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Attorneys for the Chapter 11 Debtors and Debtors In Possession

HONORABLE WHITMAN L. HOLT

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

DEBTORS' RESPONSE TO WSNA'S EMERGENCY MOTION FOR RECONSIDERATION OF THE ORDER AUTHORIZING CLOSURE OF MEDICAL

[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), SHS 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).

CENTER; DECLARATION OF MICHAEL LANE IN SUPPORT THEREOF

[Related Docket No. 876]

Astria Health ("Astria") and SHC Medical Center - Yakima, both Washington nonprofit corporations, doing business as Astria Regional Medical Center (the "Medical Center"), along with the above-referenced affiliated debtors (collectively, the "Debtors"), the debtors and debtors in possession in the above-captioned chapter 11 bankruptcy cases (collectively, the "Chapter 11 Cases"), hereby file this response (the "Response") to *WSNA's Emergency Motion For Reconsideration of the Order Authorizing Closure of Medical Center* [Docket No. 876] (the "Reconsideration Motion"), filed by the Washington State Nurses' Association ("WSNA"). In support of the Response, the Debtors respectfully state as follows:

PRELIMINARY STATEMENT

The Court should overrule the Reconsideration Motion because (i) the WSNA does not have standing to challenge the closure of the Medical Center as evidenced by the limitations contained in its collective bargaining agreement ("CBA"); (ii) the Reconsideration Motion fails to meet the heavy burden for reconsideration; (iii) substantial closure of the Medical Center has occurred, rendering the Reconsideration Motion moot; and (iv) the adequacy of WARN notice is not relevant to the matter at hand.

1 The Debtors made the difficult but sound business decision to preserve patient
2 care and the financial viability of the Debtors' other hospitals, to close the Medical
3 Center. After consideration of the evidence provided by the Debtors through
4 declaration under penalty of perjury, and hearing two hours of arguments from parties,
5 including Washington State regulatory authorities and the Official Committee of
6 Unsecured Creditors (the "Committee"), the Court entered a well-reasoned order (the
7 "Order") [Docket No. 874] authorizing the closure of the Medical Center.
8 The WSNA now seeks reconsideration of the Order. However, the WSNA,
9 which serves as the union representative for nurses at the Medical Center under a
10 CBA, does not have standing to object to the Debtors' decision to close the Medical
11 Center. The WSNA's right to represent the nurses of the Medical Center only extends
12 to those matters expressly provided for in the CBA and the CBA does not authorize
13 the WSNA to question the Debtors' decision to close the Medical Center. To the
14 contrary, the CBA recognizes that the management and operations of the Medical
15 Center rest solely with the Medical Center. CBA, Article 20 (the applicable provision
16 of which is attached to the Declaration of Michael Lane, filed herewith). The WSNA
17 objects to the closure based on the alleged negative impact on the community.
18 However, the WSNA has no standing to assert generalized grievances about the
19 delivery of healthcare in Yakima, Washington.
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19-01189-WLH11 Doc 886 Filed 01/13/20 Entered 01/13/20 11:42:54 Pg 3 of 26

1 The WSNA's Reconsideration Motion also does not provide for any newly
2 discovered evidence, clear error by the Court, or any intervening change in the
3 controlling law to support reconsideration of the Order. Instead, the Reconsideration
4 Motion is an attempt to re-litigate issues already considered by the Court at the
5 hearing on the Motion to Close (defined herein). In particular, the WSNA complains
6 of the lack of notice of the Motion to Close and the hearing. These concerns were
7 raised by the Official Committee of Unsecured Creditors and considered by the Court.
8 However, the Court held that notice of the Motion to Close and the hearing was proper
9 under the circumstances. Other parties in interest, including many Regulatory
10 Agencies (defined herein), attended the hearing, but none objected to the closure of
11 the Medical Center. The WSNA cannot rebut the fact that the Medical Center has
12 consistently sustained financial losses that drains the resources of the Debtors' other
13 hospitals and the existence of the Medical Center negatively impacts the Debtors'
14 ability to obtain exit financing or sell their assets in bankruptcy. The Court relied on
15 these facts in its finding that the Debtors' properly exercised their business judgment
16 to close the Medical Center.
17 Moreover, the Debtors have taken significant steps to close the Medical Center
18 since the Court's entry of the Order authorizing the closure. As of the date of this
19 Response, the Medical Center is substantially closed and the Reconsideration Motion
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19-01189-WLH11 Doc 886 Filed 01/13/20 Entered 01/13/20 11:42:54 Pg 4 of 26

should be considered moot. Finally, any argument concerning the propriety of WARN notice is irrelevant to the issues at hand.

