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(*Pro Hac Vice* Application to be submitted)

12 Attorneys for Bridge Healthcare Finance, LLC
13 and Bridge Opportunity Finance, LLC

14 **UNITED STATES BANKRUPTCY COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**
16 **LOS ANGELES DIVISION**

17 In re
18 PLEASANT CARE CORPORATION, a
California corporation

19 In re
20 SNF PROPERTIES INCORPORATED, a
California corporation

21 In re
22 PCC HEALTH SERVICES, INC., a California
corporation

23 In re
24 ATLAS CARE ENTERPRISES, INC., a
California corporation

25 In re
26 EMBER CARE CORPORATION, a
California corporation

27 Debtors.
28

Main Case No. LA 07-12312-EC

Case No. LA 07-12322-EC

Case No. LA 07-12319-EC

Case No. LA 07-12326-EC

Case No. LA 07-12316-EC

Chapter 11

**EMERGENCY MOTION FOR
APPOINTMENT OF
CHAPTER 11 TRUSTEE**

Date: (to be scheduled)

Time:

Place: Courtroom 1639

1 Bridge Healthcare Finance, LLC and Bridge Opportunity Finance, LLC (collectively,
2 "Bridge"), by their undersigned counsel, respectfully requests that this Court appoint a Chapter 11
3 Trustee pursuant to 11 U.S.C. § 1104(a) (the "Motion") to oversee and manage the Debtor's
4 facilities for a period of time while (1) issues with compliance with state and Federal health care
5 compliance and certification requirements are addressed and (2) their finances are verified and
6 stabilized, and in support of the Motion state as follows.
7

8 INTRODUCTION

9 This chapter 11 case and the related cases¹ were filed just minutes prior to the
10 commencement of a hearing in the Superior Court of California on Bridge's complaint requesting,
11 among other things, the appointment of a receiver to run the nursing home facilities of the Pleasant
12 Care Corporation ("Pleasant") and its affiliated debtor-entities PCC Health Services, Inc. ("PCC"),
13 SNF Properties, Inc. ("SNF"), Ember Care Corporation ("Ember") and Atlas Care Enterprises,
14 Incorporated ("Atlas") (each a "Debtor" and collectively, the "Debtors"). The request for the
15 appointment of a receiver was not only supported by Bridge, as secured lender to the Debtors, but
16 also by the California Department of Health Services ("DHS"), whose representative filed a
17 declaration in support of such appointment. The request for appointment of a receiver was based
18 upon numerous actions taken by the Debtors, including, without limitation:
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20 (i) failing to comply with the minimum health care compliance requirements
21 under California law by failing to correct significant quality of care and elder abuse issues
22 and deficiencies at the facilities cited by DHS—several of such issues have been
23 determined to place the over 2,800 residents of the Debtors' facilities in immediate
24 jeopardy or under substandard care, including failure to provide an environment free of
25 medical errors, sexual abuse, and neglect;

26 (ii) failing to provide care in accordance with minimum federal standards for
27 certification to receive Medi-Cal and Medicare reimbursement, leading to de-certification
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¹ The related bankruptcy cases are In re PCC Health Services, Inc., Case No. 07-12319; In re SNF Properties Incorporated, Case No. 07-12322; In re Ember Care Corporation, Case No. 07-12316; and In re Atlas Care Enterprises, Inc., Case No. 12326.

1 of three facilities and the license suspension of a fourth facility and resulting in loss of
2 virtually all income from the decertified facilities;

3 (iii) failing to pay approximately \$12 million in March rent to most, if not all,
4 of the facility landlords;

5 (iv) failure to pay payroll taxes of approximately \$8.4 million, failing to pay
6 California Bed Tax of \$3.5 million for certain of the Debtors, and failing to pay over
7 \$500,000 in union dues; and

8 (v) failure to pay for critical utility services and endangering residents' health
9 and safety.

10 Although the filing of these chapter 11 cases has stayed the state court receiver
11 proceedings, the foregoing issues and others more specifically discussed herein continue and the
12 Debtors' facilities are in immediate danger of lacking sufficient food, medications and supplies,
13 utilities and other goods and services that are essential to provide adequate care for the elderly
14 residents. As a result, it may become necessary to abruptly transfer the elderly residents in the
15 Debtors' facilities to other facilities where they can receive adequate care. Such an involuntary
16 and abrupt mass transfer of patients from one facility to another would further endanger the
17 residents' health and welfare as discussed in further detail herein.

