DARIN M. DALMAT (WSBA No. 51384)
KELLY ANN SKAHAN (WSBA No. 54210)
BARNARD IGLITZIN & LAVITT LLP
18 W Mercer St, Suite 400
Seattle, WA 98119
Tel: (206) 257-6028 / Fax: (206) 257-6048
dalmat@workerlaw.com
skahan@workerlaw.com

PETER D. DECHIARA (Pending *Pro Hac Vice*)
COHEN WEISS AND SIMON, LLP
900 Third Avenue, Suite 2100
New Yok, NY 10022-4869
Tel: (212) 356-0256 / Fax: (646) 473-8216
pdechiara@cwsny.com

Attorneys for WSNA

HONORABLE WHITMAN L. HOLT

UNITED STATE BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

IN RE: ASTRIA HEALTH, *et al*. Debtors.[1]	Chapter 11 Lead Case No. 19-01189-11 (Jointly Administered) **Adv. Pro. Case No. _____**

[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), SHS 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

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SEATTLE, WASHINGTON 98119 IGLITZIN &
TEL 800.238.4231 | FAX 206.378.4132 LAVITT LLP

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Washington State Nurses Association, Plaintiff, v. SHC Medical Center–Yakima, Astria Health, Defendants.	**Adversary Proceeding Complaint**

ADVERSARY PROCEEDING COMPLAINT

1. Plaintiff Washington State Nurses Association (**WSNA**) is the collective bargaining representative of nurses currently and formerly employed by the Debtors, including Defendant SHC Medical Center Yakima d/b/a Astria Regional Medical Center (**Yakima Regional** or **the hospital**), which is a subsidiary of Defendant Astria Health. WSNA brings this complaint for violations of the Worker Adjustment and Retraining Notification Act (**WARN Act**), 29 U.S.C. §§ 2101–09, the Washington Wage Payment and Collection Act (**Payment Act**), RCW 49.48.010–900, and the Washington Wage Rebate Act (**Rebate Act**), RCW 49.52.010–090.

(19-01199-11), Yakima Home Care Holdings, LLC (19-01201-11), and Yakima HMA Home Health, LLC (19-01200-11).

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2. The Defendants violated the WARN Act by closing Yakima Regional without providing nurses or other employees at least 60 days advanced notice of the closure, as required by that statute.

3. The Defendants knew, at least as early as the beginning of December 2019, that the Debtors would be unlikely to secure exit financing or find a buyer willing to purchase the entire hospital system, including Yakima Regional, at a price they would accept. Based on that knowledge, the Defendants began planning to close Yakima Regional in December. Yet, they deliberately shielded their closure plans from the nurses. They did so not out of any need to secure financing, respond to unforeseen circumstances, or deal with a natural disaster. They simply preferred to keep the nurses in the dark. Their decision to hide their closure plans from their nurses has foisted mass, immediate layoffs on those employees, disrupting their lives and derailing their careers with inadequate time to negotiate over the effects of the Defendants' decision or to seek alternative employment. The WARN Act forbids such sudden, secretive closure plans where, as here, the employers meet none of the narrow exceptions to the 60-day notice requirement.

4. To remedy these WARN violations, WSNA, on behalf of the nurses it represents, seeks to recover 60 days of wages and benefits—including accrued but unpaid paid time off (PTO)—from the Defendants. WSNA's claims are entitled to first priority administrative expense status under 11 U.S.C. § 503(b)(1)(A).

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5. WSNA's Payment Act claims arise from the Defendants' failure to pay the nurses all PTO it owed them within the pay period following their termination. In light of the nurses' clear, contractual right to cash out their accrued PTO upon termination, their accrued PTO qualifies as wages under the Payment Act. Although the Defendants were required to pay those wages by the end of the established pay period following their termination, they did not do so. WSNA, on behalf of the nurses it represents, is thus entitled to recover those wages and reasonable attorney's fees. Again, these claims are entitled to first priority administrative expense status under 11 U.S.C. § 503(b)(1)(A).