For these reasons, the Reconsideration Motion should be denied.

BACKGROUND

1. On January 3, 2020, the Debtors filed the *Debtors' Notice of Emergency Motion and Emergency Motion to Authorize Closure of Medical Center* (the "Motion to Close") [Docket No. 867] under seal. Concurrently, the Debtors also filed the *Debtors' Ex Parte Motion to File Certain Motion and Declaration in Support Thereof, Under Seal* (the "Motion to Seal") [Docket No. 866], seeking authorization to file the Motion to Close under seal.

2. The Debtors filed the Motion to Close as a last resort measure to close the Medical Center to ensure the safety of patients and to maintain the financial viability of the Debtors' remaining two hospitals and related clinics. Specifically, the Debtors sought authorization to close the Medical Center because the Medical Center (i) has consistently incurred substantial financial losses that are draining resources of the Debtors' other hospitals, (ii) has a negative effect on the Debtors' ability to obtain exit financing or to sell the Debtors' assets in bankruptcy, and (iii) has experienced an increased turnover of nursing staff, making continued operations of a safe and effective hospital problematic because replacing employed nurses with temporary staffing nurses can harm patient care and is significantly more expensive.

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3. The Debtors filed the Motion to Close under seal because, given the recent increase in turnover of nurses and staff at the Medical Center, the Debtors were concerned that advance public notice of the closure of the Medical Center would lead to further employee turnover that would jeopardize patient care at the Medical Center.

4. At the Court's direction, the Debtors properly served the Motion to Close and the notice of the telephonic hearing (the "Hearing") to consider the Motion to Close on the United States Trustee, the Official Committee of Unsecured Creditors (the "Committee"), counsel to secured lenders and DIP lenders, UMB Bank, NA and Lapis Advisers LP, and counsel for the following regulatory agencies (the "Regulatory Agencies"): the City of Yakima; the State of Washington, Consumer Protection Division (Office of the Attorney General); Office of the Attorney General for the United States; Office of the Washington Attorney General; the Patient Care Ombudsman; The Centers for Medicare and Medicaid Services and United States Department of Health and Human Services; and the Washington Department of Public Health. *See* Certificate of Service [Docket No. 875].

5. Each of the parties served with the Motion to Close and notice of Hearing, including the Regulatory Agencies, attended and actively participated at the Hearing held on January 8, 2020. None of these parties objected to the closure of the Medical Center.

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19-01189-WLH11 Doc 886 Filed 01/13/20 Entered 01/13/20 11:42:54 Pg 6 of 26

6. The Creditors' Committee, which represents all unsecured creditors including the nurses employed at the Medical Center, however, did contest the Motion to Seal on the basis that individual unsecured creditors did not have prior notice of the Motion to Close or the Hearing. The Court considered and rejected the Committee's arguments and found no violations of due process, reasoning that appropriate creditors and Regulatory Agencies received adequate notice of the Motion to Close and were in attendance at the Hearing. Also, the Court agreed with the Debtors and found that the Motion to Close was properly filed initially under seal to protect against the risk that patient care could be jeopardized. The Court weighed these risks to patient care and found that notice of the Motion to Close and Hearing was proper.

7. At the conclusion of the Hearing, the Court orally granted the Debtors' Motion to Close, finding that the Debtors properly exercised their business judgment to close the Medical Center. Later that day, on January 8, 2020, the Court entered its Order [Docket No. 874] authorizing the Debtors to close the Medical Center.

8. The WSNA, which is the representative of nurses employed at the Medical Center under a collective bargaining agreement, now seeks reconsideration of the Order.

