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

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

12 In re:
13 ASTRIA HEALTH, *et al.*,
14 Debtors and
15 Debtors in
16 Possession.¹

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

**DEBTORS' OBJECTION TO MOTION
FOR ALLOWANCE OF
ADMINISTRATIVE EXPENSE CLAIM
FOR ADVANCED TRANSFUSION
SERVICES PURSUANT TO
11 U.S.C. §503(b)(1)A AND NOTICE
THEREOF**

[Related Docket Nos. 1563 and 1565]

18
19 ¹ The Debtors, along with their case numbers, are as follows: Astria Health (19-01189-11), Glacier
20 Canyon, LLC (19-01193-11), Kitchen and Bath Furnishings, LLC (19-01194-11), Oxbow Summit,
21 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).

**DEBTORS' OBJECTION TO
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1 Astria Health (“Astria”) and SHC Medical Center - Yakima doing business as
2 Astria Regional Medical Center (“ARMC”), both Washington nonprofit
3 corporations, along with the above-referenced affiliated debtors (collectively, the
4 “Debtors”), the debtors and debtors in possession in the above-captioned chapter 11
5 bankruptcy cases (collectively, the “Chapter 11 Cases”), hereby file this objection
6 (the “Objection”), pursuant to §§ 105, 503, 507, and 1129 of title 11 of the United
7 States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”),² Rule 3007 of the
8 Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 3007-1
9 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Eastern
10 District of Washington (the “Court”), to the *Motion For Allowance Of Administrative*
11 *Expense Claim For Advanced Transfusion Services Pursuant To 11 U.S.C.*
12 *§503(B)(1)A And Notice Thereof* [Docket No. 1563] (the “Motion”) filed Advanced
13 Transfusion Services, a division of Isto Biologics (“Advanced”). The Debtors object
14 on the grounds that Advanced has not met its burden of demonstrating by a
15 preponderance of the evidence that the requested amounts are “the actual, necessary
16 costs and expenses of preserving the estate,” as required under § 503(b)(1)(A) and
17 Ninth Circuit caselaw based on the fact that (a) the express terms of Advanced’s
18 agreement with the Debtors allowed the Debtors to terminate the agreement upon
19 closure of ARMC; (b) the Motion is barred by previous Court order; and
20

21 ² All references to “§” or “section” are to the Bankruptcy Code unless otherwise so specified.

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1 (c) Advanced provided no benefit to the Debtors' estates after January 15, 2020. In
2 further support of the Objection, attached hereto is the Declaration of Michael Lane
3 (the "Lane Declaration") and the Debtors state as follows:

4 **I. JURISDICTION AND VENUE**

5 1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157
6 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The venue
7 of the Chapter 11 Cases is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The
8 statutory predicate for this Objection is §§ 105, 503, 507, and 1129.

9 **II. STATEMENT OF FACTS**

10 2. The Debtors filed voluntary petitions for relief under chapter 11 of the
11 Bankruptcy Code on May 6, 2019 (the "Petition Date"). These Chapter 11 Cases are
12 currently being jointly administered before the Court. [Docket No. 10]. Since the
13 Petition Date, the Debtors have been operating their businesses as debtors in
14 possession pursuant to §§1107 and 1108.

15 3. Debtor Astria, a Washington nonprofit corporation, is the direct or
16 indirect corporate member of several entities that make it the largest non-profit
17 healthcare system based in Eastern Washington. The Astria system is headquartered
18 in the heart of Yakima Valley, Washington.

19 4. As of the Petition Date, the Astria system included ARMC, a 214-bed
20 hospital in Yakima, Washington; "Sunnyside," a 38-bed critical access hospital in

1 Sunnyside, Washington; and “Toppenish,” a 63-bed hospital in Toppenish,
2 Washington.

3 5. On May 24, 2019, the Office of the United States Trustee (the “U.S.
4 Trustee”) appointed an Official Committee of Unsecured Creditors (the
5 “Committee”) in these Chapter 11 Cases. [Docket No. 135]. No trustee or examiner
6 has been appointed.

