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5

6 UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
7 SAN FRANCISCO DIVISION

8 In re:)
9) Case No. 17-30175 HLB
AgeSong Genesis, LLC,)
10) Chapter 11
11) **FIRST SUPPLEMENTAL REPORT OF**
12) **THE PATIENT CARE OMBUDSMAN**
13 Alleged Debtor) (No Hearing Required)

14 Pursuant to the order directing the appointment of a Patient
15 Care Ombudsman entered by this court on March 2, 2017, Tracy Hope
16 Davis, the United States Trustee, duly appointed Joseph Rodrigues as
17 the Patient Care Ombudsman in this case.

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19 In compliance with the order granting motion to appoint trustee
20 entered by this court on March 29, 2017, the Patient Care Ombudsman
21 has cooperated with the trustee in the preparation and filing of
22 this first supplemental report to the court.
23

24 April 26, 2017

Respectfully submitted,

25 /s/Joseph Rodrigues

26 Joseph Rodrigues
27 State Long-Term Care Ombudsman

1 **FIRST SUPPLEMENTAL REPORT OF THE PATIENT CARE OMBUDSMAN**

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3 The Felton Family Service Agency of San Francisco is the
4 designated local Long-Term Care (LTC) Ombudsman entity for the City
5 and County of San Francisco and is the representative of the Office
6 of the State LTC Ombudsman. As mandated by the federal Older
7 Americans Act (42 U.S.C. 3058g), LTC Ombudsman representatives
8 identify, investigate and resolve complaints that are made by, or on
9 behalf of residents of LTC facilities that relate to action,
10 inaction or decisions that may adversely affect the health, safety,
11 welfare or rights of residents.
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14 AgeSong University is located at 350 University Street, San
15 Francisco, California. The California Department of Social
16 Services, Community Care Licensing Division, licenses this facility
17 as a Residential Care Facility for the Elderly. Residential Care
18 Facilities for the Elderly, also known as assisted living
19 facilities, provide 24-hour non-medical care and supervision,
20 including housing, meals, personal care, social activities, and
21 coordination of medical appointments, to people who have physical,
22 cognitive, or behavioral conditions that prevent them from living
23 alone.
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27 The following information describes the visits of the local
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1 Ombudsman representative, observations about staffing, the general
2 status of the residents, communication between and among staff and
3 residents of the facility, and any complaints made by or on behalf
4 of residents to the LTC Ombudsman Program. Benson Nadell, Ombudsman
5 Program Coordinator, conducted these visits to the facility.
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8 Since the first report submitted by the Patient Care Ombudsman,
9 certain actions have occurred. On April 18, 2017, the Assistant
10 Executive Director/Administrator of AgeSong University, Anna Allas,
11 e-mailed the local Ombudsman Program Coordinator copy of a plan of
12 correction. At first, this was presented as a request from the
13 trustee. In the Assistant Executive Director/Administrator's e-mail
14 she stated the plan came from AgeSong management in response to the
15 first report from the Patient Care Ombudsman. This plan of
16 correction is a rare submission to a Long-Term Care Ombudsman
17 Program. It will be useful to track actual compliance into the
18 future. The first report also led to queries from the two parties
19 in this case as to why the Patient Care Ombudsman recommended a
20 trustee. This assumption was corrected by referring to a request
21 from AgeSong University management and some creditors, to the court
22 to appoint a trustee, which the Patient Care Ombudsman supported.
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26 During the local Ombudsman representative's visit on March 24,
27 2017, Dr. Noss, the Executive Director/Administrator and Mr. Nadell
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1 discussed persons with dementia being triggered by others. The
2 purpose of this discussion was to remind facility staff and
3 administration that staff should anticipate triggers for behavior
4 related to dementia. Staff must be present and pro-active in
5 redirecting residents away from situations that may lead to unwanted
6 out lashes against residents and staff.
7