6. WSNA's Rebate Act claims arise from the Defendants' willful determinations to deprive nurses of timely payment of the PTO they are entitled to under their CBA and by the Payment Act. Defendants are thus liable for damages per RCW 49.52.070, which, again, should be treated as administrative expenses under 11 U.S.C. § 503(b)(1)(A).

JURISDICTION AND VENUE

7. This is an adversary proceeding under Rule 7001 of the Federal Rules of Bankruptcy Procedure.

8. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 157, 1331, and 1334, and the district court's local rule referring proceedings arising in or relating to cases under Title 11 to the bankruptcy judges of this district (LCivR

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83.5), because it arises under the WARN Act, a federal statute, and arises in or is related to the pending Chapter 11 jointly administered cases involving the Defendants, *In re Astria Health*, Ch. 11 Case Nos. 19-01189-11 and 19-01192-11.

9. This Court has supplemental jurisdiction over the Payment Act and Rebate Act claims under 28 U.S.C. § 1367.

10. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1391(b) and (c) because the Defendants do business in this judicial district and are subject to personal jurisdiction in this district.

11. This action is a core proceeding under 28 U.S.C. § 157.

THE PARTIES

12. Plaintiff WSNA is a non-profit corporation and labor union headquartered in Seattle, Washington. It is the collective bargaining representative for all registered nurses currently and formerly employed by Yakima Regional. It is the nurses' representative under the National Labor Relations Act (**NLRA**), 29 U.S.C. §§ 152(4), 159. As such, it is also the nurses' representative under the WARN Act, 29 U.S.C. § 2101(a)(3), and may sue on their behalf. 29 U.S.C. § 2104(a)(5).

13. WSNA also has associational standing to assert Payment and Rebate Act claims on behalf of the nurses it represents.

a. WSNA is acting in this suit on behalf of the nurses it represents who were employed by the Defendants.

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b. The nurses would have standing to assert Payment and Rebate Act claims in their own right, had WSNA not brought those claims on their behalf in its associational capacity.

c. Ensuring that its members are properly compensated for the services that they perform and vindicating their rights under the Payment and Rebate Acts are germane to WSNA's purpose and goals.

d. The Payment and Rebate Act claims asserted in this case do not require the participation of the individual employees on whose behalf WSNA is asserting those claims.

14. Defendant Yakima Regional is a Washington nonprofit corporation, whose principal office during the period of its business operations was at all relevant times located in Yakima, Washington.

15. During its period of business operations, Yakima Regional was a hospital that served the residents of Yakima and the Yakima Valley region. It employed 100 or more employees, excluding part-time employees. It likewise employed more than 100 employees who in the aggregated worked at least 4,000 hours per week, exclusive of overtime.

16. Yakima Regional is a subsidiary of SHC Holdco, LLC, whose sole member is Astria Health.

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17. Defendant Astria Health is a Washington nonprofit corporation, whose principal office is located in Yakima, Washington. It employs 100 or more employees, excluding part-time employees. It likewise employs more than 100 employees who in the aggregated worked at least 4,000 hours per week, exclusive of overtime.

18. On information and belief, Yakima Regional was substantially dependent on Astria Health within the meaning of 20 C.F.R. § 639.3(a)(2), including through common ownership; common directors and officers; de facto exercise of control by Astria Health; a unity of personnel policies emanating by a common source; and a dependency on the operations of Astria Health, including longstanding subsidization by other Astria Health subsidiaries.

19. Both Defendants employed the nurses at relevant times within the meaning of RCW 49.48.082(6) and RCW 49.46.010(2).

GENERAL ALLEGATIONS

20. Yakima Regional has recognized WSNA as the nurses' collective bargaining representative since Astria Health acquired the hospital from its predecessor, Community Health Systems, Inc. (**CHS**) in 2017. The parties' most recent CBA, dated April 29, 2019, continues in effect until March 31, 2022.