18 In light of the foregoing, the current management of the Debtors have grossly mismanaged
19 these facilities to the detriment of the elderly residents and must not be allowed to continue to
20 manage these facilities. Accordingly, Bridge, with the support of DHS, hereby moves for
21 appointment of a Chapter 11 Trustee or an examiner with expanded powers to oversee and manage
22 these facilities to ensure the well-being of the residents of the Debtors facilities' while (a) the
23 healthcare compliance issues are addressed, (b) the Debtors' finances are verified and stabilized,
24 and (c) the facilities are reorganized or marketed for sale in a future auction process as
25 appropriate.
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BACKGROUND FACTS

1. On March 22, 2007 (the "Petition Date"), Pleasant, PCC, SNF, Ember and Atlas each filed their voluntary petitions for relief under Chapter 11 of the Bankruptcy Code 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code"). A motion for joint administration of these cases is currently pending and is strongly supported by Bridge. Pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors continue to operate their businesses as debtors in possession no official committee of unsecured creditors has been formed, to date.

2. Prior to the Petition Date, Bridge entered into loan agreements (the "Loan Agreements") with the Debtors whereby:

(a) Bridge made available to Pleasant and PCC a credit facility of up to \$11 million, secured by substantially all of the personal property of Pleasant and PCC; and

(b) Bridge made available to SNF, Ember and Atlas a revolving credit facility of up to \$6 million, and two term loans in the amounts of \$10 million and \$2 million, all secured by substantially all of the personal property of SNF, Ember and Atlas.

The Loan Agreements have been amended or supplemented from time to time by agreement between the parties. In addition, at various times, Bridge and the Debtors have entered into forbearance agreements addressing admitted defaults by Pleasant, PCC, SNF, Ember and Atlas under the Loan Documents (the "Forbearances"). The Loan Documents are attached as Exhibits 1 through 17 to the Evidence Appendix, and are discussed in the Declaration of Shawn Andrews, Managing Director for Bridge (the "Andrews Declaration")². A copy of the Andrews Declaration is being filed contemporaneously herewith.

² The Loan Agreements and Forbearances are more fully discussed in Bridge's Limited Objection to Debtors' Emergency Motion for an Interim Order Authorizing the Debtors to Use Cash Collateral on an Interim Basis Pending a Final Hearing, filed contemporaneously herewith.

1 3. As set forth in the Andrews Declaration, shortly prior to the Petition Date, Bridge
2 discovered additional defaults by the Debtors in their performance of the applicable covenants in
3 the Loan Agreements and the Forbearances. As a result of these defaults, Bridge, with the active
4 support of DHS, filed its Verified Complaint in the Superior Court of California, County of Los
5 Angeles, North Central Division (case number EC 044516) alleging, *inter alia*, breach of contract
6 and conversion, and requesting the appointment of a receiver (the "State Court Complaint"). The
7 bases for this Motion and the bases for Bridge's request for appointment of a receiver include,
8 among other things, the following:

9
10 (a) The Debtors' failure to comply with the minimum health care compliance
11 requirements under California law, including, without limitation, their continuing failures to
12 correct significant quality of care and elder abuse issues and deficiencies at the facilities cited by
13 DHS. Several such issues have been determined to place the over 2800 elderly residents of the
14 Debtors' facilities in "immediate jeopardy" or under "substandard care", including Debtors'
15 failures to provide an environment free from medical errors, sexual abuse, and neglect. Bridge
16 discovered this from information provided by Hohn Guiliano of JJ Guiliano and Associates.
17 Bridge hired Mr. Guiliano in late 2006 to conduct a Survey and Regulatory Compliance Due
18 Diligence on 29 of Debtors' nursing homes. Mr. Guiliano provided Bridge with a Report, dated
19 March 17, 2007, in which Mr. Guiliano reports his findings that, among other things, the Debtors
20 are providing substandard care to the patients. Mr. Guiliano's Declaration and Report are attached
21 to the Andrews Declaration as Exhibit 18. Mr. Guiliano's findings are supported by a report by
22 DHS which found 3 recent category AA regulatory violations in the Debtors' facilities. A copy of
23 the DHS Report is attached as Exhibit 34 to the Declaration of Joyce Johnston (the "Johnston
24 Declaration"). A copy of the Johnston Declaration is being filed contemporaneously herewith.
25 Category AA regulatory violations are "where serious lapses in the minimum standard of quality
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1 of health care were determined by [DHS] to have been a direct proximate cause of the patient's
2 death." Johnston Declaration ¶ 8. The DHS Report also evidences 4 category A regulatory
3 violations in the Debtors' facilities. Category A regulatory violations are "where serious lapses in
4 the minimum standard of quality of health care were determined by [DHS] to present imminent
5 danger or substantial probability of death or harm to residents." Johnston Declaration ¶ 9.