7 6. On or about September 23, 2013, Advanced entered into an agreement
8 with ARMC for the provision of transfusion services, as extended from time to time
9 up through December 31, 2018 (the “Agreement”). [See Proof of Claim No. 247,
10 Exhibit 3]. Under the Agreement, ARMC was permitted, without recourse, to
11 unilaterally and immediately terminate the Agreement by written notice upon closure
12 of ARMC. Agreement at ¶ 3.2.3(c).

13 7. In early January 2020, the Debtors decided to close ARMC to ensure
14 the safety of patients and to maintain the financial viability of the Debtors’ remaining
15 two hospitals and related clinics. [Docket No. 867]. On January 8, 2020, the Court
16 entered an order [Docket No. 874] (the “Closure Order”) granting the Debtors’
17 motion to close ARMC. Advanced’s counsel received notice of the Closure Order
18 through the CM/ECF notification on January 8, 2020 and by first class mail again on
19 January 10, 2020 [Docket No. 884]. In accordance with the Closure Order, the
20 Debtors ceased operations at ARMC on or before January 15, 2020.

1 8. On February 5, 2020, to halt accrual of administrative costs associated
2 with certain contracts and leases, the Debtors filed their first omnibus motion to reject
3 those certain executory contracts and unexpired leases of real property, with relief
4 *nunc pro tunc* to January 15, 2020 [Docket Nos. 1019] (the “Rejection Motion”).
5 The Agreement at issue here was listed in Exhibit A attached thereto. Advanced and
6 its counsel were each served copies of the Rejection Motion and Rejection Order.
7 See Certificates of Service [Docket Nos. 1026 and 1166]. Advanced did not file any
8 response or otherwise object to the Rejection Motion, and the Court entered its order
9 granting the Rejection Motion [Docket No. 1146] (the “Rejection Order”) on March
10 27, 2020 and setting April 27, 2020 as the deadline (the “Admin Claim Deadline”)
11 by which “any claim(s) for rejection damages or administrative expense arising from,
12 related to, or in connection with the rejection of Contracts or Leases listed in **Exhibit**
13 **A** attached to the [Rejection] Motion is/are required to be filed.”³

14 9. On June 17, 2020, the Court issued an *Order (I) Fixing the First Interim*
15 *Bar Date for Filing Certain Postpetition Administrative Expense Claims and*
16 *(II) Approving the Form of Notice of the Administrative Expense Claims Bar Date*
17 [Docket No. 1416] (the “Admin Bar Date Order”), which set July 22, 2020 as the
18
19

20 ³ As mentioned in the Debtors’ reply [Docket No. 1107] to responses to the Rejection Motion and
21 at the March 18, 2020 hearing on the Rejection Motion, this deadline was requested by various
claimants whose contracts were listed in Exhibit A attached to the Rejection Motion.

1 deadline to file certain other Administrative Expense Claims (as defined in the Admin
2 Bar Date Order).

3 10. On July 22, 2020, Advanced filed the *Motion For Allowance Of*
4 *Administrative Expense Claim For Advanced Transfusion Services Pursuant To 11*
5 *U.S.C. §503(b)(1)A And Notice Thereof* [Docket No. 1563] (the “Advanced Admin
6 Claim”), along with the *Declaration of Donald Brown in Support of Advanced*
7 *Transfusion’s Motion for Allowance of Administrative Expense Claim* [Docket No.
8 1565] (the “Brown Declaration”), requesting payment of \$103,888.00 (the
9 “Requested Amount”) for infusion care therapist services and goods supplied to
10 ARMC: (i) Invoice No. 196412 dated December 31, 2019 for \$28,500.00 as a
11 monthly service charge (the “Monthly Service Charge”); (ii) Invoice No. 198284
12 dated January 31, 2020 for the Monthly Service Charge; (iii) Invoice No. 199969
13 dated March 1, 2020 for the Monthly Service Charge; (iv) Invoice No.1999968 dated
14 March 19, 2020 for a prorated amount of the Monthly Service Charge, as well as
15 (v) Invoice No. 197075 dated January 10, 2020 for \$495.00 for an autotransfusion
16 converted service fee; (vi) Invoice No. 197076 dated January 10, 2020 for \$295.00
17 for an autotransfusion standby service fee; and (vii) Invoice No. 197191 dated
18 January 14, 2020 for \$295.00 for an autotransfusion standby service fee. Brown
19 Declaration at 1-9.

