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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

v.

ROYALWOOD CARE CENTER, LLC; FOUNTAIN VIEW SUBACUTE AND NURSING CENTER, LLC; SKILLED HEALTHCARE, LLC; FOUNTAIN VIEW HOLDINGS, INC.; FOUNTAIN VIEW MANAGEMENT, INC.; FOUNTAIN VIEW SUBACUTE NURSING CENTER, INC.; FOUNTAIN VIEW THERAPY SERVICES, INC.; THE ROYALWOOD CONVALESCENT HOSPITAL, INC.; SKILLED HEALTHCARE GROUP, INC.; SUMMIT CARE CORP.; SUMMIT CARE-CALIFORNIA, INC.; SUMMIT CARE PHARMACY, INC.; SUMMIT CARE TEXAS EQUITY, INC.; SUMMIT HEALTH CARE, INC.; AND SUMMIT CARE, INC.,

Defendants.

CV 05-6795 ABC (PLAx)

ORDER RE: DEFENDANTS SKILLED HEALTHCARE GROUP, INC., SKILLED HEALTHCARE, LLC, SUMMIT CARE CORP., SUMMIT CARE PHARMACY, INC., FOUNTAIN VIEW SUBACUTE AND NURSING CENTER, LLC, AND FOUNTAIN VIEW SUBACUTE AND NURSING CENTER, INC.'S MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT

Pending before the Court is Defendants Skilled Healthcare Group, Inc., Summit Care Corporation, Summit Care Pharmacy, Inc., Fountain View Subacute and Nursing Center, LLC, and Fountain View Subacute and Nursing Center, Inc.'s (collectively, "Defendants'") Motion for Summary Judgment, or, in the Alternative, Partial Summary Judgment, filed on July 30, 2007. Plaintiff U.S. Equal Employment Opportunity Commission ("Plaintiff") opposed on August 6, 2007 and Defendants replied on August 13, 2007. The Court finds this matter appropriate for resolution without oral argument and VACATES the March 3, 2008 hearing date. See Fed. R. Civ. P. 78; Local Rule 7-15. Having considered the arguments of the parties and case file in this matter, the Court rules as follows.

I. INTRODUCTION AND FACTUAL BACKGROUND[1]

Plaintiff has brought this case against myriad Defendants to challenge two English-only policies in force at various times in facilities to which Defendants are allegedly related. Without raising the ultimate (and dispositive) question of discrimination, Defendants have brought this non-dispositive motion to adjudicate whether they can be held liable even if Plaintiff proves discrimination. The facts are complicated and strenuously disputed and the parties cannot agree on the applicable law. Although the Court can determine the applicable law easily enough, the Court finds it necessary to outline in detail below the facts as presented by the parties and why summary adjudication is inappropriate on most of the points advanced by Defendants.

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[1]The parties strenuously object to and dispute many of the facts discussed infra. The Court will note those objections that have merit and will note the factual disputes throughout.

A. Plaintiff's Claims

Plaintiff alleges that "Defendants have engaged in unlawful employment practices at their Torrance, California location in violation of Section 703 of Title VII, 42 U.S.C. § 2000e-2, by subjecting Jose Zazueta and the class of similarly situated individuals to discrimination in the compensation, terms, conditions and privileges of their employment based on their Hispanic national origin." (First Amended Complaint ("FAC") ¶ 11.)[2] The alleged discrimination included (a) requiring "Zazueta and the class of similarly situated individuals, all of whom speak Spanish as their primary language, [to] speak only English at all times while on the premises of Defendants"; (b) enforcing the language policy against the alleged class, but not non-Hispanic employees; (c) disciplining the alleged class for speaking Spanish on the premises; and (d) terminating Zazueta for speaking Spanish on the premises. (Id.) Plaintiff challenges two English-only policies, one in force before 2001 and one implemented in 2004. (Defendants' Statement of Undisputed Facts ("SUF") No. 4.)[3]

B. Defendants' Bankruptcy and the Formation of New Entities

When the first policy was in effect up until 2001, Defendant Fountain View, Inc. managed myriad operations of its subsidiaries, including Summit Care-California, Inc. dba Royalwood Care Center.

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[2]Despite this language, Plaintiff argues that the scope of the case is broader than simply the Torrance, California facility. The Court discusses this contention infra.

[3]Unless otherwise noted, the Court takes both Defendants' alleged undisputed facts and Plaintiff's genuine issued from Defendants' Reply to EEOC's Amended Statement of Genuine Issues of Material Facts. That document contains all facts and objections provided by all parties.

(Plaintiff's Statement of Genuine Issues ("GI") Nos. 52-64.) For example, Fountain View, Inc. provided human resources functions to all of the skilled nursing and assisted living facilities owned and operated by its subsidiaries, such as Summit Care-California, Inc. dba Royalwood Care Center. (GI No. 52.) Fountain View, Inc. also provided an identical employee handbook to all subsidiary facilities, which contained the same policies and rules governing day-to-day conduct in the workplace. (Id. No. 54.) Although Plaintiff asserts various other activities at subsidiaries that were managed by Fountain View, Inc. prior to the bankruptcy, these allegations appear largely irrelevant; Defendants do not seek dismissal of Defendant Fountain View, Inc. in this motion.

At this time, Summit Care-California, Inc. dba Royalwood Care Center conducted its operations at the Torrance, California location. (SUF No. 3, 6.) However, on October 2, 2001, Fountain View, Inc., along with certain of its affiliates, filed voluntary Petitions for Relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the Central District of California. (Id. No. 30.) On July 10, 2003, the Bankruptcy Court found that the requirements for confirmation set forth in Bankruptcy Code for the Debtors' Third Amended Joint Plan of Reorganization dated April 22, 2003 were satisfied, and ordered confirmation of the Plan. (Id.) August 19, 2003 was the effective date of the plan and the Bankruptcy Court entered a Discharge Order on August 20, 2003. (Id.)

In August 2003, when Fountain View, Inc. and its affiliated entities emerged from bankruptcy, every skilled nursing and assisted living facility previously constituting a subsidiary was reconstituted as either a limited liability company or a limited partnership. (GI

No. 70.) For those that became limited liability companies, the sole member/owner became Defendant Summit Care Corp. (Id.) For those that transformed into limited liability partnerships, the limited partner became Summit Care Corp. and the general partner became a limited liability company which has Summit Care Corp. as its sole member. (Id. No. 71.) Summit Care Corp. itself is wholly owned by Defendant Skilled Healthcare Group, Inc. (Id. No. 73.) Any "doing business as" facility was merged with Summit Care Corp., such as Summit Care California, Inc. (Id. No. 76.) Boyd Hendrickson and Roland Rapp were the signatories for each of the merging entities as CEO and Secretary for each, respectively. (Id. No. 77.)

