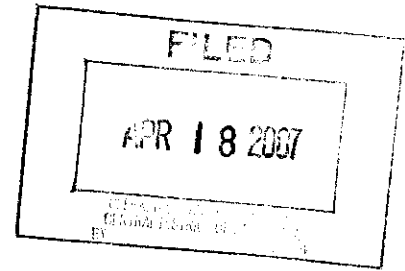


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7 Services

8
9 UNITED STATES BANKRUPTCY COURT
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA
11 LOS ANGELES DIVISION

12
13 In re
14 PLEASANT CARE CORPORATION, et. al.
15 Debtors.

Case No. LA 07-12312-EC

Chapter 11

Jointly Administered with Cases:

- 16 LA-12322-EC
- 17 LA-12319-EC
- 18 LA-12326-EC
- 19 LA-12316-EC

- 20 x Affects All Debtors
- 21 Affects SNF Properties Incorporated only
 - 22 Affects PCC Health Services, Inc. only
 - 23 Affects Atlas Care Enterprises, Inc. only
 - 24 Affects Ember Care Corporation only
 - 25 Affects Pleasant Care Corporation only
- 26
27
28

**JOINDER BY THE CALIFORNIA
DEPARTMENT OF HEALTH
SERVICES IN THE MOTION OF
THE UNITED STATES TRUSTEE
FOR APPOINTMENT OF
CHAPTER 11 TRUSTEE;
DECLARATION OF JOYCE
JOHNSTON IN SUPPORT
THEREOF**

Date: May 2, 2007
Time: 1:30 p.m.
Place: Courtroom 1639
255 E. Temple St.
Los Angeles, CA

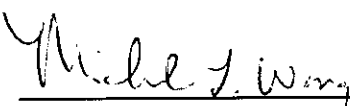
Hon. Ellen Carroll
Bankruptcy Judge

1 The California Department of Health Services (“DHS”) hereby joins in and supports the
2 Motion for Appointment of a Chapter 11 Trustee (“Motion”) filed by the United States Trustee
3 (“UST”) in these bankruptcy cases.

4 DHS submits the attached Memorandum of Points and Authorities and Declaration of Joyce
5 Johnston in support of the Motion.

6
7 Dated: April 18, 2007

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 Attorney General of the State of California
9 LESLIE P. McELROY
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15 CALIFORNIA DEPARTMENT OF HEALTH SERVICES
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 I.

3 INTRODUCTION

4 Pleasant Care Corporation, and its various related entities (collectively “Debtor”), operate
5 30 skilled nursing facilities located in the State of California and licensed by the California
6 Department of Health Services (“DHS”). Although DHS is concerned about the health and
7 safety of all the residents currently residing in the Debtor’s facilities, DHS is particularly
8 concerned for the residents in the three uncertified facilities, Pleasant Care Novato, Pleasant Care
9 Ukiah, and Emmanuel San Joaquin, as well as the residents at East Los Angeles Convalescent
10 Hospital. Based on recent problems, DHS believes the Debtor and its managers may not be
11 capable of operating facilities that provide for the health and safety of its residents.

12 II.

13 LONG-TERM CARE, HEALTH SECURITY AND SAFETY ACT OF 1973

14 The “Long-Term Care, Health and Safety Act of 1973” (“Act”) was established by the
15 California Legislature to regulate long-term health care facilities. DHS is the sole entity
16 responsible for the administration and enforcement of the Act, which is achieved through the
17 imposition of citations and civil penalties to ensure compliance with applicable statutes and
18 regulations.

19 One of the main purposes of the Act is to assure that long-term health care facilities provide
20 the highest level of care possible to their patients. This objective is accomplished through annual
21 certification surveys, consumer complaint investigations, and special incident reports. A citation
22 may issue following any one of these inspection mechanisms and/or investigative methods. A
23 deficiency may issue following a certification survey.

24 III.

25 DEBTOR’S DECERTIFIED FACILITIES AND CONTINUED VIOLATIONS IN 2007

26 A. Decertified Facilities and Immediate Jeopardy to the Health and Safety of Residents

27 Although DHS is concerned about the health and safety of all the residents currently
28 residing in the Debtor’s facilities, DHS is particularly concerned for the residents in the three

1 uncertified facilities, Pleasant Care Novato, Pleasant Care Ukiah, and Emmanuel San Joaquin, as
2 well as the residents at East Los Angeles Convalescent Hospital. Based on recent problems,
3 DHS believes the Debtor and its managers may not be capable of operating facilities that provide
4 for the health and safety of its residents. (Declaration of Joyce Johnston, hereinafter referred to
5 as Johnston's Second Declaration, Assistant Chief Counsel of DHS, dated April 17, 2007, ¶3.)^{1/}

