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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 **MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION OF SECOND AMENDED JOINT CHAPTER 11 PLAN AND RESPONSE TO OBJECTIONS**

[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).

1901189201211000000000008

[RELATED DOCKET NOS.: 1986, 1987, 2065, 2066, 2067, 2068, 2077, 2079]

HEARING:
Date/Time: December 18, 2020 / 10:00 am (Pacific)
Location: Telephonic Hearing
Telephone Conference: (877) 402-9757
Access Code: 7036041

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Astria Health ("Astria") and the affiliated debtors, the debtors and debtors in possession (each a "Debtor" and, collectively, the "Debtors") in the above-captioned chapter 11 bankruptcy cases (the "Chapter 11 Cases"), and Lapis Advisers, LP as lender under the Debtors' debtor in possession facility in the Chapter 11 Cases, agent under the Debtors' prepetition credit agreement, and as investment advisor and investment manager for certain funds which are beneficial holders of those certain Washington Health Care Facilities Authority Revenue Bonds (collectively the "Lapis Parties" and, together with the Debtors, the "Plan Proponents"), hereby file this brief in support of confirmation of the *Second Amended Joint Chapter 11 Plan of Reorganization of Astria Health and its Debtor Affiliates* [Docket No. 1986], as may be amended and supplemented from time to time (the "Plan")[2] and reply to the objections [Docket Nos. 2065, 2066, 2068, 2077, 2079] (collectively, the "Objections") filed by certain parties (listed below and collectively referred to as the "Objectors")[3] to confirmation of the Plan (collectively, the "Confirmation Brief"),

[2] Unless otherwise provided herein, all capitalized terms have the definitions set forth in the Plan.

[3] The Objectors are: Cerner Corporation, Premier, Inc., the United States Trustee, the United States of America (on behalf of the United States Small Business Administration and the Department of Health and Human Services, acting through

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and, in support of the Confirmation Brief, the Debtors submit the Declaration of Michael Lane (the "Lane Decl."), and respectfully state as follows:

I. INTRODUCTION

The Plan filed by the Debtors and the Lapis Parties as co-Plan Proponents, provides for a restructuring and reorganization of the Debtors' operating facilities that will enable the operating Debtors to emerge from chapter 11 as a well-capitalized healthcare system that is positioned for long-term success. Confirmation of the Plan will also preserve critical patient care for communities in the Yakima Valley and jobs for their employees, and will maximize the value of the Debtors' Estates for all creditors with Allowed Claims.

Since the Petition Date, the Debtors and their management, advisors, creditors, stakeholders, community members, and employees, among others, have worked tirelessly to maintain hospital operations; preserve the going-concern value of the Debtors' two operating Hospitals (and maximize the sale value of a hospital which closed in January 2020 and certain associated properties); to protect the health and wellbeing of the patients who are treated at the operating Hospitals and the jobs of the Debtors' current employees; and maximize the value of their assets for the benefit

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its designated component, the Centers for Medicare & Medicaid Services) and the State of Washington Health Care Authority.

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of their creditors. In fact, the Debtors continue to operate their remaining two Hospitals, satisfy their obligations in these cases, and steadfastly work with their constituents to negotiate and structure the Plan, and conclude these Chapter 11 Cases.

The cornerstones of the Plan are compromises among the Debtors, the Lapis Parties, and the Official Committee of Unsecured Creditors. These compromises are the result of successful and substantial negotiations among these major constituents in these Chapter 11 Cases. In particular, the Lapis Parties have agreed, as part of the Plan, to reinstatement and repayment of their secured claims over time in accordance with the terms of the Exchange Debt Documents including their claims for debtor-in-possession financing that, absent these arrangements, would have to be paid in full in cash on the Effective Date. Meanwhile, the Plan Proponents and the Committee resolved several issues the Committee raised relating to confirmation of the Plan and the treatment of Holders of General Unsecured Claims. The resulting Plan maximizes the value of the ultimate recoveries to all creditor groups on a fair and equitable basis, settles significant claims against the Debtors on terms that are fair, reasonable, and in the best interests of the Debtors' Estates and creditors, pays Allowed Administrative Claims and Priority Claims in full, and provides for a recovery of at least $7.3 million to the holders of the Allowed General Unsecured Claims. In recognition of these extraordinary efforts and the fair and equitable

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results, the Plan has been overwhelmingly accepted by all Voting Classes that returned ballots on the Plan.

Reflecting the consensual nature of these Chapter 11 Cases, the Plan Proponents received only a handful of objections to confirmation, some of which already have been resolved. As set forth more fully below, the Plan meets all requirements for confirmation under title 11 of the United States Code (the "Bankruptcy Code") and these Objections should be overruled. Notably, the Objections are primarily limited to §§ 524(e), 1123(b)(3)(A), 1129(a)(9), and 1129(a)(11), and concede that the Plan satisfies the majority of the Bankruptcy Code's confirmation requirements.

The Plan Proponents will file an amended Plan prior to the Confirmation Hearing, to provide non-material modifications and clarifications to the Plan to address certain points raised in the Objections. These non-material modifications will not require resolicitation of the Plan and do not alter the substantive rights of Holders of Claims treated under the Plan.

Based on the foregoing, and as set forth below, the Plan is proposed in good faith and confirmation is warranted as a matter of law. The Plan Proponents submit that the Court should enter the Confirmation Order substantially in the form which shall be filed prior to the Confirmation Hearing.

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II. FACTUAL BACKGROUND

A. General Background

1. On May 6, 2019 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under the Bankruptcy Code. These Chapter 11 Cases are jointly administered before this Court. [Docket No. 10]. The Debtors are operating their businesses as debtors in possession pursuant to §§ 1107 and 1108.[4]

2. Debtor Astria, a Washington nonprofit corporation, is the direct or indirect corporate member of entities that make it (at least as of the Petition Date) the largest non-profit healthcare system based in Eastern Washington. The Astria Health system is headquartered in the heart of Yakima Valley, Washington, with Hospital facilities in Sunnyside, and Toppenish, Washington.

3. At the Petition Date, Astria system included three hospitals: Astria Regional Medical Center, a 214-bed hospital in Yakima, Washington ("ARMC"); Astria Sunnyside Hospital, a 38-bed critical access hospital in Sunnyside, Washington ("Sunnyside"); and Astria Toppenish Hospital, a 63-bed hospital in

[4] All references to "§" are to sections of the Bankruptcy Code; all references to "Bankruptcy Rules" are to provisions of the Federal Rules of Bankruptcy Procedure; all references to "LBR" are to provisions of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Eastern District of Washington.

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Toppenish, Washington ("Toppenish," and referred to collectively with Sunnyside and the Medical Center as the "Hospitals").

4. The United States Trustee appointed the Official Committee of Unsecured Creditors (the "Committee") in these Chapter 11 Cases on May 24, 2019. [Docket No. 135]. No trustee or examiner has been appointed.

5. On January 9, 2020, the Court approved the Debtors' motion to close ARMC. [*See* Docket Nos. 867, 874]. The Debtors later retained Cushman & Wakefield U.S., Inc. and Almon Commercial Real Estate as real estate brokers to market the ARMC facility, as well as other real estate in the Yakima area. [*See* Docket Nos. 1243-44]. After negotiating with prospective buyers, the Debtors, in consultation with the Lapis Parties, selected Yakima MOBIC, LLC as the entity to acquire the ARMC hospital building and adjacent medical office building, for $20 million. On October 7, 2020, the Debtors filed a motion to approve this sale [Docket No. 1891] (the "MOB Sale Motion"). On October 26, 2020, the Court entered an order approving the sale pursuant to the MOB Sale Motion [Docket No. 1950].

6. Additional information about the Debtors' businesses and affairs, capital structure, and prepetition indebtedness, and the events leading up to the Petition Date, can be found in the *Declaration of John M. Gallagher in Support of Emergency First-Day Motions* [Docket No. 21] (the "First Day Declaration") as well

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as the broader record of the Chapter 11 Cases, which are incorporated herein by reference.

B. Plan Overview

7. The Plan is built around the settlement of all rights, claims and interests associated with the Lapis Parties' DIP Claims, Senior Secured Bond Debt Claims and Senior Secured Credit Agreement Claims (the "Senior Debt 9019 Settlement"). The Senior Debt 9019 Settlement is comprised of (i) the classification and treatment of the DIP Claims, Senior Secured Bond Debt Claims and Senior Secured Credit Agreement Claims and other Lapis Parties prepetition Claims as specified in the Plan, (ii) the issuance (or reinstatement, as applicable) of Exchange Debt, and (iii) the release and exculpation terms for the Lapis Parties as specified in the Plan.

8. The Plan also embodies the Committee Plan Settlement set forth in the Term Sheet between the Debtors, the Committee, and the Lapis Parties, which reflects a compromise and settlement of numerous complex issues including, but not limited to, those set forth in the *Limited Objection of Official Committee of Unsecured Creditors to Motion for an Order Approving: (i) Proposed Disclosure Statement; (ii) Solicitation and Voting Procedures; (iii) Notice and Objection Procedure for Confirmation of Joint Plan of Reorganization; and (iv) Granting Related Relief* [Docket No. 1624]. The Debtors and the Committee engaged in extensive negotiations regarding these issues culminating in a settlement resolving

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the Committee's objections as set forth in the Term Sheet between the parties, the terms of which have been incorporated into the Plan. As amended in light of the settlement, the Plan provides, among other things, contributions totaling not less than $7.3 million by the Debtors and/or Reorganized Debtors to the GUC Distribution Trust for distribution to the Holders of Allowed General Unsecured Claims consistent with the Plan's terms, and the potential for additional funds dependent upon the ultimate resolution of certain causes of action belonging to the Debtors and their estates and Avoidance Actions to be transferred to the GUC Distribution Trust on the Effective Date.

9. Also, on the Effective Date, all Liquidation Trust Assets shall be contributed to the Liquidation Trust Agreement. The Plan also provides that the Reorganized Debtors, controlled by AH System as the sole member, will provide the management for the Hospitals after the Effective Date. In the event any Liquidation Trust Assets are liquidated, the proceeds of such liquidation shall be used generally to fund AH System's operating cash account up to an amount equal to the lesser of $10 million or thirty (30) days cash on hand and then to pay the Exchange Debt in accordance with the Exchange Debt Documents.

10. The Plan deems the Debtors consolidated for the purposes of Claim allowance and distribution, which treats the Debtors' assets and liabilities as if they were pooled without actually merging the Debtor entities.

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11. The Plan describes the specific treatment of all Claims and the distribution of proceeds to Holders of Allowed Claims. As set forth in Section II of the Plan, except for Administrative Claims, Priority Tax Claims, Professional Fee Claims, and DIP Claims, which are not required to be classified, all Claims are divided into Classes under the Plan, as follows.

12. The Plan classifies the Priority Claims (Class 1) as unimpaired and deemed to have accepted the Plan (and thus not entitled to vote on the Plan). Class 1 Claims are anticipated to recover 100% of their Allowed Claims.

13. The Plan classifies the following Claims as impaired and entitled to vote on the Plan: Classes 2A (Senior Secured Bond Debt Claims), 2B (Senior Secured Credit Agreement Claims), 2C (Other Secured Claims), 3 (Convenience Class Claims), 4 (General Unsecured Claims), and 4A (Insured Claims).

14. Under the Plan, (i) Senior Secured Bond Debt Claims (Class 2A) are reinstated on the terms of the Exchange Debt Documents, (ii) Senior Secured Credit Agreement Claims (Class 2B) are exchanged for Senior Secured Credit Agreement Exchange Debt, and (iii) Other Secured Claims (Class 2C) will be paid (a) Cash in full, (b) a reinstated note on the same payment and collateral terms as its prior Claim, (c) a return of collateral securing the Claim, or (d) such less favorable treatment to which the Holder otherwise agrees.

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15. Convenience Class Claims (Class 3) will be paid 20% of the allowed amount of the Claim up to $1,000.

16. Holders of Allowed General Unsecured Claims (Class 4) shall receive, on one or more GUC Distribution Dates, a *Pro Rata* share of the Net GUC Distribution Trust Assets and Insured Claims (Class 4A) shall recover only from the available insurance and Debtors shall be discharged to the extent of any such excess.

17. Intercompany Claims (Class 5) are eliminated under the Plan.

18. The Plan Proponents have requested that the Bankruptcy Court approve and implement the terms of (i) the Plan, (ii) the Senior Debt 9019 Settlement, (iii) the Committee Plan Settlement, and (iv) other documents necessary to effectuate the Plan.

C. The Disclosure Statement and Solicitation

19. On July 7, 2020, the Plan Proponents filed a joint motion [Docket No. 1473] seeking approval of the Disclosure Statement and procedures for the solicitation and tabulation of votes to accept or reject the Plan (the "Disclosure Statement Motion"), including proposed solicitation procedures (the "Solicitation Procedures") and vote tabulation procedures (the "Tabulation Procedures"). That same day, the Plan Proponents filed their Plan and Disclosure Statement, which were later amended to address certain modifications and informal objections, and to incorporate the Committee Plan Settlement.

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20. On November 12, 2020, the Bankruptcy Court entered an order [Docket No. 1991] (the "Disclosure Statement Order") following the hearing on the Disclosure Statement Motion, which, among other things, granted the Disclosure Statement Motion and approved the Disclosure Statement, the Solicitation Procedures, and the Tabulation Procedures.

21. On or before November 19, 2020, the Plan Proponents, through their noticing and claims agent, Kurtzman Carson Consultants LLC ("KCC"), timely mailed a solicitation package (the "Solicitation Package") to holders of claims entitled to vote on the Plan. *See* Certificate of Service at Docket Nos. 1994 and 2002. On November 17, 2020, the Plan Proponents also published notice of the hearing on confirmation of the Plan in the following newspapers: Yakima Herald-Republic and USA Today. [*See* Docket Nos. 2026, 2027].

22. Prior to the Voting Deadline, the Plan Proponents also filed certain documents constituting the Plan supplement (as may be amended, modified, or supplemented from time to time, the "Plan Supplement") in accordance with Section 1.121 of the Plan. [Docket Nos. 2043, 2082].

D. Vote Tabulation

23. The deadline to file objections to the Plan was December 4, 2020, and the deadline for all holders of Claims entitled to vote on the Plan to cast their ballots was December 4, 2020, at 4:00 p.m. (Pacific Time) (the "Voting Deadline"). *See*

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Disclosure Statement Order ¶ 13. All classes of creditors entitled to vote that returned a ballot (other than Class 4A which did not submit any votes) have voted in favor of confirmation. Concurrently herewith, the Debtors filed the Voting Declaration and reports of their Court-appointed voting and claims agent, KCC.

24. After the Voting Deadline, KCC tabulated the votes to accept or reject the Plan reflected in the ballots received on or before the Voting Deadline. *See Certification of Leanne V. Rehder Scott with Respect to the Tabulation of Votes on the Second Amended Joint Chapter 11 Plan of Astria Health and its Debtor Affiliates* [Docket No. 2121] (the "Voting Declaration") at ¶¶ 9-15. As set forth in the Voting Declaration and the table below, each class eligible to vote on the Plan (other than Class 4A (Insured Claims) which did not submit any ballots accepting or rejecting the Plan) (the "Voting Classes") voted to accept the Plan:

CLASS	ACCEPTING				REJECTING			
	Ballot Count	Ballot Count (%)	Dollar Amount	Dollar Amount (%)	Ballot Count	Ballot Count (%)	Dollar Amount	Dollar Amount (%)
2A	1	100%	$36,732,417.00	100%	0	0%	$0	0%
2B	1	100%	$10,477,534.25	100%	0	0%	$0	0%
2C	8	88.89%	$3,310,212.33	93.33%	1	11.11%	$236,408.70	6.67%
3	85	97.70%	$206,625.91	97.62%	2	2.30%	$5,035.00	2.38%
4	79	87.78%	$16,018,320.45	72.36%	11	12.22%	$6,119,825.07	27.64%
4A	0	0%	$0	0%	0	0%	$0	0%

25. The hearing on Plan confirmation (the "Confirmation Hearing") is scheduled to occur on December 18, 2020, at 10:00 a.m. (Pacific Time).