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1 11. Until July 22, 2020, the Debtors were unaware of any postpetition
2 outstanding obligations to Advanced. Moreover, the Debtors had reason to believe
3 that if the Debtors had any postpetition outstanding obligations to Advanced,
4 Advanced would have filed an administrative claim by the April 27, 2020 Admin
5 Claim Deadline set forth in the Rejection Order. Nevertheless, after reviewing the
6 invoices, the Debtors are willing to pay \$43,790.00 of the Requested Amount, which
7 accounts for the Monthly Service Charge for December 2019 and a prorated amount
8 of the Monthly Service Charge for the portion of January 2020 during which ARMC
9 remained open, plus \$1,040.00 for the goods actually used by the Debtors. The
10 Debtors dispute owing all remaining amounts, *i.e.*, \$60,098.00 (the “Disputed
11 Amounts”).

12 12. Pursuant to the notice set forth in the Motion, as well as various
13 stipulations filed by the parties in an effort to resolve the dispute without Court
14 intervention [*see* Docket Nos. 1679 and 1770], the deadline to file an objection to the
15 Motion is September 14, 2020. Those efforts failed, and the Debtors have timely
16 filed this Objection.

17 13. On July 7, 2020, Lapis, UMB and the Debtors (the “Plan Proponents”)
18 filed the *Joint 11 Chapter Plan of Reorganization of Astria Health and its Debtor*
19 *Affiliates* [Docket No. 1471] (the “Plan”) as well as the *Disclosure Statement*
20 *Relating to the Joint Chapter 11 Plan of Reorganization of Astria Health and its*

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1 *Debtor Affiliates* [Docket No. 1472] (the “Disclosure Statement”). The Debtors
2 anticipate confirming the Plan in the near future.

3 14. Additional background facts on the Debtors, including an overview of
4 the Debtors’ business, information on the Debtors’ capital structure, and events
5 leading up to these Chapter 11 Cases, are contained in the First Day Declarations.
6 [Docket Nos. 16 and 21].

7 **III. ARGUMENT**

8 The Debtors object on the grounds that Advanced Transfusion has not met its
9 burden of demonstrating by a preponderance of the evidence that the requested
10 amounts are “the actual, necessary costs and expenses of preserving the estate,” as
11 required under § 503(b)(1)(A) and Ninth Circuit caselaw, based on the fact that
12 (a) Advanced is not entitled to the Disputed Amounts by the express terms of the
13 Agreement, (b) Advanced is not entitled to the Disputed Amounts because it failed
14 to file an administrative expense claim by the April 27, 2020 Admin Claim Deadline
15 set forth in the Rejection Order, and (c) Advanced provided no benefit to the Debtors’
16 estates after January 15, 2020.