6
7 (b) The de-certification of three of the Debtors' facilities. At some time prior
8 to the most current Forbearances, as a result of the Debtors' failure to meet minimum federal
9 standards for certification to receive Medi-Cal and Medicare reimbursements, three of the
10 Debtors' facilities were de-certified, the effect of which is that Medi-Cal and Medicaid will no
11 longer pay for services provided by these three facilities. Bridge discovered this information from
12 Mr. Guiliano after the Forbearances were executed. The Debtors delayed and failed to disclose to
13 Bridge that these facilities had been de-certified and that the license to operate one additional
14 facility had been suspended. As a result of the Debtors' concealment of this information, Bridge
15 continued to lend money to Debtors relying on the anticipated receivables from these four
16 facilities.

17
18 (c) The Debtors' failure to pay March rent to most, if not all, of the facility
19 landlords. In early March 2007, Mr. Graff of Silverman & Associates informed Bridge that
20 Debtors had not paid the rent due for March, 2007 on its facilities. A copy of Mr. Graff's
21 Declaration is being filed contemporaneously herewith (the "Graff Declaration"). In addition, Mr.
22 Graff informed Bridge that Emmanuel Barnabe, President of the Debtors, admitted to him that
23 Debtors had failed to pay their rent for March of 2007. See Andrews Declaration ¶ 25(f).

24
25 (d) Debtors failure to pay payroll taxes of approximately \$8.5 million owed to
26 the State of California for the months of October, 2006 through January, 2007. Mr. Graff of
27 Siverman & Associates, and not the Debtors, informed Bridge of the Debtors' failure to pay
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1 payroll taxes of approximately \$8.5 million owed to the State of California for the months
2 October, 2006 through January, 2007. See Andrews Declaration ¶ 25(g).

3 (e) Debtors Pleasant and SNF failure to pay California Bed Tax of \$3.5 million
4 from 2005 to present. In March, 2007, Mr. Graff, and not the Debtors, informed Bridge of the
5 Debtors' failure to pay the Bed Tax. At the same time, Mr. Graff informed Bridge that the
6 Debtors had also failed to pay approximately \$500,000 in union dues. Debtors never disclosed to
7 Bridge that they had not paid these taxes or union dues. See Andrews Declaration ¶ 25(h)

8 (f) The Debtors' failure to pay critical utility providers. Prior to the Petition
9 Date, California utility providers issued shut-off notices for critical utilities that are vital and
10 necessary for the safety and welfare of the residents. The utilities threatened to terminate utility
11 service to the Debtors' facilities due to their continued nonpayment of amounts owed the utility
12 providers, and will likely require sizable deposits from the Debtors as a result of the bankruptcy
13 filing. Graff Declaration ¶ 6(d).

14 (g) The Debtors' failure to provide the State of California with all documents
15 necessary to complete a compliance review and survey of all of the nursing homes owned,
16 operated and managed by Debtors for 2005 and 2006. Bridge discovered Debtors' failure to
17 produce all necessary documents from Mr. Guiliano, and not from the Debtors. See Andrews
18 Declaration ¶ 25(j).

19 4. In addition to the foregoing, Bridge discovered through its own investigation that
20 the Debtors had been sued in approximately 40 state and federal court lawsuits relating to elder
21 abuse, unlawful business practices, wrongful death, personal injury, medical malpractice and fraud
22 and that two civil judgments had been entered against Pleasant. Andrews Declaration ¶ 25(c).

23 5. The foregoing list of defaults is not exhaustive. For example, since the Petition
24 Date Bridge has learned:
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1 (a) Prior to the Petition Date the Debtors were in arrears to a critical nursing
2 supply vendor, Twin Med, who has cut the Debtors off and is no longer delivering needed nursing
3 supplies to the facilities. Likewise, the Debtors are similarly in arrears to a critical food vendor,
4 Sysco, and is in danger of having food deliveries cut off as well. Graff Declaration ¶ 6(b).

5 (b) The workers' compensation insurance coverages for the Debtors will expire
6 on March 31, 2007 and the companies do not have sufficient cash flow to pay the approximate
7 \$300,000 deposit required to renew the workers' compensation insurance for their approximately
8 4,000 employees. Graff Declaration ¶ 6(h).