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III. JURISDICTION, VENUE, AND STATUTORY PREDICATES

The Bankruptcy Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

The Plan Proponents seek, in part, an order confirming the Plan. The statutory predicates for this relief are §§ 1122, 1123, 1125, 1126, 1127, and 1129.

IV. THE PLAN SATISFIES EACH REQUIREMENT FOR CONFIRMATION

To confirm the Plan, the Plan Proponents must demonstrate by a preponderance of the evidence that they have satisfied the provisions of § 1129. *See In re Ambanc La Mesa Ltd. P'ship*, 115 F.3d 650, 653 (9th Cir. 1997) ("The bankruptcy court ***must*** confirm a Chapter 11 debtor's plan . . . if the debtor proves by a preponderance of the evidence" that the plan meets the requirements of § 1129.) (emphasis added); *see also Heartland Fed. Sav. & Loan Ass'n v. Briscoe Enters., Ltd. II* (*In re Briscoe Enters., Ltd. II*), 994 F.2d 1160, 1165 (5th Cir. 1993) ("The combination of legislative silence, Supreme Court holdings, and the structure of the [Bankruptcy] Code leads this Court to conclude that preponderance of the evidence is the debtor's appropriate standard of proof both under § 1129(a) and in a cramdown."); *In re Bally Total Fitness of Greater N.Y., Inc.*, No. 07-12395, 2007 WL 2779438, at *3 (Bankr. S.D.N.Y. Sept. 17, 2007) ("The Debtors, as proponents of the Plan, have the burden of proving the satisfaction of the elements of Sections

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1129(a) and (b) of the Bankruptcy Code by a preponderance of the evidence."). Here, the Plan complies with all relevant sections of the Bankruptcy Code, including §§ 1122, 1123, 1125, 1126, 1127, and 1129, as well as the Bankruptcy Rules and applicable non-bankruptcy law. This memorandum addresses each requirement individually.

A. The Plan Complies With the Applicable Provisions of the Bankruptcy Code (11 U.S.C. § 1129(a)(1)).

Section 1129(a)(1) requires that a chapter 11 plan "compl[y] with the applicable provisions of [the Bankruptcy Code]." 11 U.S.C. § 1129(a)(1). The legislative history of § 1129(a)(1) explains that this provision encompasses the requirements of §§ 1122 and 1123 including, principally, rules governing classification of claims and interests and the contents of a chapter 11 plan. S. Rep. No. 95-989, at 126 (1978); H.R. Rep. No. 95-595, at 412 (1977); *see also Kane v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 843 F.2d 636, 648-49 (2d Cir. 1988) (suggesting Congress intended the phrase "'applicable provisions' in [§ 1129(a)(1)] to mean provisions of Chapter 11 . . . such as section 1122"); *see also In re Mirant Corp.*, No. 03-46590, 2007 WL 1258932, at *7 (Bankr. N.D. Tex. Apr. 27, 2007) (noting that objective of § 1129(a)(1) is to assure compliance with sections of Bankruptcy Code governing classification and contents of a plan); 7 COLLIER ON BANKRUPTCY ¶ 1129.02 (Richard Levin & Henry J. Sommer eds., 16th ed.). As explained below, the Plan complies with §§ 1122 and 1123 in all respects.

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1. The Plan Satisfies the Classification Requirements of § 1122.

Section 1122 of the Bankruptcy Code governs the classification of claims and interests. Section 1122(a) requires that a plan "place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests in such class." The Ninth Circuit has recognized that, under § 1122, plan proponents have significant flexibility to place similar claims into different classes, provided there is a rational basis for doing so. *See Barakat v. Life Ins. Co. of Va.* (*In re Barakat*), 99 F.3d 1520, 1524–25 (9th Cir. 1996); *see also In re Rexford Props., LLC*, 558 B.R. 352, 361 (Bankr. C.D. Cal. 2016) ("A claim that is substantially similar to other claims may be classified separately from those claims, even though section 1122(a) does not say so expressly."). For example, courts have allowed separate classification where there are good business reasons for separate classification. *See Barakat*, 99 F.3d at 1524-25 (holding that substantially similar claims may be classified separately if there is a "legitimate business or economic justification" for doing so).

Section II of the Plan provides for the separate classification of Claims into seven different Classes based upon differences in the legal or factual nature of those Claims or other relevant and objective criteria. Each of the Claims in a particular Class under the Plan is substantially similar to other Claims in such Class, and the classification structure is necessary to implement certain aspects of the Plan. Valid

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and sound factual and legal reasons exist for the separate classification of Claims, including, but not limited to the fact that each of the Claims in a particular Class are substantially similar to the other Claims in such Class and, therefore, the classification scheme does not discriminate unfairly between or among holders of such Claims.

Specifically, the Plan divides the classified Claims into the following Classes:

CLASS	DESCRIPTION	IMPAIRED/ UNIMPAIRED	VOTING STATUS
1	Priority Claims	Unimpaired	Not Entitled to Vote / Deemed to Accept
2A	Senior Secured Bond Debt Claims	Impaired	Entitled to Vote
2B	Senior Secured Credit Agreement Claims	Impaired	Entitled to Vote
2C	Other Secured Claims	Impaired	Entitled to Vote
3	Convenience Class Claims	Impaired	Entitled to Vote
4	General Unsecured Claims	Impaired	Entitled to Vote
4A	Insured Claims	Impaired	Entitled to Vote
5	Intercompany Claims	Eliminated Through Consolidation of Debtors	N/A

Administrative Claims, Priority Tax Claims, Professional Fee Claims, and DIP Claims (the "Unclassified Claims") are not classified and are separately treated under Section II of the Plan.

Finally, the classification structure was not designed to gerrymander the Classes to create an impaired accepting Class. This is evident in part based on the

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fact that each class that returned a ballot (other than Class 4A, which did not vote) voted overwhelmingly to accept the Plan. Further, Classes 2A, 2B, 2C, 3, 4, and 4A are impaired Classes entitled to vote on the Plan. The Lapis Parties are co-Plan Proponents and Holders of Class 2A and 2B Claims. Thus, the Lapis Parties knew, at the time of Plan formulation, that the Holders of Class 2A and 2B Claims would vote to accept the Plan. The Plan Proponents therefore had no motivation to gerrymander the Classes to obtain an impaired accepting Class. Accordingly, the Plan fully complies with the requirements of § 1122.

2. The Plan Satisfies the Seven Mandatory Plan Requirements of §§ 1123(a)(1)-(a)(7).

Section 1123(a) requires that the contents of a chapter 11 plan: (i) designate classes of claims and interests; (ii) specify unimpaired classes of claims and interests; (iii) specify treatment of impaired classes of claims and interests; (iv) provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim agrees to a less favorable treatment of such particular claim or interest; (v) provide adequate means for the plan's implementation; (vi) provide for the prohibition of nonvoting equity securities and provide an appropriate distribution of voting power among the classes of securities; and (vii) contain only provisions that are consistent with the interests of the creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan.

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The Plan satisfies the mandatory plan requirements set forth in § 1123(a). Section II of the Plan satisfies the first three requirements of § 1123(a) by designating Classes of Claims, as required by § 1123(a)(1), specifying the Classes of Claims that are Unimpaired under the Plan, as required by §1123(a)(2), and specifying the treatment of each Class of Claims that is impaired, as required by § 1123(a)(3). The Plan also satisfies § 1123(a)(4)—the fourth mandatory requirement—because the treatment of each Allowed Claim within a Class is the same as the treatment of each other Allowed Claim in that Class, unless the holder of a Claim consents to less favorable treatment on account of its Claim.

The provisions of the Plan provide adequate means for the Plan's implementation, thus satisfying the fifth requirement of § 1123(a). *See* § 1123(a)(5). The provisions of Section III of the Plan, along with the Plan Supplement, relate to, among other things: (i) AH NP 2, a Washington nonprofit corporation and currently a wholly owned nondebtor subsidiary of Astria, will become the sole member of Astria; and Astria will change from a no-member nonprofit corporation to a single member nonprofit corporation; (ii) a newly created nondebtor entity, AH System, a freestanding Washington nonprofit corporation, will assume the non-discharged debt of the Debtors in exchange for AH NP 2's transfer of its sole membership interest in Astria to AH System; (iii) the reinstatement of the Senior Secured Bond Debt Claims; (iv) the issuance of the Exchange Debt to satisfy the DIP Claims and Senior Secured

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Credit Agreement Claims in full; (v) the creation of the GUC Distribution Trust and Liquidation Trust; (vi) the investigation and potential prosecution of D&O Causes of Action consistent with the terms of the D&O Cause of Action Agreement; (vii) the management of the Reorganized Debtors; (viii) the creation of an Administrative and Priority Claims Reserve; (ix) provisions governing objections to Claims; and (x) provisions governing distributions to Holders of Claims.

The sixth requirement of § 1123(a)—*i.e.*, that if a debtor is a corporation, its plan must prohibit the issuance of nonvoting equity securities—is also met. *See* § 1123(a)(6). The Debtors, which are nonprofit public benefit corporations, will not issue any stock or other securities under the Plan. Thus, the Plan comports with § 1123(a)(6). *See In re St. Mary's Hosp., Passaic, N.J.*, No. 09-15619, 2010 WL 5126151, at *4 (Bankr. D.N.J. Feb. 2, 2010) ("Sections 1123(a)(6) and (a)(7) of the Bankruptcy Code are not applicable to this case, as the Debtor is a non-stock, not-for-profit corporation.").

Finally, the Plan fulfills the seventh requirement in § 1123(a), which requires that the Plan provisions with respect to the manner of selection of any officer, director, or trustee "contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy." 11 U.S.C. § 1123(a)(7). Section III.I of the Plan explains that the Reorganized Debtors, controlled by AH System as the sole member, will provide the management for the Hospitals after the

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Effective Date. The Debtors intend to reject the Executive Services Agreement with AHM, Inc. ("AHM") as of the earlier of the date ordered by the Court on a motion to reject the agreement, or the Effective Date. The Debtors also expect that all AHM employees currently serving as officers or employees of the Debtors will be offered employment by AH System. The Debtors filed a Plan Supplement that identified the new directors for the Reorganized Debtors as: Maureen Ames Spivack, Kimberly Anne Clift, Debbie Jo Ahl, and Jim Hansen. [Docket No. 2043, Exhibit C].

The Plan is also in compliance with the requirement that the selection of any officer, director, or trustee be made in the interests of equity security holders because the Plan does not provide for the creation of any equity security interests. *See* 11 U.S.C. § 1123(a)(7); *see also St. Mary's Hosp., Passaic, N.J.*, 2010 WL 5126151, at *4 (finding § 1123(a)(7) inapplicable to nonprofit entities).

B. The Plan Complies With the Applicable Provisions of the Bankruptcy Code (11 U.S.C. § 1129(a)(2)).

Section 1129(a)(2) requires that the proponent of a chapter 11 plan comply with the applicable provisions of the Bankruptcy Code. The legislative history to § 1129(a)(2) reflects that this provision is intended to encompass the disclosure and solicitation requirements set forth in § 1125 and the plan acceptance requirements set forth in § 1126. *See In re Johns-Manville Corp.*, 68 B.R. 618, 630 (Bankr. S.D.N.Y. 1986), *aff'd in part, rev'd in part on other grounds*, 78 B.R. 407 (S.D.N.Y. 1987), *aff'd*, 843 F.2d 636 ("Objections to confirmation raised under § 1129(a)(2) generally

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involve the alleged failure of the plan proponent to comply with § 1125 and § 1126 of the [Bankruptcy] Code."); *In re Downtown Inv. Club III*, 89 B.R. 59, 65 (B.A.P. 9th Cir. 1988) ("Section 1129(a)(2) in turn requires that the proponent of the plan complies with the applicable provisions of Title 11."); *see also* H.R. Rep. No. 95-595, at 412 (1977); S. Rep. No. 95-989, at 126 (1978) ("Paragraph (2) [of section 1129(a)] requires that the proponent of the plan comply with the applicable provisions of chapter 11, such as section 1125 regarding disclosure."). The Plan Proponents have complied with these provisions, including §§ 1121, 1125, 1126, and 1127, as well as Bankruptcy Rules 3017 and 3018, by carrying out the Solicitation Procedures approved by the Court in its Disclosure Statement Order.

1. The Plan Proponents Are Authorized to File the Joint Plan Under § 1121.

Section 1121(c) provides that "[a]ny party in interest including the debtor . . . a creditors' committee, [or] . . . a creditor . . . may file a plan." 11 U.S.C. § 1121(c). Since the Debtors and the Lapis Parties are co-Plan Proponents, and the Plan Proponents are all clearly parties in interest as expressly contemplated by § 1121(c), the requirements of § 1121 are satisfied.

2. The Plan Proponents Complied with the Disclosure Statement and Solicitation Requirements of § 1125.

Section 1125(b) prohibits the solicitation of acceptances or rejections of a plan "unless, at the time of or before such solicitation, there is transmitted to such holder

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the plan or a summary of the plan, and a written disclosure statement approved, after notice and a hearing, by the court as containing adequate information." 11 U.S.C. § 1125(b). The purpose of § 1125 is to ensure that parties-in-interest are fully informed on the condition of the Debtors, the means for implementation of the Plan, and the treatment of all classes of Claims so they may make an informed decision on whether to accept or reject the Plan. *See In re Cal. Fidelity, Inc.*, 198 B.R. 567, 571 (B.A.P. 9th Cir. 1996) ("At a minimum, § 1125(b) seeks to guarantee that a creditor receives adequate information about the plan before the creditor is asked for a vote."); *In re Art & Architecture Books of the 21st Century*, No. 2:13-bk-14135-RK, 2016 WL 1118743, at *14 (Bankr. C.D. Cal. Mar. 18, 2016) ("The primary purpose of a disclosure statement is to give creditors and interest holders the information they need to decide whether to accept the plan.") (citing *Captain Blythers, Inc. v. Thompson* (*In re Captain Blythers, Inc.*), 311 B.R. 530, 537 (B.A.P. 9th Cir. 2004).

The Plan Proponents have satisfied § 1125. On November 4, 2020, the Plan Proponents filed the first amended plan [Docket No. 1967] and related disclosure statement [Docket No. 1968] and requested approval of the notice periods for approval of the disclosure statement and confirmation of the Plan in order to meet the deadlines negotiated with the Plan Proponents for the Effective Date of the Plan. [Docket Nos. 1970]. On November 6, 2020, the Court held a hearing to consider the disclosure statement. Thereafter, on November 11, 2020, the Plan Proponents filed

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the Plan and Disclosure Statement, which incorporated certain revisions to address comments received from Court and certain objecting parties.