17 Administrative expense priority status under § 503(b)(1)(A) is reserved for
18 “the actual, necessary costs and expenses of preserving the estate.” In order to qualify
19 for such treatment, the expense must (i) arise from a postpetition transaction between
20 the party claiming the administrative priority and debtor in possession, and (ii) confer

1 benefit upon the bankruptcy estate. *See* § 503(b)(1). Then, assuming the claimant
2 can establish these two prongs, the claimant must establish the *value* of its services,
3 which is not presumptively the contract rate. *See N.L.R.B. v. Bildisco & Bildisco*,
4 465 U.S. 513, 531, 104 S. Ct. 1188, 1199, 79 L. Ed. 2d 482 (1984) (“If the debtor-
5 in-possession elects to continue to receive benefits from the other party to an
6 executory contract pending a decision to reject or assume the contract, the debtor-in-
7 possession is obligated to pay for the *reasonable value* of those services, which,
8 *depending on the circumstances* of a particular contract, *may* be what is specified in
9 the contract.”) (internal citations omitted) (emphasis added); *see also In re Cook*
10 *Inlet Energy LLC*, 583 B.R. 494, 502-03 (B.A.P. 9th Cir. 2018) (emphasizing that the
11 contract rate is not presumed to be the value of one’s services).

12 Additionally, the burden of proof for administrative claims is much higher than
13 claims filed under § 502(a), which are considered *prima facie* evidence of validity
14 and amount of a claim. *Compare* § 503(b) to § 502(a); *see also In re Cook Inlet*
15 *Energy LLC*, 583 B.R. at 501 (comparing administrative expense claims with other
16 claims). Administrative expense claimants “bear the burden of persuasion by a
17 preponderance of the evidence to meet the strict standards set, keeping in mind the
18 policy behind the allowance of such claims.” *Id.* (citations omitted). “The terms
19 ‘actual’ and ‘necessary’ are construed narrowly so as ‘to keep fees and administrative
20 costs at a minimum.’” *Id.* (citations omitted).

1 Despite Advanced’s higher burden, the Motion falls woefully short of
2 “persuasion by a preponderance of the evidence.” Even in the Brown Declaration,
3 there is nothing sufficient enough to compel the Court to grant Advanced’s request
4 for the Disputed Amounts, which would require the Court to disregard the plain
5 language of the Agreement, the Admin Claim Deadline, and the fact that Advanced
6 provided no benefit to the Debtors’ estates after January 15, 2020. To the extent,
7 Advanced claims lack of notice or some breach of a general duty of good faith and
8 fair dealing (which the Debtors strongly deny) as a defense, Advanced cannot and
9 has not established the elements of such claims—and indeed such assertions are
10 contrary to the facts.

11 In sum, § 503(b) sets a strict bar for establishing a claim is “the actual,
12 necessary costs and expenses of preserving the estate,” and the Advanced has failed
13 to meet its burden. The Motion and the Brown Declaration are wholly conclusory
14 and insufficient to establish administrative expense priority.

15 A. Advanced Is Not Entitled To The Disputed Amounts By The Express Terms
16 Of The Agreement.

17 Advanced fails to establish it is entitled to the Disputed Amounts under the
18 express terms of the Agreement, which state in clear, unambiguous terms,
19 “**Immediate Termination by Facility.** Facility may terminate this Agreement
20 immediately by written notice to Independent Contractor upon the occurrence of any
21 of the following events: . . . (c) closure of Facility, or sale of Facility, or of all, or

1 substantially all, of Facility's assets; . . . ” Agreement at ¶ 3.2.3(c). The Debtors
2 provided written notice of ARMC’s closure on multiple occasions through multiple
3 filings. [Docket Nos. 867, 874, 884, 1019, 1026, 1146, 1166]. Under basic contract
4 law, express terms of an agreement will be given their ordinary, plain meaning.
5 *Washington State Major League Baseball Stadium Pub. Facilities Dist. v. Huber,*
6 *Hunt & Nichols-Kiewit Const. Co.*, 176 Wash. 2d 502, 509–10, 296 P.3d 821, 825
7 (2013) (“Words in a contract are given their ordinary, usual, and popular meaning,
8 absent indication of any contrary intent or use of technical terms.”). Therefore,
9 pursuant to the express terms of the Agreement, because written notice was provided,
10 Advanced is not entitled to Disputed Amounts, which accrued after ARMC’s
11 closure.⁴ Advanced cites no caselaw or legal support to the contrary, nor can it.