8
9 Yvonne Lau, the individual controlling the finances of the
10 facility wanted to speak to the local Ombudsman representative after
11 the Patient Care Ombudsman filed his first report. Ms. Lau had a
12 copy on her mobile phone. Ms. Lau and Mr. Nadell met outside the
13 facility.
14

15
16 Ms. Lau asked why the Patient Care Ombudsman had the authority
17 to recommend a trustee to manage AgeSong University to the court.
18 Mr. Nadell stated that he did not initiate the idea of the trustee.
19 There was a petition to the court for the appointment of a trustee.
20 This triggered a request from the court for the Patient Care
21 Ombudsman to visit AgeSong University and provide a report by March
22 24, 2017 and every 60 days thereafter. Mr. Nadell informed Ms. Lau
23 that because of the conflict amongst the parties involved in the
24 operation and management of AgeSong University, he felt a neutral
25 third party would be necessary, but reiterated that he did not
26 initiate the request for a trustee.
27

1 Ms. Lau claimed that AgeSong management is pulling funds each
2 month from revenues generated by AgeSong University. The Patient
3 Care Ombudsman is not in a position to verify this claim and leaves
4 this accusation to the other professionals involved in this case.
5

6
7 Mr. Nadell told Ms. Lau that he hoped the facility would not
8 close. She responded that it would not close.
9

10 About ten minutes after their conversation, after leaving the
11 facility, Ms. Lau called Mr. Nadell. Ms. Lau wanted to know the law
12 as to why AgeSong University management was not letting her in the
13 building. Mr. Nadell responded that he did not know what the law was
14 in regard to this matter.
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16
17 Vivian Heubling, District Supervisor from the San Bruno Office
18 of Community Care Licensing, California Department of Social
19 Services, called Mr. Nadell for an update on the facility. Mr.
20 Nadell asked Ms. Heubling if Community Care Licensing tracked
21 percentages of full-time equivalents for personnel at AgeSong
22 University. Ms. Heubling responded that Community Care Licensing
23 does not ask for percentages. Mr. Nadell asked because of the
24 allegation from Ms. Lau that revenue was siphoned up and away to pay
25 for Woodpark/AgeSong staffing, since that facility in Oakland
26 supposedly does not have revenue to sustain AgeSong personnel.
27

1 Ms. Heubling indicated that Licensing does not track that
2 information.

3
4 Walking upstairs, Mr. Nadell met a staff person sitting in
5 front of a computer. The staff person indicated that he just
6 started working at the facility. He is the chef. In a subsequent
7 conversation with another staff member, Mr. Nadell learned that this
8 new chef had previously worked at the facility. According to the
9 board in the medications room, the facility was admitting new
10 residents, mostly for respite.
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14 Over the past few weeks, after speaking with complaint referral
15 sources, the local Ombudsman program learned that hospital social
16 workers and perhaps others had not been able to reach staff at
17 AgeSong University. On April 2, 2017 a hospital social worker was
18 unable to contact AgeSong University regarding a resident's
19 medications.
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21
22 On his April 6, 2017 visit to the facility visit, Mr. Nadell
23 interviewed Kathy Nguyen, LVN, and Wellness Nurse regarding this
24 incident. Ms. Nguyen reported that Dr. Noss removed work cell
25 phones and that must have been the number the social worker from the
26 hospital was using to try and reach the facility. Ms. Nguyen
27 contacted the social worker and resolved some of issues.
28