On November 12, 2020, the Court entered the Disclosure Statement Order, approving notice schedule proposed by the Plan Proponents. [Docket No. 1991]. The Disclosure Statement Order also found that the Disclosure Statement contains adequate information, and approved the Solicitation and Tabulation Procedures. *See* Disclosure Statement Order at ¶¶ C, 2, 16, and 22. The Disclosure Statement Order approved the contents of the Solicitation Packages that the Plan Proponents provided to holders of Claims in Voting Classes and the timing and method of delivery of the Solicitation Packages. *See id*. at ¶¶ 6-15. As detailed in the Voting Declaration, the Plan Proponents complied in all respects with the Solicitation Procedures as outlined in the Disclosure Statement Order, including their compliance with service requirements and not soliciting acceptance of the Plan from any creditor prior to sending the Solicitation Packages that contained the Court-approved Disclosure Statement. *See* Voting Decl. at ¶¶ 5-8.

3. The Debtors Complied With the Plan Acceptance Requirements of § 1126.

Section 1126 provides that only holders of claims and equity interests in impaired classes that will receive or retain property under a plan on account of such claims or equity interests may vote to accept or reject a plan. 11 U.S.C. § 1126.

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Sections 1126(c) and (d) specify the requirements for acceptance of a plan by a class of claims. Specifically, § 1126(c) provides:

> A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of [section 1126], that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of [section 1126], that have accepted or rejected such plan.

Id.

Class 1 is Unimpaired under the Plan. Pursuant to § 1126(f), holders of Claims in the Unimpaired Classes are not entitled to vote on the Plan and are conclusively deemed to have accepted the Plan.

The Plan Proponents solicited votes on the Plan from the Voting Classes—that is, the holders of all Allowed Claims in each Impaired Class entitled to receive distributions under the Plan: Classes 2A through 4A. As noted above, the Voting Deadline occurred on December 4, 2020, at 4:00 p.m. (Pacific Time), and the Voting Declaration details the results of the voting process in accordance with § 1126, in which the Plan was overwhelmingly supported by the holders of Claims in each Voting Class that returned ballots on the Plan. Based on the foregoing, the Plan Proponents' solicitation of votes on the Plan was undertaken in conformity with § 1126 and the Disclosure Statement Order.

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C. The Plan Has Been Proposed in Good Faith and Not by Any Means Forbidden by Law (11 U.S.C. § 1129(a)(3)).

Section 1129(a)(3) provides that a court may confirm a plan only if the plan is proposed "in good faith and not by any means forbidden by law." The Ninth Circuit defined that standard in the case of *In re Sylmar Plaza, L.P.*, 314 F.3d 1070 (9th Cir. 2002), by holding that "a plan is proposed in good faith where it achieves a result consistent with the objectives and purposes of the Code." *Id.* at 1074; *accord Ryan v. Loui* (*In re Corey*), 892 F.2d 829, 835 (9th Cir. 1989); *In re Madison Hotel Assocs.*, 749 F.2d 410, 425 (7th Cir. 1984). The Ninth Circuit in *Sylmar Plaza* further held that "the requisite good faith determination is based on the totality of the circumstances." *Id.* at 1074; *accord Stolrow v. Stolrow's, Inc.* (*In re Stolrow's, Inc.*), 84 B.R. 167, 172 (B.A.P. 9th Cir. 1988).

Good faith for purposes of § 1129(a)(3) may be found where the plan is supported by key creditor constituencies, or was the result of extensive arm's-length negotiations with creditors. *See In re Chemtura Corp.*, 439 B.R. 561, 608-09 (Bankr. S.D.N.Y. 2010) (finding good faith requirement met because, among other things, the debtor negotiated and reached agreements with several parties-in-interest to put forward a chapter 11 plan which "in the aggregate demonstrate a good faith effort on the part of the debtor to consider the needs and concerns of all major constituencies in this case") (quotation marks and citation omitted); *In re Leslie Fay Cos.*, 207 B.R. 764, 781 (Bankr. S.D.N.Y. 1997) ("The fact that the plan is proposed by the

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committee as well as the debtors is strong evidence that the plan is proposed in good faith."); *In re Eagle-Picher Indus., Inc.*, 203 B.R. 256, 274 (Bankr. S.D. Ohio 1996) (finding that chapter 11 plan was proposed in good faith when, among other things, it was based on extensive arm's-length negotiations among plan proponents and other parties-in interest).

Here, the Plan is the product of months of extensive arm's-length independent and interrelated negotiations and compromises among the Debtors and its major constituents, namely the Committee, and the Lapis Parties. These negotiations were difficult and addressed complex legal and factual issues. These compromises provided for Allowed Administrative and Priority Claims to be paid in full under the Plan on or soon after the Effective Date or as otherwise agreed to by holders of such Claims and for a distribution to Holders of General Unsecured Claims. This facilitated the best possible recovery for all creditors under the totality of the circumstances. As a result of these compromises, the Plan has the support of each Class of Claims. The support from each of these constituencies evidences the Plan Proponents' good faith and good intentions in proposing the Plan, and the totality of circumstances surrounding its formulation clearly promotes the purposes of the Bankruptcy Code.

Additionally, Bankruptcy Rule 3020(b)(2) provides that the Court may determine that a plan proponent proposed a plan in good faith and not by any means

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forbidden by law, without receiving evidence, if no party in interest has timely objected to the plan proponent's good faith. *See* Bankruptcy Rule 3020(b)(2) ("If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issue."); *see also In re Warren*, 89 B.R. 87, 91 (B.A.P. 9th Cir. 1988) ("Rule 3020(b)(2) states that without objection the court "may" find that the plan was filed in good faith without receiving evidence."). No party has objected to the good faith of the Plan Proponents in proposing the Plan.[5] The Plan Proponents therefore submit that the requirements of § 1129(a)(3) have been satisfied.

D. The Plan Provides for Bankruptcy Court Approval of Certain Administrative Payments (11 U.S.C. § 1129(a)(4)).

Section 1129(a)(4) requires that certain professional fees and expenses paid by the plan proponent, by the debtor, or by a person issuing securities or acquiring property under a plan, be subject to Court approval as reasonable. *See, e.g., In re*

[5] The Plan Proponents note that the limited objection filed by Premier, Inc. [Docket No. 2066] asserts that if the effective date of rejection of Executory Contracts is not the Effective Date under the Plan but another undisclosed date, then the Plan is not proposed in good faith. Premier Objection, pp. 4-5. As discussed below, the Debtors have resolved this objection and clarified that the effective date of rejection of Executory Contracts is, in fact, the Effective Date of the Plan.

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Worldcom, Inc., 2003 WL 23861928, at *53-54 (Bankr. S.D.N.Y. Oct. 31, 2003); *In re Drexel Burnham Lambert Grp., Inc.*, 138 B.R. 723, 760 (Bankr. S.D.N.Y. 1992); *In re Elsinore Shore Assocs.*, 91 B.R. 238, 268 (Bankr. D. N.J. 1988) (holding that requirements of section 1129(a)(4) were satisfied where plan provided for payment of only "allowed" administrative expenses). Here, the Plan mandates that all payments (except for ordinary course payments on account of Administrative Claims and DIP Claims) made by the Debtors for services, costs, or expenses in connection with these Chapter 11 Cases before the Effective Date, including all Professional Fee Claims, must be approved by, or are subject to the approval of, the Bankruptcy Court as reasonable. *See* Plan §§ II.D.1, II.D.2.

The Plan makes clear that such Professional Fee Claims are contingent on Bankruptcy Court approval and sets forth a procedure for Holders of Professional Fee Claims to submit applications for allowance of compensation for services rendered and reimbursement of expenses with the Bankruptcy Court.

> [U]pon Court approval of such final application, [Holders of Professional Fee Claims] shall receive, in full satisfaction, settlement, and release of, and in exchange for such Claim, from the Administrative and Priority Claims Reserve, Cash in such amounts as allowed by the Court (i) on the later of (A) the Effective Date (or as soon thereafter as reasonably practicable) and (B) the date that is ten (10) days after the allowance date, or (ii) upon such other terms as may be mutually agreed upon between the holder of such Claim and the Plan Proponents, and consistent with the terms of the Definitive Documents.

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Plan § II.D.2. Pursuant to the Plan, professionals asserting a Professional Fee Claim for services rendered before the Effective Date must file a request for final allowance of such Professional Claim no later than forty-five (45) days after the Effective Date. In addition, Section VI.2 of the Plan provides that the Bankruptcy Court will retain jurisdiction after the Effective Date to hear and determine all applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan. Accordingly, the Plan complies with the requirements of § 1129(a)(4).

E. Post-Effective Date Directors and Officers Are Disclosed and Their Appointment Is Consistent with Public Policy (11 U.S.C. § 1129(a)(5)).

Section 1129(a)(5)(A)(i) provides that a court may confirm a plan only if the plan proponent discloses "the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer of voting trustee of the debtor . . . or a successor to the Debtor under the plan." Section 1129(a)(5)(A)(ii) requires that the appointment to, or continuance of a director, officer or voting trustee be "consistent with the best interests of creditors and equity holders and with public policy." *In re Produce Hawaii, Inc.*, 41 B.R. 301, 304 (Bankr. D. Haw. 1984); *In re Parks Lumber Co., Inc.*, 19 B.R. 285, 291 (Bankr. W.D. La. 1982). Section 1129(a)(5)(B) provides that a court may confirm a plan only if the plan proponent discloses "the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider."

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Section III.I of the Plan provides that the Reorganized Debtors will provide management for the Hospitals after the Effective Date. AH Systems will serve as the sole member of the Reorganized Debtors and it is expected that all AHM employees currently serving as officers or employees of the Debtors will be offered employment by AH System. Further, the Debtors filed a Plan Supplement which identified the new directors for the Reorganized Debtors as: Maureen Ames Spivack, Kimberly Anne Clift, Debbie Jo Ahl, and Jim Hansen. [Docket No. 2043, Exhibit C]. Accordingly, the Plan complies with the requirements of § 1129(a)(5).

F. The Plan Does Not Require Governmental Regulatory Approval of Rate Changes (11 U.S.C. § 1129(a)(6)).

Section 1129(a)(6) permits confirmation of a chapter 11 plan only if any regulatory commission that will have jurisdiction over the debtor after confirmation has approved any rate change provided for in the plan. *See* 11 U.S.C. § 1129(a)(6). Section 1129(a)(6) is inapplicable here because the Plan does not provide for any rate changes.

G. The Plan Is in the Best Interests of Creditors and Interest Holders (11 U.S.C. § 1129(a)(7)).

The "best interests of creditors" test of § 1129(a)(7) requires that, with respect to each impaired class of claims or interests, each individual holder of a claim or interest has either accepted the plan or will receive or retain property having a present value, as of the effective date of the plan, of not less than what such holder would

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receive if the debtor were liquidated under chapter 7 of the Bankruptcy Code at that time. *See* 11 U.S.C. § 1129(a)(7).

The Plan Proponents have satisfied the Best Interest Test with respect to Classes 2A, 2B, 2C, 3, and 4 because such Classes have unanimously voted to accept the Plan. *See*, *supra*, Section II.D (setting forth the vote tabulation); *see* 11 U.S.C. § 1129(a)(7)(i) (providing that the Best Interest Test is satisfied when, "[w]ith respect to each impaired class of claims or interests[,] each holder of a claim or interest of such class has accepted the plan.").

Further, all creditors will receive more under the Plan than if the case were converted to chapter 7. Generally, in a chapter 7 case, (i) the debtor's assets are sold by a chapter 7 trustee, (ii) secured creditors are paid first from the sales proceeds of properties on which the secured creditor has a lien, (iii) administrative claims are paid thereafter, (iv) unsecured creditors are paid after administrative claims from any remaining sales proceeds, according to their rights to priority, (v) unsecured creditors with the same priority share in proportion to the amount of their allowed claim in relationship to the amount of total allowed unsecured claims, and (vi) finally, interest holders receive the balance that remains after all creditors are paid, if any.

Here, in the event of a conversion of the Chapter 11 Cases to chapter 7, one or more chapter 7 trustees would be appointed to administer the Debtors' assets. Such chapter 7 trustee(s) would be completely unfamiliar with the vast complexities of

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these Chapter 11 Cases and would be under a statutory duty to liquidate the Debtors' assets as expeditiously as possible. *See* 11 U.S.C. § 704(a)(1).

A chapter 7 trustee's liquidation of the Debtors' assets would present significant potential risks to creditor recoveries in chapter 7. The Plan contemplates the Reorganized Debtors' continued operation following the Effective Date; the repayment of the Lapis Parties' Senior Secured Bond Debt, Senior Secured Credit Agreement Exchange Debt, and DIP Claims Exchange Debt over time; and significant contributions to the GUC Distribution Trust for the benefit of General Unsecured Creditors. If the Debtors cease operations in a hypothetical chapter 7 case and their assets are liquidated, the proceeds of those sales would be used to pay off the Lapis Parties' secured claims with no remaining assets available to make any distribution to General Unsecured Creditors. This is reflected in the Liquidation Analysis attached to the Disclosure Statement as Exhibit A.

Following the appointment of a chapter 7 trustee, the chapter 7 trustee would presumably hire new professionals who would be equally unfamiliar with the vast complexities of these Chapter 11 Cases. If a chapter 7 trustee is authorized to continue operating the Debtors, the chapter 7 trustee would likely retain healthcare operations advisors to assist in the management of the Debtors' hospitals. A change in management of the Debtors, alone, would represent a monumental task for the chapter 7 trustee and professionals, and would require quick familiarization with

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hospital operations, receivables, and the Debtors' ongoing litigation, among a litany of other historically complex issues. Regardless of whether a chapter 7 trustee elects to continue operations, a chapter 7 trustee would likely retain attorneys, financial advisors, and other professionals to engage in the complicated process of liquidating the Debtors' assets and providing distributions to creditors. The Debtors anticipate that this process would be lengthy and costly given the Debtors' complex structure and liabilities, particularly without the more streamlined deemed consolidation of the Debtors' assets and liabilities proposed under the Plan.

The result of a chapter 7 trustee's appointment and employment of a substantial number of professionals unfamiliar with these complex Chapter 11 Cases would be the incurrence of an extraordinary amount of additional professional fees. By contrast, the Debtors' professionals are skilled and already intimately familiar with these Chapter 11 Cases, continuing with their current roles. Through the significant cost savings of the confirmed Plan as compared to conversion to chapter 7, Holders of Allowed Claims will receive more under the Plan than they would receive in a converted chapter 7 bankruptcy (and certainly at least as much under the Plan). As discussed in more detail in the Liquidation Analysis attached as Exhibit A to the Disclosure Statement, the Debtors have satisfied the "Best Interest Test."

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Accordingly, § 1129(a)(7) is satisfied because the Plan provides fair and equitable treatment of all classes of creditors and the greatest feasible recovery to all creditors.[6]

H. The Plan Complies With Statutorily Mandated Payment of Priority Claims (11 U.S.C. § 1129(a)(9)).

Section 1129(a)(9) requires that persons holding allowed claims entitled to priority under § 507(a) receive specified cash payments under the Plan. Unless the holder of a particular claim agrees to a different treatment with respect to such claim, § 1129(a)(9) sets forth the treatment the Plan must provide. Under Section II.D.1 of the Plan, holders of Allowed Administrative Claims under § 503(b) shall receive Cash in full and final satisfaction of their Allowed Administrative Claims on the Effective Date or as soon as reasonably practicable thereafter, except to the extent the Debtors or the Reorganized Debtors, as applicable, and a holder of an Allowed Administrative Claim against a Debtor agree to less favorable treatment of such Allowed Administrative Claim. *See* Plan § II.D.1.d. Consequently, the Plan Proponents submit that § 1129(a)(9) is satisfied because the Plan provides for the payment of all Allowed Administrative Claims on the Effective Date, except to the extent the Holder of such Claim has agreed to different treatment.

[6] The Debtors (though not the Lapis Parties) also reserve all rights to assert that this test does not or should not apply in the circumstances presented by the Plan.