12 B. Advanced Is Not Entitled To The Disputed Amounts Because It Failed To File
13 An Administrative Expense Claim By The April 27, 2020 Admin Claim
14 Deadline Set Forth In The Rejection Order.

15 After the closing of ARMC, the Debtors quickly moved to reject the
16 Agreement under § 365(a) (*see* Rejection Motion at Exhibit A),⁵ which the Court

17 ⁴ The Debtors acknowledge they received services and goods from Advanced up until ARMC’s
18 closure on January 15, 2020. Therefore, the Debtors will stipulate to owing Advanced \$43,790.00
19 for such services and goods, *provided that* they may pay this amount at confirmation of the Plan,
20 pursuant to § 1129(a).

21 ⁵ Although the Debtors believe they effectively terminated the Agreement upon closure of ARMC
through notice to Advanced of such closure, to the extent such termination was somehow deficient,
the Debtors also filed the Rejection Motion. Notice of the Rejection Motion specifically provides
for such contingency:

“PLEASE TAKE FURTHER NOTICE that, the Debtors have made a good-faith
effort to identify only executory contracts and unexpired leases for purposes of

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1 granted without any objection from Advanced (Rejection Order). Indeed, despite
2 having the opportunity to file for rejection damages or administrative expense claims
3 by the April 27, 2020 Admin Claim Deadline, Advanced failed to do so. At no point
4 prior to July 22, 2020 were the Debtors even aware Advanced claimed any
5 outstanding postpetition amounts were due and owing. Only after the Court entered
6 the Admin Bar Date Order did Advanced file its administrative expense claim;
7 however, such filing is untimely, as Advanced’s claims were already ordered to be
8 filed or barred by the Admin Claim Deadline set by order of this Court. *Travelers*
9 *Indemnity Co. v. Bailey*, 557 U.S. 137, 151 (2009) (“[T]he Bankruptcy Court plainly
10 had jurisdiction to interpret and enforce its own prior orders.”); *Local Loan Co. v.*
11 *Hunt*, 292 U.S. 234, 239-40 (1934) (“That a federal court of equity has jurisdiction
12 . . . to secure or preserve the fruits and advantages of a judgment or decree rendered
13 therein, is well settled” and that “[t]hese principles apply to proceedings in
14

15 creating Exhibit A. However, due to the large volume of contracts, agreements,
16 and leases executed by or on behalf of the Debtors, this list may include certain
17 Contracts or Leases that (a) have already terminated or expired, (b) were not formed
18 prepetition, and/or (c) are no longer executory or otherwise binding. Thus, the
19 inclusion of a Contract or Lease in Exhibit A does not constitute an admission by
20 the Debtors of the “executory” or “unexpired” nature of such Contract or Lease,
21 legal rights or any claim of any counterparty or other beneficiary to such agreement,
or a waiver of the Debtors’ right to recharacterize, reclassify, or defend against such
Contract or Lease, or to dispute the validity, status, or enforceability of any Contract
or Lease. While reasonable efforts have been made to ensure the accuracy of
Exhibit A, inadvertent errors or omissions may have occurred. As such, the Debtors
reserve all of their rights to add additional Contracts or Leases, or to supplement
any description of any Contract or Lease listed on Exhibit A.” Rejection Motion at
4.

