. Proposed form of order to be circulated and submitted to the court for signature. (related document(s): 2 Motion for Temporary Restraining Order filed by Astria Health, Glacier Canyon, LLC, Kitchen and Bath Furnishings, LLC, Oxbow Summit, LLC, SHC Holdco, LLC, SHC Medical Center - Toppenish, SHC Medical Center - Yakima, Sunnyside Community Hospital Association, Sunnyside Community Hospital Home Medical Supply, LLC, Sunnyside Home Health, Sunnyside Professional Services, LLC, Yakima HMA Home Health, LLC, Yakima Home Care Holdings, LLC) Appearances: Sam Alberts, James Day, Samuel Maizel, Geoffrey Miller, Sarah Schrag, Attorneys for Astria/Plaintiff; Mark Sacks and Brian Donovan, Attorneys for US Small Business Administration/Defendant. Other Attendees: William Kannel, Attorney for UMB Bank, N.A., Lapis Advisers; Jane Pearson, Boris Mankovetskiy and Andrew Sherman, Attorneys for Unsecured Creditors Committee; Gary Dyer, Attorney for US Trustee; John Gallagher, CEO of Astria Health; Michael Lane, CRO of Astria Health.(NNU) (Entered: 06/08/2020)
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15	18 06/08/2020	STIPULATION. Signed by Samuel R. Maizel for the Debtors, William W. Kannel, Attorneys for UMB Bank, N.A., as Trustee and Lapis Advisers, L.P. and Ryan T. Jareck Attorneys for Lapis Advisers, L.P. and the filer.. Filed by Sam Alberts on behalf of Astria Health, Glacier Canyon, LLC, Kitchen and Bath Furnishings, LLC, Oxbow Summit, LLC, SHC Holdco, LLC, SHC Medical Center - Toppenish, SHC Medical Center - Yakima, Sunnyside Community Hospital Association, Sunnyside Community Hospital Home Medical Supply, LLC, Sunnyside Home Health, Sunnyside Professional Services, LLC, Yakima HMA Home Health, LLC, Yakima Home Care Holdings, LLC (Alberts, Sam) (Entered: 06/08/2020)
16		
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20	20 06/09/2020	ORDER Uploaded. Filed by Alberts, Sam. (RE: 2) (Entered: 06/09/2020)
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22	22 06/10/2020	ORDER Granting Preliminary Injunction, Denying Stay Pending Appeal, and Certifying Issues to the Ninth Circuit Court of Appeals (Related Doc # 2). (CMR) (Entered: 06/10/2020)
23		
24	23 06/23/2020	ORDER Uploaded. Filed by Alberts, Sam. (RE: 4) (Entered: 06/23/2020)
25		
26	24 06/23/2020	MOTION to Withdraw Reference . Filed by Brian M Donovan on behalf of United States Small Business Administration and Jovita Carranza, in her capacity as Administrator for the United States Small Business Administration (Donovan, Brian) DEPUTY Clerk Note: Fee amount removed from docket text - not applicable for US Attorney's Office. Modified on 6/24/2020 (CMR). (Entered: 06/23/2020)
27		

