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6 Unsecured Claims

7
8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **LOS ANGELES DIVISION**

11 In re:
12 PLEASANT CARE CORPORATION, *et al.*,
13 Debtors.

- 14 Affects All Debtors
15 Affects Pleasant Care Corporation Only
16 Affects SNF Properties Incorporated Only
17 Affects PCC Health Services, Inc. Only
18 Affects Atlas Care Enterprises, Inc. Only
19 Affects Ember Care Corporation Only
20

Case No.: LA 07-12312-EC

Jointly Administered with Case Nos.

LA 07-12322-EC
LA 07-12319-EC
LA 07-12326-EC
LA 07-12316-EC

Chapter 11

**NOTICE OF MOTION AND MOTION OF
COMMITTEE OF CREDITORS HOLDING
UNSECURED CLAIMS FOR ORDER
APPROVING PROTOCOL PURSUANT TO
SECTION 1102(b)(3) OF THE
BANKRUPTCY CODE**

[NO HEARING REQUIRED PURSUANT TO
L.B.R. 9013-1(g)(1)(N)]

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23 **TO THE HONORABLE ELLEN CARROLL, UNITED STATES BANKRUPTCY JUDGE;**
24 **THE DEBTORS AND THEIR COUNSEL; THE OFFICE OF THE UNITED STATES**
25 **TRUSTEE; ALL PARTIES REQUESTING SPECIAL NOTICE; AND ALL SECURED**
26 **CREDITORS:**

27 **PLEASE TAKE NOTICE THAT** the Committee of Creditors Holding Unsecured Claims
28 (the "Committee") appointed in the above-referenced cases of Pleasant Care Corporation and its

1 related Debtors (the “Debtors”) will and hereby does move (the “Motion”) for entry of an order
2 pursuant to Sections 105(a), 107(b), and 1102(b)(3)(A) of the Bankruptcy Code, Rule 9018 of the
3 Federal Rules of Bankruptcy Procedure, and Local Bankruptcy Rule 9013-1(g)(1)(N), approving the
4 Committee’s adoption of certain information sharing procedures pursuant to Section 1102(b)(3)(A)
5 of the Bankruptcy Code.

6 **PLEASE TAKE FURTHER NOTICE THAT** through the Motion the Committee requests
7 an order of the Court confirming that (1) Section 1102(b)(3)(A) of the Bankruptcy Code does not
8 authorize or require the Committee to provide access to each and every piece of Confidential
9 Information or Privileged Information to any creditor that the Committee represents and (2) the
10 Committee satisfies its duties under the “information access” prong and the “comment solicitation”
11 prong of Section 1102(b)(3) by creating, at *de minimis* cost, a web page posted on, and accessible
12 via the existing internet site of the Committee’s counsel, Pachulski Stang Ziehl Young Jones &
13 Weintraub LLP.

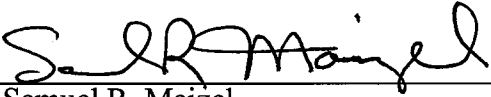
14 **PLEASE TAKE FURTHER NOTICE THAT** the web page will contain (a) links to public
15 sources for pleadings and other case information (such as PACER and this Court’s internet site),
16 (b) documents that can be downloaded or viewed using the Adobe Acrobat reader, (c) links to email
17 addresses for Committee Counsel to whom questions or information requests may be directed, and
18 (d) periodic updates or reports to creditors generally; the website is already created and can be
19 accessed at www.pszyjw.com.

20 **PLEASE TAKE FURTHER NOTICE THAT**, pursuant to Local Bankruptcy
21 Rule 9013-1(g), unless otherwise set forth by an order of the Court, any party responding in
22 opposition to this Motion shall have 15 days after service within which to serve and file a response
23 and to request a hearing thereon.
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1 **PLEASE TAKE FURTHER NOTICE THAT** the Court may, without a hearing, grant the
2 requested relief at the Committee's request if no timely opposition and request for hearing is served
3 and filed.

