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Debtors-in-Possession*

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re

Chapter 11

ASTRIA HEALTH, et al.¹,
Debtors.

Lead Case No. 19-01189
Jointly Administered

MOTION FOR ORDER APPROVING
SETTLEMENT AGREEMENT BY AND
BETWEEN THE DEBTORS AND
SIEMENS FINANCIAL SERVICES, INC.

Astria Health (“Astria”) and SHC Medical Center - Yakima (“SHC Yakima”),
nonprofit corporations doing business in the state of Washington as Astria Regional
Medical Center (the “Medical Center”), along with the above-referenced affiliated
debtors (collectively, the “Debtors”), the debtors and debtors-in-possession herein,

¹ The Debtors, along with their case numbers, are as follows: Astria Health (19-01189-11), Glacier Canyon, LLC (19-01193-11), Kitchen and Bath Furnishings, LLC (19-01194-11), Oxbow Summit, LLC (19-01195-11), SHC Holdco, LLC (19-01196-11), SHC Medical Center-Toppenish (19-01190-11), SHC Medical Center-Yakima (19-01192-11), Sunnyside Community Hospital Association (19-01191-11), Sunnyside Community Hospital Home Medical Supply, LLC (19-01197-11), Sunnyside Home Health (19-01198-11), Sunnyside Professional Services, LLC (19-01199-11), Yakima Home Care Holdings, LLC (19-01201-11), and Yakima HMA Home Health, LLC (19-01200-11).



1 move the court for entry of an order, pursuant to 11 U.S.C. § 105(a) and Federal Rule
2 of Bankruptcy Procedure 9019(a), approving a settlement entered into by and between
3 SHC and Siemens Financial Services, Inc. (“SFS”). This motion is based upon the
4 record and files herein, and the accompanying Declaration of Michael Lane (“Lane
5 Declaration”). For the reasons set forth below, the motion should be granted and the
6 settlement approved.

7 I. JURISDICTION

8 This court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and
9 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
10 Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

11 II. FACTUAL BACKGROUND

12 A. The Bankruptcy

13 The Debtors filed voluntary petitions for relief under chapter 11 of the
14 Bankruptcy Code on May 6, 2019 (the “Petition Date”). A detailed discussion of the
15 Debtors’ business operations and events leading up to these chapter 11 cases is set forth
16 in the Declaration of John M. Gallagher in Support of Emergency First Day Motions.
17 *See* ECF No. 21.

18 These chapter 11 cases are currently being jointly administered before the court.
19 *See* ECF No. 10. The United States Trustee appointed the Official Committee of
20 Unsecured Creditors in these chapter 11 cases on May 24, 2019. ECF No. 135. No
21 trustee or examiner has been appointed. Since the Petition Date, the Debtors have been
22 operating their businesses and managing their affairs as debtors in possession pursuant
23 to §§1107 and 1108.

1 **B. The Medical Center Closure**

2 On January 3, 2020, the Debtors filed a motion seeking to close SHC Medical
3 Center – Yakima on an emergency basis [ECF No. 867] (the “Closure Motion”). On
4 January 8, 2020, the court granted the Closure Motion and, thereafter, in January 2020,
5 SHC closed and has no longer provided medical care as an operating hospital. *See*
6 *Order Granting Debtors’ Emergency Motion to Authorize Closure of Medical Center*,
7 ECF No. 874; *Lane Decl.*, ¶ 2.