21. On May 6, 2019, the Defendants filed voluntary petitions under Title 11 for bankruptcy protection, seeking to reorganize under Chapter 11.

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22. On or about December 3, 2019, the Board of Trustees of Astria Health adopted a resolution authorizing John M. Gallagher—the President and Chief Executive Officer of Astria Health—to cease operations of Yakima Regional.

23. In pertinent part, the resolution noted that, on or about July 2, 2019, Astria Health had retained Piper Jaffray, now, Piper Sandler, (**Piper**) as an investment banker to assist the Defendants in obtaining exit financing or finding a buyer to acquire the Defendants. It further noted that Piper had recently obtained expressions of interest from potential lenders, none of which included financing for Yakima Regional. Accordingly, it noted, Piper had concluded by December 3, 2019, that it was "very unlikely that any entity will want to acquire [Yakima Regional] as a going concern."

24. As of December 3, 2019, Astria Health's Board of Trustees had also received, reviewed, and considered recommendations of the company's senior management, including Mr. Gallagher, and determined, among other things, that (1) Astria Health was unable to obtain financing; (2) there was unlikely to be a market for Yakima Regional to continue in operations as a going concern; and (3) Astria Health could no longer continue to subsidize continuing losses of Yakima Regional.

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25. Also on December 3, 2019, the Board of Trustees of Yakima Regional adopted a resolution authorizing Mr. Gallagher to cease operations of Yakima Regional.

26. The resolution adopted by Yakima Regional's Board of Trustees contained recitals that, in all material respects, paralleled those of Astria Health's Board of Trustees. In particular, Yakima Regional's Board of Trustees also acknowledged that as of December 3, 2019, it had determined that it was unlikely that the hospital would obtain exit financing or find a buyer and—in light of those determinations—Astria Health could no longer continue to subsidize the continuing losses of the Company.

27. The Defendants kept both resolutions confidential and did not, at the time, share them with WSNA or the nurses.

28. On December 13, 2019, the Defendants filed a motion with the bankruptcy court seeking, *inter alia*, authorization to obtain replacement postpetition financing. ECF No. 818. Despite the Defendants' December 3, 2019, resolutions, the December 13 motion informed the court and the public that "Astria's necessity to the health and welfare of the people of the Yakima Valley is evidenced by several facts," including having the only open-heart surgery program in Yakima County; the only neurosurgery program in Yakima County; and the only elective cardiac catheterization program in Yakima County. Those three programs were

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housed at Yakima Regional. As such, the motion gave no public indication that the Defendants had authorized Mr. Gallagher to close Yakima Regional; to the contrary, it gave every indication that maintaining the valuable health-care services at Yakima Regional was necessary to the health and welfare of the Yakima Valley.

29. On January 3, 2020, the Defendants filed an *Ex Parte* Motion to File Certain Motion and Declaration in Support Thereof, Under Seal (**Sealing Motion**). ECF No. 866. That motion did not recite the nature of the underlying motion.

30. Although the court ultimately denied the Defendants' Sealing Motion by order dated January 8, 2020, ECF No. 874, the underlying motion had been sealed from January 3, 2020, until the court's ruling on January 8, 2020.

31. On January 8, 2020, WSNA discovered, for the first time, that the Defendants' underlying motion had sought judicial approval to close Yakima Regional (**Closure Motion**). ECF No. 867. In particular, WSNA learned of the Closure Motion after the court had authorized the closure in a hearing on January 8, 2020. The Defendants deliberately deprived WSNA and its counsel of notice of that hearing to deprive the nurses of advanced notice of the closure.

32. On January 8, 2020, Les Abercrombie, the Chief Human Resource Officer for Yakima Regional, sent WSNA a Notice Pursuant to Worker Adjustment and Retaining Act (**WARN Notice**). Mr. Abercrombie delivered that WARN Notice by email, time stamped 3:29 p.m. on January 8, 2020.

