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as GUC Distribution Trustee*

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

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EX PARTE JOINT MOTION
FOR SEALING ORDER -1

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1 In re:

2 Astria Health,

3 Remaining Debtor.

Case No. 19-01189-WLH11

EX PARTE JOINT MOTION FOR ENTRY OF AN ORDER AUTHORIZING 1) THE FILING UNDER SEAL AND CONTINUED SEALING OF THE REORGANIZED DEBTOR’S RESPONSE (WITH EXHIBITS) [DOCKET NO. 2888] TO THE SEALED MOTION OF THE GUC DISTRIBUTION TRUSTEE FOR AN ORDER ENFORCING THE PLAN AND COMPELLING PAYMENT OF THE GUC VENDOR CREDIT RECOVERY, RETROACTIVE TO APRIL 6, 2023, AND 2) THE FILING UNDER SEAL OF A REPLY AND SUR-REPLY IN RELATION THERETO

12 Steven D Sass LLC, in its capacity as GUC Distribution Trustee¹ (the
13 “Trustee”), and Astria Health (“Astria” or the “Reorganized Debtor”), formerly a
14 debtor and debtor in possession (as such, collectively with its affiliated former debtor
15 entities, the “Debtors” and, as reorganized, the “Reorganized Debtors”) in the above-
16 captioned chapter 11 bankruptcy case, hereby jointly move *ex parte* (the “Joint
17 Motion”), pursuant to sections 105(a) and 107 of title 11 of the United States Code,
18 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), Rule 9018 of the Federal Rules of
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22 ¹ Capitalized terms used but not otherwise defined in this Motion shall have the meanings
23 ascribed to them in the Plan (as defined in the Plan Enforcement Motion).

EX PARTE JOINT MOTION
FOR SEALING ORDER - 2

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1 Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 9018-1 of the Local
2 Bankruptcy Rules of the United States Bankruptcy Court for the Eastern District of
3 Washington (the “Local Bankruptcy Rules”), for entry of an order, substantially in
4 the form attached hereto as Exhibit A (the “Proposed Order”), in connection with the
5 *Motion of the GUC Distribution Trustee for an Order Enforcing the Plan and*
6 *Compelling Payment of the GUC Vendor Credit Recovery* (the “Plan Enforcement
7 Motion”) [Docket No. 2879] (filed under seal) authorizing 1) the filing under seal and
8 the continued sealing of the *Notice of Hearing and Reorganized Debtor’s Objection*
9 *to Motion for an Order Enforcing the Plan and Compelling Payment of the GUC*
10 *Vendor Creditor Recovery; Memorandum and Points of Authority* [Docket No. 2888]
11 (the “Response”) retroactive to its date of filing (April 6, 2023) and 2) the Trustee
12 leave to file under seal a reply to the Response (the “Reply”) and the Reorganized
13 Debtor to file under seal a sur-reply to the Reply (the “Sur-reply” and referred to
14 collectively with the Motion, Response and Reply, and all exhibits filed therewith, as
15 the “Sealed Papers”). In support of the Joint Motion, the Trustee and the
16 Reorganized Debtor respectfully state as follows:

17
18
19 **JURISDICTION AND VENUE**

20 1. This court has jurisdiction over the Joint Motion pursuant to 28 U.S.C.
21 §§ 157 and 1334. The Joint Motion is a core proceeding pursuant to 28 U.S.C. §
22
23

EX PARTE JOINT MOTION
FOR SEALING ORDER - 3

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1 157(b). Venue is proper under 28 U.S.C. §§ 1408 and 1409(a).

2
3 **BACKGROUND**

4 2. For the same reasons that the Trustee moved for the Plan Enforcement
5 Motion be filed under seal (*see Ex Parte Motion for Entry of an Order Sealing the*
6 *Motion of the GUC Distribution Trustee for an Order Enforcing the Plan and*
7 *Compelling Payment of the GUC Vendor Credit Recovery* [Docket No. 2877]), and
8 which motion was granted (*see Order Sealing the Motion of the GUC Distribution*
9 *Trustee for an Order Enforcing the Plan and Compelling Payment of the GUC*
10 *Vendor Credit Recovery* [Docket No. 2880]), the Trustee and the Reorganized Debtor
11 jointly respectfully request that the court enter an order authorizing the filing under
12 seal, continued, and future sealing all Sealed Papers.

14 3. Like the Plan Enforcement Motion, the Response and the other
15 anticipated Sealed Papers necessarily describe and otherwise will discuss certain
16 terms of the Term Sheet² and other confidential information.

18 4. The Sealed Papers also necessarily describe certain terms of a
19 settlement agreement (the “Cerner Settlement Agreement”) between Astria and
20

21
22 ² The Term Sheet was filed with the Court under seal as part of the Plan Supplement
23 [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.

1 Cerner Corporation (“Cerner”), which contains the terms of a settlement of litigation
2 between Astria and Cerner that was also filed under seal.