8 **C. The Equipment Leases**

9 Prior to and on the Petition Date, SHC Yakima and SFS were parties to the
10 following equipment leases:

- 11 i. Leasing Schedule No. 21192-21260 also known as Contract No. 160-
12 0000246-000 to that certain Master Equipment Lease Agreement
13 dated as of August 24, 2011 (collectively, “Lease 1”) by and between
14 SHC Yakima as transferee of Yakima HMA, LLC and SFS with
 respect to a RIO Robotic Arm Interactive Orthopedic System, and all
 equipment related thereto (the “Lease 1 Equipment”);
- 15 ii. Leasing Schedule No. 22583-30887 also known as Contract No. 151-
16 0002401-750 to that certain Master Equipment Lease Agreement
17 dated as of August 24, 2011 (collectively, “Lease 2”) by and between
18 SHC Yakima as transferee of Yakima HMA, LLC and SFS with
 respect to an Aplio 300 Ultrasound Imaging System, and all
 Equipment related thereto (the “Lease 2 Equipment”);
- 19 iii. Leasing Schedule No. 22583-30889 also known as Contract No. 154-
20 0000664-000 to that certain Master Equipment Lease Agreement
21 dated as of August 24, 2011 (collectively, “Lease 3”) by and between
22 SHC Yakima as transferee of Yakima HMA, LLC and SFS with
23 respect to a CVIS - Syngo Dynamics SL Server, Software
 Maintenance Upgrades, V9, and all equipment related thereto (the
 “Lease 3 Equipment”);

- 1 iv. Leasing Schedule No. 24414-33576 also known as Contract No. 221-
2 0000142-000 to that certain Master Equipment Lease Agreement
3 dated as of August 24, 2011 (collectively, "Lease 4") by and between
4 SHC Yakima as transferee of Yakima HMA, LLC and SFS with
5 respect to 3 RP500 Blood Gas Analyzer, and all equipment related
6 thereto (the "Lease 4 Equipment"); and
7
8 v. Leasing Schedule No. 17075 also known as Contract No. 130-
9 0000470-900 to that certain Master Equipment Lease Agreement
10 dated as of December 9, 2008 (collectively, "Lease 5") by and
11 between Health Management Associates, Inc. / SHC Yakima and SFS
12 with respect to one (1) Magnetom Avanto System, and all equipment
13 related thereto, in which SHC Yakima is in possession (the "Lease 5
14 Equipment").

15 *See Siemens Financial Services, Inc.'s Application for Allowance and Payment of
16 Administrative Expense Claim*, ECF No. 1540, at 2; *Declaration of Joseph Altieri*, ECF
17 No. 1542, ¶ 9; *Lane Decl.*, ¶ 3. Lease 1, Lease 2, Lease 3, Lease 4, and Lease 5 are
18 collectively referred to as the "Leases," and the Lease 1 Equipment, Lease 2
19 Equipment, Lease 3 Equipment, Lease 4 Equipment, and Lease 5 Equipment are
20 collectively referred to as the "Leased Equipment."

21 On August 5, 2019, SFS filed two proofs of claim in the SHC Yakima case: (i)
22 Claim No. 74 in the amount of \$109,592.87 in connection with Lease 1 and the Lease 1
23 Equipment, Lease 2 and the Lease 2 Equipment, Lease 3 and the Lease 3 Equipment,
and Lease 4 and the Lease 4 Equipment ("Claim No. 74"); and (ii) Claim No. 75 in the
amount of \$346,886.76 in connection with Lease 5 and the Lease 5 Equipment ("Claim
No. 75") and, together with Claim No. 74, the "Claims").

D. SFS' Administrative Application

On June 17, 2020, the court entered the *Order (I) Fixing the First Interim Bar*

1 *Date for Filing Certain Postpetition Administrative Expense Claims and (II) Approving*
2 *the Form of Notice of the Administrative Expense Claims Bar Date* [ECF No. 1416]
3 (the “First Admin Bar Date Order”). The First Admin Bar Date Order established July
4 22, 2020 as the deadline to file administrative expense claims and provides that the
5 relevant time period for such claims is from the Petition Date through June 17, 2020
6 (“Administrative Time Period”).

7 On July 22, 2020, SFS filed an *Application for Allowance and Payment of*
8 *Administrative Expense Claim* [ECF No. 1540] (the “Administrative Application”),
9 seeking allowance and payment in the amount of \$214,867.24, as an administrative
10 expense pursuant to sections 503(a) and (b) of the Bankruptcy Code, for the Debtors’
11 use of the Leased Equipment during the Administrative Time Period. *See Declaration*
12 *of Joseph Altieri*, ECF No. 1542, ¶ 11.