6 DHS' records reflect the Debtor recently requested a survey of the Novato and Ukiah
7 facilities claiming those facilities were prepared to be certified for Medi-Cal after numerous
8 months of decertification and receiving no federal reimbursement. The surveys were conducted
9 on or about March 16, 2007 and, as a result, both facilities were denied certification. The
10 facilities failed to meet several compliance standards. (Johnston's Second Declaration, ¶4.) True
11 and correct copies of the Pleasant Care Novato and Pleasant Care Ukiah surveys are attached as
12 Exhibit A and Exhibit B, respectively, to Johnston's Second Declaration.

13 Most significantly, the survey reflected the facilities could not pass medications to residents
14 without errors above the five percent error rate allowed under federal law. This failure resulted
15 in the finding of an "immediate jeopardy" to the health and safety of the residents at the Novato
16 facility.^{2/} (Johnston's Second Declaration, ¶5.)

17 B. Situation Alert at Debtor's East Los Angeles Convalescent Hospital

18 On or about March 30, 2007, according to a "Situation Alert" received by DHS from the
19 Los Angeles District Office, DHS found the Debtor's East Los Angeles Convalescent Hospital
20 had a medication error rate of *over 20%* which constituted immediate jeopardy to the health and
21 safety of the residents. For over a week the facility could not lower the medication error rate to
22 the acceptable level of five percent. DHS' pharmacy consultants worked with the facility
23 providing technical assistance to assist the facility in correcting the error. Debtor's life
24 threatening compliance issue lasted for over a week and raises serious concerns. (Johnston's

25
26 1. Johnston's first declaration, dated March 21, 2007, is attached as Exhibit 2 to the UST's
27 Request for Judicial Notice filed concurrently with its Motion for Appointment of Chapter 11
Trustee.

28 2. "Immediate Jeopardy" is defined as a situation in which the provider's noncompliance
with one or more requirements of participation has caused or is likely to cause serious injury, harm,
impairment or death to a resident.

1 Second Declaration, ¶6.) A true and correct copy of the Situation Alert is attached as Exhibit C
2 to Johnston's Second Declaration.

3 C. Continued Violations Leading to State Citations and Federal Deficiencies

4 From the beginning of the calendar year 2007 to date, the Debtor has amassed three Class
5 "A" violations, six Class "B" violations, and three "F" deficiencies. (Johnston's Second
6 Declaration, ¶7.) Attached as Exhibit D to Johnston's Second Declaration is a true and correct
7 copy of the most recent report of the past compliance history of the Debtor's facilities.

8 Class "A" violations are where serious lapses in the minimum standard of quality of health
9 care were determined by DHS to present imminent danger or substantial probability of death or
10 serious physical harm to residents. True and correct copies of the three Class "A" Citations are
11 attached collectively as Exhibit E to Johnston's Second Declaration and summarized herein.

12 On March 1, 2007, Emmanuel Health Care Center Norwalk was issued Class "A" Citation
13 #94-1296-0003154-F for failing to immediately consult with a resident's physician when the
14 resident had an accident resulting in injury that had the potential of requiring physician
15 intervention and for failing to conduct periodic comprehensive and on-going assessment of his
16 injuries after the accident. These violations presented imminent danger or substantial probability
17 of death or serious physical harm to the resident.

18 On January 31, 2007, Pleasant Care Convalescent Petaluma was issued Class "A" Citation
19 #11-1850-0003620-F for failing to ensure that areas which presented as accident hazards
20 remained secure and could not be accessed by residents. As a result of this severe lapse, a
21 resident fell down a flight of stairs and sustained a fracture of the collarbone. This same facility
22 was issued Class A Citation #11-1792-0003635-F for failing to ensure that a resident received
23 adequate supervision. These violations presented imminent danger or substantial probability of
24 death or serious physical harm to the resident.

25 Class "B" violations are where serious lapses in the minimum standard of quality of health
26 care were determined by DHS to present direct or immediate relationship to the health, safety, or
27 security of the residents. True and correct copies of the six Class "B" Citations are attached
28 collectively as Exhibit F to Johnston's Second Declaration and are summarized herein.

1 On April 11, 2007, Emmanuel Health Care Center Yuba City was issued Class "B" Citation
2 #23-1326-0003882-F for providing substandard patient care. The facility's staff failed to ensure
3 that a resident, who entered the facility without a pressure ulcer, did not develop one and they
4 also failed to ensure that the resident received necessary treatment and services to promote
5 healing and prevent new ulcers from developing.