4 Dated: April 9, 2007

PACHULSKI STANG ZIEHL YOUNG
JONES & WEINTRAUB LLP

6 By 
7 Samuel R. Maizel
8 Proposed Attorneys for the Committee of
9 Creditors Holding Unsecured Claims

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **JURISDICTION**

3 1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334.
4 Venue of this case and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

5 2. The statutory predicates for the relief sought herein are Sections 105(a), 107(b), and
6 1102(b)(3) of the Bankruptcy Code¹ and Rule 9018 of the Federal Rules of Bankruptcy Procedure
7 (the “Bankruptcy Rules”).

8 **FACTS**

9 3. On March 22, 2007, Pleasant Care Corporation; Ember Care Corporation; PCC
10 Healthcare Services, Inc.; SNF Properties, Inc.; and Atlas Care Enterprises, Inc. (collectively, the
11 “Debtors”), filed voluntary petitions under chapter 11 of the Bankruptcy Code, in the United States
12 Bankruptcy Court for the Central District of California, Los Angeles Division (the “Bankruptcy
13 Court”), which cases are jointly administered under the title *In re Pleasant Care Corporation*, Case
14 No. 07-12312-EC (the “Case”).

15 4. On March 29, 2007 the United States Trustee appointed the Committee of Creditors
16 Holding Unsecured Claims (the “Committee”), which is composed of the following members:
17 Comprehensive Therapy; Dairy King; Healthcare Services Group, Inc.; Twin Med LLC; and SEIU,
18 United Healthcare Workers West.

19 5. On April 20, 2007 the Committee filed an Application To Employ Pachulski Stang
20 Ziehl Young Jones & Weintraub LLP (the “Committee Counsel”) as Counsel to the Committee.

21 6. The Committee, which was appointed under Section 1102(a), is required to “provide
22 access to information for creditors who (i) hold claims of the kind represented by th[e] committee;
23 and (ii) are not appointed to the committee[.]” 11 U.S.C. § 1102(b)(3)(A). Additionally, the
24 Committee must “solicit and receive comments from the creditors described in subparagraph (A)[.]”
25 11 U.S.C. § 1102(b)(3)(B).

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28 ¹ All references to “Section” herein are to sections of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1530,
as amended.

1 A. **The Committee’s Requirement to “Solicitation and Receive Comments” And**
2 **Provide Access to Information Can Be Satisfied Through a Dedicated Web Page**

3 10. Section 1102(b)(3) does not specifically address how a committee should “solicit and
4 receive comments” from its constituents nor how it should “provide access to information” to its
5 constituents. The Committee proposes to satisfy these statutory requirements by creating and
6 maintaining a web page, accessible via the Committee Counsel’s existing internet site, dedicated to
7 the *Pleasant Care Corporation Creditors’ Committee*. This web page will contain (a) links to public
8 sources for pleadings and other case information (such as PACER and this Court’s internet site),
9 (b) documents that can be downloaded or viewed using the Adobe Acrobat reader, (c) links to email
10 addresses for Committee counsel to whom questions or information requests may be directed, and
11 (d) periodic updates or reports to creditors generally. In each instance, as discussed below, only
12 non-confidential and non-privileged information would be made available to unsecured creditors.
13 The web page, in anticipation of this Motion, is already created and can be accessed at
14 www.pszyjw.com.

15 11. The web page will fulfill the Committee’s duty to solicit and receive comments from
16 its constituency by providing a convenient method for unsecured creditors to review materials
17 related to the status of the case and submit questions to the Committee Counsel via electronic mail.
18 The web page will fulfill the Committee’s obligation to provide access to information by posting at
19 an easily accessible web page important documents and periodic updates on the status of the case.
20 The Committee Counsel has already used this procedure in many cases, including *In re Western*
21 *Medical* and *In re West Contra Costa Health Care District*.