1. Fountain View, Inc. and Skilled Healthcare Group, Inc.

Prior to the Bankruptcy Discharge Order, Defendant Fountain View, Inc. was a privately held company incorporated in the state of Delaware. (SUF No. 31.) On August 19, 2003, pursuant to the Bankruptcy Discharge, Fountain View, Inc. became a holding company with no operational functions and no employees and, in October 2003, Fountain View, Inc. changed its name to Skilled Healthcare Group, Inc. (Id.)

2. Summit Care Corp.

Defendants claim that Summit Care Corp. is a Delaware corporation that operates as a holding company with no employees and is a direct subsidiary of Skilled Healthcare Group, Inc. (Id. No. 32.) In reconstituting the subsidiaries as LLCs or LLPs, the limited liability agreements provide: "[Summit Care Corp.] shall have the right and authority to take all actions . . . which [it] otherwise deems necessary, useful or appropriate for the day-to-day management and conduct of the LLC's business and which are not otherwise specifically

reserved to the managers." (Id.)

3. Skilled Healthcare, LLC

Defendants assert that Skilled Healthcare, LLC was created as a separate entity that contracts with other companies to provide a range of administrative, consultative, and support services; it is a direct subsidiary of Skilled Healthcare Group, Inc and has no subsidiaries and no ownership interest in Royalwood Care Center, LLC. (Id. No. 34.)

4. Summit Care Pharmacy, Inc.

In June 2005, Summit Care Pharmacy, Inc. converted from a California corporation to a Delaware corporation and Defendants claim it has no employees and no operational functions. (Id. No. 33.)[4]

5. Royalwood Care Center, LLC

While Summit Care-California, Inc. dba Royalwood Care Center operated at the Torrance, California location prior to 2003, following the bankruptcy in July 2003, it was reorganized as Royalwood Care Center, LLC. (Id. No. 3.) Royalwood Care Center, LLC is incorporated in the State of Delaware and, as of August 2003, the business operated by Summit Care-California, Inc. at 22520 Maple Avenue in Torrance was transferred to Royalwood Care Center, LLC pursuant to the Plan of Reorganization for the bankruptcy of Fountain View, Inc. (Id. No. 8.) Royalwood also filed a change of ownership with the California Department of Health Services and the Center for Medicare and Medicaid Services to formally transfer the licenses and certifications to Royalwood Care Center, LLC. (Id.) Royalwood Care Center, LLC is a wholly-owned subsidiary of Summit Care Corporation and a wholly-owned

[4]As noted in Plaintiff's opposition, Plaintiff has not and does not oppose dismissal of Summit Care Pharmacy, Inc. as a Defendant.

indirect subsidiary of Skilled Healthcare Group, Inc. (Id. No. 9.)

Royalwood Care Center, LLC is a skilled nursing care facility which provides care to long-term and short-term patients and patients who need 24-hour nursing care and may be chronically ill, frail or experiencing a very slow recovery from an illness or injury. (Id. No. 5.) Royalwood Care Center, LLC also cares for short term patients recovering from major surgery, stroke, neurological and orthopedic conditions, or other illnesses and disabilities. (Id.) Mr. Zazueta was hired on February 21, 2001 by Fountain View, Inc. to work at the Torrance facility. (GI Nos. 48, 49.)

Royalwood Care Center, LLC's limited liability operating agreement — which established Royalwood Care Center, LLC and other subsidiaries as limited liability companies — vests in Summit Care Corp. authority over the day-to-day operations of the facilities at Summit Care Corp.'s discretion. (Id. No. 74.) By means of a resolution, Royalwood Care Center, LLC's members have delegated the authority to operate Royalwood Care Center, LLC to a governing body in accordance with federal regulations. (SUF No. 10.)

6. Fountain View Subacute and Nursing Center, LLC and Fountain View Subacute and Nursing Center, Inc.

Fountain View Subacute and Nursing Center, Inc. is the former name of Fountain View Subacute and Nursing Center, LLC, which changed its name and converted to an LLC in July 2004. (Id. No. 37.) It is now a Delaware limited liability company, a wholly-owned direct subsidiary of Summit Care Corp. and an indirect subsidiary of Skilled Healthcare Group, Inc.; it operates a separate facility from the Royalwood Care Center, LLC facility. (Id. No. 38.) Jose Zazueta was never employed by Fountain View Subacute and Nursing Center, LLC or

Fountain View Subacute and Nursing Center, Inc. (Id. No. 39.) Neither Fountain View Subacute and Nursing Center, LLC nor Fountain View Subacute and Nursing Center, Inc. has an ownership interest in Royalwood Care Center, LLC. (Id. No. 40.) Fountain View Subacute operates a skilled healthcare facility located at 5310 Fountain Avenue, Los Angeles, California; it does not have any employees in common with Royalwood Care Center, LLC, and it has its own governing body and its own Administrator. (Id. No. 47.)

C. The Management of Royalwood Care Center, LLC and Other Subsidiary Facilities

Defendants claim that the skilled nursing facilities like Royalwood Care Center, LLC are highly regulated and closely monitored by both state and federal agencies. For example, they assert that 42 C.F.R. section 483.75 sets forth specific licensing requirements for skilled nursing facilities, which requires them to comply with Federal, State, and local laws, as well as professional standards. 42 C.F.R. § 483.75(b) ("The facility must operate and provide services in compliance with all applicable Federal, States, and local laws, regulations, and codes, and with accepted professional standards and principles that apply to professionals providing services in such a facility."). Compliance with these regulations is allegedly monitored by state surveys. (SUF No. 11.)[5] Section 483.75(d) requires the creation of a "governing body" "that is legally responsible for establishing and implementing policies regarding the management and

[5]Defendants support the state-survey requirement with only testimony from Senior Vice President Kelly Atkins. The Court has trouble accepting this assertion without some additional legal or factual support, such as a citation to a statute or regulation, or even documents evidencing such monitoring.

operation of the facility" and that appoints a properly licensed administrator who is "[r]esponsible for management of the facility."

Allegedly pursuant to this regulation, Royalwood Care Center, LLC's governing body approves polices and procedures and the operational budget, appoints an Administrator, and delegates the day to day authority over the facility to the Administrator. (Id. No. 13, 19.) Defendants claim that Royalwood Care Center, LLC has its own independent human resources department, which initially handles any discrimination and/or harassment complaint internally. (Id. No. 28.) Royalwood Care Center, LLC's staff developer conducts internal training for Royalwood Care Center, LLC employees on issues such as harassment and discrimination. (Id. No. 29.) In addition, the staff developer handles employee orientation, which includes training on Royalwood Care Center, LLC's policies and procedures. (Id.)