6 On April 4, 2007, Emmanuel Health Care Center Yuba City was issued Class "B" Citation
7 #23-1988-0003855-F for providing substandard patient care. The facility's staff failed to protect
8 a resident from neglect by not providing for the resident's hygienic need for six hours. The
9 resident, with end stage renal disease, was left sitting in his wheelchair in urine and feces for six
10 hours. On April 4, 2007, this same facility also was issued Class "B" Citation #23-2001-
11 0003856-S for violating California Health and Safety Code section 1418.91(a) for failing to
12 report alleged abuse of a resident.

13 On March 27, 2007, Emmanuel Health Care Center Yuba City was issued Class "B"
14 Citation #23-1870-0003818-S for providing substandard patient care. The facility's staff failed
15 to ensure a resident was free of physical abuse when a facility employee administered care, which
16 resulted in bruising of the resident.

17 On March 6, 2007, Emmanuel Convalescent Hospital San Jose was issued Class "B"
18 Citation #07-1703-0003772-F for providing substandard patient care. The facility's staff failed
19 to provide a bed side rail padding and a resident sustained facial injuries as a result to bumping
20 her head while receiving hospice care.

21 On January 24, 2007, Pleasant Care Rehabilitation and Nursing Center Santa Cruz was
22 issued Class "B" Citation #07-1607-0003664-S for failing to report suspected abuse of a resident,
23 in violation of California Welfare and Institutions Code sections 15630(a) and 15630(b)(1)(A).

24 "F" Deficiencies are violations where potential for more than minimal harm that is not
25 immediate jeopardy but is widespread. True and correct copies of the three "F" Deficiencies are
26 attached collectively as Exhibit G to Johnston's Second Declaration.

27 Based on these problems, DHS believes the Debtor and its managers may not be capable of
28 operating facilities that provide for the health and safety of its residents.

1 IV.

2 BREADTH OF DHS' APPROVAL OF THE CHANGE OF CORPORATE OFFICERS

3 The secured and unsecured creditors arranged for the Emmanuel Bernabe to step down as a
4 corporate officer in the various corporations. The creditors selected two new officers to replace
5 Emmanuel Bernabe as corporate officers.

6 California Health and Safety Code Section 1267.5 (b) requires DHS' prior written approval
7 of any change in corporate officer by a licensee of a skilled nursing home. DHS has approved a
8 change in the Debtor's corporate officers. DHS' approval is based on a check into those officers'
9 criminal backgrounds and history of operating nursing facilities. That approval does not involve a
10 decision regarding the capability of those officers to operate a skilled nursing facility on a daily
11 basis. (Johnston's Second Declaration, ¶13.) It should be noted that the officers continue to
12 report to a Board of Directors which consists of Emmanuel Bernabe and his friends and relatives.

13 V.

14 NECESSITY FOR APPOINTMENT OF A TRUSTEE

15 DHS believes the appointment of a disinterested Chapter 11 Trustee is clearly in the best
16 interest and safety of the residents living at the Debtor's facilities, and that removal of Emmanuel
17 Bernabe and his friends and family members from any roles in managing or controlling the
18 facilities is the only option under the present dire circumstances.

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IV.

CONCLUSION

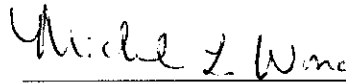
For the foregoing reasons, DHS joins in the UST's Motion and respectfully requests the Motion be granted.

Dated: April 18, 2007

Respectfully Submitted,

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60211945.wpd

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **In Re Pleasant Care Corporation, et al.**

No.: **LA 07-12322-EC**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

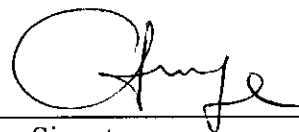
On April 18, 2007, I served the attached **JOINDER BY THE CALIFORNIA DEPARTMENT OF HEALTH SERVICES IN THE MOTION OF THE UNITED STATES TRUSTEE FOR APPOINTMENT OF CHAPTER 11 TRUSTEE; DECLARATION OF JOYCE JOHNSTON IN SUPPORT THEREOF** by transmitting a true copy via electronic mail. The name(s) and e-mail addresses of the person(s) served via e-mail are set forth in the attached electronic service list.

I also served the said document by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed to the person(s) set forth in the attached mailing service list.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 18, 2007, at Los Angeles, California.

Olajumoke Ajibade-Olatokunbo

Declarant



Signature

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