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RESPONSE

I. The WSNA does not have standing to object to the Debtors' decision to close the Medical Center.

The standing of a party to proceed is a precondition for the exercise of jurisdiction by any federal court, and may be considered at any time. *See generally Qwest Communications International, Inc. v. F.C.C.*, 240 F.3d 886, 891 (10th Cir. 2001); *Pashaian v. Eccelston Properties, Ltd.*, 88 F.3d 77, 82-83 (2d Cir. 1996). Here the WSNA does not have standing to be heard. First, the WSNA's right to represent the nurses at the Medical Center on this matter (or any matter) extends only to those matters expressly provided for in the CBA, dated April 9, 2019, between the WSNA and the Medical Center.[2] The WSNA is not authorized by the terms of the CBA to appear on this matter -- whether the Medical Center should remain open or not -- as a representative of the nurses. Under the CBA, WSNA has no right to dispute management's decision to close the Medical Center. While the CBA acknowledges WSNA's authority to bargain with respect to wages, hours, and other terms and conditions of employment, the CBA specifically provides that:

> [t]he management of the Medical Center and the direction of the work force is vested exclusively with the Medical Center . . . . The Medical Center has the right and responsibility, except as modified in this

[2] A full copy of the CBA was filed with the WSNA's proof of claim, which is itself attached hereto as Exhibit A.

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19-01189-WLH11 Doc 886 Filed 01/13/20 Entered 01/13/20 11:42:54 Pg 8 of 26

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> Agreement, to control, change, and supervise all operations, and to direct, assign, and re-assign as the Medical Center deems necessary to provide quality patient care. Such rights and responsibilities shall include, by way of illustration, but not limited to, the selection and hiring of nurses, discipline, supervision, layoff, promotion, demotion, or transfer of nurses, establishment of work schedules, and control and regulation of the use of all equipment and other property of the Medical Center.

CBA, Article 20. In fact, nothing in the CBA prohibits a closure of the Medical Center on an emergency, or otherwise.

Generally, for standing in a chapter 11 case, a party must satisfy statutory standing under 11 U.S.C. § 1109, constitutional standing under Article III, and the evolving prudential standing requirements. *See Hughes v. Tower Park Props., LLC (In re Tower Park Props., LLC)*, 803 F.3d 450, 456 (9th Cir. 2015). Previously, the Supreme Court recognized at least three prudential standing doctrines: "'the general prohibition on a litigant's raising another person's legal rights, the rule barring adjudication of generalized grievances more appropriately addressed in the representative branches, and the requirement that a plaintiff's complaint fall within the zone of interests protected by the law invoked.'" *Lexmark Int'l, Inc. v. Static Control Components, Inc*., 572 U.S. 118, 126 (2014) (*quoting Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 12 (2004) (quoting *Allen v. Wright,* 468 U.S. 737, 751 (1984))). Here, the WSNA violates two of these doctrines. First, the WSNA, which is not authorized under the CBA to speak on issues related to the closure of the

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1 Medical Center, generally complains about the effect of the closure on the community
2 and access to healthcare facilities. This is an attempt by the WSNA to raise another
3 person's alleged legal rights. Second, the WSNA is asking the Court to adjudicate
4 generalized grievances about how healthcare is going to be delivered in Yakima after
5 the Medical Center is closed. The WSNA seeks to create a right for the citizens of
6 Yakima to have access to healthcare facilities that the community cannot financially
7 support, and have the Court enforce that right. However noble (yet still unfunded)
8 WSNA's objective may be, there is no legal right in the United States for any
9 community to have a certain number of emergency rooms, or hospital beds, or even
10 any healthcare facilities at all. While it is fair to debate those issues in the political
11 arena, they are beyond the jurisdiction of this Court; thus, the WSNA's arguments
12 that the Medical Center should remain open because of the impact on the availability
13 of healthcare to the community should not be reviewed by this Court.
14 Additionally, the Federal Rules of Bankruptcy Procedure (the "Bankruptcy
15 Rules") suggest that the WSNA does not have standing to appear. Bankruptcy Rule
16 2018(d) provides that in a chapter 11 case such as this, a "labor union … shall have
17 the right to be heard on the economic soundness of a plan affecting the interests of the
18 employees." That Bankruptcy Rule does not provide that a labor union has the right
19 to be heard on the economic soundness of a use of assets pursuant to § 363 of the
20 Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code") out of the
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19-01189-WLH11 Doc 886 Filed 01/13/20 Entered 01/13/20 11:42:54 Pg 10 of 26

