

1 JAMES L. DAY (WSBA #20474)
THOMAS A. BUFORD (WSBA #52969)
BUSH KORNFELD LLP
2 601 Union Street, Suite 5000
Seattle, WA 98101
Tel: (206) 292-2110
3 Email: jday@bskd.com
tbuford@bskd.com

HONORABLE WHITMAN L. HOLT

4 SAMUEL R. MAIZEL (Admitted *Pro Hac*
Vice)
5 DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
6 Tel: (213) 623-9300
Fax: (213) 623-9924
7 Email: samuel.maizel@dentons.com

8 SAM J. ALBERTS (WSBA #22255)
DENTONS US LLP
1900 K. Street, NW
Washington, DC 20006
9 Tel: (202) 496-7500
Fax: (202) 496-7756
10 Email: sam.alberts@dentons.com

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

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

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

Chapter 11
Lead Case No. 19-01189-11
Jointly Administered
**EX PARTE MOTION FOR ENTRY OF AN
ORDER SEALING PLAN SETTLEMENT
TERM SHEET; DECLARATION OF
MICHAEL LANE IN SUPPORT THEREOF**

18 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,
19 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 -
20 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
21 Home Health, LLC (19-01200-11).

MOTION TO SEAL



1 Astria Health, a Washington nonprofit public benefit corporation (“Astria”),
2 and the above-referenced affiliated debtors and debtors in possession (the
3 “Debtors”) under chapter 11 of title 11 of the United States Code, §§ 101 *et seq.*
4 (the “Bankruptcy Code”),² in these chapter 11 cases (the “Chapter 11 Cases”), by
5 and through the undersigned counsel of record, hereby move *ex parte* (the
6 “Motion”), pursuant to §§ 105(a) and 107, Bankruptcy Rule 9018 and LBR 9018-1,
7 for the entry of an Order granting leave to file that certain Plan Settlement Term
8 Sheet between the Debtors, the Official Committee of Unsecured Creditors (the
9 “Committee”), and the Lapis Parties³ setting forth the Committee Plan Settlement
10 (the “Term Sheet”), under seal as part of the Plan Supplement. The Plan
11 Supplement, not including the Term Sheet, is filed concurrently herewith. Another
12 version of the Plan Supplement, which includes the Term Sheet, is separately filed

13 ² All references to § herein are to sections of the Bankruptcy Code. All references
14 to “Bankruptcy Rules” are to provisions of the Federal Rules of Bankruptcy
15 Procedure. All references to “LBR” are to provisions of the Local Bankruptcy
16 Rules of the United States Bankruptcy Court for the Eastern District of
17 Washington.

18 ³ Capitalized terms not otherwise defined herein shall have the meaning afforded in
19 the *Second Amended Joint Chapter 11 Plan of Reorganization of Astria Health and*
20 *its Debtor Affiliates* [Docket No. 1986] (the “Plan”).

1 under seal. The basis for the relief requested in this Motion is set forth below and
2 in the attached Declaration of Michael Lane. In further support of the Motion, the
3 Debtors respectfully state as follows:

4 **I. JURISDICTION, VENUE AND PREDICATE FOR RELIEF**

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

8 The statutory predicates for the relief requested herein are §§ 105(a) and 107
9 and Bankruptcy Rule 9018.

10 **II. ARGUMENT**

11 Section 107(b) authorizes the Court to issue orders that will protect entities
12 from potential harm caused by disclosure of confidential information. Specifically,
13 § 107(b) provides:

14 (b) On request of a party in interest, the bankruptcy court
15 shall, and on the bankruptcy court's own motion, the
16 bankruptcy court may—

- 17 (1) protect an entity with respect to a trade secret or
18 confidential research, development, or commercial
19 information; or
20 (2) protect a person with respect to scandalous or
defamatory matter contained in a paper filed in a
case under this title.