28 APPELLANT'S DESIGNATION OF RECORD ON APPEAL AND STATEMENT OF THE ISSUES TO BE PRESENTED - 5

1	26	06/23/2020	NOTICE of Appeal and Statement of Election to District Court. Filed by Brian M Donovan on behalf of United States Small Business Administration and Jovita Carranza, in her capacity as Administrator for the United States Small Business Administration (RE: 22 Temporary Restraining Order). (Donovan, Brian) DEPUTY Clerk Note: Fee amount removed from docket text - not applicable for US Attorney's Office. Modified on 6/24/2020 (CMR). (Entered: 06/23/2020)
5	28	06/24/2020	PDF with attached Audio File. Court Date & Time [6/24/2020 1:36:08 AM]. File Size [2320 KB]. Run Time [00:09:40]. (NydiaUrlacher). (Entered: 06/24/2020)
7	29	06/24/2020	MINUTE Entry Re: Scheduling Conference. HELD. Court will sign the proposed joint stipulated order submitted by counsel staying the adversary proceeding pending appeal in District Court. (RE: 4 Notice of Scheduling Conference) Appearances: Samuel Maizel, and Sarah Schrag, Attorneys for Plaintiff; Brian Donovan, Attorney for Defendant (NNU) (Entered: 06/24/2020)
10	30	06/24/2020	APPEAL Transmittal to District Court. Appellant(s): United States Small Business Administration and Jovita Carranza, in her capacity as Administrator for the United States Small Business Administration. Appellee(s): Astria Health, et al (See Exhibit A of ECF 28). Case County: YAKIMA. Date Notice of Appeal Filed: 06/23/2020. Date of Entry of Order on Appeal: 06/10/2020. Date Bankruptcy Case Filed: 05/15/2020. Fee Paid: N/A. Notice of Appeal mailed N/A to N/A. All other parties, including the US Trustee, were electronically served. (RE: Temporary Restraining Order 22 , Notice of Appeal and Statement of Election 28). Certificate of Record due by 8/13/2020. (CMR) (Entered: 06/24/2020)
16	31	06/25/2020	CASE Number from Appellate Court, District Court, Case Number: 20-cv-03089-RMP (RE: Notice of Appeal and Statement of Election 28). (CMR) (Entered: 06/25/2020)
18	32	06/26/2020	STIPULATED Order (RE: Notice of Scheduling Conference 4). Status Hearing scheduled 8/25/2020 at 01:30 PM at (877) 402-9757, Access 7036041 - Yakima. (CMR) (Entered: 06/26/2020)
20		07/07/2020	NOTICE of Cross Appeal and Statement of Election. Fee Amount \$298. Filed by Sam Alberts on behalf of Astria Health, SHC Medical Center - Toppenish, Yakima HMA Home Health, LLC (RE: 19 Minutes of Proceedings, 22 Temporary Restraining Order). Appellant Designation due by 07/21/2020. (Alberts, Sam) (Entered: 07/07/2020)
23	33	07/07/2020	OBJECTION (RE: Motion to Withdraw Reference 26). Filed by Sam Alberts on behalf of Astria Health (Alberts, Sam) (Entered: 07/07/2020)
24	34	07/08/2020	APPEAL Transmittal to District Court. Appellant(s): Astria Health, SHC Medical Center - Toppenish, and Yakima HMA Home Health Care, LLC. Appellee(s): United States Small Business Administration and Jovita Carranza, in her capacity as Administrator for the United States Small Business Administration. Case County: YAKIMA. Date Notice of Appeal Filed: 7/7/2020. Date of Entry of Order on Appeal: 6/10/2020. Date Bankruptcy Case Filed: 05/15/2020. Fee Paid: No.

APPELLANT'S DESIGNATION OF RECORD ON APPEAL AND STATEMENT OF THE ISSUES TO BE PRESENTED - 6

1		Transmittal of Notice of Appeal mailed N/A to N/A. All other parties, including the US Trustee, were electronically served. (RE: Temporary Restraining Order ²² , Notice of Cross Appeal ³⁴).
2		Certificate of Record due by 8/27/2020. (CMR) (Entered: 07/08/2020)
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4	35 07/09/2020	CASE Number from Appellate Court, District Court, Case Number: 20-cv-03098-RMP (RE: Notice of Cross Appeal ³⁴). (CMR) (Entered: 07/09/2020)
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6	36 07/09/2020	RECEIPT of Notice of Cross Appeal(20-80016-WLH) [appeal,crssapl] (298.00) Filing Fee. Receipt number A7648026. Fee amount 298.00 (RE: Notice of Cross Appeal ³⁴). (U.S. Treasury) (Entered: 07/09/2020)
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9 RESPECTFULLY SUBMITTED: July 10, 2020.

10 ETHAN P. DAVIS
11 Acting Assistant Attorney General

12 WILLIAM D. HYSLOP
13 United States Attorney

14 /s/ Brian M. Donovan
15 BRIAN M. DONOVAN
16 Assistant United States Attorney

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28 APPELLANT'S DESIGNATION OF RECORD ON APPEAL AND STATEMENT OF THE
ISSUES TO BE PRESENTED - 7

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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.¹

Chapter 11

Lead Case No. 19-01189-11

Jointly Administered

¹ 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).

**CROSS-APPELLANTS'
 DESIGNATION OF RECORD AND
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ASTRIA HEALTH, *et al.*,

Plaintiffs,

v.

UNITED STATES SMALL BUSINESS
ADMINISTRATION and JOVITA
CARRANZA, in her capacity as
Administrator for the United States Small
Business Administration,

Defendants.