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1 bankruptcy.”). The Admin Bar Date Order did not provide Advanced a second bite
2 at the apple.⁶

3 C. Advanced provided no benefit to the Debtors’ estates after January 15, 2020.

4 Advanced provided no benefit to the Debtors’ estates after January 15, 2020
5 because ARMC closed. Advanced does not dispute that it provided no services or
6 goods to the Debtors after January 15, 2020. Without providing a benefit to the
7 Debtors’ estates, Advanced fails to establish it is entitled to any of the Disputed
8 Amounts. *See* § 503(b)(1); *see also In re Cook Inlet Energy LLC*, 583 B.R. at 502-
9 03. To the extent Advanced argues it provided benefit to the Debtors’ estates by
10 “standing by” after ARMC’s closure until the Court could hear the Rejection Motion,
11 there is no factual basis for such assertion. *See* Brown Declaration at 9 (invoicing
12 the Debtors up through March 19, 2020, the day after the hearing on the Rejection
13 Motion). The Debtors gave no indication to Advanced that they needed or intended
14 for Advanced to stand by after ARMC closed, and Advanced has failed to articulate
15 a logical explanation for why “standing by” would have been of any benefit to the
16 Debtors’ estates since no patients were even at ARMC after January 15, 2020. Even
17 assuming *arguendo* that Advanced provided any benefit to the Debtors’ estates by
18 standing by (which the Debtors strongly deny), the contract price is not presumed to
19 be the fair value for standing by, and Advanced has failed to show any actual costs

20 _____
21 ⁶ *But see* discussion at *supra* n.4 regarding amounts incurred prior to ARMC’s closing.

1 incurred after January 15, 2020 that would justify paying the Disputed Amount for
2 services not rendered to a closed hospital. *See In re Cook Inlet Energy LLC*, 583
3 B.R. at 502-03 (holding debtors need not rebut a presumption that the contract price
4 equates to fair value because such presumption does not exist).

5 In sum, Advanced provided no benefit to the Debtors' estates after January 15,
6 2020, Advanced cannot argue otherwise since the Debtors cut off any further
7 obligations to Advanced when the Debtors timely provided written notice of
8 ARMC's closure a week in advance, and Advanced was time-barred from filings its
9 Motion by the Rejection Order. For all the foregoing reasons, Advanced has failed
10 to establish by a preponderance of the evidence that it is entitled to an administrative
11 expense claim for the Disputed Amounts, as required by the Ninth Circuit and
12 § 503(b)(1)(A).

13 IV. CONCLUSION

14 WHEREFORE, the Debtors request this Court (a) deny Advanced's Motion
15 for administrative expense to the extent of the Disputed Amounts, and, (b) allow the
16 Debtors to pay any administrative expense claims owing to Advanced at confirmation
17 of the Plan pursuant to § 1129(a).

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Dated: September 14, 2020

/s/ Sam J. Alberts

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1 **DECLARATION OF MICHAEL LANE**

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

4 1. I am the Chief Restructuring Officer of Astria Health (“CRO”). I was
5 appointed CRO by the Astria Health Board of Directors as required by the
6 subordinated promissory note dated January 18, 2019.

7 2. I have been involved in the healthcare industry representing hospitals
8 for more than 40 years as a financial and strategic advisor, CRO, interim Chief
9 Executive Officer (“CEO”) as well as a commercial and investment banker. I am a
10 non-practicing certified public accountant and hold a BS and MBA from Southeast
11 Missouri State University. In the past ten years alone I have represented numerous
12 distressed hospitals as CRO, interim CEO, financial and strategic advisor including
13 numerous Chapter 11 proceedings involving acute care and behavioral organizations.
14 In addition, I have been involved in asset-based lending to healthcare organizations
15 and actively participated in numerous merger and acquisition assignments over the
16 past decades.

17 3. This declaration is prepared in support of the *Debtors’ Objection To*
18 *Motion For Allowance Of Administrative Expense Claim For Advanced Transfusion*
19 *Services Pursuant To 11 U.S.C. §503(B)(1)A And Notice Thereof* (the “Objection”).
20

1 4. The Debtors filed voluntary petitions for relief under chapter 11 of the
2 Bankruptcy Code on May 6, 2019 (the “Petition Date”). These Chapter 11 Cases are
3 currently being jointly administered before the Court. [Docket No. 10]. Since the
4 Petition Date, the Debtors have been operating their businesses as debtors in
5 possession pursuant to §§1107 and 1108.