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Further, the Plan contemplates the establishment of the Administrative and Priority Claims Reserve. *See id*. § II.D.4. Pursuant to Section II.D.4 of the Plan, the Debtors request that the Bankruptcy Court establish the Administrative and Priority Claims Reserve in the amount of approximately $4,624,674 (the Administrative, Professional and Priority Claims Cap). The Debtors have proposed to reserve the full face amount of the majority of asserted Administrative Claims that will not be Allowed on the Effective Date, in accordance with Section III.K. *See* Lane Decl. at ¶ 10. Many of these fully reserved Administrative Claims represent claims the Debtors already pay in the ordinary course of business. I*d*. The proposed Administrative and Priority Claims Reserve further reserves for the remaining handful of Disputed Administrative Claims not Allowed on the Petition Date—just not for the full face amount of the asserted Disputed Administrative Claim. *Id*. Consequently, the Debtors submit that the Administrative and Priority Claims Reserve is sufficient, under the circumstances. *See* Plan § III.K; *see also* Lane Decl. at ¶ 10.

Pursuant to Section II.E.1 of the Plan, all Allowed Priority Claims under § 507(a), unless otherwise agreed, shall receive payment in Cash in an amount equal to the amount of such Allowed Claim, payable on the Effective Date (or as soon as practicable thereafter) equal to the allowed amount of such Claim, unless the Class votes to accept deferred Cash payments of a value, as of the Effective Date, equal to

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the allowed amount of such Claims. The Plan also satisfies the requirements of § 1129(a)(9)(C) in respect of the treatment of Priority Tax Claims under § 507(a)(8). Pursuant to Section II.D.3 of the Plan and except as otherwise may be agreed, holders of Allowed Priority Tax Claims

> shall be paid in full in Cash from the Administrative and Priority Claims Reserve (a) on the later of the Effective Date or the date such Claim is allowed, (b) after the Effective Date, over a period not to exceed five years from the date of assessment of the subject tax, together with interest thereon at a rate satisfactory to the Debtors or such other rate as may be required by the Bankruptcy Code, or (c) upon such other terms as may be mutually agreed upon between the holder of such Claim and the Plan Proponents, and consistent with the terms of the Definitive Documents.

Based upon the foregoing, the Plan satisfies the requirements of § 1129(a)(9).

I. Each Impaired Class of Claims That Returned a Ballot Has Accepted the Plan, Excluding the Acceptances of Insiders (11 U.S.C. § 1129(a)(10)).

Section 1129(a)(10) provides that, if a class of claims is impaired under a plan, at least one impaired class of claims must accept the plan, excluding acceptance by any insider. *See* 11 U.S.C. § 1129(a)(10); *see also In re Station Casinos, Inc.*, 2011 WL 6012089, at ¶ 118 (Bankr. D. Nev. July 28, 2011) ("The bankruptcy courts that have expressly considered the matter have uniformly held that compliance with Section 1129(a)(10) is tested on a per-plan basis, not on a per-debtor basis, and that Section 1129(a)(10) therefore does not require an accepting impaired class for each debtor under a joint plan."). As set forth above, all Voting Classes (none of which contain insiders) are impaired and each Voting Class that returned a ballot has

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accepted the Plan (other than Class 4A, which did not vote). Therefore, the Voting Declaration confirms that the Plan satisfies § 1129(a)(10).

J. The Plan Is Feasible (11 U.S.C. § 1129(a)(11)).

Section 1129(a)(11) requires that the Court determine that the Plan is feasible as a condition precedent to confirmation. Specifically, it requires that confirmation is not likely to be followed by liquidation or the need for further financial reorganization of the Debtors or any successor to the Debtors, unless such liquidation or reorganization is proposed in the plan. As described below, the Plan is feasible within the meaning of this provision.

The feasibility test set forth in § 1129(a)(11) requires the Court to determine whether the Plan is workable and has a reasonable likelihood of success. *See Johns-Manville Corp.*, 843 F.2d at 649. The key element of feasibility is whether there is a reasonable probability that the provisions of the plan can be performed. As noted by the United States Court of Appeals for the Ninth Circuit: "The purpose of section 1129(a)(11) is to prevent confirmation of visionary schemes which promise creditors and equity security holders more under a proposed plan than the Debtors can possibly attain after confirmation." *Pizza of Haw., Inc. v. Shakey's, Inc.* (*In re Pizza of Haw., Inc.)*, 761 F.2d 1374, 1382 (9th Cir. 1985) (quoting 5 COLLIER ON BANKRUPTCY ¶ 1129.02[11] at 1129–34 (15th ed. 1984)). However, just as speculative prospects of success cannot sustain feasibility, speculative prospects of failure cannot defeat

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feasibility, and the mere prospect of financial uncertainty cannot defeat confirmation on feasibility grounds. *See In re U.S. Truck Co.*, 47 B.R. 932, 944 (E.D. Mich. 1985), *aff'd*, 800 F.2d 581 (6th Cir. 1986).

As set forth herein, the uncontroverted evidence demonstrates that the Plan is feasible. As more specifically discussed below in response to certain non-meritorious Objections raised by claimants that do not hold Allowed Administrative Claims, the Plan also satisfies § 1129(a)(11) because the Plan addresses the possible effect of certain litigation. Even though the Plan is not required to provide a mechanism for addressing the claims of claimants who may subsequently recover judgments against the Debtors, the Debtors have provided more than sufficient reserves to address any such claims. *See In re RCS Capital Dev., LLC*, BAP No. AZ-12-1626-JuTaAh, 2013 WL 3619172, *8 (B.A.P. 9th Cir. July 16, 2013) (unpublished); *In re Harbin*, 486 F.3d 510, 519 (9th Cir. 2007); *see also discussion, infra*. Followed to its logical conclusion, the Objectors' arguments would require debtors to reserve for 100% of the face amount of any filed request for payment regardless of allowance, *i.e.*, the worst case scenario. Such a result could preclude debtors from ever confirming a plan and is inconsistent with the requirements of the Bankruptcy Code. Consequently, as further discussed below, these claims do not render the Plan infeasible. Accordingly, the Plan satisfies the feasibility requirement set forth in § 1129(a)(11).

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K. The Plan Provides for the Payment of All Fees under 28 U.S.C. § 1930 (11 U.S.C. § 1129(a)(12)).

Section 1129(a)(12) requires that, as a condition precedent to the confirmation of a plan, "[a]ll fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan." 11 U.S.C. § 1129(a)(12). The Plan complies with § 1129(a)(12) by providing for the payment in full, in Cash, any U.S. Trustee Fees "(a) on the later of the Effective Date or the date such Claims are Allowed under § 503, or (b) upon such other terms as may be mutually agreed upon between the Holder of such Claim and the Plan Proponents, and consistent with the terms of the Definitive Documents." *See* Plan §§ II.D.1.d.ii, VII.P. Quarterly fees accruing under 28 U.S.C. § 1930(a)(6) after Confirmation shall be paid by the Liquidation Trust to the U.S. Trustee in accordance with 28 U.S.C. § 1930(a)(6) and the Liquidation Trust Agreement until entry of a final decree, or entry of an order of dismissal or conversion to chapter 7. Plan § VII.P. Accordingly, the Plan satisfies the requirements of § 1129(a)(12).

L. The Plan Requirement for Payment of Retiree Benefits (11 U.S.C. § 1129(a)(13)) Is Not Implicated.

Section 1129(a)(13) provides that a court may confirm a plan only if "[t]he plan provides for the continuation after its effective date of payment of all retiree benefits . . . for the duration of the period the debtor has obligated itself to provide

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such benefits." *See* 11 U.S.C. § 1129(a)(13). This provision is inapplicable as the Debtors will not have any ongoing retiree benefit obligations as of the Effective Date. Accordingly, the Plan satisfies the this requirement set forth in § 1129(a)(13).

M. Sections 1129(a)(14) and 1129(a)(15) Do Not Apply to the Plan.

Section 1129(a)(14) relates to the payment of domestic support obligations and § 1129(a)(15) applies only in cases in which the debtor is an "individual" as defined in the Bankruptcy Code. 11 U.S.C. §§ 1129(a)(14), (a)(15). Neither of these provisions applies to the Debtors. The Debtors are not subject to any domestic support obligations, and therefore, the requirements of § 1129(a)(14) do not apply. Further, none of the Debtors are an "individual" and, therefore, the requirements of § 1129(a)(15) do not apply.

N. The Plan Provides That Any Transfer of Property Will Be in Compliance With Applicable Non-Bankruptcy Law, Subject to Bankruptcy Court Oversight (11 U.S.C. § 1129(a)(16)).

Section 1129(a)(16) provides that applicable non-bankruptcy law will govern all transfers of property under a plan to be made by "a corporation or trust that is not a moneyed, business, or commercial corporation or trust." The legislative history of § 1129(a)(16) demonstrates that this section was intended to "restrict the authority of a trustee to use, sell, or lease property by a nonprofit corporation or trust." *See* H.R. REP. 109-31(I), 145, 2005 WL 832198, 121, 2005 U.S.C.C.A.N. 88, 203-04 (2005). Because, according to the legislative history of § 1129(a)(16), "[n]othing in

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[§ 1129(a)(16)] may be construed to require the court to remand or refer any proceeding, issue, or controversy to any other court or to require the approval of any other court for the transfer of property," *id*., and because the Plan provides for the Bankruptcy Court's approval of, or otherwise authorizes, any property transfers, the Plan satisfies the requirements of § 1129(a)(16).

O. The Plan Provides Fair and Equitable Treatment of the Non-Accepting Class 4A (11 U.S.C. § 1129(b)).

The Plan does not satisfy § 1129(a)(8) which requires that each class of claims or interests must either accept the plan or be unimpaired. No members of impaired Class 4A (Insured Claims) submitted a ballot accepting or rejecting the Plan. Under Ninth Circuit precedent, when no creditors in a class return a ballot, that class is deemed to have rejected the plan. *See Bell Road Inv. Co. v. M. Long Arabians (In re M. Long Arabians)*, 103 B.R. 211 (9th Cir. BAP 1989); *In re Real Wilson Enterprises, Inc*., No. 11-15697-B-11, 2013 WL 5352697, at *3 (Bankr. E.D. Cal. Sept. 23, 2013). Thus, Class 4A is deemed to have rejected the Plan.

Nevertheless, the Plan should be confirmed because its treatment of Class 4A is fair and equitable under § 1129(b). Section 1129(b) provides that a plan provides fair and equitable treatment

> With respect to a class of unsecured claims . . . [if] the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property . . . .

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11 U.S.C. § 1129(b)(2)(B)(ii). There are no Classes of Claims which are junior to Class 4A under the Plan. Accordingly, the Plan's treatment of Class 4A is fair and equitable and complies with the requirements of § 1129(a)(b).

P. The Principal Purpose of the Plan Is Not Avoidance of Taxes (11 U.S.C. § 1129(d)).

Section 1129(d) of the Bankruptcy Code states "the court may not confirm a plan if the principal purpose of the plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933." The purpose of the Plan is not to avoid taxes or the application of section 5 of the Securities Act of 1933. Moreover, no holder of Priority Tax Claims has thus far raised any objection arguing that the Plan Proponents have proposed the Plan to either avoid taxes or the application of section 5 of the Securities Act of 1933, and the Plan Proponents do not anticipate any such objections will be filed, particularly as all Priority Tax Claims will be paid in full pursuant to the Plan. Moreover, the Plan Proponents are nonprofit, tax-exempt entities. The Debtors therefore submit that the Plan satisfies the requirements of § 1129(d).

V. THE DISCRETIONARY CONTENTS OF THE PLAN SHOULD BE APPROVED

Section 1123(b) sets forth additional provisions that may be included in a chapter 11 plan. The Plan includes certain such additional provisions. For example, the Plan proposes treatment for executory contracts and unexpired leases and seeks

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to implement release, exculpation, and injunction provisions. *See id*. §§ IV, VII. As discussed below, each of these provisions is in the best interests of the Debtors, their estates, creditors, and other parties-in-interest in these Chapter 11 Cases.

A. The Assumption or Rejection of the Executory Contracts and Unexpired Leases Under the Plan Should Be Approved.

Section IV.B of the Plan provides for the rejection of all executory contracts and unexpired leases ("Executory Agreements") that exist between the Debtors and any other person or entity prior to the Petition Date on the Effective Date except for Executory Agreements that "(i) have been assumed by order of the Court, (ii) are subject to a motion to assume pending on the Effective Date, or (iii) have been identified on a list of assumed contracts to be filed with the Court prior to the Voting Deadline, which shall be a date prior to the Effective Date of the Plan." The Schedule of Assumed Agreements was filed prior to the Voting Deadline pursuant to the Plan. [Docket Nos. 2043, 2082].

Section 365(a) provides that a debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease." 11 U.S.C. § 365(a). Courts routinely approve motions to assume and assign or reject executory contracts or unexpired leases upon a showing that the debtor's decision to take such action will benefit the debtor's estate and is an exercise of sound business judgment. *Durkin v. Benedor Corp. (In re G.I. Indust., Inc.)*, 204 F.3d 1276, 1282 (9th Cir. 2000) ("a bankruptcy court applies the business judgment rule to evaluate a [debtor-in-

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possession]'s rejection decision") (*citing NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984)); *see also In re Chi-Feng Huang*, 23 B.R.798, 800 (B.A.P. 9th Cir. 1982). The debtor's exercise of its business judgment is entitled to deference. *See In re Pomona Valley Med. Grp.*, 476 F.3d 665, 670 (9th Cir. 2007) ("[I]n evaluating the rejection decision, the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate.") (citing *Navellier v. Sletten*, 262 F.3d 923, 946 n. 12 (9th Cir. 2001); *FDIC v. Castetter*, 184 F.3d 1040, 1043 (9th Cir.1999); *In re Chi–Feng Huang*, 23 B.R. at 801).

The Debtors reviewed and analyzed their Executory Agreements. In their business judgment, the Debtors have concluded that certain of their Executory Agreements should be assumed on the Effective Date because such agreements are beneficial to the Reorganized Debtors. Likewise, the Debtors have determined that it is in their best interest to reject all other Executory Agreements under the Plan as they are no longer providing a benefit to the Estates. Accordingly, for all of the foregoing reasons, the proposed assumption or rejection of Executory Agreements should be approved in connection with confirmation.

B. The Plan's Release, Injunction and Exculpation Provisions Are Appropriate and Should Be Approved.

The Plan provides for the release of certain causes of action of the Debtors, releases by holders of Claims, and the exculpation of certain parties for their acts

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during the Chapter 11 Cases. These provisions are proper because, among other things, they are the product of arm's-length negotiations and have been critical to obtaining the support of various constituencies for the Plan.

1. The Debtors' Releases.

Pursuant to VII.F.1 of the Plan, the Debtors shall release the Released Parties

> To the fullest extent authorized by applicable law, . . . from any and all . . . Causes of Action . . . existing or taking place prior to or on the Effective Date arising from or related in any way to the Debtors, any of the Debtors' present or former assets, the Released Parties' interests in or management of the Debtors, the Plan, the Disclosure Statement, this Chapter 11 Case, or any restructuring of Claims or interests undertaken prior to the Effective Date, including those that the Debtors, the Reorganized Debtors, the GUC Distribution Trust, or the Liquidation Trust would have been legally entitled to assert or that any Holder of a Claim against or interest in the Debtor or any other entity could have been legally entitled to assert derivatively or on behalf of the Debtors or their Estates including with respect to the Lapis Parties any challenge to Claims and rights of the Lapis Parties under the Bond Documents and Credit Agreement Documents; *provided*, *however*, that the foregoing "Debtors' Releases" shall not operate to waive or release any Claims or Causes of Action of the Debtors or their Estates against a Released Party arising under any contractual obligation owed to the Debtors that is entered into or assumed pursuant to the Plan.