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

**CROSS-APPELLANTS’
DESIGNATION OF RECORD
ON APPEAL AND STATEMENT
OF ISSUES PRESENTED**

Debtor Astria Health (“Astria”), Debtor SHC Medical Center - Toppenish, doing business as Astria Toppenish Hospital (“Toppenish”), both Washington nonprofit corporations under § 501(c)(3) of title 26 of the United States Code, and Debtor Yakima HMA Home Health LLC doing business as Astria Home Health & Hospice-Yakima (“Astria Home Health”), also a Washington corporation, along with the above-referenced affiliated debtors (collectively, the “Debtors” or “Cross-Appellants”), the debtors and debtors in possession in the above-captioned chapter 11 bankruptcy cases (collectively, the “Chapter 11 Cases”), pursuant to Rule 8009(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), hereby designate the following items to be included in the record on appeal and states the issues to be presented on appeal from the *Order Granting Preliminary Injunction*,

**CROSS-APPELLANTS’
DESIGNATION OF RECORD AND
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1 *Denying Stay Pending Appeal, and Certifying Issues to the Ninth Circuit Court of*
 2 *Appeals* [Docket No. 22]:²

3 **A. Statement of Issues Presented.**

4 1. Whether the bankruptcy court erred in holding funds received under the
 5 Paycheck Protection Program (“PPP”) as part of the Coronavirus Aid, Relief, and
 6 Economic Security Act (the “CARES Act”), Public Law 116-136 (signed into law
 7 March 27, 2020), as augmented by the Payment Protection Program and Health Care
 8 Enhancement Act, Pub. L. 116-139 (signed into law April 24, 2020) and by Public
 9 Law No: 116-147 (signed into law July 4, 2020), are not an “other similar grant”
 10 within the meaning of § 525(a) of title 11 of the United States Code, §§ 101 *et seq.*
 11 (the “Bankruptcy Code”).

12 **B. Designation of Record on Appeal.**³

13

Filing Date	#	Docket Text
05/15/2020	<u>1</u> (136 pgs)	Adversary case 20-80016. COMPLAINT. Fee Amount \$350. Nature of Suit: (91 (Declaratory

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15 ² Although the Debtors intended their appeal of Docket No. 22 to be designated as a “cross-appeal”
 16 from the appeal commenced by the United States Small Business Administration (the “SBA”) and
 17 Jovita Carranza, in her capacity as Administrator for the SBA (Appellate Case No. 20-cv-03089),
 18 the Court Clerk’s office for the District Court for the Eastern District of Washington has created a
 19 second appeal (Appellate Case No. 20-cv-03098). The Debtors will be filing a motion to
 consolidate the two appeals shortly. This Designation of Record on Appeal and Statement of Issues
 Presented applies to both appellate cases.

20 ³ Cross-Appellants’ designation of record on appeal includes all exhibits and attachments to any
 filings referenced herein.

21 **CROSS-APPELLANTS’
 DESIGNATION OF RECORD AND
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1		judgment)) (72 (Injunctive relief - other)) (21 (Validity, priority or extent of lien or other interest in property)) (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Alberts, Sam) (Entered: 05/15/2020)
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4	2 (111 pgs; 2 docs)	MOTION for Temporary Restraining Order and Request for Hearing and Briefing Schedule With Respect for a Preliminary Injunction. Filed by Sam Alberts on behalf of Astria Health, Glacier Canyon, LLC, Kitchen and Bath Furnishings, LLC, Oxbow Summit, LLC, SHC Holdco, LLC, SHC Medical Center - Toppenish, SHC Medical Center - Yakima, Sunnyside Community Hospital Association, Sunnyside Community Hospital Home Medical Supply, LLC, Sunnyside Home Health, Sunnyside Professional Services, LLC, Yakima HMA Home Health, LLC, Yakima Home Care Holdings, LLC (Attachments: # 1 Exhibits A through F) (Alberts, Sam) Hearing scheduled 5/19/2020 at 11:00 AM at (877) 402-9757  , Access 7036041 - Yakima. DEPUTY Clerk Note: Hearing information added and entry clarified. Modified on 5/18/2020 (CMR). (Entered: 05/15/2020)
5	05/15/2020	
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13	6 (4 pgs)	ORDER Setting Emergency Hearing Regarding Debtors' Motion for Temporary Restraining Order (RE: Motion for Temporary Restraining Order 2). Hearing scheduled 5/19/2020 at 11:00 AM at (877) 402-9757  , Access 7036041 - Yakima. (CMR) (Entered: 05/18/2020)
14	05/18/2020	
15		
16	9 (1 pg)	 PDF with attached Audio File. Court Date & Time [5/19/2020 11:15:17 AM]. File Size [3756 KB]. Run Time [00:15:39]. (NydiaUrlacher). (Entered: 05/19/2020)
17	05/19/2020	
18		
19	12	MINUTE Entry Re: Motion for Temporary Restraining Order. HELD. The parties reached an agreement and submitted a proposed agreed order. Court finds the schedule outlined is
20	05/19/2020	