1 ordinary course of business. Several canons of statutory construction apply here that
2 support a union's limited standing. First, the Bankruptcy Rules "should be construed
3 so that effect is given to all its provisions, so that no part will be inoperative or
4 superfluous, void or insignificant . . . ." *Hibbs v. Winn*, 542 U.S. 88, 101 (2004)
5 (*quoted in Corley v. United States*, 556 U.S. 303, 314 (2009)); *Astoria Federal*
6 *Savings & Loan Ass'n v. Solimino*, 501 U.S. 104, 112 (1991). If the WSNA has
7 standing to appear on any issue, Bankruptcy Rule 2018(d) is rendered superfluous.
8 Another canon of statutory construction is that "where Congress includes particular
9 language in one section of a statute but omits it in another . . ., it is generally presumed
10 that Congress acts intentionally and purposely in the disparate inclusion or exclusion."
11 *Keene Corp. v. United States*, 508 U.S. 200, 208 (1993) (*quoting Russello v. United*
12 *States*, 464 U.S. 16, 23 (1983)). Here the Bankruptcy Rules intentionally gave the
13 WSNA standing to be heard on the economic soundness of a plan, but did not extend
14 that right generally, and did not include issues raised under § 363 specifically. To
15 give the WSNA standing here would ignore that the Bankruptcy Rules were created
16 "intentionally and purposely" and only gave labor unions standing as such with regard
17 to one specific issue.
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19-01189-WLH11 Doc 886 Filed 01/13/20 Entered 01/13/20 11:42:54 Pg 11 of 26

1 Even if the WSNA has some right to payment as a creditor, the WSNA should
2 not be considered a party in interest with standing in this context.[3] "An entity may be
3 [a] real party in interest and have standing in one respect while he may lack standing
4 for another purpose." *In re Ofty Corp.*, 44 B.R. 479, 481 (Bankr. D. Del. 1984); *see*
5 *also In re River Bend-Oxford Assocs.*, 114 B.R. 111, 113 (Bankr. D. Md. 1990)
6 ("Party in interest is an expandable concept depending on the particular factual
7 context in which it is applied . . . . [A] determination whether an entity qualifies as a
8 party in interest should be made within the specific reorganization process context for
9 which the determination is sought."). Here the baseline for the WSNA's opposition
10 to the closure of the Medical Center rests in its belief that it is entitled to second-guess
11 the informed judgment of the Debtors' management and Board of Directors, as well
12 as the discretionary determination of this Court, that closure of the Medical Center
13 was in the best interests of creditors. However, the debtor in possession, as a fiduciary
14 of the estates' creditors, is the more appropriate arbiter of the "best interests" of the
15 estate than an alleged individual creditor. In this regard, it must also be noted that
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18 [3] Although the WSNA has filed a proof of claim (designated as Claim No. 409) on
19 behalf of employees in the Medical Center case, that claim is limited to
20 $1,571,887.50, based solely on "Accrued PTO." *See* Exhibit A.
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19-01189-WLH11 Doc 886 Filed 01/13/20 Entered 01/13/20 11:42:54 Pg 12 of 26

although the Committee, which represents the interests of all general unsecured creditors, objected to the Motion to Seal, it did not object to the relief sought in the Motion to Close itself. To the contrary, at the prior status conference the Committee counsel effectively argued that the Medical Center should be closed.