Defendants claim Royalwood Care Center, LLC's Administrator is ultimately responsible for hiring, firing, disciplining, and scheduling Royalwood Care Center, LLC employees. (Id. No. 18.) In accordance with federal regulations, the Administrator is responsible for the operational and managerial control over the day-to-day operation of the facility. (Id. No. 16.) In order to qualify for state licensing, a skilled nursing facility Administrator must possess and demonstrate the skills required to independently manage a facility. Specifically, in order to be licensed, an Administrator must complete 1,000 hours in an Administrator-in-training program. (Id. No. 17.)

Many of Royalwood Care Center, LLC's activities, however, are undertaken with the involvement of Skilled Healthcare, LLC. According to Plaintiff, immediately after the reorganization, Skilled

Healthcare, LLC entered into administrative services agreements with all former Fountain View, Inc. subsidiaries. (GI No. 92.) Royalwood Care Center, LLC's governing body has the authority to revise, adopt, or reject the policies recommended by Skilled Healthcare, LLC. (SUF No. 24.) Under the administrative services agreements, Skilled Healthcare, LLC provides the following services: accounting and administrative services; auditing; business information and communications; employee fringe benefits review and products; cash management services; clinical consulting; corporate compliance services; bulk purchasing; managed care contracting; budgetary development and support; accounts payable and processing; reimbursement consulting; cost report preparation and audit representation; information systems and IT support; operational consulting and oversight support; design and decorating services; insurance review and insurance products; legal services; marketing systems and services; human resources development; public affairs; and tax preparation (federal income, state income, and local personal property and real estate). (GI No. 104.) Plaintiff also claims that Skilled Healthcare, LLC develops workplace policies for subsidiaries. (Id. No. 106.)

Although Defendants claim that the contract with Skilled Healthcare, LLC provides only outside expert consulting for the Administrator and protects against an Administrator's misuse of resources, Plaintiff believes that Skilled Healthcare, LLC has significantly more involvement in the day-to-day operations of Royalwood Care Center, LLC. (GI No. 36.) Even beyond these services, Skilled Healthcare, LLC's vice presidents of operations sit on each of the facilities' governing bodies as assistant chairpersons, along with

the senior vice president of operations, who continued to hold the title of chairperson of the governing body. (Id. No. 110.) Moreover, Plaintiff claims – and Defendants dispute – that Skilled Healthcare, LLC's human resources directors have an active presence at different facilities, spending approximately 60% of their time at the facilities under their purview. (Id. No. 111.) In contrast, Defendants assert that, in 2003, Skilled Healthcare, LLC employed only two human resources directors, each of whom provided human resources consulting to over 20 facilities each. Currently, just one human resources director is responsible for consulting with at least 40 facilities. (Id.) Yet, while Royalwood Care Center, LLC initially handles human resources-related complaints, if the issue is not resolved, it consults Skilled Healthcare, LLC's Human Resources and/or Legal Department for advice. (SUF No. 28.)

Further, while the Administrator prepares the facility's operational budget for approval by the governing body, (id. No. 21),[6] Skilled Healthcare, LLC has at least some involvement with these and other activities (id. No. 26). In fact, Skilled Healthcare, LLC employs a staff of accounts receivable field representatives to supervise the accounts receivable operations of the facilities. (GI No. 116.) The parties agree that, when services are performed by subsidiary companies within Skilled Healthcare Group, Inc. for the skilled nursing and assisted living facilities, no checks are written

[6]The Court sustains Plaintiff's objection that the Administrator "independently researches and recommends employee wage rates to the governing body for approval." (SUF No. 21.) The cited deposition testimony of Administrator Rita Simms does not support this contention. Similarly, the Court sustains Plaintiff's objections to Defendants undisputed facts number 22 and 23, since the cited evidence does not support them.

and no monies are actually transferred into the account of the service provider. (Id. No. 118.) Rather, the expense is noted in the accounts maintained by Skilled Healthcare, LLC's finance department. (Id.) Moreover, Defendants claim that all invoices must be approved and processed for payment by Royalwood Care Center, LLC's Administrator and that Skilled Healthcare, LLC pays them out of a Royalwood Care Center, LLC bank account. (Id. No. 27). However, testimony from Defendants' Rule 30(b)(6) witness clearly indicates that Royalwood Care Center, LLC's "separate account" is designated as such only for deposits, but "[t]hose funds are moved to a concentration account, and that's where payments are made from." (Dep. Tr. of Rule 30(b)(6) witness Bradley Gibson at 181:1-10.) Therefore, each facility has a separate depository account with Skilled Healthcare, LLC, but payments for services rendered by vendors not owned by Skilled Healthcare Group, Inc. are made from a single concentration account that holds the funds from all of the facilities. (GI No. 119.) Payroll is similarly paid from only a single account. (Id. No. 120.) Royalwood Care Center, LLC's tax return is also included with Skilled Healthcare Group, Inc.'s tax filing, although it is delineated. (Id. No. 42.)

In fact, Plaintiff asserts that, of the 70 or so contracting partners that Skilled Healthcare, LLC had from August 2003 to the present, only one was with a facility or entity not owned by Skilled Healthcare Group, Inc. (Id. No. 97.) Moreover, no facility has declined services offered by Skilled Healthcare, LLC in favor of using an outside vendor. (Id. No. 98.) Finally, a number of entities owned by Skilled Healthcare Group, Inc. provide services to subsidiary facilities, such as Southwest Payroll, LLC and Skilled Healthcare LLC,

both of which perform human resources and operational functions. (Id. No. 117.)[7]

Notably, the second language policy was created by Skilled Healthcare, LLC, in conjunction with revising multiple policies in the employee handbook. (Id. No. 126.) The vice president of human resources, with the human resources directors, created a draft that was then submitted for review to Skilled Healthcare, LLC's senior vice presidents of operations and legal counsel. (Id.) Thereafter, Skilled Healthcare, LLC rolled out a plan for the new policies, including obtaining approval from the governing bodies of each of the facilities, conducting four meetings with the administrators and directors of nursing of the facilities in the four regions to discuss changes from the old handbooks to the new ones, and delivering the handbooks to facilities. (Id.) None of the governing bodies recommended any changes to or rejected any of the new policies, even though they could have done so. (Id. No. 127.) Plaintiff asserts that there is no evidence that any governing body ever rejected any human resources-related policy change proposed by Skilled Healthcare, LLC. (Id. No. 128.)