**CROSS-APPELLANTS'
DESIGNATION OF RECORD AND
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1		appropriate and will sign/enter order (RE: 2 Motion for Temporary Restraining Order)
2		Appearances: Samuel Maizel, Thomas Buford, Sarah Schrag, Attorneys for Plaintiff; Brian Donovan, Attorney for Defendant United States Small Business Administration. Other parties: John Gallagher with Astria Health; Michael Lane with Astria Health; Gary Dyer, Attorney for US Trustee; Ryan Jareck, Attorney for Lapis Advisers; William Kannel, Attorney for UMB Bank, Lapis Advisers; David Leigh, Attorney for Med One Capital Funding LLC; Richard Hyatt, Attorney for TIAA Commercial Finance Inc; Boris Mankovetskiy, Jane Pearson and Andrew Sherman, Attorneys for the Unsecured Creditors Committee; Darin Dalmat, Attorney for Washington State Nurses Assc; Michael Siderius, Attorney for GE Precision Healthcare LLC (NNU) (Entered: 05/19/2020)
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12	05/20/2020	13 (4 pgs) AGREED ORDER Regarding Scheduling and Reservation of PPP Funds (RE: Motion for Temporary Restraining Order 2). Hearing scheduled 6/3/2020 at 11:00 AM at (877) 402-9757, Access 7036041 - Yakima. (CMR) (Entered: 05/20/2020)
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18	05/26/2020	14 (514 pgs; 15 docs) BRIEF signed by Brian M. Donovan. Filed by Brian M Donovan on behalf of United States Small Business Administration and Jovita Carranza, in her capacity as Administrator for the United States Small Business Administration (RE: Motion for Temporary Restraining Order 2). (Attachments: # 1 Exhibit A # 2 Exhibit 1 # 3 Exhibit 2 # 4 Exhibit 3 # 5 Exhibit 4 # 6 Exhibit 5 # 7 Exhibit 6 # 8 Exhibit 7 # 9 Exhibit 8 # 10 Exhibit 9 # 11 Exhibit 10 # 12 Exhibit 11 # 13 Exhibit 12 # 14 Exhibit 13)(Donovan, Brian) (Entered: 05/26/2020)
19		
20	06/01/2020	16 (94 pgs) REPLY signed by Samuel R. Maizel (RE: Brief 14). Filed by Sam Alberts on behalf of Astria Health, Glacier Canyon, LLC, Kitchen and Bath Furnishings, LLC, Oxbow Summit, LLC,