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33. In pertinent part, the notice states that the "Debtors have now learned that no lenders will agree to provide the necessary financing to keep [Yakima Regional] operational." In fact, as the Defendants' December 3, 2019, resolutions indicated, the Defendants had made that determination more than a month before delivering their WARN Notice to WSNA.

34. The Defendants' WARN Notice acknowledged that their decision to close Yakima Regional would result in the separation of employment of all Yakima Regional employees, "which will result in an 'employment loss' within the meaning of the WARN Act."

35. The Defendants' WARN Notice communicated their expectation that they would close Yakima Regional between January 13, 2020, and January 22, 2020. As it turned out, the Defendants closed Yakima Regional more than a week before January 22, 2020, and also completed mass layoffs at least a week before that date.

36. Had the Defendants given WSNA 60 days' notice of the closure and mass layoffs—as required by the WARN Act—they would have had to notify WSNA by no later than mid-November 2019.

37. The Defendants have not paid the nurses represented by WSNA any wages or benefits since the closure of Yakima Regional. Specifically, the Defendants have not paid nurses wages, PTO, health insurance contributions, retirement

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contributions, life insurance contributions, disability plan contributions, or any other benefits to which nurses were entitled as an incident of their employment.

38. The CBA entitles nurses, following termination, "to payment for any accrued and unused PTO at the employee's base rate of pay, including BSN/certification pay, permanent charge nurse pay, and shift differential for personnel permanently assigned to evening or night shifts," but excluding overtime, standby pay, and other wage premiums. CBA, § 10.4.

39. Notwithstanding that clear contractual right to cash out accrued and unused PTO, the Defendants did not pay nurses their accrued PTO upon their termination or by the pay period following their termination. They failed to do so willfully, even though the bankruptcy court had previously authorized them to pay wages and PTO. The nurses' PTO remains unpaid to date.

FIRST CAUSE OF ACTION:
VIOLATION OF WARN ACT

40. WSNA realleges and incorporates by reference the allegations set forth in Paragraphs 1–39 of this Complaint as if fully restated here.

41. At all relevant times, the Defendants have been employers under the WARN Act, 29 U.S.C. § 2101(a)(1).

42. The Defendants undertook a plant closing, within the meaning of 29 U.S.C. § 2101(a)(2), in January 2020.

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43. The Defendants caused a mass layoff, within the meaning of 29 U.S.C. § 2101(a)(3), in January 2020.

44. Those actions made the nurses aggrieved employees of the Defendants under 29 U.S.C. § 2104(a)(7).

45. WSNA is the representative of the nurses affected by the plant closing and mass layoff, within the meaning of 29 U.S.C. § 2101(a)(3).

46. With exceptions not applicable here, the WARN Act prohibits employers from ordering a plant closing or mass layoff until the end of a 60-day period after the employer serves written notice of such an order on the affected employees' representative. 29 U.S.C. § 2102(a).

47. The Defendants provided WSNA and the affected nurses far less than 60 days' notice of the closure of Yakima Regional and of their mass layoffs, in violation of 29 U.S.C. § 2102(a).

48. The Defendants had no legitimate basis under 29 U.S.C. § 2102(b) to reduce the notification period.

a. On information and belief, as of December 3, 2019 (and perhaps earlier), the Defendants were no longer actively seeking capital that could have enabled them to avoid the shutdown of Yakima Regional. Alternatively, if the Defendants were actively seeking capital after December 3, 2019, on information and belief, they either had no realistic opportunity to

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secure such capital to continue Yakima Regional in operation or no good-faith belief that giving the notice would have precluded them from obtaining needed capital.

b. The Defendants did not face reasonably unforeseeable circumstances in December 2019 or January 2020 that caused them to close Yakima Regional.

c. The Defendants did not close Yakima Regional on account of a natural disaster.

d. The Defendants did not give as much notice as was practicable under the circumstances.