9 6. Despite the foregoing, the Debtors continue to pay on luxury car leases for the
10 senior management and their family members. The Debtors are currently spending approximately
11 \$24,000 per month to lease 13 relatively new BMW's, Mercedes, Lexus and Lincoln Navigators
12 for management and family. Graff Declaration ¶ 6(k):

13 7. There were also additional defaults under the Loan Documents which preceded the
14 Forbearances, including, without limitation, the transfer by the Debtors of approximately \$1.0
15 million to an account Debtors maintained at East West Bank. Debtors did not obtain Bridge's
16 permission to transfer such funds and did so without notifying Bridge. Bridge discovered the
17 transfer through one of its internal auditors when they performed during a routine quarterly review
18 of the Debtors' books and records. Andrews Declaration ¶ 25(d).

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22 **REQUEST FOR APPOINTMENT OF CHAPTER 11 TRUSTEE, OR, IN THE
ALTERNATIVE, AN EXAMINER**

23 8. Section 1104(a) provides in pertinent part:

24 (a) At any time after the commencement of the case but before confirmation of
25 a plan, on request of a party in interest or the United States trustee, and after notice
26 and a hearing, the court shall order the appointment of a trustee--

27 (1) for cause, including fraud, dishonesty, incompetence, or gross
28 mismanagement of the affairs of the debtor by current management,

1 either before or after the commencement of the case, or similar
2 cause,...;

3 (2) if such appointment is in the interest of creditors, any equity
4 security holders, and other interests of the estate, without regard to
5 the number of holders of securities of the debtor or the amount of
6 assets or liabilities of the debtor; or

7 (3) if grounds exist to convert or dismiss the case under section
8 1112, but the court determines that the appointment of a trustee or
9 examiner is in the best interests of creditors of the estate.

10 Whether "cause" exists is not limited to the enumerated grounds in 1104(a)(1), but, instead, "is
11 within the discretion of the Court and due consideration must be given to the various interests
12 involved in the bankruptcy proceeding." *In re Bellevue Place Assoc.*, 171 B.R. 615, 623 (Bankr.
13 N.D. Ill. 1994). Stated another way, cause covers myriads of actions of the debtor, and can be
14 found simply where appointment is in the interests of creditors. *See In re Oklahoma Refining Co.*,
15 838 F.2d 1133, 1136 (10th Cir. 1988). "Section 1104 represents a potentially important protection
16 that the court should not lightly disregard or encumber with overly protective attitudes towards
17 debtors-in-possession." *See Bellevue Place*, 171 B.R. at 623 (citing *In re Savino Oil & Heating*
18 *Co., Inc.*, 99 B.R. 518, 525 (Bankr.E.D.N.Y. 1989). Moreover, where cause exists, the court's
19 appointment of a trustee is mandatory. *See Oklahoma Refining Co.*, 838 F.2d at 1136.

20 **"Cause" exists to appoint a trustee in these cases based upon the gross mismanagement of
21 the Debtors financial affairs by the Debtors.**

22 9. The Debtors' actions described in paragraph 4 above and further discussed in the
23 Johnston Declaration have put the residents of all of the Debtors' facilities at substantial risk and
24 demonstrate, at best, gross mismanagement of the Debtors' nursing home facilities. At three
25 facilities, the Debtors have been unable to provide care to their residents in accordance with even
26 the bare minimum federal standards for certification to receive Medi-Cal and Medicare
27 reimbursement and a fourth facility has lost its license. Because, on information and belief, nearly
28 all of the elderly residents of the de-certified facilities are Medi-Cal or Medicare eligible, the

1 failure to meet certification standards means that these three facilities have received virtually no
2 payment for services during the period of noncompliance. Despite this fact, the Debtors have
3 elected to continue business as usual in these de-certified facilities with no realistic likelihood of
4 being reimbursed by Medi-Cal or Medicare.

5
6 10. Because the Debtors are run essentially as one integrated business, the Debtors'
7 election to continue to operate three de-certified facilities has caused a significant drain on the
8 Debtors' resources overall and may lead to an inability of the Debtors to provide sufficient staff,
9 food, medications and supplies and other essential services not only at the de-certified and
10 unlicensed facilities, but at all of their facilities. See Johnston Declaration ¶¶ 4-5. If this happens,
11 it may become necessary to transfer such residents to other facilities where they can receive
12 adequate care, risking a traumatic mass relocation of these elderly residents. See Johnston
13 Declaration ¶ 6.