D. Relationship Among Various Entities

Following the reorganization, the duties of Fountain View, Inc.'s Human resources department remained substantially the same, except: (1) prior to the reorganization, advice or consulting would be given to the facility administrator or Fountain View, Inc.'s vice president of operations, and after the reorganization, advice would still be

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[7]The evidence provided by Defendants does not support their claim that Royalwood Care Center, LLC's name appears on these paychecks as the employer. (SUF No. 25.)

given to those persons, but also might be given to the director of nursing of a given facility; and (2) prior to the reorganization, the human resources department could change policy if senior management at Fountain View, Inc. agreed, but after the reorganization, Skilled Healthcare, LLC needed the approval of the governing body to change policy. (GI Nos. 108, 109.)

The executives serving in various entities overlap, as well. The original Board of Managers for Summit Healthcare, LLC consisted of Jose Lynch, John Harrison, and Roland Rapp. (Id. No. 80.) Harrison was replaced by John King in October 2004. (Id. No. 81.) Lynch also served as president and CEO, Harrison as CFO, and Rapp as secretary of Skilled Healthcare, LLC. (Id. No. 84.) Rapp served as general counsel. (Id. No. 85.) Lynch serves as president and CEO of Summit Care Corp.; Harrison served as CFO until October 2004, when he was replaced by John King; Rapp serves as secretary and chief administrative officer. (Id. No. 86.) Boyd Hendrickson, Rapp, Lynch, and King all serve as directors. (Id.) Hendrickson became CEO and ultimately chairman of the board of Skilled Healthcare Group, Inc. after the reorganization. (Id. No. 87.) Lynch serves as president, and became COO and a member of the board in 2005. (Id. No. 88.) Rapp was general counsel, secretary, and chief administrative officer of Skilled Healthcare Group, Inc.; Harrison was a director until he was replaced by King in 2004. (Id. Nos. 89, 90.)

Jose Lynch, Roland Rapp, and John King serve as officers of Royalwood Care Center, LLC, and serve on the Board of Directors for Skilled Healthcare Group, Inc. and Summit Care Corporation. (Id. No. 43.) Kelly Atkins also serves as an officer of Royalwood Care Center, LLC, and one member of Skilled Healthcare Group, Inc.'s board of

directors is an officer of Royalwood Care Center, LLC. (Id.) Summit Care Corporation has one other Board Member that does not serve as an officer for Royalwood Care Center, LLC. (Id.)

II. LEGAL STANDARD

It is the burden of the party who moves for summary judgment to establish that there is "no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); British Airways Bd. v. Boeing Co., 585 F.2d 946, 951 (9th Cir. 1978). If the moving party has the burden of proof at trial (the plaintiff on a claim for relief, or the defendant on an affirmative defense), the moving party must make a showing sufficient for the court to hold that no reasonable trier of fact could find other than for the moving party. See Calderone v. United States, 799 F.2d 254, 259 (6th Cir. 1986) (quoting W. Schwarzer, Summary Judgment Under the Federal Rules: Defining Genuine Issues of Material Fact, 99 F.R.D. 465, 487-88 (1984)). This means that, if the moving party has the burden of proof at trial, that party "must establish beyond peradventure all of the essential elements of the claim or defense to warrant judgment in [that party's] favor." Fontenot v. Upjohn Co., 780 F.2d 1190, 1194 (5th Cir. 1986).

If the opponent has the burden of proof at trial, then the moving party has no burden to negate the opponent's claim. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). In other words, the moving party does not have the burden to produce any evidence showing the absence of a genuine issue of material fact. Id. at 325. "Instead . . . the burden on the moving party may be discharged by 'showing' — that is, pointing out to the district court — that there is an absence of evidence to support the nonmoving party's case." Id.

Once the moving party satisfies this initial burden, "an adverse party may not rest upon the mere allegations or denials of the adverse party's pleadings . . . [T]he adverse party's response . . . must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e) (emphasis added). A "genuine issue" of material fact exists only when the nonmoving party makes a sufficient showing to establish the essential elements to that party's case, and on which that party would bear the burden of proof at trial. Celotex, 477 U.S. at 322-23. "The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which a reasonable jury could reasonably find for plaintiff." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986). The evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in favor of the nonmovant. Id. at 248. However, the court must view the evidence presented to establish these elements "through the prism of the substantive evidentiary burden." Id. at 252.

III. ANALYSIS

The Court finds that the easiest way to address the parties' arguments is to divide them by entity, and then by argument. The Court will first address an initial disagreement between the parties, however: the scope of the Complaint.

A. The Scope of the Complaint

Defendants argue that Plaintiff limited its lawsuit to the English-only policies at the Torrance, California facility. At first blush, this argument appears persuasive. Plaintiff alleges that, "[s]ince at least November 2001, Defendants have engaged in unlawful employment practices at their Torrance, California location in

violation of Section 703 of Title VII, 42 U.S.C. § 2000e-2, by subjecting Jose Zazueta and the class of similarly situated individuals to discrimination in the compensation, terms, conditions and privileges of their employment based on their Hispanic national origin." (FAC ¶ 11.) Interpreted literally, Plaintiff's complaint may be so limited.

But the Court is not inclined to interpret Plaintiff's complaint so strictly in light of the parties' actions throughout the course of this litigation. For example, the parties engaged in many months of highly contested discovery directed specifically at all facilities where the English-only policies were implemented. Never once during that time did Defendants move this Court to definitively rule on the scope of the Complaint. Discovery is now closed and Defendants have waited far too long to seek a limit on the scope of Plaintiff's Complaint. Moreover, even if the Court were to limit the Complaint, nothing would stop Plaintiff from filing a new case to challenge this same policy at other locations. The Court will not waste judicial resources by forcing Plaintiff to file a new action when those claims can properly be adjudicated here. Defendants' request to limit the Complaint to the Torrance, California facility is therefore DENIED.

B. Liability of the Moving Defendants

The Court notes first that Summit Care-California dba Royalwood Care Center, Royalwood Care Center, LLC, and Fountain View, Inc. have not moved for summary adjudication. Rather, at issue here is liability against Skilled Healthcare Group, Inc. ("SHG"), Summit Care Corporation ("SCC"), Skilled Healthcare LLC ("SHLLC"), Fountain View Subacute and Nursing Center, LLC, and Fountain View Subacute and Nursing Center, Inc. (collectively "Fountain View Subacute"), and

Summit Care Pharmacy, Inc. Although some of the arguments overlap, the Court will treat each entity separately for the sake of clarity.