3 **RELIEF REQUESTED**

4 5. By this Joint Motion, the Trustee and the Reorganized Debtor
5 respectfully request that the court enter the Proposed Order, substantially in the form
6 attached hereto as Exhibit A, granting the Trustee and the Reorganized Debtor leave
7 to file, as applicable, the Response (retroactively to the date filed), Reply, and Sur-
8 reply to the Plan Enforcement Motion under seal.
9

10 **BASIS FOR RELIEF**

11 6. Section 107(b) of the Bankruptcy Code authorizes the court to issue an
12 order to protect an entity from potential harm caused by disclosure of confidential
13 information. Specifically, section 107(b) provides:

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

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

20 (2) protect a person with respect to
21 scandalous or defamatory matter
22 contained in a paper filed in a case under
23 this title.

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

8
9 8. Bankruptcy Rule 9018 sets forth the procedure by which a party may
10 move for relief under section 107. In particular, Bankruptcy Rule 9018 states that
11 the court “may make any order which justice requires (1) to protect the estate or any
12 entity in respect of a trade secret or other confidential . . . commercial information.”
13 Fed. R. Bankr. P. 9018. Local Bankruptcy Rule 9018-1 provides that a motion to
14 seal may be made on an *ex parte* basis.

15
16 9. The Plan Enforcement Motion necessarily describes certain terms of,
17 and attaches, the Term Sheet, which this court previously permitted to be filed under
18 seal at the request of the Debtors upon a finding of good cause for that relief as well
19 as related documents (as was filed with the Response). *See Order on Debtors’ Ex*
20 *Parte Motion for Entry of an Order Sealing Plan Settlement Term Sheet* [Docket No.
21 2049].
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EX PARTE JOINT MOTION
FOR SEALING ORDER - 6

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1 10. The Plan Enforcement Motion likewise necessarily describes certain
2 terms of, and attaches, the Cerner Settlement Agreement, which contains the terms
3 of a settlement of litigation between Astria and Cerner that gave rise to the GUC
4 Distribution Trust's claim to payment of the GUC Vendor Credit Recovery that is
5 the subject of the Plan Enforcement Motion. The Cerner Settlement Agreement
6 includes certain confidentiality provisions to which the GUC Distribution Trustee
7 agreed to be bound.
8

9 11. The Response also includes exhibits that contain sensitive and
10 otherwise confidential information. It is anticipated that the Reply and Sur-reply
11 may also seek to attach confidential documents. Accordingly, the Trustee and the
12 Reorganized Debtor respectfully request that the court enter the Proposed Order
13 granting the Trustee and the Reorganized Debtor leave to file the Response
14 (retroactive to April 6, 2023), the Reply, and the Sur-reply to the Plan Enforcement
15 Motion under seal.
16

17 Respectfully submitted this 19th day of April, 2023.

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EX PARTE JOINT MOTION
FOR SEALING ORDER - 7

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EX PARTE JOINT MOTION
FOR SEALING ORDER - 8

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Exhibit A
Proposed Order

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

In re:

Astria Health,

Remaining Debtor.

Case No. 19-01189-WLH11

**ORDER GRANTING THE EX PARTE
JOINT MOTION FOR ENTRY OF AN
ORDER AUTHORIZING 1) THE
FILING UNDER SEAL AND
CONTINUED SEALING OF THE
REORGANIZED DEBTOR'S
RESPONSE (WITH EXHIBITS)
[DOCKET NO. 2888] TO THE SEALED
MOTION OF THE GUC
DISTRIBUTION TRUSTEE FOR AN
ORDER ENFORCING THE PLAN AND
COMPELLING PAYMENT OF THE
GUC VENDOR CREDIT RECOVERY,
RETROACTIVE TO APRIL 6, 2023,
AND 2) THE FILING UNDER SEAL OF
A REPLY AND SUR-REPLY IN
RELATION THERETO**

ORDER GRANTING JOINT
SEALING MOTION - 1

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1 This court, having read and considered the *Ex Parte Joint Motion for Entry of*
2 *an Order Authorizing Sealing the Response, Reply, and Sur-Reply to the Motion of*
3 *the GUC Distribution Trustee for an Order Enforcing the Plan and Compelling*
4 *Payment of the GUC Vendor Credit Recovery* [Docket No. ____] (the “Motion”)
5 filed by the GUC Distribution Trustee and the Reorganized Debtor, and good and
6 sufficient cause appearing therefor,
7

8 **HEREBY ORDERS AS FOLLOWS:**

- 9 1. All capitalized terms are defined in the Motion.
- 10 2. The Motion [Docket No. ____] is granted.
- 11 3. The GUC Distribution Trustee and the Reorganized Debtor are
12 authorized to file the Sealed Papers, which include the Response, Reply, Sur-reply,
13 and all exhibits thereto, to the Plan Enforcement Motion with this court under seal
14 and such Sealed Papers shall remain under seal unless and until determined by
15 separate court order.
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18 //End of Order//
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ORDER GRANTING JOINT
SEALING MOTION - 2

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ORDER GRANTING JOINT
SEALING MOTION - 3

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