“Section 107(b) [makes] it mandatory for a [bankruptcy] court to protect
documents falling into one of the enumerated exceptions.” *In re Khan*, 2013

1 WL 6645436, at *3 (B.A.P. 9th Cir. Dec. 17, 2013). Moreover, “[t]he types of
2 information that can be protected by the court are unlimited.” *Id.* at 4. On the
3 whole, § 107 codifies “the rule that the public's right to access [information in a
4 case is] far from absolute.” *In re JMS Auto. Rebuilders, Inc.*, 2002 WL 32817517,
5 at *3 (C.D. Cal. Jan. 15, 2002).

6 Bankruptcy Rule 9018 sets forth the procedure by which a party may move
7 for relief under § 107. In particular, Bankruptcy Rule 9018 states that the court
8 “may make any order which justice requires (1) to protect the estate or any entity in
9 respect of trade secrets [or] confidential . . . information” Fed. R. Bankr.
10 P. 9018.

11 Here, the Term Sheet contains certain confidential information concerning
12 the Debtors’ claims against Cerner Corporation (“Cerner”) which, if disclosed
13 publically, potentially could be used by Cerner to its advantage in any ensuing
14 litigation. Thus, if the Term Sheet is made public, the Debtors submit that it will
15 cause them irreparable harm in their ability to pursue claims against Cerner.
16 Accordingly, in the exercise of the Debtors’ reasonable business judgment, the
17 Debtors seek leave to file the Term Sheet under seal as it is in the best interests of
18 the estates.

19 The Term Sheet has been distributed to the United States Trustee, Lapis
20 Advisers LP, UMB Bank, N.A., and the Committee (collectively, the “Parties”).

Each of the Parties consents to filing the Term Sheet under seal. Accordingly, by

MOTION TO SEAL

- 3 -
DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, CA 90017-5704
Phone: (213) 623-9300
Fax: (213) 623-9924
BUSH KORNFIELD LLP
LAW OFFICES
601 Union St., Suite 5000
Seattle, Washington 98101-2373
Telephone (206) 292-2110
Facsimile (206) 292-2104

1 this Motion, the Debtors request that the Court enter an order, pursuant to §§ 107(b)
2 and (c) and Bankruptcy Rule 9018, authorizing Debtors to file the Term Sheet
3 under seal.

4
5 Dated: November 25, 2020

/s/ Samuel R. Maizel
6 SAMUEL R. MAIZEL (Admitted *Pro*
7 *Hac Vice*)
8 SAM J. ALBERTS (WSBA #22255)
9 DENTONS US LLP

10 JAMES L. DAY (WSBA #20474)
11 BUSH KORNFELD LLP

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

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MOTION TO SEAL

DENTONS US LLP
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Seattle, Washington 98101-2373
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Facsimile (206) 292-2104

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DECLARATION OF MICHAEL LANE

I, Michael Lane, hereby state and declare as follows:

1. I am filing this declaration (the “Declaration”) in support of the Debtors’ *Ex Parte Motion for Entry Of An Order Sealing Plan Settlement Term Sheet* (the “Motion”).⁴

2. I am the Chief Restructuring Officer (“CRO”) of Astria Health (“Astria”) and independently employed.

3. I have read the Motion and agree with the factual representations contained therein.

4. I support the filing under seal of the Term Sheet.

5. The Term Sheet contains certain confidential strategic information concerning the Debtors’ claims against Cerner Corporation (“Cerner”) which if publically disclosed, potentially could be used by Cerner to its advantage in any ensuing litigation. Thus, if the Term Sheet is made public, I believe it will cause the Debtors irreparable harm in their ability to pursue claims against Cerner. Accordingly, I believe that it is in the best interests of the estates to file the Term Sheet under seal.

6. The Term Sheet has been distributed to the United States Trustee,

⁴ Unless otherwise defined, capitalized terms used herein shall have the same meaning as in the Motion.

1 Lapis Advisers LP, UMB Bank, N.A., and the Committee (the “Parties”). Each of
2 the Parties consents to filing the Term Sheet under seal.

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

5 Dated: November 25, 2020

ASTRIA HEALTH

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7 By: 
Michael Lane
Chief Restructuring Officer

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