1. Skilled Healthcare Group, Inc.

Plaintiff advances several theories of liability for SHG. First, Plaintiff argues that SHG is an integrated enterprise with its subsidiaries, which subjects it to the coverage under Title VII. As discussed below, this itself does not establish liability in the Ninth Circuit, so Plaintiff argues that SHG can be subject to liability as either a joint or indirect employer, or on an agency theory for the post-bankruptcy English-only policy implemented by its subsidiary-agents. Finally, even if SHG is not liable for the post-bankruptcy English-only policy, it can be held liable as a successor to Fountain View, Inc. for its subsidiary-agents' pre-bankruptcy English-only policy.

a. Integrated Enterprise

Defendants argue that SHG is the substantially equivalent entity to Fountain View, Inc. following the reorganization. In contrast to Fountain View, Inc., however, Defendants claim that SHG is merely a "holding company" with no employees. Title VII applies to employers with 15 or more employees. 42 U.S.C. § 2000e(b). Defendants first argue that, because SHG does not have any employees, Title VII does not apply. Plaintiff argues that SHG is an "integrated enterprise" with its subsidiary facilities and meets this threshold Title VII requirement.

To determine whether two entities are considered an integrated enterprise for purposes of Title VII, the Court must consider four factors: "(1) the interrelation of operations; (2) common management; (3) centralized control of labor relations; and (4) common ownership

or financial control." See Kang v. U. Lim Amer., Inc., 296 F.3d 810, 815 (9th Cir. 2002). When applying this test in the Title VII context, the third factor – centralized control of labor relations – is "most critical." Id.[8]

Applying the Kang factors to this case presents some difficulty. Unlike in Kang, where the defendant-employer had six employees and conducted some operations, SHG has no employees and is, as Defendants assert, nothing more than a holding company. Consequently, SHG and its subsidiaries do not operate out of the same physical location. Moreover, it appears from the facts that SHG has turned over nearly all of its management activities to SHLLC. In fact, Plaintiff heavily relies on SHLLC's involvement in the management of subsidiary facilities in arguing that SHG should be considered an integrated enterprise with its subsidiaries. SHLLC is a separate Defendant, and, as Defendants point out, Plaintiff must establish an integrated enterprise with regard to SHG. Despite the uniqueness of this case, the Court will apply the factors from Kang, since they are still relevant to this inquiry.

On the first factor, Defendants argue that SHG had no operations, maintained a separate mailing address and Royalwood Care Center, LLC conducted its own accounts receivable and billing, has its own depository account, and approves disbursements. Plaintiff has offered evidence that SHG files a single tax return in which Royalwood Care Center, LLC, is included and that SHG has presented itself to the

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[8]Plaintiff cites two cases arising in the National Labor Relations Act context to argue that "none of the four factors is controlling." (Opp'n at 18:27.) As Defendants point out, Kang controls this case under Title VII, which stated that the third factor was, in fact, "most critical."

public as an integrated enterprise. Plaintiff points to SHG's own Annual Report, which portrays it and its subsidiaries as a single entity, operating 61 skilled nursing facilities and 12 assisted living facilities in California, Texas, Kansas, Missouri, and Nevada. On balance, the first prong favors finding an integrated enterprise.

The second factor – common management – weighs slightly in favor of an integrated enterprise. SHG and its subsidiaries share three the officers and managers: Jose Lynch, Roland Rapp, and John Harrison (who was later replaced by John King). Other executives of these entities are not shared, however.

The third and "most critical" factor – centralized control of labor relations – weighs against finding an integrated enterprise. Plaintiff rests its arguments on actions taken by SHLLC in arguably managing the human resources functions of subsidiaries like Royalwood Care Center, LLC, but has not offered evidence that SHG actually issued the challenged policies or had authority over hiring and firing a subsidiary's employees. Plaintiff instead argues that SHLLC's actions should be considered in determining whether SHG should be considered an integrated enterprise, but fails to offer facts that would impute SHLLC's action to SHG. This factor weighs against finding an integrated enterprise.

Finally, the fourth factor of common ownership weighs in favor of an integrated enterprise here because Defendants admit that SHG owns the subsidiaries.[9]

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[9]Defendants argue that common ownership, "standing alone can never be sufficient to establish parent liability." Lockard v. Pizza Hut, Inc., 162 F.3d 1062, 1071 (10th Cir. 1998). This may be true, but Plaintiff has offered more than just evidence of common management, although not enough to overcome summary judgment.

Although three factors weigh in Plaintiff's favor in some measure, Plaintiff has nevertheless failed to create a genuine issue of material fact that SHG should be considered an integrated enterprise.[10] Plaintiff has failed to adduce any evidence that SHG, rather than SHLLC, exercised control over labor relations of the subsidiaries, the most important factor. Even the facts that favor Plaintiff do not approach those in Kang where the court found an integrated enterprise. For example, in Kang, the Court found an integrated enterprise where: the entities shared the same Mexican facility; the defendant kept the employer's accounts, issued its paychecks and paid its bills; the entities shared the same person as vice-president of one and president of the other and supervisors reported directly to the defendant's managers; critically, the defendant had the authority to hire and fire the employer's employees and the defendant "essentially had complete control over [the employer's] labor relations"; the two entities were owned by the same person; and the employer made no profits, instead transferring all its funds to the defendant. Kang, 296 F.3d at 815-16. The few facts specific to SHG, even viewed in a light favorable to Plaintiff, do not create an issue of fact that SHG must be covered by Title VII as an integrated enterprise. Therefore, the Court GRANTS Defendants' motion for summary judgment as to SHG's liability for the post-bankruptcy English-only policy.