22 12. Based on the Committee Counsel’s experience in prior cases, the cost of creating and
23 maintaining the web page is *de minimis*. If and to the extent the creation of the web page dedicated
24 to the Committee results in additional expenses to Committee Counsel, the Committee Counsel will
25 seek reimbursement from the Debtors for such expense in accordance with the normal procedures for
26 reimbursement of expenses.
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1 **B. Access to Confidential and or Privileged Information Should Be Limited**

2 13. Section 1102(b)(3)(A) requires that the Committee provide access to information it
3 obtains. In its extreme, Section 1102(b)(3)(A) could be read as requiring a committee to provide
4 access to all information provided to it by a debtor, or developed through exercise of its investigative
5 function, regardless of whether the information is confidential, privileged, proprietary or material
6 non-public information and regardless of whether disseminating such information implicates
7 securities laws disclosure requirements.

8 14. As is typical, the Committee expects that the Debtors will share Confidential
9 Information and may, in instances where a joint defense is appropriate, also share Privileged
10 Information with the Committee in connection with this case. The Committee will also assemble its
11 own Confidential Information and/or Privileged Information.²

12 15. Section 1102(b)(3)(A)'s information sharing requirement raises the issue of whether
13 the Committee could be required to share Confidential Information or Privileged Information with
14 any and all unsecured creditors. The Committee will use the Confidential Information and
15 Privileged Information to assess and analyze, among other things, the Debtors' strategies in the case,
16 the prospects for the Debtors' business, and the alternatives that are available to maximize returns to
17 unsecured creditors. If there were a risk that the Debtors' Confidential Information given to the
18 Committee would have to be turned over to all creditors, the Debtors would be extremely reluctant
19 to give Confidential Information to the Committee in the first place. The Debtors might conclude
20 that it could not give such information to the Committee at all. The inability of the Committee to
21 gain access to Confidential Information, in turn, would limit the ability of the Committee to fulfill its
22 statutory obligations under the Bankruptcy Code. Hence, maintaining the confidentiality of
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24 ² For purposes of this Motion, the term "Confidential Information" means any non-public or proprietary
25 information of the Debtors or the Committee, including, without limitation, information concerning the Debtors' assets,
26 liabilities, business operations, projections or analyses. Confidential Information would not, however, include
27 information that: (i) is or becomes generally available to the public or is or becomes available to the Committee on a
28 non-confidential basis, in each case to the extent that such information became so available other than by a violation of a
contractual, legal, or fiduciary obligation to the Committee or the Debtors; or (ii) was in the possession of the Committee
prior to its disclosure by the Debtors and is not subject to any other duty or obligation to maintain confidentiality. The
term "Privileged Information" means any information that is subject to the attorney-client or attorney work product
privilege, whether such privilege is solely controlled by the Committee or is a joint privilege with the Debtors or some
other party.

1 Confidential Information and Privileged Information is critical for the Committee to adequately
2 perform its duties in this case.

3 16. Public dissemination of Confidential Information could also harm the Debtors'
4 estates. Among other things, the Debtors' business strategies and intended initiatives would become
5 known to the Debtors' competitors, thereby allowing such competitors to adjust to the Debtors'
6 plans and reduce or eliminate value of such initiatives to the estate. In addition, the Debtors' other
7 Confidential Information, such as employee information, and patient records, is sensitive in nature,
8 and public disclosure of such information would cause serious problems for the Debtors, as well as
9 potentially violate federal and state privacy laws.

10 17. The Committee believes that Section 1102(b)(3) was intended to expand the
11 involvement of unsecured creditors in chapter 11 cases. In this regard, however, Congress could not
12 have intended for a committee to be required to provide unfettered access to every type and kind of
13 information that a committee receives from a debtor or assembles on its own. If this had been the
14 intention, Section 1102(b)(3) would frustrate numerous provisions of the Bankruptcy Code.

15 18. For example, Section 107(b)(1) provides that "on request of a party in interest, the
16 bankruptcy court shall . . . protect an entity with respect to trade secret or confidential research,
17 development, or commercial information."³ Section 107(b)(1) is mandatory. *Video Software*
18 *Dealers Ass'n v. Orion Pictures Corp.*, 21 F.3d 24, 27 (2d Cir. 1994) (providing that the protections
19 of Section 107(b)(1) are mandatory upon request). As a result, under Section 107(b)(1) and
20 Bankruptcy Rule 9018, this Court is empowered to protect the Committee from having to release
21 Confidential Information or Privileged Information to general creditors. The Court has further
22 authority under Section 105(a) to issue any order, process or judgment that is necessary or
23 appropriate to carry out the provisions of the Bankruptcy Code. Protecting the release of
24 Confidential Information and Privileged Information is necessary to accomplish that purpose.