14
15 11. DHS has expressed serious concern about the harmful effects of an abrupt and
16 involuntary transfer of such elderly residents. As noted by Ms. Johnston, "[t]he emergency
17 relocation of nursing home residents is a traumatic and tragic event, no matter how compelling the
18 necessity." Johnston Declaration, ¶ 11.

19
20 Nursing home residents are, by definition, a fragile, vulnerable,
21 dependant population. Almost certainly, in a group of 3,200
22 residents, some of them will die, either during the emergency
23 relocation process, or soon afterward. Some experts believe that the
24 death rate accompanying such a traumatic relocation can be as high
25 as 25%, during the move itself and the ensuing days or weeks. Such
26 deaths may or may not be the direct result of an emergency
27 relocation, but no one who has been involved in such a process
28 would deny that it was an extremely upsetting experience.

Johnston Declaration, ¶ 14.

1 DHS and Bridge agree that the best way to avert the possibility of an emergency relocation of the
2 elderly residents of these facilities is through the immediate appointment of a chapter 11 trustee to
3 replace the Debtors' current management.

4 12. Finally, the Debtors' efforts to conceal from Bridge (a) the de-certification of three
5 of their facilities and the license suspension of fourth facility, and (b) approximately 40 lawsuits
6 and 2 judgments against Debtors has not only severely jeopardized Bridge's collateral, but called
7 into question the honesty of Debtors' officers. Without having knowledge of the de-certifications,
8 Bridge continued to fund Debtors as if all of such facilities were open, operating, and generating
9 revenue for Debtors. Such officers should not now be allowed to manage these facilities as
10 fiduciaries for the creditors of these estates.

11 **Appointment of a trustee is in the best interests of the creditors of these estates.**

12 13. A court need not find "cause" in order to appoint a trustee. Pursuant to 11 U.S.C.
13 §1104(a)(2), the court has wider discretion and the standards are even more flexible than those
14 under §1104(a)(1). *See e.g. Tradex Corp. v. Phoebe Morse*, 339 B.R. 823, 829 (D. Mass.
15 2006)("The bankruptcy court appears to enjoy even more sweeping discretion under subsection
16 (a)(2)"); *Oklahoma Refining Co.*, 838 F.2d at 1136 ("It is clear, both from the language of the
17 stated and established case law, that the court need not find any of the enumerated wrongs in order
18 to find cause for appointing a trustee."); *see also Bellevue Place*, 171 B.R. at 623; *see also In re*
19 *Colorado-Ute Electric Assoc., Inc.*, 120 B.R. 164, 176 (Bankr.D.Col. 1990) ("As to whether the
20 appointment of a trustee is in the best interest of creditors pursuant to Section 1104(a)(2), the court
21 should eschew rigid absolutes and look to the practical realities and necessities.") (citations
22 omitted).

23 14. In applying their discretion to authorize the appointment of a Chapter 11 Trustee,
24 some courts have considered the following factors:
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- (a) The trustworthiness of the debtor;
- (b) The debtors' past and present performance and prospects for rehabilitation;
- (c) The confidence, or lack thereof, of the business community and creditors in present management; and
- (d) The benefits derived by appointment of a trustee, balanced against the costs of appointment.

Colorado-Ute, 120 B.R. at 176 (citations omitted). Indeed, it is enough that appointment of a Chapter 11 trustee is in the "interest of the estate generally, which can mean that there may be competing interests that weigh for and against the appointment." *In re Sanders*, 2000 WL 329574, *5 (Bankr.N.D.Ill 2000); *see also Tradex*, 339 B.R. at 829 ("an appointment court need find the factual predicates-- "cause" or best interests of relevant parties—by only a preponderance of the evidence").

15. In light of the foregoing, there can be no doubt that the appointment of a trustee in these cases is in the best interests of the residents of the Debtors' facilities and the creditors of the Debtors' estates. The current management of these Debtors have demonstrated an utter inability or unwillingness to address the serious healthcare compliance issues in at least 4 of their facilities, and have put the health and welfare of all 2,800 elderly residents of their facilities at risk. In addition, management has shown a willingness to deceive creditors when such deception suits their purposes. The Debtors' current management no longer have the confidence of significant parties in interest in these cases, including Bridge and DHS.

WHEREFORE, for the all the reasons set forth above, Bridge respectfully requests that this Court appoint a Chapter 11 Trustee and grant such other and further relief as this Court deems just and equitable under the circumstances.

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DATED: March 26, 2007

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