II. The Reconsideration Motion fails to meet the standard for reconsideration and should be denied.

Although "[t]he federal rules do not contemplate motions for reconsideration," as such, Federal Rules of Civil Procedure (the "Civil Rules") 59 and 60 set forth procedures to request alteration or relief from a judgment. *See Hatsen v. Finn (In re Curry & Sorensen, Inc.)*, 57 B.R. 824, 827 (B.A.P. 9th 1986); Fed. R. Civ. P. 59 & 60. Civil Rules 59 and 60 are applicable to cases under the Bankruptcy Code by Bankruptcy Rules 9023 and 9024. Although the language of the Bankruptcy Rules only mentions "cases" under the Bankruptcy Code, courts regularly apply Civil Rules 59 and 60 to contested matters and adversary proceedings. *See, e.g., In re First Magnus Fin. Corp.*, No. 4:09-ap-00211-JMM, 2010 WL 5376205, *2 (Bankr. D. Ariz. Dec. 22, 2010) (Marlar, C.J.) (denying motion for relief from order granting summary judgment in adversary proceeding brought under Fed. R. Civ. P. 59 and 60 "[a]lthough either type of motion is proper").

Here, the Reconsideration Motion seeks reconsideration of the Court's Order entered in a contested matter, and, as a result, is subject to Civil Rules 59 and 60.

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19-01189-WLH11 Doc 886 Filed 01/13/20 Entered 01/13/20 11:42:54 Pg 13 of 26

Specifically, the Court should consider the Reconsideration Motion under the strict standards applied to requests to alter or amend a judgment under Civil Rule 59(e). "A 'motion for reconsideration' is treated as a motion to alter or amend judgment under Federal Rule of Civil Procedure Rule 59(e) if it is filed within [fourteen] days of entry of the judgment." *Am. Ironworkers & Erectors, Inc. v. N. Am. Const. Corp.*, 248 F.3d 892, 898-99 (9th Cir. 2001). WSNA filed the Reconsideration Motion two days after the Court entered the Order. Accordingly, the Court should treat the Reconsideration Motion as a request for relief under Civil Rule 59(e).

The Ninth Circuit Court of Appeals is unequivocal in its case law: requests for reconsideration should be denied unless the extraordinary remedy is warranted by highly unusual circumstances. "[R]econsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly." *McDowell v. Calderon*, 197 F.3d 1253, 1255, n.1 (9th Cir. 1999) (citation omitted). For this reason, "[a] motion for reconsideration under Rule 59(e) should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." *Id.* at 1255 (internal citations and quotations omitted).

Even under Rule 60, the WSNA has failed to carry its burden of demonstrating why this Court should reconsider the Order. No ground for reconsideration is present

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19-01189-WLH11 Doc 886 Filed 01/13/20 Entered 01/13/20 11:42:54 Pg 14 of 26

here: there has been no change in controlling law, no newly available evidence, and no clear error or manifest injustice.

The WSNA argues that the Court should grant the Reconsideration Motion because the WSNA was not provided with notice of the Motion to Close or the Hearing prior to entry of the Order. The WSNA relies on *United States Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271 (2010) to argue that "a judgment is void under Rule 60(b)(4) if the proceedings leading to its entry violates due process . . . ." Reconsideration Motion, at 9. However, the Motion to Close was filed to preserve assets of the Debtors' estates and the Supreme Court in *Espinosa* noted that "We are mindful that conserving assets is an important concern in a bankruptcy proceeding." 559 U.S. 260 (2010). The Supreme Court also explained that:

> "A judgment is not void," for example, "simply because it is or may have been erroneous." *Hoult v. Hoult*, 57 F. 3d 1, 6 (CA1 1995); … Instead, Rule 60(b)(4) applies only in the rare instance where a judgment is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard. *See United States v. Boch Oldsmobile, Inc*., 909 F. 2d 657, 661 (CA1 1990); … *cf. Chicot County Drainage Dist. v. Baxter State Bank*, 308 U. S. 371, 376 (1940); Stoll v. Gottlieb, 305 U. S. 165, 171–172 (1938).

Espinosa, 559 U.S. at 270-71.