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27 ³ Section 107(b)(1) is further supported by Bankruptcy Rule 9018, which states, in relevant part, that "on motion
28 or on its own initiative, with or without notice, the court may make any order which justice requires to protect the estate
or any entity in respect of a trade secret or other confidential research, development, or commercial information . . ."
Fed. R. Bankr. P. 9018.

1 19. The disclosure of nonpublic or privileged information to unsecured creditors will
2 impede the ability of the Committee to perform its statutory function in these cases and could
3 prejudice the Debtor’s ability to reorganize its affairs. Given the importance of this issue, the
4 Committee seeks an order of the Court confirming that Section 1102(b)(3)(A) does not authorize or
5 require the Committee to provide access to each and every piece of Confidential Information or
6 Privileged Information to any creditor that the Committee represents. There are few decisions on
7 this relatively new provision of the Bankruptcy Code, but generally courts are issuing orders at the
8 request of creditors’ committees that provide that such committees are not required to disseminate,
9 without further order of the court, confidential, proprietary or other nonpublic information. *In re*
10 *Refco, Inc.*, 336 B.R. 187, 200-03 (Bankr. S.D.N.Y. 2006) (Section 1102(b)(3) does not require the
11 dissemination of confidential information or such information that would constitute a breach of
12 attorney-client privilege.); *see also In re Independence Air (FLYi Inc.)*, Case No. 05-2011 (Bankr.
13 Del., Walrath, J.) (filed Nov. 7, 2005), *Order Setting Forth Procedures for Sharing of Information*
14 *by Creditors’ Committee Pursuant to Section 1102(b)(3)(A) of the Bankruptcy Code*, dated Nov. 17,
15 2005 (Docket No. 145); *In re Dana Corp.*, Case No. 06-10354 (Bankr. S.D.N.Y., Lifland, J.) (filed
16 Mar. 3, 2006), *Order Pursuant to Sections 105(a), 107(b), and 1102(b)(3)(A) of the Bankruptcy*
17 *Code, Confirming that Official Committees are not Authorized or Required to Provide Access to (A)*
18 *Confidential Information of the Debtors or (B) Privileged Information*, dated Mar. 29, 2006 (Docket
19 No. 737); David S. Kupetz, *Comfort Zone*, *The Los Angeles Lawyer*, April 2007, at 22 (discussing
20 the history of Section 1102(b)(3) and the use of “comfort orders” by courts and committees to deal
21 with the obligations imposed by that section).

22 **C. Use of Motion Without a Required Hearing Pursuant to LBR 9013-1(g)(1)(N)**

23 20. Resolution of these issues by motion without need for a hearing under LBR 9013-
24 1(g)(1)(N) is appropriate. These issues are non-confrontational and creditors are not likely to object.
25 The process described herein has been used in many pending and past bankruptcy cases. Finally, not
26 requiring a hearing will reduce the estates’ administrative expenses.

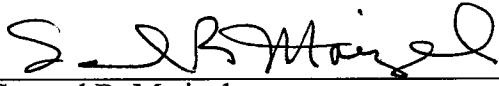
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CONCLUSION

WHEREFORE, the Committee respectfully requests that the Court enter an order, pursuant to Sections 105(a), 107(b)(1), and 1102(b)(3) and Bankruptcy Rule 9018, confirming that (1) the Committee fulfills its obligations under Section 1102(b)(3) by establishing the web page described herein, and (2) Section 1102(b)(3)(A) does not authorize or require the Committee to provide access to Confidential Information or Privileged Information to any creditor that the Committee represents.

Dated: April 19, 2007

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By 
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Proposed Attorneys for the Committee of
Creditors Holding Unsecured Claims