[10]This finding does not preclude Plaintiff's ability to pursue SHG for satisfaction of a judgment under traditional corporate law principles. Plaintiff has not argued that point here and the Court renders no decision on it.

b. Joint Employer Liability, Indirect Employer Liability, and Agency Liability

The "integrated enterprise" construct does not create liability under Title VII; it only establishes that Title VII covers an entity. See E.E.O.C. v. Pacific Maritime Ass'n, 351 F.3d 1270, 1274 (9th Cir. 2003) ("[T]he integrated enterprise test does not determine joint liability as the parties suggest, but instead determines whether a defendant can meet the statutory criteria of an 'employer for Title VII applicability." (citation omitted and emphasis in original)). Because SHG does not meet the 15-employee threshold for coverage under Title VII, SHG cannot be held liable as a joint employer. Cf. id. (analyzing joint liability only after concluding that the defendant could be considered an integrated enterprise triggering Title VII coverage). Nor can SHG be held liable as an indirect employer if it cannot be considered an employer under Title VII. See Lutcher v. Musicians Union Local 47, 633 F.2d 880, 883 (9th Cir. 1980) ("[T]here must be some connection with an employment relationship for Title VII protections to apply."); E.E.O.C. v. NCL Amer., Inc., 2008 WL 281524, at *7 (D. Hawaii February 1, 2008) (finding indirect liability inapplicable because "NCL Corp. is not an employer for Title VII purposes, given the lack of evidence that it had at least fifteen employees in 2004."). Finally, SHG cannot be held liable as the principal for the actions of its subsidiary-agents if it, itself, is not an employer under Title VII. 42 U.S.C. § 2000e(b) (defining "employer" as "a person engaged in an industry affecting commerce who has fifteen or more employees . . . and any agent of such a person . . . ." (emphasis added)); Astarita v. Urgo Butts & Co., 1997 WL 317028, at *3 (S.D.N.Y. 1997) ("[A]s is plain from the statutory language, in

order for a person acting as an agent to be deemed an employer, the principal must be an employer covered by Title VII."). Because SHG is not covered by Title VII, the Court GRANTS Defendants' motion for summary judgment as to SHG's potential liability for the post-bankruptcy English-only policy on the theories of joint employer, indirect employer, and agency.

c. Successor Liability

Plaintiff argues that SHG can nevertheless be held liable for the pre-bankruptcy English-only policy at Fountain View, Inc. as Fountain View, Inc.'s successor. Plaintiff's argument involves two steps: (1) Fountain View, Inc. is liable for the discrimination of its subsidiaries based on an agency theory; and (2) SHG is now liable as Fountain View Inc.'s successor. Defendants do not challenge Fountain View, Inc.'s liability, nor do they seek to dismiss Fountain View, Inc. as a party. Nor do they challenge that SHG could be held liable as Fountain View, Inc.'s successor. (Reply at 2:13-20.) The Court DENIES Defendants' motion for summary judgment as to SHG's successor liability for the pre-bankruptcy English-only policy.

2. Summit Care Corp.

Like SHG, Defendants argue that SCC is merely a holding company with no employees and not subject to Title VII's coverage. Plaintiff again argues that, notwithstanding, SCC should be considered an integrated enterprise with its subsidiaries.

a. Integrated Enterprise

Of the factors from Kang, Plaintiff has adduced only two facts to suggest that SCC is in any way integrated with its subsidiaries. First, Plaintiff offers evidence that Royalwood Care Center, LLC's limited liability operating agreement vests in SCC authority over the

day-to-day operations of the facilities at SCC's discretion. Defendants, in contrast, offer evidence that this discretionary authority was delegated to Royalwood Care Center, LLC's governing board, allegedly pursuant to federal regulation, see 42 C.F.R. § 483.75(d). Plaintiff has not offered any evidence that SCC retained authority, contrary to this delegation, to govern the day-to-day operations of the subsidiaries.[11] Nor has Plaintiff offered evidence that, in practice, SCC exercised day-to-day management authority, despite this regulation.

Plaintiff also offers evidence that Royalwood Care Center, LLC is a direct, wholly owned subsidiary of SCC and that SCC shares some managers and officers with Royalwood Care Center, LLC. For example, Jose Lynch, Roland Rapp, and John King both serve as officers of Royalwood Care Center, LLC and serve on the Board of Directors for SCC. SCC, however, has one other Board Member who does not serve as an officer for Royalwood Care Center, LLC.

Even viewing this evidence favorably for Plaintiff, it is not enough to create a factual dispute as a matter of law. As with SHG, Plaintiff has failed to adduce any evidence that SCC maintained control over the labor relations at Royalwood Care Center, LLC or any other subsidiary. While the limited liability agreements appear to delegate subsidiaries' day-to-day operational authority to SCC, Defendants delegated that authority to the subsidiaries' governing board. Absent some suggestion that SCC retained this authority contrary to this delegation, the Court finds no disputed issue here.

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[11]This conclusions is specific to SCC. As discussed below, Plaintiff has create a genuine issue that SHLLC managed the day-to-day operations of Royalwood Care Center, LLC and other subsidiaries.

Plaintiff's other evidence of common management and ownership, like the evidence offered for SHG, is insufficient on its own to raise a factual question as to SCC as an integrated enterprise. Therefore, the Court GRANTS Defendants' motion for summary judgment as to SCC's liability for the post-bankruptcy English-only policy.[12]

b. Successor Liability

Plaintiff does argue, however, that SCC can be held liable as a successor to Fountain View, Inc. As discussed, Defendants do not challenge Fountain View, Inc.'s status as a Defendant, so the Court must determine whether SCC can be held liable for the pre-bankruptcy English-only policy in effect at Fountain View, Inc. and its subsidiaries. Three principal factors must be considered to determine successor liability: "(1) continuity in operations and work force of the successor and predecessor employers; (2) notice to the successor employer of its predecessor's legal obligation; and (3) ability of the predecessor to provide adequate relief directly." Criswell v. Delta Air Lines, Inc., 868 F.2d 1093, 1094 (9th Cir. 1989). "Because the origins of successor liability are equitable, fairness is a prime consideration in its application. The emphasis, therefore, is on the second and third factors listed above." Id.

Plaintiff argues that Mr. Zazueta was employed by Fountain View, Inc. and Fountain View, Inc.'s subsidiary, Royalwood dba Summit Care – California when the pre-bankruptcy policy was in effect.

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[12]Plaintiff does not argue that SCC is liable either as a joint employer, indirect employer, or as a principal. In any event, like SHG, because SCC is not subject to Title VII, it cannot be held liable under any of these theories. See Pacific Maritime Ass'n, 351 F.3d at 1274; Lutcher, 633 F.2d at 883; NCL Amer., Inc., 2008 WL 281524, at *7; Astarita, 1997 WL 317028, at *3.

Royalwood dba Summit Care – California merged into SCC and Plaintiff has produced evidence that the location, workforce and operations of Royalwood dba Summit Care – California continued both as the local subsidiary Royalwood Care Center, LLC and as SCC as the owner. While the Court finds no disputed facts that day-to-day management was vested in Royalwood Care Center, LLC pursuant to federal regulations, this appears not to have changed following the bankruptcy and the reconstitution of Fountain View, Inc. Fountain View, Inc.'s operations appear to have been split among various new entities, including SCC, but the operations themselves appear to have remained constant. This satisfies the first prong of Criswell. Moreover, Plaintiff argues – and the Court agrees – that the second prong is met because, unlike the merger in Criswell where two independent entities blended into a single merged entity, the corporate changes here involved a reorganization and notice to the new entities can be presumed. Finally, and perhaps most important, Fountain View, Inc. and Summit Care – California no longer exist so they cannot provide any relief to Plaintiff. While other entities that currently exist may provide relief, the third Criswell factor focuses on the predecessor's ability to provide relief, not whether any currently existing entity may also be liable.