**CROSS-APPELLANTS'
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1		SHC Holdco, LLC, SHC Medical Center - Toppenish, SHC Medical Center - Yakima, Sunnyside Community Hospital Association, Sunnyside Community Hospital Home Medical Supply, LLC, Sunnyside Home Health, Sunnyside Professional Services, LLC, Yakima HMA Home Health, LLC, Yakima Home Care Holdings, LLC (Alberts, Sam) (Entered: 06/01/2020)
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5	06/03/2020	17 (1 pg)  PDF with attached Audio File. Court Date & Time [6/3/2020 11:24:37 AM]. File Size [36135 KB]. Run Time [02:30:34]. (NydiaUrlacher). (Entered: 06/03/2020)
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8	06/03/2020	19 MINUTE Entry Re: Motion for Temporary Restraining Order and Use of PPP Funds. HELD. The court heard argument of counsel and for the reasons stated on the record, the court grants motion and delivers oral ruling. Proposed form of order to be circulated and submitted to the court for signature. (related document(s): 2 Motion for Temporary Restraining Order filed by Astria Health, Glacier Canyon, LLC, Kitchen and Bath Furnishings, LLC, Oxbow Summit, LLC, SHC Holdco, LLC, SHC Medical Center - Toppenish, SHC Medical Center - Yakima, Sunnyside Community Hospital Association, Sunnyside Community Hospital Home Medical Supply, LLC, Sunnyside Home Health, Sunnyside Professional Services, LLC, Yakima HMA Home Health, LLC, Yakima Home Care Holdings, LLC) Appearances: Sam Alberts, James Day, Samuel Maizel, Geoffrey Miller, Sarah Schrag, Attorneys for Astria/Plaintiff; Mark Sacks and Brian Donovan, Attorneys for US Small Business Administration/Defendant. Other Attendees: William Kannel, Attorney for UMB Bank, N.A., Lapis Advisers; Jane Pearson, Boris Mankovetskiy and Andrew Sherman, Attorneys for Unsecured Creditors Committee; Gary Dyer, Attorney for US Trustee; John Gallagher, CEO of Astria Health; Michael Lane, CRO of Astria Health.(NNU) (Entered: 06/08/2020)
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**CROSS-APPELLANTS'
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1		18 (5 pgs)	STIPULATION. Signed by Samuel R. Maizel for the Debtors, William W. Kannel, Attorneys for UMB Bank, N.A., as Trustee and Lapis Advisers, L.P. and Ryan T. Jareck Attorneys for Lapis Advisers, L.P. and the filer.. Filed by Sam Alberts on behalf of Astria Health, Glacier Canyon, LLC, Kitchen and Bath Furnishings, LLC, Oxbow Summit, LLC, SHC Holdco, LLC, SHC Medical Center - Toppenish, SHC Medical Center - Yakima, Sunnyside Community Hospital Association, Sunnyside Community Hospital Home Medical Supply, LLC, Sunnyside Home Health, Sunnyside Professional Services, LLC, Yakima HMA Home Health, LLC, Yakima Home Care Holdings, LLC (Alberts, Sam) (Entered: 06/08/2020)
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5	06/08/2020		
6		22 (56 pgs)	ORDER Granting Preliminary Injunction, Denying Stay Pending Appeal, and Certifying Issues to the Ninth Circuit Court of Appeals (Related Doc # 2). (CMR) (Entered: 06/10/2020)
7			
8	06/10/2020		
9		28 (6 pgs)	NOTICE of Appeal and Statement of Election to District Court. Filed by Brian M Donovan on behalf of United States Small Business Administration and Jovita Carranza, in her capacity as Administrator for the United States Small Business Administration (RE: 22 Temporary Restraining Order). (Donovan, Brian) DEPUTY Clerk Note: Fee amount removed from docket text - not applicable for US Attorney's Office. Modified on 6/24/2020 (CMR). (Entered: 06/23/2020)
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11	06/23/2020		
12		30 (1 pg)	 PDF with attached Audio File. Court Date & Time [6/24/2020 1:36:08 AM]. File Size [2320 KB]. Run Time [00:09:40]. (NydiaUrlacher). (Entered: 06/24/2020)
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14	06/24/2020		
15		31	MINUTE Entry Re: Scheduling Conference. HELD. Court will sign the proposed joint stipulated order submitted by counsel staying the adversary proceeding pending appeal in District Court. (RE: 4 Notice of Scheduling Conference)
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1		Business Administration and Jovita Carranza, in her capacity as Administrator for the United States Small Business Administration. Case County: YAKIMA. Date Notice of Appeal Filed: 7/7/2020. Date of Entry of Order on Appeal: 6/10/2020. Date Bankruptcy Case Filed: 05/15/2020. Fee Paid: No. Transmittal of Notice of Appeal mailed N/A to N/A. All other parties, including the US Trustee, were electronically served. (RE: Temporary Restraining Order ²² , Notice of Cross Appeal ³⁴). Certificate of Record due by 8/27/2020. (CMR) (Entered: 07/08/2020)
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7	07/09/2020	CASE Number from Appellate Court, District Court, Case Number: 20-cv-03098-RMP (RE: Notice of Cross Appeal ³⁴). (CMR) (Entered: 07/09/2020)
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9	07/09/2020	RECEIPT of Notice of Cross Appeal(^{20-80016-WLH}) [appeal,crssapl] (298.00) Filing Fee. Receipt number A7648026. Fee amount 298.00 (RE: Notice of Cross Appeal ³⁴). (U.S. Treasury) (Entered: 07/09/2020)
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12	07/10/2020	37 STATUS Report to Appellate Court Regarding Payment of Appeal Filing Fee. Please be advised the filing fee in District Court Case Number 20-cv-03098-RMP was paid on 7/9/2020 (RE: Notice of Cross Appeal ³⁴). (CMR) (Entered: 07/10/2020)
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15	07/10/2020	³⁸ (7 pgs) APPELLANT Designation of Contents For Inclusion in Record On Appeal, STATEMENT of Issues. Filed by Brian M Donovan on behalf of United States Small Business Administration and Jovita Carranza, in her capacity as Administrator for the United States Small Business Administration (RE: ²⁸ Notice of Appeal and Statement of Election, 32 Appeal Transmittal). (Donovan, Brian) DEPUTY Clerk Note: APPELLANT Designation of Contents For Inclusion in Record On Appeal added to docket text. Modified on 7/13/2020 (CMR). (Entered: 07/10/2020)
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Dated: July 21, 2020

DENTONS US LLP

By /s/ Sam J. Alberts
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SAM J. ALBERTS (WSBA #22255)
GEOFFREY M. MILLER (Admitted *Pro Hac Vice*)
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