1 Mr. Nadell learned that the facility's phone system is
2 centralized through the receptionist, with no real back-up.
3 However, on this same day, Kathy Nguyen, LVN informed Mr. Nadell
4 that the phone now back-ups to her restored work cell phone.
5 Telephone calls goes through the receptionist. If that receptionist
6 is not present or otherwise occupied, then calls do not go through.
7 Mr. Nadell recommends a better and more user-friendly telephone
8 system. Each of the program directors on the floor should also be
9 given a work related cell phone.
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12 Mr. Nadell conducted a facility visit on April 6, 2017 and met
13 with Mr. J.D. Sanders from AgeSong Human Resources. Mr. Sanders
14 asked Mr. Nadell why he asked for a trustee to be appointed in the
15 Patient Care Ombudsman report. Mr. Nadell stated that the petition
16 for the trustee was from Mr. Shabahangi and some of the creditors,
17 not the Ombudsman. Mr. Nadell stated that because of the conflict
18 in the operation of the facility, he supported that idea.
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21 The Ombudsman representative reported that Mr. Sanders
22 understood from the report that staff morale was poor. Mr. Nadell
23 had mentioned in the Patient Care Ombudsman report that AgeSong
24 University senior management had scolded front line management and
25 caregivers. Mr. Sanders indicated that AgeSong University management
26 cannot take personnel actions because they have no access to payroll
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1 and to personnel records. Those were removed by Ms. Lau who set up
2 the new time clock system that was reported in the Patient Care
3 Ombudsman's first report to the court. Also, it is alleged the
4 bookkeeper took records and was working off site.
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6
7 Mr. Nadell visited the facility again on April 17, 2017. Mr.
8 Nadell worked through a series of abuse reports: one of an elderly
9 woman receiving care and a female caregiver was observed on top of
10 her by a meal server and other male, delivering food to this woman's
11 room. This resident usually eats in dining room. Mr. Nadell showed
12 this report to the Assistant Executive Director/Administrator who
13 stated she never seen this report. Mr. Nadell received the report
14 from Dr. Noss. The Assistant Executive Director/Administrator
15 suggested that perhaps Kathy Nguyen, the Wellness Nurse (who was not
16 at the facility during this visit) has knowledge of the report.
17 Again, embedded in this interview regarding an abuse report, there
18 appears to be a pattern of fractured communication between on-floor
19 programmatic managers and the senior management of AgeSong
20 University.
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24 The Ombudsman representative observed the meal being served.
25 The meal consisted of a noodle/ramen type of dish. Some other
26 residents were eating chuck roast.
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1 Mr. Nadell conducted an additional visit to the facility on
2 April 21, 2017. 20 residents have diabetes. The Ombudsman
3 representative went to the medications room. Per staff, their paper
4 work was up to date, with day by day entries. According to the
5 licensed vocational nurse on duty, three pharmacies are used: Omni-
6 Care, Kaiser, and Walgreens. Omni-Care uses a Medication
7 Administration Record and keeps track of refills. Kaiser has
8 different system. With 20 persons with type 2 diabetes and with
9 many also with dementia, and a subset with behaviors, the balancing
10 of medications is a crucial part of provision of care. Ombudsman
11 representatives do not review all records. There must be a reason
12 for the review, i.e., a complaint. One thing was asked of the LVN
13 was whether the medications room should go electronic. The LVN
14 stated that had been discussed but was non-committal on the
15 discussion and the costs. Also this case reveals need of
16 coordination between different hospital systems, pharmacies and the
17 med room. The son of this particular resident was happy once he got
18 an explanation. The hospital computer was not reconciled with the
19 documentation in the med room.
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24 The Ombudsman representative had a conversation with a clinical
25 case manager from a community-based organization in San Francisco.
26 The case manager works for one of the oldest residents at AgeSong
27 University. The case manager said his client was more anxious. The
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1 Ombudsman representative queried the Assistant Executive
2 Director/Administrator to the extent to which residents were
3 informed of the financial situation of the facility. The Ombudsman
4 approach, during visits, was to downplay any back story in talking
5 to residents. Some residents however, were aware of the situation.
6 The Assistant Executive Director/Administrator said certainly the
7 "legacy" family members are aware and in fact some have contacted
8 the Ombudsman Program. Some had met with the debtor. Most are
9 concerned. This particular client of the case manager has not
10 directly involved nearby family. The Ombudsman raises this because
11 these residents who are vulnerable should not be affected by the
12 conflict between management and the debtor, or be misinformed of the
13 financial straits, before the situation is resolved. One anxiety
14 for families is relocation into an uncertain situation where there
15 are no affordable assisted living facilities in San Francisco to
16 which their elderly relatives can be relocated.
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20 AgeSong University specializes in dementia care. Most
21 residents are not combative. One of the key challenges in dementia
22 care is managing behaviors. That does not mean sole reliance on
23 strong anti-psychotics, but staff who know the residents and with
24 sufficient number and training to act proactively even when
25 incidents are unpredictable. Staffing should be the first expense
26 in allocating costs. The Title 22 State regulations refer to
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1 adequate staffing. But the guidelines to determine adequate
2 staffing are vague. In other buildings, the Ombudsman representative
3 has recommended work load determination based on pre-placement
4 appraisal and subsequent appraisals once the person is placed. This
5 is not required, so it is not done. It is however, a best practice.
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8 Mr. Nadell conducted another visit on Sunday, April 23, 2017.
9 Mr. Nadell visited and logged in approximately 11:00 a.m. and logged
10 out about 2:30 p.m.
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12 Neither the Assistant Executive Director/Administrator nor the
13 Wellness Nurse was present this weekend day. Two other nurses were
14 present and were passing out medications along with a medication
15 technician. The piano was playing and the AgeSong Engagement person
16 was present. A few new persons moved in, mostly placed by Kaiser
17 for respite. There was a young male with a neuroleptic condition,
18 confused and with seizures. Several residents were also in the
19 hospital.
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23 This visit was just prior to lunch, and most residents who were
24 able went to dining room. The dining room is a large room, with a
25 high ceiling. There seemed to be enough servers. Some of the
26 caregivers were helping feed those who needed assistance. Menus are
27 now available and followed. Most residents who did complain of food
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1 are now pleased with the new chef and happy with offerings and
2 choice.