Defendants argue two points in rebuttal: (1) no entity succeeded the local subsidiaries and they were all reconstituted as limited liability companies or limited liability partnerships; and (2) SCC did not take on any operations of the former entities and all operations continued as normal at the subsidiary level. Neither point is persuasive. Defendants' first argument elevates form over substance. They admit that nothing at Royalwood Care Center, LLC changed

following the bankruptcy. Their second point is belied by the facts: Plaintiff has offered evidence that SCC owned all of the subsidiaries, just as Fountain View, Inc. did, and Defendants have not challenged Fountain View, Inc.'s liability. Nevertheless, whether operations changed at the subsidiary level is irrelevant to determining whether SCC can properly be viewed as a successor to Fountain View, Inc. Plaintiff has offered evidence that it, in fact, can. Successor liability is equitable and here Plaintiff has provided enough evidence that SCC can be held liable as a successor to preclude summary judgment. Defendants' motion for summary judgment that SCC cannot be liable for the pre-bankruptcy English-only policy is DENIED.

3. Skilled Healthcare, LLC

While Defendants admit that SHLLC is covered by Title VII, Defendants argue that SHLLC is neither a joint employer nor an indirect employer of the subsidiaries, so it may not be held liable for the post-bankruptcy English-only policy. Defendants also argue that SHLLC may not be held liable for the pre-bankruptcy policy as a successor to Fountain View, Inc.

a. Joint Employer Liability

"Two or more employers may be considered 'joint employers' if both employers control the terms and conditions of employment of the employee." Pacific Maritime Ass'n, 351 F.3d at 1275. The parties agree that the following factors must be considered to determine joint employer status: (1) the nature and degree of control of the workers; (2) the degree of supervision, direct or indirect, of the work; (3) the power to determine the pay rates or the methods of payment of the workers; (4) the right, directly or indirectly, to hire, fire, or modify the employment conditions of the workers; and (5) preparation

of payroll and payment of wages. Id.

Plaintiff has demonstrated myriad factual disputes that preclude summary adjudication on SHLLC's joint employer status. As to the first and second prongs, SHLLC acts essentially as an administrative arm of Royalwood Care Center, LLC, developing and disseminating the Employee Handbook containing the second English-only policy and all other day-to—day workplace conduct and policies. Although SHLLC only recommended adoption of these policies and did not "force" them upon subsidiaries, Plaintiff has adduced evidence that several managers sat on each of the subsidiaries' governing bodies, which probably had substantial influence over the subsidiaries' adoption of these policies. These individuals also likely held sway over the Administrator of each subsidiary, since Plaintiff adduced evidence that the governing board hires and fires each Administrator. Further, Royalwood Care Center, LLC has never rejected a policy recommendation from SHLLC in the human resources area. SHLLC also maintained a regular presence at subsidiaries through its human resources directors and vice presidents of operations. These facts alone create a triable issue.

As to the fourth prong, although the Administrator had the ultimate authority to hire and fire subsidiary employees, he or she served at the pleasure of the governing board, which worked closely with SHLLC in many areas and shared managers and officers. Defendants argue that the Court must presume that these executives "change hats" when sitting on each entity's board. See United States v. Bestfoods, 524 U.S. 51, 69-70 (1998). Notwithstanding that Bestfoods was a CERCLA case, the Court there recognized that "it is entirely appropriate for directors of a parent corporation to serve as

directors of its subsidiary, and that fact alone may not serve to expose the parent corporation to liability for its subsidiary's acts." Id. at 69 (emphasis added). Here, Plaintiff has offered evidence beyond the mere shared directors to create factual issues. Therefore, whether they actually "change hats" when sitting on the boards of both SHLLC and Royalwood Care Center, LLC is a question for the jury.

As to the third and fifth elements, Plaintiffs adduce evidence that the Administrator sets wage rates, but SHLLC was deeply involved in developing budgets for subsidiaries, which had to be approved by SHLLC's vice president of operations and senior vice president of operations before it could be finalized. Moreover, Southwest Payroll Services, which Defendants admit is owned by SHG, provides payroll services, but the ultimate payroll payment comes from a consolidated account maintained by SHLLC.

Other facts are disputed, as discussed in detail in the factual section above, and the Court need not chronicle them again here. Reviewing the facts favorably for Plaintiff, the Court finds that genuine issues exist as to whether SHLLC can be held liable for the post-bankruptcy policy implemented at Royalwood Care Center, LLC as a joint employer. Summary judgment on this point is DENIED.

b. Indirect Employer Liability

Plaintiff further claims that SHLLC can be held liable for the post-bankruptcy English-only policy at Royalwood Care Center, LLC on a theory of indirect employer liability. Liability as an indirect employer arises when "there exists discriminatory 'interference' by the indirect employer and where the indirect employer had some peculiar control over the employee's relationship with the direct employer." Anderson v. Pacific Maritime Ass'n, 336 F.3d 924, 932 (9th

Cir. 2003). In other words, the existence of an indirect employer relationship depends upon whether the putative indirect employer "interfered" with the putative employee's employment relationship and the degree of control the putative indirect employer exercised. See id. at 929-30. The Ninth Circuit cautions that the Court must look at the alleged indirect employer's actions to determine indirect employer status: "All of our cases [applying the indirect employer theory] have done so in instances where the indirect employer was the entity performing the discriminatory act." Id. at 931.

Defendants argue that only two facts support Plaintiff's indirect employer theory for SHLLC, which are insufficient to create liability. First, Defendants do not dispute that SHLLC drafted the language policy and presented it to Royalwood Care Center, LLC and other subsidiaries, which is at least partly the alleged discriminatory act. Defendants argue, however, that the governing board at each subsidiary had the opportunity and authority to accept, reject, or modify the policy. Second, two SHLLC employees sat on the governing board of Royalwood Care Center, LLC, which is, in itself, insufficient to establish interference with employees at the subsidiaries, citing Garcia v. Courtesy Ford, Inc., 2007 WL 1192681, at *5 (W.D. Wash. 2007) (granting summary judgment on indirect employer liability based on evidence of "only one link between [the alleged indirect employer] and the termination of plaintiff," i.e., the involvement of the same Vice President for the indirect and direct employers).

