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12 *as GUC Distribution Trustee*

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

15 In re:

16 Astria Health,

17 Remaining Debtor.

Case No. 19-01189-WLH11

**EX PARTE MOTION FOR
ENTRY OF AN ORDER
SEALING THE MOTION OF
THE GUC DISTRIBUTION
TRUSTEE FOR AN ORDER
ENFORCING THE PLAN AND
COMPELLING PAYMENT OF
THE GUC VENDOR CREDIT
RECOVERY**

23 GUC DISTRIBUTION TRUSTEE'S EX PARTE
MOTION FOR ORDER SEALING GUC
DISTRIBUTION TRUSTEE'S MOTION FOR ORDER
ENFORCING PLAN
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1 Steven D Sass LLC, in its capacity as GUC Distribution Trustee¹ for the
2 Astria Health GUC Distribution Trust (the “Trustee”), hereby moves *ex parte* (the
3 “Motion”), pursuant to sections 105(a) and 107 of title 11 of the United States Code,
4 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), Rule 9018 of the Federal Rules
5 of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 9018-1 of the Local
6 Bankruptcy Rules of the United States Bankruptcy Court for the Eastern District of
7 Washington (the “Local Bankruptcy Rules”), for entry of an order, substantially in
8 the form attached hereto as Exhibit A (the “Proposed Order”), granting the Trustee
9 leave to file the *Motion of the GUC Distribution Trustee for an Order Enforcing the*
10 *Plan and Compelling Payment of the GUC Vendor Credit Recovery* (the “Plan
11 Enforcement Motion”) under seal. In support of the Motion, the Trustee
12 respectfully states as follows:
13
14

15 **JURISDICTION AND VENUE**

16 1. This court has jurisdiction over the Motion pursuant to 28 U.S.C. §§
17 157 and 1334. The Motion is a core proceeding pursuant to 28 U.S.C. § 157(b).
18 Venue is proper under 28 U.S.C. §§ 1408 and 1409(a).
19
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21 ¹ Capitalized terms used but not otherwise defined in this Motion shall have the meanings
22 ascribed to them in the Plan (as defined in the Plan Enforcement Motion).

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BACKGROUND

2. By the Plan Enforcement Motion, the Trustee respectfully requests that the court enter an order enforcing the terms of the Plan and compelling the Reorganized Debtors to immediately pay the GUC Vendor Credit Recovery (as defined in the Plan) to the GUC Distribution Trust in the amount specified in the Plan Enforcement Motion, as required by the Plan.

3. Section I.A.1.94 of the Plan, which governs the “GUC Vendor Credit Recovery,” provides that “the Cash equivalent of fifty percent (50%) of any and all non-Cash value realized by the Debtors as a result of the Vendor Claims² ... will be paid by the Debtors (or Reorganized Debtors, as applicable) to the GUC Distribution Trust quarterly as that value (in the form of cost savings or otherwise) is realized by the Debtors (or Reorganized Debtors, as applicable).” *See* Plan, § I.A.1.94.

4. Section I.A.1.94 of the Plan further provides that “[f]or the purpose of calculating the Cash equivalent of any non-Cash value realized by the Debtors (or

21
22

² Pursuant to the Plan, “Vendor Claims” is defined as “any and all actual or potential claims and causes of action of the Debtors against the Vendor, including any and all Vendor Avoidance Actions.” *See* Plan, § I.A.1.160. The “Vendor” is defined as “Cerner Corporation and all of its subsidiaries and affiliates.” *See* Plan, § I.A.1.158.

1 Reorganized Debtors, as applicable) as a result of any Vendor Claims, the amount
2 shall be calculated as set forth in the Term Sheet.” *See id.*³

3 5. Because the Plan refers to the Term Sheet for calculation of the GUC
4 Vendor Credit Recovery, the Plan Enforcement Motion necessarily describes
5 certain terms of the Term Sheet. A copy of the Term Sheet is attached to the Plan
6 Enforcement Motion as Exhibit C.

7
8 6. The Plan Enforcement Motion also necessarily describes certain terms
9 of a settlement agreement (the “Cerner Settlement Agreement”) between Astria
10 Health (“Astria”) and Cerner Corporation (“Cerner”), which contains the terms of
11 a settlement of litigation between Astria and Cerner that gave rise to the GUC
12 Distribution Trust’s right to payment of the GUC Vendor Credit Recovery. A copy
13 of the Cerner Settlement Agreement is attached to the Plan Enforcement Motion as
14 Exhibit B.

15
16 **RELIEF REQUESTED**

17 7. By this Motion, the Trustee respectfully requests that the court enter
18 the Proposed Order, substantially in the form attached hereto as Exhibit A, granting
19 the Trustee leave to file the Plan Enforcement Motion under seal.