Id. (the "Debtor Releases").

It is well-established that debtors are authorized to settle or release their claims in a chapter 11 plan. *See In re Pac. Gas & Elec*., 304 B.R. 395, 416 (Bankr. N.D. Cal. 2004) ("Given that section 1123(b)(3)(A) permits a plan of reorganization to include settlements, and given the overwhelming votes in favor of the Plan, such review [under Rule 9019] might be unnecessary. Nevertheless . . . [t]he court will

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discuss the releases as if Rule 9019 governs."); *In re Aina Le'a, Inc.*, No. BR 17-00611, 2019 WL 2274909, at *12 (Bankr. D. Haw. May 24, 2019) ("The releases of Claims and Rights of Action by the Debtor described herein and in the Plan, in accordance with section 1123(b) of the Bankruptcy Code (the 'Debtor's Release'), represent a valid exercise of the Debtor's business judgment under Bankruptcy Rule 9019."). Section 1123(b)(3)(A) specifically provides that a chapter 11 plan may provide for "the settlement or adjustment of any claim or interest belonging to the debtor or to the estate." 11 U.S.C. § 1123(b)(3)(A). A plan that proposes to release a claim or cause of action belonging to a debtor is considered a "settlement" for purposes of satisfying § 1123(b)(3)(A). Settlements pursuant to a plan are generally subject to the same "reasonable business judgment" standard applied to settlements under Bankruptcy Rule 9019. *See WCI Cable, Inc.*, 282 B.R. at 469 (evaluating a settlement pursuant to § 1123(b) under the factors applicable to settlements under Bankruptcy Rule 9019 set forth in *In re A & C Properties*).

First, the Plan Proponents are not aware of any other colorable Estate claims or causes of action that may exist against any of the Released Parties. Therefore, it is not possible to place any probability of success on such litigation given that no viable litigation has even been identified.

Second, the Debtor Releases have the support of every major creditor constituent in these Chapter 11 Cases. The Lapis Parties are co-Plan Proponents and

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the Committee supports the Plan, including the Debtor Releases. The Plan reflects the settlement and resolution of numerous complex issues, and the Debtor Releases are an integral part of the consideration to be provided in exchange for the compromises and resolutions embodied in the Plan. Further, each Voting Class that returned a ballot on the Plan has overwhelmingly voted to accept the Plan, including the Debtor Releases set forth therein.

Third, the Debtor Releases are in the best interests of the Debtors' creditors. In the absence of any viable claims against any of the Released Parties, pursuing claims against the Released Parties would be a costly and futile exercise that would only distract the Reorganized Debtors' management of the business. The Debtor Releases will eliminate the potential for post-effective date litigation against Board Trustees that could directly and indirectly threaten the Reorganized Debtors' ability to function effectively by virtue of indemnification agreements and the cost and distraction of potential third-party discovery. With respect to the Lapis Parties, the Debtor Releases were a central component of the Senior Debt 9019 Settlement. As noted, the Senior Debt 9019 Settlement is a cornerstone of the Plan and for the further reason, the Debtor Release as in the best interests of the Debtors' creditors and Estates.

Fourth, each of the Released Parties afforded significant value to the Debtors, played an integral role in the formulation of the Plan, and expended significant time

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and resources analyzing and negotiating the issues involved therein and leading the Debtors through a complex chapter 11 process. For instance, the Released Parties have made significant contributions to the success of these Chapter 11 Cases, including, in certain instances, compromising their claims to reach settlements that furthered the resolution of these Chapter 11 Cases, financing the Debtors' operations during these Chapter 11 Cases, and otherwise supporting the Debtors' intensive efforts and negotiations to build near-universal consensus behind the Plan—a result which benefits all parties in interest and preserves the value-maximizing recoveries set forth in the Plan. With respect to the Lapis Parties, the Lapis Parties agreed to have their claims reinstated or extended as set forth in the Plan. The DIP Claims, in particular, would have under other circumstances been paid in full in cash on the Effective Date. The Lapis Parties also consented to the Committee Plan Settlement; absent the Committee Plan Settlement the Lapis Parties would have asserted that most or all of the consideration the settlement made available to holders of Allowed Unsecured Claims under the Plan would instead be distributed to the Lapis Parties. Also, the Board of Trustees, who serve without compensation, met frequently prior to the Petition Date and even more so during these Chapter 11 Cases to consider the Debtors' options during this period of financial distress and evaluate an outcome that would maximize value to all stakeholders. Among other things, the Board of Trustees evaluated provided intensive and thoughtful consideration in ultimately

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approving the decision to file a chapter 11 bankruptcy petition, to obtain post-petition financing, to close and later sell ARMC and the related medical office building and to file the Plan. The Plan thus appropriately offers certain protections in the form of releases to the Released Parties that constructively participated in the Debtors' restructuring, and should be approved as fair, reasonable, and equitable. Further, as explained below, the releases are permissible under § 524(e) because they do not effectuate a release of debts on which the Released Parties are co-liable with the Debtors. *See Blixseth v. Credit Suisse*, 961 F.3d 1074, 1081-84 (9th Cir. 2020). Accordingly, the Released Parties are entitled to the releases set forth in the Plan, pursuant to § 1123(a)(2)(A).

Fifth, the Debtor Releases are similar in scope to those which have been approved by other courts in the Ninth Circuit. *See, e.g., In re FirstFed Fin. Corp.*, No. 2:10-bk-12927-ER, Docket No. 514 at 9 (Bankr. C.D. Cal. Nov. 13, 2012) (approving debtor releases); *In re Verity Health System of California, Inc.*., No. 2:18-bk-20151-ER, Docket No. 5504 at 24-27 (Bankr. C.D. Cal. Nov. 13, 2012) (approving debtor releases). The Plan Proponents therefore submit that the Debtor Releases are consistent with applicable law, represent a valid settlement of whatever Claims the Debtors may have against the Released Parties pursuant to § 1123(b)(3)(A), represent a valid exercise of the Debtors' business judgment, and should be approved.

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2. Third Party Releases.

Pursuant to VII.F.2 of the Plan, the Releasing Parties shall release the Released Parties:

> from any and all actions, claims, interests, obligations, rights, suits, damages, causes of action, remedies and liabilities whatsoever, including any derivative claims asserted on, behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that such Holder (whether individually or collectively) ever had, now has or hereafter can, shall or may have, based on or relating to, or in any manner arising from or related in any way to the Debtors, any of the Debtors' present or former assets, the Released Parties' interests in or management of the Debtors, the business or contractual arrangements between the Debtors and any Released Party, the Plan, the Disclosure Statement, these Chapter 11 Cases, or any restructuring of claims or interests undertaken prior to the Effective Date, including those that the Debtors, the Reorganized Debtors, the GUC Distribution Trust, or the Liquidation Trust would have been legally entitled to assert or that any Holder of a Claim against or interest in the Debtors or any other entity could have been legally entitled to assert derivatively or on behalf of the Debtors or their Estates, except for (I) any Claims and Causes of Action for actual fraud, gross negligence or willful misconduct and (ii) the right to receive distributions from the Debtors, the Reorganized Debtors, the GUC Distribution Trust, or the Liquidation Trust on account of an allowed claim against the Debtors pursuant to the Plan.

Id. (the "Third Party Releases").

As discussed, the Plan Proponents are not aware of any other colorable Estate claims or causes of action that may exist against any of the Released Parties. Also, the Third Party Releases have the support of every major creditor constituent in these Chapter 11 Cases. Parties which voted in favor of the Plan also had the option to opt

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out of these Third Party Releases such that they would not be considered Releasing Parties. Parties which rejected the Plan were automatically deemed to have opted out of the Third Party Releases.

The Third Party Releases should be approved as they are in line with other nondebtor releases approved by Ninth Circuit precedent. The Ninth Circuit's recent decision in *Blixseth*, 961 F.3d 1074, clarifies its prior decision, *In re Lowenschuss*, 67 F.3d 1394 (9th Cir. 1995), and explains that the plain language of § 524(e) does not prohibit nondebtor releases of any kind.

Section 524(e) provides as follows:

> Except as provided in subsection (a)(3) of this section, discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.

The Ninth Circuit's early interpretation of § 524(e) recognized that, "[g]enerally, discharge of the principal debtor in bankruptcy will not discharge *the liabilities of codebtors or guarantors*." *Underhill v. Royal*,769 F.2d 1426, 1432 (9th Cir. 1985) (emphasis added). The Ninth Circuit and the Bankruptcy Appellate Panel for the Ninth Circuit generally conformed to this interpretation—that § 524(e) precludes a debtor's discharge from affecting the liability of a codebtor or guarantor on "such debt." *See, e.g., Am. Hardwoods, Inc. v. Deutsche Credit Corp.* (*In re Am. Hardwoods, Inc.*), 885 F.2d 621, 625 (9th Cir. 1989) (affirming bankruptcy court finding that it lacked the power to permanently enjoin creditor from enforcing state

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court judgment against nondebtor guarantors); *Sun Valley Newspapers, Inc. v. Sun World Corp.* (*In re Sun Valley Newspapers, Inc.*), 171 B.R. 71, 77 (B.A.P. 9th Cir. 1994) (holding reorganization plans which proposed to release non-debtor guarantors violated § 524(e) and were therefore unconfirmable); *Seaport Automotive Warehouse, Inc. v. Rohnert Park Auto Parts, Inc.* (*In re Rohnert Park Auto Parts, Inc.*), 113 B.R. 610, 614-17 (B.A.P. 9th Cir. 1990) (finding that a reorganization plan provision which enjoined creditors from proceeding against co-debtors violated § 524(e)).

However, *Lowenschuss* indicated that the limitations previously suggested with respect to § 524(e) are not so narrow. *See* 67 F.3d 1394. There, the Ninth Circuit denied approval of a "Global Release Provision" in a plan, which "broadly released the debtor and connected persons or entities . . . from all claims" rather than co-liabilities or guarantees, as inconsistent with § 524(e). *See id.* at 1401 (citing *Am. Hardwoods, Inc.*, 885 F.2d 621; *Underhill*,769 F.2d 1426).

More recently in *Blixseth*, 961 F.3d at 1082, the Ninth Circuit reevaluated the sweep of § 524(e) and in doing so, it recognized the limitation of *Lowenschuss* and the appropriate application of § 524(e). There, the Ninth Circuit considered an exculpation clause that provided an exculpation for nondebtor plan proponents. *See Blixseth*, 961 F.3d at 1082. The Ninth Circuit reviewed the plain language of § 524(e) and observed that "[b]y its terms, § 524(e) prevents a bankruptcy court from

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extinguishing claims of creditors against non-debtors *over the very debt discharged through the bankruptcy proceedings*." *Id.* (citing *In re PWS Holding Corp.*, 228 F.3d 224, 245-46 (3d Cir. 2000)) (emphasis added). The Ninth Circuit reasoned

> [t]hat § 524(e) confines the debt that may be discharged to the "debt of the debtor"—and not the obligations of third parties for that debt—conforms to the basic fact that "a discharge in bankruptcy does not extinguish the debt itself but merely releases the debtor from personal liability . . . . The debt still exists, however, and can be collected from any other entity that may be liable.

Id. (quoting *Landsing Diversified Props.-II v. First Nat'l Bank & Tr. Co. of Tulsa (In re W. Real Estate Fund)*, 922 F.2d 592, 600 (10th Cir. 1990)). The Ninth Circuit further recounted its prior observation, in *Underhill*, of the legislative history that "[t]he emphasis on the liability of co-debtors and guarantors, but not creditors or other third parties, indicates the intended scope of Section 16 and, by extension, § 524(e)." *See id.* at 1083 (citing *Underhill v. Royal*,769 F.2d at 1432).

The Ninth Circuit reconciled the language in its prior holdings with the plain meaning of § 524(e) and concluded that

> the breadth of the coverage—the "Global Release" in *Lowenschuss*; the permanent injunction in *American Hardwoods*; and the "all claims" exculpation in *Underhill*—would have affected the ability of creditors to make claims against third parties, including guarantors and co-debtors, ***for the debtor's discharged debt***.

Id. at 1084 (emphasis added).

The Plan does not intend to release co-liabilities precluded by § 524(e) and, thus, is not in violation of law. As explained *supra* with respect to the Debtor

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Releases, the Plan merely seeks to provide the Released Parties — parties who have each made significant contributions to the success of these Chapter 11 Cases, with appropriate exculpations and releases. Such contributions alone justify such relief. Moreover, the Third Party Releases are necessary preconditions to the Lapis Parties and the Committee compromising their claims to reach settlements that furthered the resolution of these Chapter 11 Cases. Thus, it is evident that the Third Party Releases provide a necessary benefit to the Estates because such exculpations and releases are integral component to the Plan that maximizes creditor recoveries in these Chapter 11 Cases. The Third Party Releases will not release any guarantee or co-liability of the Released Parties on a debt otherwise treated under the Plan. Accordingly, the Third Party Releases are consistent with § 524(e).

Moreover, the Third Party Releases are similar in scope to those approved by other courts in in the Ninth Circuit. *See, e.g.*, *In re PG & E Corp*., 617 B.R. 671, 683 (Bankr. N.D. Cal. 2020) (approving third party releases). Accordingly, the Plan Proponents submit that the Third Party Releases are consistent with applicable law, represent a valid settlement of whatever Claims the Debtors may have against the Released Parties pursuant to § 1123(b)(3)(A), represent a valid exercise of the Debtors' business judgment, and should be approved.

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3. The Injunctions.

Section 105(a) of the Bankruptcy Code authorizes a bankruptcy court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [title 11]." 11 U.S.C. § 105(a). The Court may issue an injunction in connection with plan confirmation in furtherance of a settlement or in the interest of the Debtors' estates. *See WCI Cable, Inc*., 282 B.R. at 469 ("Section 105(a) can be used with respect to the injunction provisions of the WCI Plan only to the extent necessary and appropriate to carry out the terms of an approved settlement.") (citing *In re Dow Corning Cor*p., 255 B.R. 445, 478 (E.D. Mich. 2000)); *see also In re Rohnert Park Auto Parts, Inc*.,113 B.R. 610, 615 (B.A.P. 9th Cir. 1990) ("[S]ection 105 permits the court to issue both preliminary and permanent injunctions after confirmation of a plan to protect the debtor and the administration of the bankruptcy estate[.]"). The equities favor imposition of the injunctive provisions of the Plan because, among other things, the Plan presents the best possible recovery to creditors (as evidenced by the overwhelming votes in support of the Plan) and the injunctions are necessary components to the Senior Debt 9019 Settlement and the Committee Plan Settlement which form the cornerstones of the Plan.

4. The Exculpation.

Exculpation of estate fiduciaries and Plan Proponents is customary and permissible in chapter 11. Indeed, the Ninth Circuit has approved exculpation

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provisions that extend to plan proponents, including non-debtor plan proponents. *See Blixseth v. Credit Suisse*, 961 F.3d 1074 (9th Cir. 2020) (approving exculpation of debtor's largest creditor that became a plan "proponent through its direct participation in the negotiations that preceded the adoption of the Plan"); *see also In re Yellowstone Mountain Club, LLC*, 460 B.R. 254, 277 (Bankr. D. Mont. 2011) (approving exculpation that extended to "the Debtors, Committee [of Unsecured Creditors], Credit Suisse and CrossHarbor, who all became, in essence, plan proponents"); *In re Fraser's Boiler Serv.*, 593 B.R. 636, 641-42 (Bankr. W.D. Wash. 2018) ("it appears common among bankruptcy courts within the Ninth Circuit to allow exculpation clauses that do not include exceptions for breaches of fiduciary duty, legal malpractice, or ordinary negligence.").