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5 On weekends, AgeSong University continues to use three staffing
6 registries. The Ombudsman representative interviewed again the
7 licensed vocational nurse who staffs the RCFE. She said that since
8 January only five caregivers were brought on, with three leaving
9 after orientation. She has a list of all who have been
10 fingerprinted. The nurse stated the starting wage for caregivers is
11 \$13.00 per hour, a rate negotiated by union contract. On weekends,
12 with registry agencies the wage is higher, but with no benefits.
13 Mr. Nadell asked about supervision and instructions. The resident
14 charts are in the medication room on the second floor. There is no
15 work load analysis of how many activities of daily living (bathing,
16 dressing, grooming, etc.) residents need assistance in, or medical
17 conditions as would be extrapolated from pre-placement forms and
18 referral information. A rational approach would be to staff
19 according to work load. In a previous interview with the staffing
20 person, she said most residents are two-person assist. In fact, one
21 combative male resident during showers needs four persons to shower
22 him. It would be good for new caregivers and weekend temporary
23 caregivers to have set instructions for each resident in terms of
24 parameters around dementia, behavior, ambulatory status, continence,
25 medical diagnoses, etc. The longer tenured staff, of course know,
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1 the residents through repeated assignments. The staff person, when
2 asked, said that 20 residents have diabetes. In RCFEs, insulin must
3 be self-administered with assistance or by a health professional.
4 AgeSong University has two licensed vocational nurses during the
5 week; another one on the weekend. What is significant is that most
6 residents who have diabetes have dementia. One woman had her blood
7 sugars crash not because of insulin being administered wrongly, but
8 because she refused insulin injections and having her blood sugar
9 tested. The resident was also eating sporadically. It was
10 explained to Mr. Nadell that Depakote and Seroquel can be
11 contributory. Persons with diabetes and with dementia related
12 behaviors should dictate staffing. Again, it would be wise to have
13 a summary of resident records on the main floor for caregivers to
14 consult.
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18 During this weekend visit there were two activity persons: one
19 playing piano, and one engaging with residents who were congregating
20 either in large front room or in the side café adjacent to the
21 dining room. Before lunch there was of a total 56 residents; about
22 eight residents were in bed and not coming to lunch. Activities
23 should ideally include those who remain in rooms. The AgeSong
24 University Engagement Specialist is good at one on one activities
25 with persons who have cognitive impairments.
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1 Each time the Ombudsman representative visits, a roster of
2 residents is requested. This allows the tracking of those who leave
3 and those admitted. Several residents have left since beginning of
4 April. This past month, three of those expired; two being on
5 hospice. One is in acute psychiatric unit. A resident moved to
6 Sonoma County. A young resident moved in with family. Another
7 moved to another RCFE. Three are in hospitals. One was evicted for
8 a dementia related assault against another resident, who also left.
9 The Ombudsman representative has noticed that placements for respite
10 from Kaiser present a challenge. Most have neurological impairments
11 along with degrees of complex medical conditions. In filling
12 AgeSong University, one would hope that screening is balanced with a
13 good calculus for deployment of adequate numbers of caregivers, with
14 ongoing education hours as required.
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18 The medication room is on the second floor and usually staffed
19 by two medication technicians. When asking them questions about
20 refills they were professional and helpful. Nadell asked about
21 persons who return from the hospital and how quickly new
22 prescriptions can be filled. The medication technicians said it
23 depends on communication with the hospital and hospitalist. The
24 physician for each resident varies and the Ombudsman representative
25 is uncertain how the communication with the hospital occurs with
26 that primary care physician. This being an RCFE, the Ombudsman
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1 representative is still unaware how medication errors are tracked.
2 The Ombudsman representative did not see a physical Medication
3 Administration Record but was told there was one.
4