20
21 _____
22 ³ The Term Sheet was filed with the court under seal as part of the Plan Supplement [Docket No.
2043]. It set forth the terms of the Committee Plan Settlement, which resolved the Committee’s
objections to a prior version of the Debtors’ plan of reorganization.

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1 **BASIS FOR RELIEF**

2 8. Section 107(b) of the Bankruptcy Code authorizes the court to issue
3 an order to protect an entity from potential harm caused by disclosure of
4 confidential information. Specifically, section 107(b) provides:

5 (b) On request of a party in interest, the bankruptcy court
6 shall, and on the bankruptcy court’s own motion, the
7 bankruptcy court may—

8 (1) protect an entity with respect to a trade secret or
9 confidential research, development, or commercial
information; or

10 (2) protect a person with respect to scandalous or
11 defamatory matter contained in a paper filed in a case
under this title.

12 9. “Section 107(b) [makes] it mandatory for a [bankruptcy] court to
13 protect documents falling into one of the enumerated exceptions.” *In re Khan*,
14 2013 WL 6645436, at *3 (B.A.P. 9th Cir. Dec. 17, 2013). Moreover, “[t]he types of
15 information that can be protected by the court are unlimited.” *Id.* at 4. On the
16 whole, section 107 codifies “the rule that the public’s right to access [information
17 in a case is] far from absolute.” *In re JMS Auto. Rebuilders, Inc.*, 2002 WL
18 32817517, at *3 (C.D. Cal. Jan. 15, 2002).

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20 10. Bankruptcy Rule 9018 sets forth the procedure by which a party may
21 move for relief under section 107. In particular, Bankruptcy Rule 9018 states that
22

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1 the court “may make any order which justice requires (1) to protect the estate or
2 any entity in respect of a trade secret or other confidential . . . commercial
3 information.” Fed. R. Bankr. P. 9018. Local bankruptcy Rule 9018-1 provides that
4 a motion to seal may be made on an *ex parte* basis.

5
6 11. The Plan Enforcement Motion necessarily describes certain terms of,
7 and attaches, the Term Sheet, which this court previously permitted to be filed
8 under seal at the request of the Debtors upon a finding of good cause for that relief.
9 *See Order on Debtors’ Ex Parte Motion for Entry of an Order Sealing Plan*
10 *Settlement Term Sheet* [Docket No. 2049].

11
12 12. The Plan Enforcement Motion likewise necessarily describes certain
13 terms of, and attaches, the Cerner Settlement Agreement, which contains the terms
14 of a settlement of litigation between Astria and Cerner that gave rise to the GUC
15 Distribution Trust’s right to payment of the GUC Vendor Credit Recovery that is
16 the subject of the Plan Enforcement Motion. The Cerner Settlement Agreement
17 includes certain confidentiality provisions to which the GUC Distribution Trustee
18 agreed to be bound.

19
20 13. Accordingly, the Trustee respectfully requests that the court enter the
21 Proposed Order granting the Trustee leave to file the Plan Enforcement Motion
22 (including the Term Sheet and Cerner Settlement Agreement) under seal.

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1 Respectfully submitted this 16th day of March, 2023.

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23 as GUC Distribution Trustee*

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Exhibit A
Proposed Order

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

<p>In re: Astria Health, Remaining Debtor.</p>	<p>Case No. 19-01189-WLH11</p> <p>ORDER SEALING THE MOTION OF THE GUC DISTRIBUTION TRUSTEE FOR AN ORDER ENFORCING THE PLAN AND COMPELLING PAYMENT OF THE GUC VENDOR CREDIT RECOVERY</p>
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ORDER SEALING GUC DISTRIBUTION TRUSTEE'S
MOTION FOR ORDER ENFORCING PLAN

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1 This court, having read and considered the *Ex Parte Motion for Entry of An*
2 *Order Sealing the Motion of the GUC Distribution Trustee for an Order Enforcing*
3 *the Plan and Compelling Payment of the GUC Vendor Credit Recovery* [Docket
4 No. ____] (the "Motion") filed by the GUC Distribution Trustee, and good and
5 sufficient cause appearing therefor,
6

7 HEREBY ORDERS AS FOLLOWS:

- 8 1. The Motion [Docket No. ____] is granted.
- 9 2. The GUC Distribution Trustee is authorized to file the Plan
10 Enforcement Motion with this court under seal.

11 //End of Order//

12 Presented by:

13 POLSINELLI PC

14 */s/ Jane Pearson*

15 _____
16 Jane Pearson, WSBA #12785

17 *Co-Counsel for Steven D Sass LLC,*
18 *as GUC Distribution Trustee*

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