Plan exculpations may also extend to non-estate fiduciaries when the exculpated parties make substantial contributions to the reorganization, the exculpations are important to such parties' participation in the reorganization efforts, and the exculpations are limited "in both scope and time" to actions related to the chapter 11 cases. *See In re Yellowstone Mountain Club*, 460 B.R. at 272; *Meritage Homes of Nev. Inc. v. JPMorgan Chase Bank, N.A.* (*In re S. Edge LLC*), 478 B.R. 403, 415-16 (D. Nev. 2012) (approving exculpation of third party nondebtors because exculpation "sets a standard of care to be applied in the bankruptcy proceeding" and "does not improperly release third party nondebtors"); *Lazo v. Roberts*, No. CV15-

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7037-CAS(PJWx), 2016 WL 738273, at *7 (C.D. Cal. Feb. 22, 2016) ("Increasingly, however, [t]he trend among bankruptcy courts [more generally] has been to confirm chapter 11 plans with express discharge or indemnification provisions for nondebtors if they meet certain tailored criteria or overall necessity. This overall trend is evident in the Ninth Circuit.") (internal quotation marks and citations omitted); *see also In re Stearns Holdings, LLC*, 607 B.R. 781, 790 (Bankr. S.D.N.Y. 2019) (holding that exculpation could extend to parties "who make a substantial contribution to a debtor's reorganization and play an integral role in building consensus in support of a debtor's restructuring"). Exculpation clauses also are essential in cases like this one that are heavily litigated. *See In re Yellowstone Mountain Club*, 460 B.R. at 274 ("An exculpation clause in this case was certainly advisable given the litigious posture of the parties.").

The exculpation provision in the Plan appropriately excludes willful misconduct or gross negligence, and there is no requirement that breaches of professional duties be excluded from a plan exculpation provision. *See In re W. Asbestos Co.*, 313 B.R. 832, 846 (Bankr. N.D. Cal. 2003) (approving provision that "neither the Plan Proponents nor any of their agents, including their attorneys, shall be liable, *other than for willful misconduct*, with respect to any action or omission prior to the effective date in connection with the Debtors' operations, the Plan, or the conduct of the bankruptcy case.") (emphasis added).

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The exculpation provision the Court upheld in *Blixseth* is particularly instructive. *See* 961 F.3d 1074. There, as here, the exculpation provision was limited both temporally and in scope to actions related to the reorganization; specifically, "any act or omission in connection with, relating to or arising out of the Chapter 11 Cases, the formulation, negotiation, implementation, confirmation or consummation of this Plan, the Disclosure Statement, or any contract, instrument, release or other agreement or document entered into during the Chapter 11 Cases or otherwise created in connection with this Plan." *Id*. at 1078-79. Furthermore, like here, the exculpation clause extended to major stakeholders, including the provider of debtor in possession financing and the largest creditor in the case, who had negotiated the plan, leading the plan to be essentially a collaborative effort, of which the exculpation was a "cornerstone." *Id*.; *see also Yellowstone Mountain Club*, 460 B.R. at 277. The exculpation clause also similarly covered the various agents, professionals, and other related parties of the exculpated parties—specifically, "with respect to each of the foregoing Persons, each of their respective directors, officers, employees, agents . . . representatives, shareholders, partners, members, attorneys, investment bankers, restructuring consultants and financial advisors." 460 B.R. at 267. Here, the Plan exculpation extends to the major stakeholders in this case who entered into settlements with the Debtors to allow the Plan to become effective and collaborated with the Debtors in the countless hours of negotiation that culminated in reaching

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agreements that became the "cornerstones" of the Plan. Finally, as with the exculpation in *Blixseth*, the Plan exculpation excludes willful misconduct and gross negligence. *Compare* 961 F.3d at 1079 with Plan § VII.E. Accordingly, the Bankruptcy Court should approve the Plan's release, injunction and exculpation provisions.

VI. THE DEEMED CONSOLIDATION OF THE DEBTORS SHOULD BE APPROVED

As set forth more fully in the Disclosure Statement, the Plan provides for the "deemed" consolidation of the Debtors for the purpose of claims and distributions. The Disclosure Statement sets forth (i) the legal requirements to establish deemed consolidation, and (ii) the factual bases supporting the Debtors' request for deemed consolidation, which are fully incorporated herein by this reference. As set forth in the Plan, the Disclosure Statement and the Plan are deemed a motion requesting that the Bankruptcy Court approve the deemed consolidation contemplated by the Plan at the Confirmation Hearing. The Disclosure Statement provided that objections to the proposed deemed consolidation must be made in writing on or before the deadline to object to confirmation of the Plan.

As further set forth below, deemed consolidation of the Debtors for claim and distribution purposes is appropriate because it is acceptable to all creditors Classes (as evidenced by the favorable votes accepting the Plan). Further, and failing to provide deemed consolidation would produce a very undesired and costly result.

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That is, it would be economically costly and time-consuming to attempt to analyze and determine which debts are owed by and against which Debtor entity, and then seek to unwind or otherwise bring intercompany actions to obtain recoveries. The cost of the analysis alone would be at the expense of recoveries to unsecured creditors in these Chapter 11 Cases. Accordingly, for the reasons set forth below and in the Disclosure Statement, the Plan Proponents respectfully request that the Bankruptcy Court approve the deemed consolidation of the Debtors.

VII. THE OBJECTIONS SHOULD BE OVERRULED

A. The Premier Objection Has Been Resolved.

Premier, Inc. (with its consolidated subsidiaries, including Premier Healthcare Solutions, Inc. ("PHSI") and Healthcare Insights, LLC ("Healthcare Insights"), collectively, "Premier") filed the *Limited Objection of Premier, Inc. and Its Subsidiaries to Confirmation of Debtors' Second Amended Joint Chapter 11 Plan of Reorganization* [Docket No. 2066] (the "Premier Limited Objection"). The Premier Limited Objection is centered on the effective date of rejection of the Premier executory contract. The Plan Proponents have agreed with Premier that rejection of the Premier agreement will be effective on the Effective Date of the Plan, resolving this Objection.

B. The Cerner Objection Is Without Merit.

Cerner Corporation on behalf of itself and its affiliates (collectively, "Cerner")

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filed the *Objection of Cerner Corporation to Debtors' Second Amended Joint Chapter 11 Plan of Reorganization of Astria Health and its Debtor Affiliates* [Docket No. 2065] (the "Cerner Objection").[7] Cerner lodged two limited, alternative objections to confirmation. One objection in the event the previously filed *Motion of Cerner Corporation for (1) Relief from the Automatic Stay to Allow Arbitration; (2) For Determination that Arbitration is Required and Should Proceed; and (3) Recognizing Federal Arbitration Act Stay of Further Proceedings on Objection to Administrative Expense Claim* [Docket No. 1995] ("Cerner Arbitration Motion") was denied by this Court, and the other objection in the event the Cerner Arbitration Motion was granted by this Court. On December 10, 2020, this Court denied the Cerner Arbitration Motion [Docket No. 2111] (the "Cerner Arbitration Denial Order"). As such, the Cerner Objection is "limited" to Cerner's aforementioned objection, which amounts to a "suggest[ion]" that confirmation be denied or delayed

[7] As an initial matter, contrary to certain assertions in the Cerner Objection, the Debtors are seeking to assume, not reject, the CBA (defined in the Cerner Objection). *See* Debtors' *Motion to Assume and Reject Contracts Between the Debtors, Cerner Corporation and Cerner RevWorks* [Docket No. 2086] ("The Debtors seek the court's authority to assume the CBA and to reject the RevWorks Contract. . . .")

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pending resolution of the "Cerner Dispute" (defined in the Cerner Arbitration Motion). *See* Cerner Objection, ¶ 39.

Cerner's "suggestion" that confirmation be delayed pending resolution of a dispute that it has made only a recent effort to advance towards resolution is a blatant effort to coerce the Plan Proponents to an unfavorable settlement by holding them hostage in these Chapter 11 Cases. It is also contrary to the "fundamental policy of Chapter 11 that a reorganization 'must be accomplished quickly and efficiently.'" *In re Adelphia Bus. Solutions, Inc.*, 341 B.R. 415, 422-23 (Bankr. S.D.N.Y. 2003) (*quoting Bittner v. Borne Chem. Co.*, 691 F.2d 134, 135-37 (3rd Cir. 1982)). As Cerner knows well, resolution of the Cerner Dispute may well, with discovery, take more than a year, and any judgment is almost certain to be appealed, which may take years more. Cerner's cynical suggestion that the Court delay confirmation for years must be rejected as it "would unduly delay the administration of the case." *Id*. at 422 (citing § 502(c)). For these reasons alone the Cerner "suggestion" should be rejected by the Court.

During the December 10th hearing on the Cerner Arbitration Motion, Cerner orally stated that it *may* also oppose confirmation of the Plan if "cure" claims are subject to the Administrative and Priority Claims Reserve, on the basis that it will assert an alleged $10.2 million "cure claim" with respect to assumption of the Cerner Business Agreement and the Plan does not provide a reserve for such amount. The

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suggestion and more recent assertions are neither appropriate nor with legitimate basis.

First, the Debtors do not dispute that administrative expense claims, to the extent allowed as of the Effective Date are to be paid out on the Effective Date under § 1129(a)(9) (unless the holder accept alternative treatment). Here, however, Cerner's alleged claim, whether characterized as an administrative or "cure" claim, is contingent as it is wholly dependent on the outcome of the Cerner Dispute. Moreover, it will be vigorously disputed by the Debtors. As such Cerner is not entitled to demand payment on the Effective Date on claims which are contingent and disputed, and certainly not "allowed." 11 U.S.C. § 1129(a)(9) ("[W]ith respect to a claim of a kind specified in section 507(a)(2) . . . , on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the *allowed* amount of such claim.") (emphasis added). *See In re Lisanti Foods, Inc.*, 329 B.R. 491, 502-03 (D. N.J. 2005) (affirming that bankruptcy court did not err in finding plan complied with § 1129(a)(9)(A) given that objecting creditor did not yet hold an "allowed" claim as defined by the plan and therefore did "not yet have any entitlement to payment of their administrative claims unless and until the Bankruptcy Court so orders"). As a result there exists no legitimate basis to delay or deny confirmation because any administrative expense or "cure" claim held by Cerner is contingent, disputed and not allowed.

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Even if this Court were inclined to look past the contingent nature of Cerner's alleged administrative expense claim, there is still no legitimate basis for this Court to deny or delay confirmation based upon the terms of the Plan, including any limitation on the Administrative and Priority Claims Reserve. It is well-established that bankruptcy courts have jurisdiction to estimate the claims and interests against the estates of debtors. *See In re Harbin*, 486 F.3d 510, 519 (9th Cir. 2007) ("Congress has explicitly given the bankruptcy court jurisdiction to consider questions concerning confirmation of a debtor's plan, and in doing so to estimate the various claims and interests against the debtor's estate."); *In re Tristar Fire Protection, Inc.*, 466 B.R. 392 (Bankr. E.D. Mich. 2012) (bankruptcy court has authority to estimate administrative claims for the purpose of plan confirmation despite NLRB's exclusive jurisdiction to adjudicate whether such claims are allowed). Indeed, any other conclusion would lead to the legally incorrect and illogical result of depriving bankruptcy courts of their ability to evaluate feasibility when a disgruntled litigant desired to block confirmation. This Court is particularly well suited to estimate the value of a Cerner Claim, particularly because the Claims and Cerner Dispute will proceed exclusively before this Court, as ruled in the Cerner Arbitration Denial Order. The Debtors submit that any such estimation should not alter the Administrative, Professional and Priority Claims Cap.

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As the court recently ruled in another nonprofit hospital bankruptcy when a creditor with a dispute against the debtors argued for a large reserve to be required against the remote possibility it might prevail in future litigation against the debtors:

> In assessing the feasibility of the Plan, the Court must evaluate "the possibility that a potential creditor may, following confirmation, recover a large judgment against the debtor." *Sherman v. Harbin (In re Harbin)*, 486 F.3d 510, 517 (9th Cir. 2007). The Court is required to "exercise its sound discretion in considering how such litigation may affect the feasibility of any specific plan." *Id.* Where, as here, the amount of an administrative claim has not yet been determined, the Court may estimate the amount of the claim for the purpose of determining plan feasibility. As explained by the court in *In re Adelphia Bus. Sols., Inc.*: "[W]hen estimating claims, Bankruptcy Courts may use whatever method is best suited to the contingencies of the case, so long as the procedure is consistent with the fundamental policy of Chapter 11 that a reorganization "must be accomplished quickly and efficiently." *Bittner v. Borne Chemical Co.*, 691 F.2d at 135–37; *see also, e.g., In re Brints Cotton Mktg., Inc.*, 737 F.2d 1338, 1341 (5th Cir.1984), citing 3 *Collier on Bankruptcy* ¶ 502.03, at 502–77 (15th ed.1983). Bankruptcy Courts have employed a wide variety of methods to estimate claims, including summary trial, *In re Baldwin–United Corp.*, 55 B.R. 885, 899 (Bankr.S.D.Ohio 1985), a full-blown evidentiary hearing, *In re Nova Real Estate Inv. Trust*, 23 B.R. 62, 65 (Bankr.E.D.Va.1982), and a review of pleadings and briefs followed by oral argument of counsel, *In re Lane*, 68 B.R. 609, 613 (Bankr.D.Haw.1986). In so doing, courts specifically have recognized that it is often "inappropriate to hold time-consuming proceedings which would defeat the very purpose of 11 U.S.C. § 502(c)(1) to avoid undue delay." 341 B.R. 415, 422–23 (Bankr. S.D.N.Y. 2003).

In re Verity Health System of California, Case No. 2:18-bk-20151-ER, Docket No. 5475 (Bankr. C.D. Cal. Aug. 12, 2020).

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Here, the Court should consider the evidence in these Chapter 11 Cases to date to the effect that Cerner's prepetition performance (or lack of performance) was a primary cause of the filing of the Chapter 11 Cases, the objection and evidence offered in opposition to Cerner's motion for allowance of an administrative expense, *see, e.g.*, Docket Nos. 1973 and 1975 showing that Cerner caused in excess of $150 million of damages to the Debtors which would be available as an offset to any potential Cerner claims, that Cerner has not sought relief in the form of an additional reserve and has therefore forfeited and or waived that right, and that the Debtors will be operating companies with significant cash flow sufficient to pay any judgment that Cerner might someday be awarded (although the Debtors dispute the likelihood of any such judgment) to find that no reserve is required on behalf of Cerner. When considering all this evidence, the Court should estimate the value of Cerner's claim at zero for purposes of determining feasibility and with regard to what, if any, reserve the Debtors should be required to place for Cerner. *See, e.g., In re Verity, supra,* ("Having conducted such a review, the Court estimates the SGM Admin Claim to have a value of $0. *See Harbin*, 486 F.3d at 520 n.7 (stating that the Court is not prohibited 'from valuing [the] claim at zero' as long as it 'exercise[s] its own judgement in reaching such a conclusion.')).").

As a result of the foregoing, and the facts on record, the Debtors submit that this Court should deny the Cerner Objection.

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C. The United States Trustee's Objections Have Been Addressed and Otherwise Should Be Overruled.