49. The Defendants have not paid the nurses their respective wages, PTO, or benefits for 60 days following their respective terminations, and have not made health insurance or retirement contributions for 60 days following their respective terminations.

SECOND CAUSE OF ACTION:
VIOLATION OF PAYMENT ACT

50. WSNA realleges and incorporates by reference the allegations set forth in Paragraphs 1–49 of this Complaint as if fully restated here.

51. In light of nurses' vested, contractual right to cash out PTO upon termination, accrued and unused PTO is compensation due to an employee by

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reason of employment and thus qualifies as "wages" within the meaning of RCW 49.48.082(10) and RCW 49.46.010(7).

52. The Defendants were required by RCW 49.48.010 to pay nurses the wages due them, including accrued and unused PTO, by no later than the end of the established pay period following their termination.

53. The Defendants have not timely paid the nurses the PTO due them.

54. The nurses have not agreed to permit the Defendants to withhold the PTO due them.

55. The Defendants' refusal to timely pay nurses the PTO owed them is not the result of any bona fide dispute over the amount due them.

THIRD CAUSE OF ACTION:
VIOLATION OF REBATE ACT

56. WSNA realleges and incorporates by reference the allegations set forth in Paragraphs 1–55 of this Complaint as if fully restated here.

57. The nurses have a contractual right under the CBA to payment of accrued and unused PTO upon termination.

58. The nurses have a statutory right under the Payment Act to payment of accrued and unused PTO upon termination.

59. The Defendants willfully and with the intent to deprive nurses of their accrued PTO, failed to pay nurses' their accrued PTO by the time of their final

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paycheck, in violation of the nurses' contractual and statutory rights recited above. Doing so violated the Defendants' obligations under RCW 49.52.050(2).

REQUEST FOR RELIEF

THEREFORE, Plaintiff WSNA respectfully requests that the Court:

1. Award back pay for each day of violation of the WARN Act at a rate of compensation for each employee provided by statute, 29 U.S.C. § 2104(a)(1).

2. Award benefits under employee benefit plans during the employment loss which would have been covered under an employee benefit plan if the employment loss had not occurred, 29 U.S.C. § 2104(a)(2).

3. Award reasonable attorney's fees and costs, pursuant to 29 U.S.C. § 2104(a)(6).

4. Award unpaid PTO due the nurses pursuant to RCW 49.48.010.

5. Award double damages for all unpaid PTO pursuant to RCW 49.52.070.

6. Award reasonable attorney's fees and costs, pursuant to RCW 49.48.030 and RCW 49.52.070.

7. Award prejudgment interest under 28 U.S.C. § 1961 and other applicable law.

8. Treat all damages, fees, costs, and interest awarded in this action as administrative expenses in the Defendants' bankruptcy cases.

9. Award all other relief the Court deems just and proper.

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RESPECTFULLY SUBMITTED this 31st day of January, 2020.

s/ Darin M. Dalmat
Darin M. Dalmat, WSBA No. 51384
Barnard Iglitzin & Lavitt LLP
18 W Mercer St, Suite 400
Seattle, WA 98119
Tel: (206) 257-6028
Fax: (206) 378-4132
dalmat@workerlaw.com

s/ Kelly Ann Skahan
Kelly Ann Skahan, WSBA No. 54210
Barnard Iglitzin & Lavitt LLP
18 W Mercer St, Suite 400
Seattle, WA 98119
Tel: (206) 257-6009
Fax: (206) 378-4132
skahan@workerlaw.com

s/ Peter D. DeChiara
Peter D. Dechiara *(Pending Pro Hac Vice)*
Cohen Weiss And Simon, Llp
900 Third Avenue, Suite 2100
New Yok, NY 10022-4869
Tel: (212) 356-0256
Fax: (646) 473-8216
pdechiara@cwsny.com

Attorneys for WSNA