13 However, prior to SFS’ filing of the Administrative Application, Lease 2, Lease
14 3, and Lease 4 were rejected pursuant to the court’s *Order Granting Debtor’s Omnibus*
15 *Motion for Order Authorizing Rejection, Pursuant to 11 U.S.C. § 365(a) of Certain*
16 *Executory Contracts and Unexpired Leases of Real Property, Nunc Pro Tunc to*
17 *January 15, 2020* [ECF No. 1146] (the “Rejection Order”). The Rejection Order
18 further provided that:

19 The Debtors shall promptly surrender possession of the Lease 2
20 Equipment, Lease 3 Equipment, and Lease 4 Equipment to SFS.
21 Unless otherwise agreed to in writing between the Debtors and SFS,
22 SFS shall file any and all claims against the Debtors and their estates
23 arising from Lease 2, Lease 3, and Lease 4 within 120 days after entry
of this Order.

Rejection Order, ¶ 7.

1 Notwithstanding the Rejection Order, SHC Yakima has remained in possession of the
2 Leased Equipment. *Lane Decl.*, ¶ 6.

3 **E. The Settlement Agreement**

4 Seeking to fully resolve and settle their disputes, SHC Yakima and SFS have
5 entered into a proposed settlement agreement (“Settlement Agreement”) regarding the
6 Leases, Leased Equipment, Claims, and Administrative Application. *Lane Decl.*, ¶ 7.
7 A copy of the fully executed Settlement Agreement is attached as Exhibit A to the Lane
8 Declaration. This settlement is subject to and conditioned upon approval of this court,
9 and the Settlement Agreement is not effective until such approval is obtained on a final
10 basis. *Id.*

11 The Settlement Agreement provides that, within five (5) business days of an
12 order approving this Settlement Agreement becoming final and non-appealable,
13 Debtors will pay to SFS the sum of \$150,000.00 (the “Settlement Amount”). *Lane*
14 *Decl.*, ¶ 8 and Exhibit A. Upon SFS’ receipt of the Settlement Amount, SFS will
15 provide the Debtors with a bill of sale (“Bill of Sale”) that transfers ownership of the
16 Leased Equipment to SHC Yakima. *Id.* A copy of the Bill of Sale is attached as
17 Schedule 1 to the Settlement Agreement, the terms of which are fully incorporated
18 therein. The Settlement Amount shall be the only payment to SFS on account of the
19 Application, the Leases, or the Leased Equipment. *Id.* In turn, SFS will not seek
20 further payment, either in the bankruptcy cases or outside of the bankruptcy cases, on
21 account of the same. *Id.*

22 Further, upon SFS’ receipt of the Settlement Amount, SFS will withdraw the
23 Administrative Application and both Claims. *Lane Decl.*, ¶ 8 and Exhibit A. SFS will

1 not reassert any claim against the Debtors for matters related to the Claims or
2 Administrative Application. *Id.* The Leases shall be deemed rejected and terminated.
3 *Id.* SFS shall file a UCC-3 financing statement amendment terminating its UCC filings
4 against the Leased Equipment, and all of SFS' right, title, and interest in the Leased
5 Equipment shall be transferred to SHC Yakima "as is" and "where is." *Id.* SFS shall
6 not be required to prepare, organize or assemble the Leased Equipment for shipment or
7 delivery to SHC Yakima, and SHC Yakima shall be responsible for and pay all costs
8 and expenses in connection with any removal or transportation of the Leased
9 Equipment from its location. *Id.*

10 III. AUTHORITY

11 The Debtors seek approval of this compromise under Bankruptcy Rule 9019.
12 *See In re Law*, 308 Fed.Appx. 152, 153 (9th Cir. 2009) (The court should approve a
13 settlement under Bankruptcy Rule 9019 that "is in the best interests of the creditors,
14 interest holders, and the estate") (quoting *Port O'Call Inv., Co. v. Blair (In re Blair)*,
15 538 F.3d 849, 852 (9th Cir. 1976)).