6 5. Debtor Astria, a Washington nonprofit corporation, is the direct or
7 indirect corporate member of several entities that make it the largest non-profit
8 healthcare system based in Eastern Washington. The Astria system is headquartered
9 in the heart of Yakima Valley, Washington.

10 6. As of the Petition Date, the Astria system included ARMC, a 214-bed
11 hospital in Yakima, Washington; “Sunnyside,” a 38-bed critical access hospital in
12 Sunnyside, Washington; and “Toppenish,” a 63-bed hospital in Toppenish,
13 Washington.

14 7. On May 24, 2019, the Office of the United States Trustee (the “U.S.
15 Trustee”) appointed an Official Committee of Unsecured Creditors (the
16 “Committee”) in these Chapter 11 Cases. [Docket No. 135]. No trustee or examiner
17 has been appointed.

18 8. On or about September 23, 2013, Advanced entered into an agreement
19 with ARMC for the provision of transfusion services, as extended from time to time
20 up through December 31, 2018 (the “Agreement”). [See Proof of Claim No. 247,

1 Exhibit 3]. Under the Agreement, ARMC was permitted, without recourse, to
2 unilaterally and immediately terminate the Agreement by written notice upon closure
3 of ARMC. Agreement at ¶ 3.2.3(c).

4 9. In early January 2020, the Debtors decided to close ARMC to ensure
5 the safety of patients and to maintain the financial viability of the Debtors' remaining
6 two hospitals and related clinics. [Docket No. 867]. On January 8, 2020, the Court
7 entered an order [Docket No. 874] (the "Closure Order") granting the Debtors'
8 motion to close ARMC. Advanced's counsel received notice of the Closure Order
9 through the CM/ECF notification on January 8, 2020 and by first class mail again on
10 January 10, 2020 [Docket No. 884]. In accordance with the Closure Order, the
11 Debtors ceased operations at ARMC on or before January 15, 2020.

12 10. On February 5, 2020, to halt accrual of administrative costs associated
13 with certain contracts and leases, the Debtors filed their first omnibus motion to reject
14 those certain executory contracts and unexpired leases of real property, with relief
15 *nunc pro tunc* to January 15, 2020 [Docket Nos. 1019] (the "Rejection Motion").
16 The Agreement at issue here was listed in Exhibit A attached thereto. Advanced and
17 its counsel were each served copies of the Rejection Motion and Rejection Order.
18 See Certificates of Service [Docket Nos. 1026 and 1166]. Advanced did not file any
19 response or otherwise object to the Rejection Motion, and the Court entered its order
20 granting the Rejection Motion [Docket No. 1146] (the "Rejection Order") on March

21
**DEBTORS' OBJECTION TO
MOTION FOR ALLOWANCE OF
ADMINISTRATIVE EXPENSE CLAIM**

18

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1 27, 2020 and setting April 27, 2020 as the deadline (the “Admin Claim Deadline”)
2 by which “any claim(s) for rejection damages or administrative expense arising from,
3 related to, or in connection with the rejection of Contracts or Leases listed in **Exhibit**
4 **A** attached to the [Rejection] Motion is/are required to be filed.”⁷

5 11. On June 17, 2020, the Court issued an *Order (I) Fixing the First Interim*
6 *Bar Date for Filing Certain Postpetition Administrative Expense Claims and*
7 *(II) Approving the Form of Notice of the Administrative Expense Claims Bar Date*
8 [Docket No. 1416] (the “Admin Bar Date Order”), which set July 22, 2020 as the
9 deadline to file certain other Administrative Expense Claims (as defined in the Admin
10 Bar Date Order).