These two facts, taken together, present a genuine issue for the jury to decide. The evidence presented by Plaintiff indicates that, while the governing boards of the subsidiaries have the power to accept, reject, or modify employment policies drafted by SHLLC, they

have never rejected or modified a human-resources-related policy, including the English-only policy at issue. This "rubber stamping," as Plaintiff labels it, creates a reasonable inference that the subsidiaries do not exercise the control given to them, but rather, allow SHLLC to dictate the allegedly discriminatory policy. This is precisely the sort of "interference" to which indirect employer liability is directed. See, e.g., Association of Mexican-Amer. Educ. v. California, 231 F.3d 572, 582 (9th Cir. 2000) (finding indirect employer liability where the state "participated extensively in, and influences, the employment policies and practices of the 'subsidiary' local school districts").

The evidence that two board members are shared between SHLLC and Royalwood Care Center, LLC strengthens this conclusion. While members of corporate boards are generally presumed to "change hats" when serving on parent and subsidiary boards, that presumption is far weaker in a case like this where there is independent evidence that Royalwood Care Center, LLC has never rejected a policy offered by SHLLC. In light of this evidence, certainly a triable issue of fact exists as to whether these shared executives are in fact "changing hats" or affirmatively interfering with the employment of employees at the subsidiaries by adopting the policies that they assisted in drafting. Defendants' citation to Garcia does not dictate a different result. There, the corporate parent and subsidiary shared a Vice President, which the court found insufficient on its own to create indirect liability. Garcia, 2007 WL 1192681, at *5. Here, in contrast, SHLLC and Royalwood Care Center, LLC share executives and SHLLC promulgated the allegedly discriminatory policy that was "rubber stamped" by Royalwood Care Center, LLC. This is more than enough to

create a genuine issue and preclude summary judgment. Therefore, the Court DENIES Defendants' motion for summary judgment on SHLLC's indirect employer liability for the post-bankruptcy English-only policy.

c. Successor Liability

Plaintiff argues that SHLLC is also liable for the pre-bankruptcy English-only policy as a successor to Fountain View, Inc. Defendants claim that Fountain View, Inc.'s operations simply ceased and any operational functions were divided into various other entities, and Fountain View, Inc. continued to exist, but changed its name to SHG.

As discussed above, three factors must be considered to determine successor liability: "(1) continuity in operations and work force of the successor and predecessor employers; (2) notice to the successor employer of its predecessor's legal obligation; and (3) ability of the predecessor to provide adequate relief directly." Criswell, 868 F.2d at 1094. Defendants challenge only the last prong, arguing that, because SHG remains a Defendant for the pre-bankruptcy policy implemented by Fountain View, Inc., SHLLC should not be held liable for that policy as well. However, Plaintiff has offered disputed facts over SHLLC's role in implementing the human resource functions previously undertaken by Fountain View, Inc. Defendants argue that SHG is a holding company with no employees and SHLLC is the main entity responsible for the human-resource-related activities at the subsidiaries. Plaintiff offered evidence that the locations, workforce and operations of the subsidiary facilities remained unchanged after the reorganization, suggesting that SHLLC took over the human resources functions that SHG is no longer performing for Fountain View, Inc.

Moreover, it is possible that a jury might conclude that SHG is not, in fact, the successor to Fountain View, Inc. for the purpose of imposing liability for the pre-bankruptcy policy. In that case, if the Court denies recovery from SHLLC as a successor, no currently existing entity could be held liable under the third Criswell prong. Because the facts are disputed and because Defendants cannot demonstrate that SHG would provide Plaintiff an adequate remedy, the Court DENIES Defendants' motion for summary judgment on SHLLC's successor liability.

4. Fountain View Subacute and Nursing Center, LLC and Fountain View Subacute and Nursing Center, Inc.

The parties' dispute over the inclusion of the two Fountain View Subacute entities in this lawsuit rests entirely on the scope of Plaintiff's complaint. If the complaint is limited to the Royalwood Care Center, LLC's Torrance facility, Fountain View Subacute, two equivalent subsidiary entities operating out of a different location, should be dismissed. On the other hand, if the Court interprets the Complaint broadly to include all subsidiary facilities implementing an English-only policy, Defendants tacitly admit that the Fountain View Subacute entities are properly included as Defendants.

In light of the Court's conclusion above that the Complaint covers subsidiary locations beyond the Royalwood Care Center, LLC Torrance location, the Court DENIES Defendants' motion for summary judgment on Fountain View Subacute's inclusion in this case.

5. Summit Care Pharmacy, Inc.

Plaintiff indicates that it does not oppose granting summary judgment regarding Defendant Summit Care Pharmacy, Inc.'s participation as a Defendant. The Court GRANTS Defendants' motion for

summary judgment as to Summit Care Pharmacy, Inc.

IV. CONCLUSION

The Court rules on Defendants' motion for summary judgment as follows:

- The Court **DENIES** Defendants' motion to the extent it seeks to limit to scope of the Complaint to the Royalwood Care Center, LLC Torrance, California facility.
- The Court **GRANTS** Defendants' motion for summary judgment as to Skilled Healthcare Group, Inc.'s liability for the post-bankruptcy English-only policy.
- The Court **DENIES** Defendants' motion for summary judgment as to Skilled Healthcare Group, Inc.'s successor liability for the pre-bankruptcy English-only policy.
- The Court **GRANTS** Defendants' motion for summary judgment as to Summit Care Corp.'s liability for the post-bankruptcy English-only policy.
- The Court **DENIES** Defendants' motion for summary judgment as to Summit Care Corp.'s successor liability for the pre-bankruptcy English-only policy.
- The Court **DENIES** Defendants' motion for summary judgment as to Skilled Healthcare, LLC's liability for the post-bankruptcy English-only policy.
- The Court **DENIES** Defendants' motion for summary judgment as to Skilled Healthcare, LLC's successor liability for the pre-bankruptcy English-only policy.
- The Court **DENIES** Defendants' motion for summary judgment as to Fountain View Subacute and Nursing Center, LLC and Fountain View Subacute and Nursing Center, Inc.'s liability for the post-bankruptcy English-only policy.
- The Court **GRANTS** Defendants' motion for summary judgment as to Summit Care Pharmacy, Inc. and **DISMISSES** Summit Care Pharmacy, Inc. as a Defendant in this case.

IT IS SO ORDERED.

DATED: February 27, 2008

AUDREY B. COLLINS
UNITED STATES DISTRICT JUDGE