Here, the WSNA alleges only the latter issue. It is well established that due process requires notice "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to

present their objections." *Mullane v. Central Hanover Bank & Trust Co*., 339 U. S. 306, 314 (1950) (citations omitted); *see also Jones v. Flowers*, 547 U. S. 220, 225 (2006) ("[D]ue process does not require actual notice . . ."). Here, the WSNA's right to notice had to be balanced against the risk to patients and patient care. The Court correctly weighed that risk and agreed with the Debtors that notice to (a) the United States Trustee, (b) counsel for the Committee, (c) the secured creditors and DIP Lenders, and (d) Regulatory Agencies was sufficient. Courts must consider the practicalities and peculiarities of the case to decide it if the constitutional notice requirements are satisfied. "The criterion is not the possibility of conceivable injury, but the just and reasonable character of the requirements, having reference to the subject with which the statute deals." *American Land Co. v. Zeiss*, 219 U.S. 47, 67 (1910).

The Reconsideration Motion also raises issues that were already raised and disposed of by the Court at the Hearing. WSNA argues that, because the Order was entered without giving WSNA notice or an opportunity to be heard, the Order is void for want of due process. *See* Reconsideration Motion, at 8-10. However, as recognized by WSNA in its Reconsideration Motion (Reconsideration Motion, at 5), the Committee, which represents the interests of all general unsecured creditors (including union represented and non-represented employees), raised these same due process concerns in its objection to the Motion to Seal [Docket No. 869] and at the

Hearing. The Court considered the arguments on this point and overruled the Committee's objection on due process concerns.

The WSNA also argues that the Court should reconsider its Order granting the Motion to Close because "[t]he unplanned closure of the Medical Center jeopardizes the health of the community that relies on the Medical Center for essential services including emergency room services and open heart surgery." Reconsideration Motion, at 6. Notice of the Hearing was properly served and noticed to all parties as directed by the Court and who had standing to address community healthcare concerns. Each of these persons or entities, who, in contrast to the WSNA, had standing and a clear interest in patient care and community issues, received notice and actively participated in the two hour emergency Hearing. None of these Regulatory Agencies, which are responsible for assuring healthcare in the Yakima Valley, opposed the closure of the Medical Center.

Moreover, as explained, WSNA's attempt to create a right for the citizens of Yakima to certain healthcare facilities that the community cannot financially support, and have the Court enforce that right, is without basis in law. There is no right in the United States for any community to have a certain number of emergency rooms, or hospital beds, or even any healthcare facilities at all. Thus, the Court should not consider the WSNA's arguments related to the impact of closure of the Medical Center on the community.

1 The Court also agreed with the Debtors' reasoning to now close the Medical
2 Center. Although the WSNA alleges that closure of the Medical Center is not
3 necessary at this time (Reconsideration Motion, at 11-12), the WSNA cannot rebut
4 the fact that the Medical Center has continued to lose money and that there is not a
5 viable funding source to keep the Medical Center open. *See* Gallagher Declaration in
6 Support of Motion to Close, ¶¶ 11-13 [Docket No. 867]. The WSNA also does not
7 contest the fact that the Medical Center's financial losses are draining resources of the
8 Debtors' other hospitals and the Medical Center's existence has a negative effect on
9 the Debtors' ability to obtain exit financing or to sell the Debtors' assets in
10 bankruptcy. *Id*. The Court relied on all of these undisputed facts in its decision to
11 authorize closure of the Medical Center. Unfortunately, hospitals in and outside of
12 bankruptcy, often shut down on expedited basis. *See e.g.*, *In re Gardens Regional*
13 *Hospital and Medical Center Inc*., Case No. 16-17463 (Bankr. C.D. Cal. Jan. 20,
14 2017) [Docket No. 633] (authorizing closure of hospital three days after motion to
15 close was filed); *In re Verity Health System of California, Inc., et al*., Case No. 19-
16 20151 (Bankr. C.D. Cal. Jan 9, 2020) [Docket No. 3934] (authorizing closure of
17 hospital three days after motion to close was filed). The need for the closure of the
18 Medical Center was therefore proper, as both a matter of law and fact.
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III. **The Reconsideration Motion is moot.**

2 The Reconsideration Motion should be deemed as moot because, as explained 3 in the attached Declaration of Michael Lane, the Debtors have taken substantial steps 4 to close the Medical Center. Since the Order was entered on January 8, 2020, the 5 Debtors have notified employees and medical staff to cease elective admissions at the 6 Medical Center, cancelled scheduled elective procedures at the Medical Center and 7 re-scheduled such procedures at other facilities. The Debtors have also notified all 8 applicable Washington state and federal regulatory agencies of the pending closure of 9 the Medical Center, including EMS, local police and fire departments, as well as the 10 media to alert the public.