16 In order to promote reasonable compromises, the bankruptcy court has "great
17 latitude" in approving settlements. *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).
18 "A court generally gives deference to a trustee's business judgment in deciding whether
19 to settle a matter," and the debtor-in-possession's duty is to persuade the court that the
20 settlement is "fair and equitable." *In re Mark Technologies Corp.*, 2018 WL 669112,
21 *18 (B.A.P. 9th Cir. Feb. 1, 2018) (citing *A & C Props.*, 784 F.2d at 1391). The
22 following factors should be considered by the Court in evaluating a motion for approval
23 of a settlement of a debtor-in-possession's litigation claims:

1 (a) The probability of success in the litigation; (b) the difficulties, if
2 any, to be encountered in the matter of collection; (c) the complexity
3 of the litigation involved, and the expense, inconvenience and delay
4 necessarily attending it; (d) the paramount interest of the creditors and
a proper deference to their reasonable views in the premises.

5 *In re Spanish Peaks Holdings, II, LLC*, 688 Fed.Appx. 462, 463 (9th Cir. 2017)
6 (quoting *In re A & C Properties*, 787 F.2d at 1381). The bankruptcy court need not
7 conclusively determine claims subject to compromise, nor conduct a “mini-trial” on the
8 merits of each claim and defense. See *In re Blair*, 538 F.2d 849, 851-52 (9th Cir.
9 1976). Similarly, the court need not determine that the settlement is the best one result
10 obtainable. *A & C Properties*, 784 F.2d at 1384; *In re W.T. Grant Co.*, 699 F.2d 599,
11 608, 613 (2nd Cir. 1983), *cert. denied*, 464 U.S. 822, 104 S.Ct. 89 (1983). Rather, the
12 court need only canvass the issues to the degree necessary to reach a conclusion that the
13 settlement does not fall below the lowest point in the range of reasonableness. *In re*
14 *Carla Leather, Inc.*, 44 B.R. 457, 465 (Bankr. S.D.N.Y. 1984, *aff’d*, 50 B.R. 764
15 (S.D.N.Y. 1985).

16 The Debtors believe the settlement proposed is fair, reasonable, and in the best
17 interests of the estates. In reaching the settlement, the Debtors considered the factors
18 outlined in *In re A & C Properties*, 784 F.2d 1377 (9th Cir. 1986), as set forth below:

19 **A. Probability of Success in Litigation**

20 In its Administrative Application, SFS asserts it is owed at least \$214,867.24
21 with respect to the Leases and the Leased Equipment during the Administrative Time
22 Period. SFS asserts it is entitled to an administrative expense claim because the
23 Debtors’ use of the Leased Equipment during the Administrative Time Period was an

1 actual and necessary expense in the operation of the Debtors' business. The Debtors,
2 on the other hand, dispute the Administrative Application to the extent it seeks an
3 administrative expense claim for amounts incurred in relation to the Leases and the
4 Leased Equipment after January 15, 2020, the *nunc pro tunc* date of the Rejection
5 Order. Considering that in exchange for payment of the Settlement Amount of
6 \$150,000, SFS will not only withdraw its Claims but will transfer title of the Leased
7 Equipment to the Debtors, there is little potential benefit, if any, of litigating this matter
8 further. The Debtors submit that this settlement is in the best interests of the estates,
9 resulting in an efficient and cost-effective resolution to determine a reasonable amount
10 owed to SFS in relation to the Claims and the Administrative Application.

11 **B. Collection Difficulties**

12 The Debtors do not foresee any difficulty in closing the sale of the Leased
13 Equipment, as SHC Yakima is currently in possession of the Leased Equipment and
14 SFS is a sophisticated, multinational financing company represented by counsel.

15 **C. Complexity and Cost of Litigation; Inconvenience of Delay**

16 The expense, inconvenience, and delay of continued litigation weigh in favor of
17 settlement. The legal fees related to filing claims objections and related motion
18 practice before this court might alone exceed the difference between the maximum
19 Claims disallowance and the proposed settlement. Moreover, the settlement achieves
20 certainty and an expeditious resolution to this dispute.