5
6 There is a Title 22 State regulation for RCFEs that where there
7 are home health agencies involved with residents, that the resident
8 and family have the right to participate in care plan meetings.
9 Recent resident rights legislation included the right for residents
10 to participate in care planning. This is especially important when
11 residents return to an RCFE from a hospital. With the contract
12 AgeSong University has with Kaiser (contract not reviewed by
13 Ombudsman) or with the City and County of San Francisco Department
14 of Public Health, Community Behavioral Health, it is imperative that
15 care plans be developed. It is unclear whether resident and family
16 or surrogate participation is built into the Plan of Operations for
17 AgeSong University. Please see the link to following Licensing form
18 which outline residents rights:
19

20 <http://www.cdss.ca.gov/cdssweb/entres/forms/English/LIC613C-2.pdf>
21

22
23 On a phone call with trustee team, Diane Rafferty from Alvarez
24 & Marsal Health Care Industry Group brought up her serious concerns
25 about the basement and the broken vent system for the laundry. The
26 Ombudsman representative did not go to the basement. However, the
27 second floor needs work as well. One of the upstairs bathrooms, a
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1 legacy from days when the building was a school for girls, with
2 swinging doors for toilet stalls, needs a modification. There are a
3 few residents on the second floor by the office. But in one wing,
4 bedridden residents are ostensibly on hospice in hospital beds.
5 During the April 23, 2017 visit, the Ombudsman representative did
6 see an agency caregiver go upstairs. Mr. Nadell did not see any
7 outward signs of a communication system. It was said that AgeSong
8 University uses a pendant system. Given the percentage of bedridden
9 upstairs, and persons with dementia on the first floor, the
10 Ombudsman representative wonders if a pendant system is adequate.
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14 The basement remains a concern. To repair that safety hazard
15 and the second floor modification would be essential.
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17 With the re-hiring of the Chef, food quality and choice has
18 increased. Residents, who complained of food, are now happy. The
19 food provider was paid in March and there is no interruption in food
20 delivery. The Ombudsman representative did not go into the kitchen.
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22
23 Mr. Nadell focused during visits on residents, their concerns,
24 and referred cases. Mostly for information, he went to the Co-
25 Administrator, the Wellness Coordinator, and another LVN. AgeSong
26 management was concerned with systems and control. In most cases,
27 discussion on resident centered issues was with the personnel who
28

1 were on the floor.
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3 The Patient Care Ombudsman has no other recommendations for the
4 court at this time.
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7 April 26, 2017

/s/Joseph Rodrigues
Joseph Rodrigues
State Long-Term Care Ombudsman