11 The Debtors also hold twice daily quality meetings with department heads to 12 effectuate discharge or transfer of patients. As of January 10, 2020, there were sixteen 13 patients remaining at the Medical Center. The Debtors anticipate that between seven 14 and nine patients will remain at the Medical Center on Monday, January 13, 2020. 15 Case Management at the Medical Center will work with physicians and nursing to 16 discharge or transfer these patients to another facility.

17 The Medical Center's staff has also been reduced concurrent with the reduction 18 in patients. The emergency department is currently operating on a skeleton crew 19 staffed for walk-ins and is closed as of Monday, January 13, 2020. A skeleton staff 20 is also retained in the radiology unit to operate x-rays, MRIs, and CT scans. Staff at

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19-01189-WLH11 Doc 886 Filed 01/13/20 Entered 01/13/20 11:42:54 Pg 19 of 26

1 the Cath Lab have also been reduced to 50% with concurrent with patient reductions.
2 Admitting staff and schedulers were also reduced on January 10, 2020.

3 Also on January 9, 2020, the Medical Center closed same day surgery, cleared
4 the schedule at the operating room and rescheduled patients as appropriate at other
5 facilities, the Cath Lab cancelled all future cases and the cardiac rehabilitation unit
6 treated its last patient. The Debtors are also discontinuing laundry service at the
7 Medical Center, consolidating medical waste for vendor Steri cycle and using the
8 supplies on hand at the Medical Center and returning or transferring any remaining
9 inventory. On January 10, 2020, Four Medical Center (medical/surgical inpatient
10 unit) was closed and consolidated into the Advanced Cardiac Unit, the cardiac
11 rehabilitation unit closed, mammography closed and the café closed (but is available
12 for patient meals only).

13 Because of these actions already taken to close the Medical Center, trying to
14 "reopen" the Medical Center would be prohibitively expensive and dangerous.
15 Accordingly, the Reconsideration Motion should be deemed moot. *See West Coast*
16 *Seafood Processors, Ass'n v. Natural Resources Defense Council, Inc.*, 643 F.3d 701,
17 704 (9th Cir. 2011) (dismissing an appeal as moot where there remained no "effective
18 relief" capable of being granted).

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19-01189-WLH11 Doc 886 Filed 01/13/20 Entered 01/13/20 11:42:54 Pg 20 of 26

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IV. Adequacy of WARN notice is not relevant to the Reconsideration Motion.

The WSNA also contends in the Reconsideration Motion that the Debtors' WARN notice was inadequate and "violated federal law." Reconsideration Motion, at 5-6. However, the adequacy of the WARN notice only relates to whether there is a claim for damages by the WSNA employees under federal labor laws, it is not relevant to whether the Debtors properly exercised their business judgment in their decision to close the Medical Center.

If a claim for WARN damages is properly brought, the Debtors will be prepared to address it at that time. Among other things, the Debtors complied with the WARN Act when it sent its WARN notice to WSNA on January 8, 2020 (immediately following the entry of the Court's Order). Because the Medical Center qualifies as a "faltering company" under the WARN Act, a full 60-day notice of termination was not required under the WARN Act. 29 U.S.C. § 2102(b)(1); 20 CFR § 639.9(a). Moreover, because the Medical Center is a liquidating fiduciary and is no longer operating the Medical Center as a going concern, it does not qualify as an "employer" for purposes of the WARN act and the WARN act's notice requirements do not apply to it. Thus, because the Debtors provided the WARN notice to the WSNA as soon as practicable following entry of the Order authorizing closure of the Medical Center, the Debtors complied with federal law.