21 **D. Best Interest of Creditors**

22 The proposed settlement is in the best interests of the Debtors and the estates.
23 The Debtors propose to pay SFS \$150,000 in full and final satisfaction of the Claims

1 and Administrative Application. In addition to resolving these claims for a relatively
2 moderate concession, the Debtors will receive all right, title and interest to the Leased
3 Equipment, conferring a substantial benefit upon the Debtors and its estates. Moreover,
4 costs of administration will greatly be reduced if this compromise is approved, and
5 avoiding further delay in the claims allowance process is in the best interest of
6 creditors. Given (i) the expenses of litigation; (ii) the relative benefits achieved through
7 settlement; (iii) the proportion of the estates' creditors that are believed will support the
8 settlement; and (iv) the range of reasonableness of the settlement in light of the
9 attendant costs and risks of continued litigation, the Debtors submit that the settlement
10 is in the best interests of creditors.

11 IV. CONCLUSION

12 For the reasons set forth above, the Debtors submit that this settlement is in the
13 best interests of creditors and these bankruptcy estates. The Debtors respectfully
14 request the court enter an order, substantially in the form of the proposed order attached
15 hereto, granting the relief requested by this motion.

16 DATED this 16th day of December, 2020.

17 BUSH KORNFELD LLP

18
19 By /s/ Thomas A. Buford
James L. Day, WSBA #20474
Thomas A. Buford, WSBA #52969
Richard B. Keeton, WSBA #51537
20 Attorneys for the Chapter 11 Debtors and
21 Debtors-in-Possession
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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re
ASTRIA HEALTH, et al.¹,
Debtors.

Chapter 11
Lead Case No. 19-01189
Jointly Administered
[PROPOSED] ORDER APPROVING
SETTLEMENT AGREEMENT BY AND
BETWEEN THE DEBTORS AND
SIEMENS FINANCIAL SERVICES, INC.

THIS MATTER came before the court upon the motion (“Motion”) of Astria Health and the above-referenced affiliated debtors (collectively, the “Debtors”), the debtors and debtors-in-possession in the above-captioned chapter 11 cases, for entry of an order, pursuant to 11 U.S.C. § 105(a) and Federal Rule of Bankruptcy Procedure 9019(a), approving the Settlement Agreement entered into by and between SHC Medical Center - Yakima and Siemens Financial Services, Inc. Capitalized terms not

¹ The Debtors, along with their case numbers, are as follows: Astria Health (19-01189-11), Glacier Canyon, LLC (19-01193-11), Kitchen and Bath Furnishings, LLC (19-01194-11), Oxbow Summit, LLC (19-01195-11), SHC Holdco, LLC (19-01196-11), SHC Medical Center-Toppenish (19-01190-11), SHC Medical Center-Yakima (19-01192-11), Sunnyside Community Hospital Association (19-01191-11), Sunnyside Community Hospital Home Medical Supply, LLC (19-01197-11), Sunnyside Home Health (19-01198-11), Sunnyside Professional Services, LLC (19-01199-11), Yakima Home Care Holdings, LLC (19-01201-11), and Yakima HMA Home Health, LLC (19-01200-11).

1 defined herein shall have their meanings as ascribed in the Motion. The court has
2 reviewed the Motion, the Settlement Agreement, the supporting Declaration of Michael
3 Lane, and the record and files herein, and finds cause to grant the requested relief.

4 Now, therefore, it is hereby

5 **ORDERED as follows:**

6 1. The Motion [ECF No. __] is granted.

7 2. The Settlement Agreement in the form attached as Exhibit A to the Lane
8 Declaration and the terms therein are approved.

9 3. The parties are authorized to enter into the Settlement Agreement and to
10 take any and all actions necessary or appropriate to effectuate the terms of the
11 Settlement Agreement.

12 4. The Court shall retain jurisdiction to hear and determine all matters arising
13 from or related to the implementation, enforcement, or interpretation of this order.

14 5. The terms and conditions of this order shall be immediately effective and
15 enforceable upon its entry.

16 /// End of Order ///

17 Presented by:

18 BUSH KORNFELD LLP

19
20 By /s/Thomas A. Buford
James L. Day, WSBA #20474
Thomas A. Buford, WSBA #52969
21 Richard B. Keeton, WSBA #51537
22 Attorneys for the Chapter 11 Debtors and
Debtors-in-Possession