The United States Trustee (the "Trustee") filed the *Objection to Second Amended Plan* [Docket No. 2068] (the "Trustee Objection"). The Trustee Objection asserts that confirmation should be denied because (i) "deemed" consolidation of the Debtors is not appropriate, (ii) the Plan's exculpation provisions are broader than Ninth Circuit authority allows, and (iii) the GUC Distribution Trust improperly limits notice with respect to a "Conflicts Trustee." As noted below, these objections are being addressed through clarification and otherwise, should be overruled.

1. Deemed Consolidation of the Debtors Is Appropriate.

The Plan provides for the "deemed" consolidation of the Debtors for the purposes of Claim allowance and distribution, which treats the Debtors' assets and liabilities as if they were pooled without actually merging the Debtor entities. As noted above, deemed consolidation treatment of claims and assets for distribution purposes is commonplace. *See, e.g., In re Verity Health Sys. of Cal., Inc., et al.*, Case No. 2:18-bk-20151-ER (Bankr. C.D. Cal. Aug. 14, 2020) [Docket No. 5504] (confirming chapter 11 plan which deems the debtors' assets and liabilities consolidated for plan purposes); *In re Bashas' Inc.*, 437 B.R. 874, 928 (Bankr. D. Ariz. 2010) (consolidation of debtor assets and liabilities for plan purposes appropriate). Here, the Plan, which clearly provides for deemed consolidation, was voted on by all impaired Classes of stakeholders. Further, the Committee,

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representing the interests of unsecured creditors in these Chapter 11 Cases, is supporting the Plan which includes these terms, based on the Committee Plan Settlement.

Even without such stakeholder support, deemed consolidation is appropriate. The Plan consolidates the Debtors for Plan purposes to avoid the economically costly, time consuming and potentially impractical process of determining which debts are owed by which specific Debtor entities, how the Debtors' enterprise value should be fairly allocated across the Debtor entities, and the unwinding of intercompany actions in an attempt to obtain recoveries. Any effort to allocate the value of the Debtors' healthcare system among entities would be time and resource consuming and potentially subject to numerous disputes and judgment calls. The cost and delay of this analysis alone would be at the expense of the recoveries to unsecured creditors. Ninth Circuit precedent (which is relied upon in the Trustee Objection) recognizes this basis for deemed consolidation of claims and liabilities for plan purposes. As recognized by the Trustee, the Ninth Circuit has observed that consolidation is justified where "'the time and expense necessary even to attempt to unscramble them [is] so substantial as to threaten the realization of any net assets for all the creditors' or where no accurate identification and allocation of assets is possible." *Alexander v. Compton (In re Bonham)*, 229 F.3d 750, 766 (9th Cir. 2000) (*quoting In re Augie/Restivo Baking Co.*, 860 F.2d 515, 519 (2d Cir. 1988)).

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In this case, the Debtors' finances and operations have always been and remain significantly interconnected. *See* Lane Decl., at ¶ 3. Funds have routinely flowed on an intercompany basis from stronger performing Debtors to support the weaker performing Debtors. *Id.* While vendor liabilities are reported specific to the individual hospitals, there was significantly higher liabilities at the ARMC facility as compared to the Sunnyside and Toppenish hospitals. *Id.* Many of the vendors provided goods and services to all hospitals and often linked shipments based upon aging of the accounts at all the hospitals. *Id.* Sunnyside hospital not only borrowed funds in January 2019 for vendor management but also provided significant funding from cash reserves to allow ARMC, and to a lesser extent Toppenish, to purchase goods and services. *Id.* It would be difficult if not impossible to reconcile and allocate cash funding for acquisition purposes, operations or vendor management. *Id.*

The Plan Proponents demonstrated these facts showing the comingling of the Debtors' assets and liabilities and the problems associated with any attempt to unwind them in connection with Disclosure Statement approval. *See Reply in Support of Joint Motion for an Order Approving: (I) Proposed Disclosure Statement; (II) Solicitation and Voting Procedures; (III) Notice and Objection Procedures for Confirmation of First Amended Joint Plan of Reorganization; and (IV) Granting Related Relief* [Docket No. 1970]. The Court agreed that this objection raised by the

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Trustee was not sufficient to warrant denial in connection with the Disclosure Statement. *See* Disclosure Statement Order, p. 4 (overruling the Trustee's objections and approving the Disclosure Statement). Nevertheless, the Trustee has reasserted this objection in the context of Plan confirmation. Trustee Objection, p. 3 ("the corporate assets identified for each debtor, are not scrambled . . ." and therefore deemed consolidation is not appropriate.). The Trustee further asserts that "the debtors need to demonstrate how [deemed consolidation] meets Section 1129(a)(7) for each non-consenting (or not voting) member of the unsecured class vis-s-viz [sic] the debtor against whom it holds a claim." *Id*. The Trustee's objection, again, should be overruled.

Performing the Trustee's desired analysis is not required by law or appropriate as it would defeat the purpose of deemed consolidation under the Plan -- which all Voting Classes that returned a ballot voted in favor of (other than Class 4A, which did not vote)—by causing the Debtors to incur the substantial costs of that analysis at the expense of creditors, let alone the added burden of time. The Trustee's desired outcome is contrary to Ninth Circuit precedent which recognizes the use of deemed consolidation of debtors' assets and labilities for plan purposes to avoid the negative impact on creditor recoveries of separately accounting for the assets and liabilities of each distinct debtor entity. *In re Bonham*, 229 F.3d at 766. Deemed consolidation

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under the Plan is appropriate in this case and the Plan Proponents request that the Court overrule this Objection to the Plan.

2. The Exculpation Clause Is Permitted in the Ninth Circuit.

The Trustee's objection to the Plan's exculpation provision should be overruled too. The Trustee mistakenly asserts that the Plan's exculpation clause (the "Exculpation Clause") is broader than what is permitted in the Ninth Circuit. Trustee Objection, pp. 3-10. As explained in Section V.B *supra*, the Exculpation Clause fits squarely within the Ninth Circuit's analysis in *Blixseth v. Credit Suisse*, 961 F.3d 1074, 1078 (9th Cir. 2020).

The Trustee objects on the basis that the Exculpation Clause covers "[a]cts or omissions in implementing or consummating the plan" and acts related to "any contract… created or entered into in connection with the Plan," "not within the *Blixseth* exception." Trustee Objection, p. 6. However, this language is not impermissible as it is language that was approved by the Ninth Circuit in *Blixseth* and, thus, should similarly be approved in this case. Similarly, the portion of the Exculpation Clause that exculpates "acts taken in connection with or in contemplation of the restructuring of the Reorganized Debtors" is consistent with the provision in *Blixseth* which exculpates "any act or omission in connection with, relating to or arising out of the Chapter 11 Cases" and should be approved. The intent of the Exculpation Clause applies to actions that occurred during the Chapter 11

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Cases. Thus, to clarify this intent in response to the Trustee's Objection, the Plan Proponents will amend Section VII.E of the Plan to delete the reference to "prepetition" actions.

Further, the notion that the Exculpated Parties, including the Debtors, the Lapis Parties, the Board Trustees, the Committee and its members, and their affiliates and related Professionals, were not closely involved in drafting the Plan which they either jointly proposed or provided support is likewise baseless. *See In re PG & E Corp.*, 617 B.R. at 684 (approving exculpation under *Blixseth* that "covers a lot of players, a number of documents and a number of events and activities" where "[t]hat reach is consistent with the complexities and difficulties of these cases"). The assertion that some of the Exculpated Parties may not be considered estate fiduciaries or are professionals is not persuasive. The Ninth Circuit in *Blixseth* approved an exculpation of Credit Suisse, the debtor's largest creditor, as well as professionals which participated in the plan approval process. 961 F.3d 1074. Here, providing exculpations to the Lapis Parties and the other Exculpated Parties is appropriate and necessary for Plan confirmation.

The Trustee also contends that it is improper to provide for an exculpation of acts undertaken by the GUC Distribution Trustee and Liquidation Trustee because "[p]redicting any future acts or omissions is speculative at best and how one would prejudge those acts or omissions is difficult to conceive." Trustee Objection, p. 7.

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As an initial matter, the Exculpation Clause is limited to acts and omissions arising prior to the Effective Date. Moreover, exculpation and limitation of liability for acts undertaken by such parties, who are essential to the Plan's consummation and will administer trusts to be established pursuant to the terms of the settlements with the Lapis Parties and the Committee that are embodied in the Plan, with respect to their post-Effective Date actions in furtherance of the Plan is appropriate in light of complex and often contentious nature of these Chapter 11 Cases, as well as the circumstances of the Plan's formulation. *See PG & E Corp.*, 617 B.R. at 68 (overruling objections to plan exculpation covering range of parties for claims "in connection with or arising out of" a range of events and activities, including "the administration of this Plan or the property to be distributed under this Plan[,]" because the exculpation "comport[ed] with the contours of such a provision as recognized in *Blixseth*" in light of the circumstances of the case); *In re BLX Group Inc.*, 2011 Bankr. LEXIS 4505, *8-18 (Bankr. D. Mont. Nov. 22, 2011) (approving exculpation and limitation of liability covering plan agent and other parties for any "act or omission in connection with, relating to, or arising out of, the Chapter 11 Case, . . . the Confirmation of this Plan, the consummation of this Plan, or the

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administration of this Plan or the property to be distributed under this Plan" while holding confirmation of plan in abeyance on other grounds).[8]

Further, as explained, the Exculpation Clause does not release the Exculpated Parties from willful misconduct or gross negligence. In particular, the Exculpation Clause clarifies that

> the foregoing "Exculpation" shall have no effect on the liability of any Entity for liability solely to the extent resulting from any such act or omission taken after the Effective Date or of any Entity solely to the extent resulting from any act or omission that is determined in a final order to have constituted gross negligence or willful misconduct.

Plan, Section VII.E. The Trustee contends that the inclusion of the word "solely" somehow would bar actions against a party for gross negligence or willful misconduct or for acts which occurred after the Effective Date. Trustee Objection, p. 8. This language is included in the Exculpation Clause to clarify that actions against a party for gross negligence or willful misconduct or for acts which occurred after the Effective Date are *not* exculpated.

[8] For the same reasons, the limitations of liability set forth in Section VII.I of the Plan, paragraphs 3.2 and 4.1 of the GUC Distribution Trust Agreement, and paragraphs 6.7(j), 7.1(c), and 7.4 of the Liquidation Trust Agreement, also referred to in the Trustee's objection, are reasonable and appropriate under the circumstances of these Chapter 11 Cases.

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In short, the Plan's Exculpation Clause is appropriate under applicable Ninth Circuit precedent and the Plan Proponents request that the Court overrule this Objection to the Plan.

3. The Trustee's Objection Regarding the Notice in the GUC Distribution Trust Has Been Resolved.

The Trustee also objects to a provision in the GUC Distribution Trust which provides that in the event the GUC Distribution Trustee has a conflict on any discrete matter, a "conflicts trustee" may be selected to handle the discrete matter with only notice to the U.S. Trustee. Trustee Objection, p. 11; GUC Distribution Trust, ¶ 3.3. To resolve the Trustee's objection that this notice is too limited, the GUC Distribution Trust will be amended to provide that the notice of selection of a "conflicts trustee" will be filed with the Court on the docket, in addition to being served on Trustee. The Trustee has agreed that this revision resolves its objection on this point.

D. The United States' Objection Should Be Overruled.

The United States of America (the "United States"), on behalf of the United States Small Business Administration ("SBA") and the Department of Health and Human Services ("HHS"), acting through its designated component, the Centers for Medicare & Medicaid Services ("CMS"), filed the *Objection to Confirmation of Second Amended Joint Chapter 11 Plan of Reorganization of Astria Health and its Debtor Affiliates* [Docket No. 2077] (the "United States Objection"). The United States Objection asserts (i) the Plan is not feasible and does not satisfy

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§ 1129(a)(9)(A) because it does not provide for payment of the SBA's or the Lender's alleged administrative claims or set aside additional reserves to pay the same; (ii) the Plan is not feasible because it does not provide for the assumption and cure of existing Medicare Provider Agreements; and (iii) to the extent the provisions in Section VII are intended to interfere with the United States' rights, those provisions contravene the Bankruptcy Code and applicable law.

1. The Lender and the SBA Do Not Hold Allowed Administrative Claims and the Debtors Are Not Required to Reserve for the Same.

Neither the SBA nor Banner Bank (the "Lender") hold an *allowed* administrative claim on account of the PPP Loans (as defined in the United States Objection). The Debtors obtained PPP Loans postpetition from Lender. While the PPP Loans are designated as "loans," they are guaranteed by the SBA and shall be forgiven if used by the Debtors for their proper purposes. *See* Section 1102 of the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"), Public Law 116-136. Both the Lender and the SBA's claims are contingent on the PPP Loan eventually coming due for the Debtors' failure to use the funds for their proper purposes. As such, the Lender and the SBA do not hold an *allowed* administrative expense claim based on the PPP Loan, as any such claim has yet to accrue. *See In re Lisanti Foods, Inc.*, 329 B.R. 491, 502-03 (D. N.J. 2005) (affirming that bankruptcy court did not err in finding plan complied with § 1129(a)(9)(A) given that objecting creditor did not yet hold an "allowed" claim as defined by the plan and therefore did

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"not yet have any entitlement to payment of their administrative claims unless and until the Bankruptcy Court so orders"). The Plan does not need to provide for payments of these alleged administrative claims on the Effective Date. *See* 11 U.S.C. § 1129(a)(9) (providing for payment of "the allowed amount" of administrative claims on the effective date).

Moreover, although the Plan includes an Administrative and Priority Claims Reserve, which covers Disputed Administrative Claims, the Plan Proponents do not need to include any amounts in this reserve for payments of the PPP Loans. No amounts are currently due and owing under the PPP Loans (*see* Docket No. 2071, Exhibit A "Promissory Note," at 1, ¶ B ("Monthly payments . . . shall be due on the fifth day of each month, beginning on the first month that is not less than ten full months from the date of the Note [*i.e.*, June 23, 2020], and continuing monthly thereafter . . . or the date on which the Loan is paid in full (giving credit for Loan forgiveness to the extent approved by SBA and such forgiveness amount is paid by SBA to Lender)."); Docket No. 2074, Exhibit A "Promissory Note," at 1, ¶ B (same, except that Promissory Note is dated June 28, 2020); *see also* § 1102 of the CARES Act) and, if the PPP Loans are later not forgiven and become due after the Effective Date, the Reorganized Debtors will make payments to the Lender on the PPP Loans over time in the ordinary course of business.

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The Plan Proponents, nevertheless, will agree to the inclusion of the following provisions in the Confirmation Order, as proposed by the United States, to preserve the status quo and the United States' rights on appeal of issues concerning the PPP Loans:

- Nothing in this Order shall be construed as (i) determining, construing, or limiting any right, obligation, or term of the PPP Loans, loan documents, or law governing the PPP loans, including whether all or any part of the PPP Loans are subject to forgiveness; (ii) determining this Court's authority to make a determination about whether all or any part of the PPP Loans is subject to forgiveness under the loan documents and law governing the PPP Loans.

- Notwithstanding any provisions to the contrary in the Plan, this Order confirming the Plan, and any implementing Plan documents, nothing shall affect the United States' appeal of the Order Granting Preliminary Injunction in the SBA Adversary Proceeding, and the District Court proceedings related thereto.

2. The Debtors Are Assuming Medicare Provider Agreements.

The United States contends that the Plan is not feasible because the Debtors have allegedly not identified any Medicare Provider Agreements on its Schedule of Assumed Agreements and "[w]ithout Medicare reimbursement, the Debtors' operations may be negatively impacted." United States Objection, p. 7. Since the United States Objection was filed, the Debtors filed an Amended Schedule of Assumed Agreements. [Docket No. 2082]. This Amended Schedule of Assumed Agreements lists the Medicare Provider Agreements which the Debtors intend to assume and cure any amounts owed thereunder in order to continue operating their

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remaining two Hospitals. Accordingly, the United States' objection on this point is moot.