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19-01189-WLH11 Doc 886 Filed 01/13/20 Entered 01/13/20 11:42:54 Pg 21 of 26

1
CONCLUSION

2 WHEREFORE, the Debtors respectfully requests that the Court deny the
3 Reconsideration Motion.

4

5 Dated: January 13, 2020

/s/ Sam J. Alberts

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

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DECLARATION OF MICHAEL LANE

I, Michael Lane, submit this Declaration in support of the DEBTORS' RESPONSE TO WSNA'S EMERGENCY MOTION FOR RECONSIDERATION OF THE ORDER AUTHORIZING CLOSURE OF THE MEDICAL CENTER (the "Response"), and hereby state and declare as follows:

1. I am the Chief Restructuring Officer of Astria Health ("CRO"). I was appointed CRO by the Astria Health Board of Directors as required by the subordinated promissory note dated January 18, 2019. I have been involved in the healthcare industry representing hospitals for 39 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.

2. 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.

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19-01189-WLH11 Doc 886 Filed 01/13/20 Entered 01/13/20 11:42:54 Pg 23 of 26

3. Following the hearing on January 8, 2020, wherein the Court authorized the Debtors to close the Medical Center, the Debtors have taken many significant steps to close the Medical Center. In particular, the Debtors have notified employees and medical staff that they were to cease allowing elective admissions at the Medical Center. The Debtors also cancelled scheduled elective procedures at the Medical Center and re-scheduled elective procedures at other facilities or competing providers.

4. Also on January 8, 2020, the Debtors notified all applicable state and federal regulatory agencies of the pending closure of the Medical Center. Specifically, the Debtors notified EMS to divert ambulances to other nearby facilities, local police and fire departments of the closure, and the media in an attempt to alert the public. The Debtors also notified the following agencies of the pending closure of the Medical Center: Department of Health - Washington State, CMS Medicare, Joint Commission, Clinical Laboratory Improvement Amendment (CLIA), and the Food and Drug Administration.

5. Beginning on January 8, 2020 to date, the Debtors have also held twice daily meetings with department heads at the Medical Center to effectuate the discharge or transfer of remaining patients at the Medical Center.

6. On January 9, 2020, the Debtors distributed WARN notices to the Medical Center's employees, notifying them of the pending closure. Also, forms were distributed to employees to facilitate the return of employee badges and keys to the

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19-01189-WLH11 Doc 886 Filed 01/13/20 Entered 01/13/20 11:42:54 Pg 24 of 26

Medical Center. The Debtors are also setting up a job fair where Medical Center employees can apply and interview for open positions at other facilities.

7. Also on January 9, 2020, the Medical Center closed same day surgery, cleared the schedule at the operating room and rescheduled patients as appropriate at other facilities, the Cath Lab cancelled all future cases and the cardiac rehabilitation unit treated its last patient. The Debtors are also discontinuing laundry service at the Medical Center, consolidating medical waste for vendor Steri cycle and using the supplies on hand at the Medical Center and returning or transferring any remaining inventory.

8. The Debtors have also set up a phone number and email address where any patient questions or medical records requests related to the closure of the Medical Center can be made.

9. As of January 10, 2020, a total of sixteen patients remain at the Medical Center. The Debtors anticipate the number of patients at the Medical Center to decease to between seven to nine patients by January 13, 2020.

10. Staffing at the Medical Center has been reduced concurrent with the reduction of patients. The emergency department is currently operating on a skeleton crew staffed for walk-ins and is expected to close on Monday, January 13, 2020. A skeleton staff is also retained in the radiology unit to operate x-rays, MRIs, and CT scans. Staff at the Cath Lab have also been reduced to 50% with concurrent with

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19-01189-WLH11 Doc 886 Filed 01/13/20 Entered 01/13/20 11:42:54 Pg 25 of 26

patient reductions. Admitting staff and schedulers were also reduced on January 10, 2020.

11. On January 10, 2020, the 4 Center (medical/surgical inpatient unit) was closed and consolidated into the Advanced Cardiac Unit, the cardiac rehabilitation unit closed, mammography closed and the café closed, but is available only for patient meals.

I declare under penalty of perjury that, to the best of my knowledge and after reasonable inquiry, the foregoing is true and correct.

Dated: January 13, 2020

ASTRIA HEALTH

By:

Michael Lane

Chief Restructuring Officer

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19-01189-WLH11 Doc 886 Filed 01/13/20 Entered 01/13/20 11:42:54 Pg 26 of 26