11 12. On July 22, 2020, Advanced filed the *Motion For Allowance Of*
12 *Administrative Expense Claim For Advanced Transfusion Services Pursuant To 11*
13 *U.S.C. §503(b)(1)A And Notice Thereof* [Docket No. 1563] (the “Advanced Admin
14 Claim”), along with the *Declaration of Donald Brown in Support of Advanced*
15 *Transfusion’s Motion for Allowance of Administrative Expense Claim* [Docket No.
16 1565] (the “Brown Declaration”), requesting payment of \$103,888.00 (the
17 “Requested Amount”) for infusion care therapist services and goods supplied to
18 ARMC: (i) Invoice No. 196412 dated December 31, 2019 for \$28,500.00 as a

19
20 ⁷ As mentioned in the Debtors’ reply [Docket No. 1107] to responses to the Rejection Motion and
21 at the March 18, 2020 hearing on the Rejection Motion, this deadline was requested by various
claimants whose contracts were listed in Exhibit A attached to the Rejection Motion.

1 monthly service charge (the “Monthly Service Charge”); (ii) Invoice No. 198284
2 dated January 31, 2020 for the Monthly Service Charge; (iii) Invoice No. 199969
3 dated March 1, 2020 for the Monthly Service Charge; (iv) Invoice No.1999968 dated
4 March 19, 2020 for a prorated amount of the Monthly Service Charge, as well as
5 (v) Invoice No. 197075 dated January 10, 2020 for \$495.00 for an autotransfusion
6 converted service fee; (vi) Invoice No. 197076 dated January 10, 2020 for \$295.00
7 for an autotransfusion standby service fee; and (vii) Invoice No. 197191 dated
8 January 14, 2020 for \$295.00 for an autotransfusion standby service fee. Brown
9 Declaration at 1-9.

10 13. Until July 22, 2020, the Debtors were unaware of any postpetition
11 outstanding obligations to Advanced. Moreover, the Debtors had reason to believe
12 that if the Debtors had any postpetition outstanding obligations to Advanced,
13 Advanced would have filed an administrative claim by the April 27, 2020 Admin
14 Claim Deadline set forth in the Rejection Order. Nevertheless, after reviewing the
15 invoices, the Debtors are willing to pay \$43,790.00 of the Requested Amount, which
16 accounts for the Monthly Service Charge for December 2019 and a prorated amount
17 of the Monthly Service Charge for the portion of January 2020 during which ARMC
18 remained open, plus \$1,040.00 for the goods actually used by the Debtors. The
19 Debtors dispute owing all remaining amounts, *i.e.*, \$60,098.00 (the “Disputed
20 Amounts”).

21
**DEBTORS’ OBJECTION TO
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1 14. Pursuant to the notice set forth in the Motion, as well as various
2 stipulations filed by the parties in an effort to resolve the dispute without Court
3 intervention [*see* Docket Nos. 1679 and 1770], the deadline to file an objection to the
4 Motion is September 14, 2020. Those efforts failed, and the Debtors have timely
5 filed this Objection.

6 15. On July 7, 2020, Lapis, UMB and the Debtors (the “Plan Proponents”)
7 filed the *Joint 11 Chapter Plan of Reorganization of Astria Health and its Debtor*
8 *Affiliates* [Docket No. 1471] (the “Plan”) as well as the *Disclosure Statement*
9 *Relating to the Joint Chapter 11 Plan of Reorganization of Astria Health and its*
10 *Debtor Affiliates* [Docket No. 1472] (the “Disclosure Statement”). The Debtors
11 anticipate confirming the Plan in the near future.

12 16. Additional background facts on the Debtors, including an overview of
13 the Debtors’ business, information on the Debtors’ capital structure, and events
14 leading up to these Chapter 11 Cases, are contained in the First Day Declarations.
15 [Docket Nos. 16 and 21].

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19 [signature follows]
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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: September 14, 2020

ASTRIA HEALTH

By:



Michael Lane
Chief Restructuring Officer