The United States also raises concerns that its alleged setoff and recoupment rights are not preserved under the Plan. *See* United States Objection, p. 8. To remedy this concern as well as to ensure that the Plan provides for cure and adequate assurance of future performance under the Medicare Provider Agreements, the Plan Proponents will agree to include the following provisions in the Confirmation Order:

- Notwithstanding anything to the contrary in the Debtors' Plan, any of its exhibits, the Plan Supplement, or this Confirmation Order, CMS' right of recoupment, if any, and CMS' administration of the Debtors' Medicare Provider Agreements and federal Medicare laws and regulations, are unaffected by the confirmation of the Plan.

- For avoidance of doubt, nothing in this Confirmation Order shall be construed to affect the rights of the United States under the Medicare Provider Agreements to assert setoff and recoupment, if any.

3. The Provisions in Section VII of the Plan Do Not Interfere With the United States' Rights.

The United States objects to the language in Section VII of the Plan, including the permanent injunction in Section VII.A, the settlement of claims in Section VII.B, and the injunction and setoff provisions in Sections VII.G and VII.J, "[t]o the extent such language is intended to interfere with United States' rights, including in the ongoing litigation of pending appeals and the assumption of the Provider Agreements . . . ." *See* United States Objection, pp. 11-13. These provisions in Section VII of the Plan are not intended to unilaterally settle any claims or interests of the United

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States or otherwise limit or interfere with the United States' rights under the Provider Agreements or in the ongoing litigation concerning the PPP Loans. As discussed, the Plan Proponents have agreed to include certain provisions in the Confirmation Order to alleviate the United States' concerns on these points.

Further, for the reasons discussed herein at length, the Plan's release and exculpation provisions (*see* Plan, §§ VII.E and VII.F) are proper under applicable Ninth Circuit precedent approving similar plan provisions and should be approved in this case.

E. The HCA Objection Has Been Resolved and Is Now Moot.

The State of Washington Health Care Authority (the "HCA") filed the *State of Washington Health Care Authority's Objection to Confirmation* [Docket No. 2079] (the "HCA Objection"). The basis of the HCA Objection is primarily that the Debtors have allegedly not identified any Medicaid Core Provider Agreements on its Schedule of Assumed Agreements and "Medicaid Core Provider Agreements are necessary if the hospitals intend to continue participating in the Medicaid fee-for-service and other Medicaid reimbursement programs." HCA Objection, p. 2. Since the HCA Objection was filed, the Debtors filed an Amended Schedule of Assumed Agreements [Docket No. 2082]. This Amended Schedule of Assumed Agreements lists the Medicaid Core Provider Agreements which the Debtors intend to assume in order to continue operating their remaining two Hospitals.

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The HCA Objection also asserts that the process of asserting Administrative Expense Claims under the Plan conflicts with the instructions for asserting a claim as set forth in the *Order (I) Fixing the First Interim Bar Date for Filing Certain Postpetition Administrative Expense Claims and (II) Approving the Form of Notice of the Administrative Expense Claims Bar Date* [Docket No. 1416] (the "Interim Administrative Claims Bar Date Order"). HCA Objection, pp. 3-6. There is no substantive difference between the Plan and the Interim Administrative Claims Bar Date Order. Given that the Debtors' election to assume the Medicaid Core Provider Agreements and cure any outstanding amounts owed under those agreements, including any post-petition amounts which would qualify as Administrative Expenses, HCA's objection is moot.

VIII. RESERVATION OF RIGHTS

The Debtors and the Lapis Parties reserve the right to further amend and modify the Plan and to submit additional documents, declarations, exhibits and other supporting documents and evidence in connection with confirmation of the Plan, or any Amended Plan, or otherwise. While the Objections to confirmation of the Plan are limited to those timely raised in the written Objections filed by the objection deadline, to the extent any additional or modified objections are raised in connection with the confirmation hearing, the Plan Proponents reserve the right to respond to the same and/or to argue they are untimely. Nothing contained herein shall constitute a

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limitation or waiver of rights with respect to any objection filed after the confirmation objection deadline pursuant to a stipulation extending such deadline.

IX. CONCLUSION

WHEREFORE, the Plan Proponents respectfully request that the Bankruptcy Court enter an order substantially in the form of the Confirmation Order, which will be filed prior to the Confirmation Hearing, (i) confirming the Plan, (ii) overruling the Objections, and (iii) granting such other and further relief as the Bankruptcy Court deems just and proper.

Dated: December 11, 2020

DENTONS US LLP

By: */s/ Samuel R. Maizel*
Samuel R. Maizel
Sam J. Alberts
Geoffrey M. Miller

Counsel to the *Debtors and Debtors In Possession*

Dated: December 11, 2020

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C.

By: */s/ William Kannel*
William Kannel
Ian A. Hammel

Counsel to the *Lapis Parties*

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DECLARATION OF MICHAEL LANE

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

1. I am the Chief Restructuring Officer ("CRO") of Astria Health ("Astria") and independently employed.

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.

3. The Debtors' finances and operations have always been and remain significantly interconnected. Funds have routinely flowed on an intercompany basis from stronger performing Debtors to support the weaker performing Debtors. While vendor liabilities are reported specific to the individual hospitals, there was significantly higher liabilities at the ARMC[9] facility as compared to the Sunnyside and Toppenish hospitals. Many of the vendors provided goods and services to all hospitals and often linked shipments based upon aging of the accounts at all the hospitals. Sunnyside hospital not only borrowed funds in January 2019 for vendor management but also provided significant funding from cash reserves to allow

[9] Capitalized terms not otherwise defined herein shall have the meaning afforded in the *Memorandum of Law in Support of Confirmation of Second Amended Joint Chapter 11 Plan and Response to Objections*.

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ARMC, and to a lesser extent Toppenish, to purchase goods and services. It would be difficult if not impossible to reconcile and allocate cash funding for acquisition purposes, operations or vendor management.

4. The Plan is the product of months of extensive arm's-length independent and interrelated negotiations and compromises among the Debtors and its major constituents, namely the Committee, and the Lapis Parties. These negotiations were difficult and addressed complex legal and factual issues. I believe that these negotiations facilitated the best possible recovery for all creditors under the totality of the circumstances.

5. The Plan is built around the settlement of all rights, claims and interests associated with the Lapis Parties' DIP Claims, Senior Secured Bond Debt Claims and Senior Secured Credit Agreement Claims (the "Senior Debt 9019 Settlement"). The Senior Debt 9019 Settlement is comprised of (i) the classification and treatment of the DIP Claims, Senior Secured Bond Debt Claims and Senior Secured Credit Agreement Claims and other Lapis Parties prepetition Claims as specified in the Plan, (ii) the issuance (or reinstatement, as applicable) of Exchange Debt, and (iii) the release and exculpation terms for the Lapis Parties as specified in the Plan. I believe that approval of the Senior Debt 9019 Settlement is in the best interests of the Estates.

6. The Plan also embodies the Committee Plan Settlement set forth in the Term Sheet between the Debtors and the Committee, which reflects a compromise

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and settlement of numerous complex issues including, but not limited to, those set forth in the *Limited Objection of Official Committee of Unsecured Creditors to Motion for an Order Approving: (i) Proposed Disclosure Statement; (ii) Solicitation and Voting Procedures; (iii) Notice and Objection Procedure for Confirmation of Joint Plan of Reorganization; and (iv) Granting Related Relief* [Docket No. 1624]. The Debtors and the Committee engaged in extensive negotiations regarding these issues culminating in a settlement resolving the Committee's objections as set forth in the Term Sheet between the parties, the terms of which have been incorporated into the Plan. As amended in light of the settlement, the Plan provides, among other things, contributions totaling not less than $7.3 million by the Debtors and/or Reorganized Debtors to the GUC Distribution Trust for distribution to the Holders of Allowed General Unsecured Claims consistent with the Plan's terms, and the potential for additional funds dependent upon the ultimate resolution of certain causes of action belonging to the Debtors and their estates and Avoidance Actions to be transferred to the GUC Distribution Trust on the Effective Date. I believe that approval of the Committee Plan Settlement is in the best interests of the Estates.

7. Also, on the Effective Date, all Liquidation Trust Assets shall be contributed to the Liquidation Trust Agreement. The Plan also provides that the Reorganized Debtors, controlled by AH System as the sole member, will provide the management for the Hospitals after the Effective Date. In the event any Liquidation

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Trust Assets are liquidated, the proceeds of such liquidation shall be used generally to fund AH System's operating cash account up to an amount equal to the lesser of $10 million or thirty (30) days cash on hand and then to pay the Exchange Debt in accordance with the Exchange Debt Documents.

8. The Plan deems the Debtors consolidated for the purposes of Claim allowance and distribution, which treats the Debtors' assets and liabilities as if they were pooled without actually merging the Debtor entities.

9. The Plan describes the specific treatment of all Claims and the distribution of proceeds to Holders of Allowed Claims. As set forth in Section II of the Plan, except for Administrative Claims, Priority Tax Claims, Professional Fee Claims, and DIP Claims, which are not required to be classified, all Claims are divided into Classes under the Plan, as follows:

- The Plan classifies the Priority Claims (Class 1) as unimpaired and deemed to have accepted the Plan (and thus not entitled to vote on the Plan). Class 1 Claims are anticipated to recover 100% of their Allowed Claims.

- The Plan classifies the following Claims as impaired and entitled to vote on the Plan: Classes 2A (Senior Secured Bond Debt Claims), 2B (Senior Secured Credit Agreement Claims), 2C (Other Secured Claims), 3 (Convenience Class Claims), 4 (General Unsecured Claims), and 4A (Insured Claims).

- Under the Plan, (i) Senior Secured Bond Debt Claims (Class 2A) are reinstated on the terms of the Exchange Debt Documents, (ii) Senior Secured Credit Agreement Claims (Class 2B) are exchanged for Senior Secured Credit Agreement Exchange Debt and (iii) Other Secured Claims (Class 2C) will be paid (a) Cash in full, (b) a reinstated note on the same payment and collateral terms as its prior Claim, (c) a return of collateral securing the Claim, or (d) such less favorable treatment to which the Holder otherwise agrees.

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- Convenience Class Claims (Class 3) will be paid 20% of the allowed amount of the Claim up to $1,000.

- Holders of Allowed General Unsecured Claims (Class 4) shall receive, on one or more GUC Distribution Dates, a *Pro Rata* share of the Net GUC Distribution Trust Assets and Insured Claims (Class 4A) shall recover only from the available insurance and Debtors shall be discharged to the extent of any such excess.

- Intercompany Claims (Class 5) are eliminated under the Plan.

10. The Plan also contemplates the establishment of the Administrative and Priority Claims Reserve which reserves for the full face amount of the majority of asserted Administrative Claims that will not be Allowed on the Effective Date. Many of these fully reserved Administrative Claims represent claims the Debtors already pay in the ordinary course of business. The proposed Administrative and Priority Claims Reserve further reserves for the remaining handful of Disputed Administrative Claims not Allowed on the Petition Date—just not for the full face amount of the asserted Disputed Administrative Claim. Consequently, I believe that the Administrative and Priority Claim Reserve is sufficient, under the circumstances. Further, even though the Plan is not required to provide a mechanism for addressing the claims of claimants who may subsequently recover judgments against the Debtors, I believe that the Debtors have provided more than sufficient reserves to address any such claims.

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11. The Plan also provides that all Allowed Priority Claims under § 507(a), unless otherwise agreed, shall receive payment in Cash in an amount equal to the amount of such Allowed Claim, payable on the Effective Date (or as soon as practicable thereafter) equal to the allowed amount of such Claim, unless the Class votes to accept deferred Cash payments of a value, as of the Effective Date, equal to the allowed amount of such Claims.

12. The Plan also provides for the rejection of all executory contracts and unexpired leases ("Executory Agreements") that exist between the Debtors and any other person or entity prior to the Petition Date on the Effective Date except for Executory Agreements that "(i) have been assumed by order of the Court, (ii) are subject to a motion to assume pending on the Effective Date, or (iii) have been identified on a list of assumed contracts to be filed with the Court prior to the Voting Deadline, which shall be a date prior to the Effective Date of the Plan."

13. The Debtors reviewed and analyzed their Executory Agreements. In their business judgment, the Debtors have concluded that certain of their Executory Agreements listed in the Schedule of Assumed Agreements should be assumed on the Effective Date because such agreements are beneficial to the Reorganized Debtors. Likewise, I believe that it is in the Debtors' best interests to reject all other Executory Agreements under the Plan as they are no longer providing a benefit to the Estates.

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14. I am not aware of any colorable Estate claims or causes of action that may exist against any of the Released Parties or Exculpated Parties. The Plan reflects the settlement and resolution of numerous complex issues, and the Debtor Releases, Third Party Releases and Exculpations are an integral part of the consideration to be provided in exchange for the compromises and resolutions embodied in the Plan.

15. I believe that the Debtor Releases, Third Party Releases and Exculpations are in the best interests of the Debtors' creditors. In the absence of any viable claims against any of the Released Parties or Exculpated Parties, pursuing claims against the Released Parties or Exculpated Parties would be a costly and futile exercise that would only distract the Reorganized Debtors' management of the business. The Debtor Releases, Third Party Releases and Exculpations will eliminate the potential for post-effective date litigation against Board Trustees that could directly and indirectly threaten the Reorganized Debtors' ability to function effectively by virtue of indemnification agreements and the cost and distraction of potential third-party discovery. Also, with respect to the Lapis Parties and the Committee, the Debtor Releases, Third Party Releases and Exculpations were central components of the Senior Debt 9019 Settlement and Committee Plan Settlement.

16. Each of the Released Parties and Exculpated Parties afforded significant value to the Debtors, played an integral role in the formulation of the Plan, and expended significant time and resources analyzing and negotiating the issues

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involved therein and leading the Debtors through a complex chapter 11 process. For instance, the Released Parties and Exculpated Parties have made significant contributions to the success of these Chapter 11 Cases, including, in certain instances, compromising their claims to reach settlements that furthered the resolution of these Chapter 11 Cases, financing the Debtors' operations during these Chapter 11 Cases, and otherwise supporting the Debtors' intensive efforts and negotiations to build near-universal consensus behind the Plan—a result which benefits all parties in interest and preserves the value-maximizing recoveries set forth in the Plan. With respect to the Lapis Parties, the Lapis Parties agreed to have their claims reinstated or extended as set forth in the Plan. The DIP Claims, in particular, would have under other circumstances been paid in full in cash on the Effective Date. The Lapis Parties also consented to the Committee Plan Settlement; absent the Committee Plan Settlement the Lapis Parties would have asserted that most or all of the consideration the settlement made available to holders of Allowed Unsecured Claims under this Plan would instead be distributed to the Lapis Parties. Also, the Board of Trustees, who serve without compensation, met frequently prior to the Petition Date and even more so during these Chapter 11 Cases to consider the Debtors' options during this period of financial distress and evaluate an outcome that would maximize value to all stakeholders. Among other things, the Board of Trustees evaluated provided intensive and thoughtful consideration in ultimately approving the decision to file a

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chapter 11 bankruptcy petition, to obtain post-petition financing, to close and later sell ARMC and the related medical office building and to file the Plan.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: December 11, 2020

ASTRIA HEALTH

By: _____
Michael Lane
Chief Restructuring Officer

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