UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16293

In the Matter of

LAURIE BEBO, and
JOHN BUONO, CPA,

Respondents.

THE DIVISION OF ENFORCEMENT'S POST-HEARING BRIEF

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I. INTRODUCTION

At hearing, the Division demonstrated that Respondent Laurie Bebo perpetrated a brazen fraud while completely disregarding her responsibilities as a public company CEO. Bebo's scheme concealed that ALC was failing, by wide margins, the occupancy and coverage ratio covenants contained in ALC's lease with Ventas. Despite the covenant failures, for a period of three years Bebo represented in ALC's Commission filings that ALC was meeting the covenants.

Bebo knew that ALC's compliance with the covenants was closely monitored by Ventas, ALC's board, and ALC's auditors. Rather than admit ALC's covenant failures, Bebo devised a scheme to include fake occupants in the covenant calculations that ALC provided to Ventas each quarter. Like many frauds, Bebo's scheme began relatively small in scope. Without Ventas's agreement or knowledge, ALC started including in the covenant calculations a limited number of employees who actually stayed at the Ventas facilities, and only for the days the employees actually stayed there. But as true occupancy at the Ventas facilities continued to decline, and actual employee stays were no longer sufficient, Bebo doubled-down on her fraud. She began including in the covenant calculations large numbers of individuals without any regard to whether they stayed at the facilities or were even ALC employees.

Despite warnings from her CFO, John Buono, that the inclusion of employees had to be "real" and that they could go to prison if the process was not legitimate, Bebo chose to populate the covenant calculations with people who spent little or no time at the Ventas facilities.[1] Among these fake occupants were Bebo's parents, husband, and husband's friend, as well as the

[1] The OIP in this matter also charged Buono for his role in Bebo's scheme. On January 29, 2015, the Commission entered an Order accepting Buono's offer of settlement, finding that he violated each securities law provision alleged against him in the OIP, imposing a $100,000 civil penalty, and barring Buono from practicing before the Commission as an accountant or serving as a director of a public company. Exchange Act Rel. No. 74177.

parents, siblings, and seven-year old nephew of Bebo's friend and subordinate, Kathy Bucholtz. As for the actual employees Bebo selected, many never stayed at or even visited the Ventas facilities. Bebo also included in the calculations former employees who had been terminated and full-time employees of the facilities who lived nearby and did not stay overnight. Bebo selected many of these non-residents to be "occupants" of multiple facilities during the same time period, for months, quarters and, in some cases, years on end. Even when Bebo selected employees who had actually stayed at the facilities, she included these employees in the calculations for periods far greater than their actual stays.

At the height of her scheme, Bebo was including more than 100 fake residents in the covenant calculations. She also directed ALC to record revenue associated with the fake residents on the financial statements of the Ventas facilities, a clear violation of both GAAP and the Ventas lease. None of this was disclosed to Ventas, which caused great discomfort to the ALC accounting personnel who performed the covenant calculations. Indeed, each of these accounting witnesses either directly confronted Bebo with their concerns, or quit working at ALC so they would no longer be involved in the process.

Bebo's more than three-year deception towards Ventas demonstrates that she acted with scienter. From the very start, and continuing through Ventas's lawsuit in April 2012, Bebo took a variety of measures to prevent Ventas from learning about the fake occupants. As a result, Ventas (and ALC's shareholders) was completely unaware that ALC was significantly failing the covenants or compensating for its failures by including fake occupants in the calculations.

Bebo likewise concealed her fraud from ALC's board and attorneys. Each board member and attorney who testified was emphatic that, prior to March 2012, they were unaware that ALC was including employees in the covenant calculations. Moreover, no witness other than Bebo

testified that the board or attorneys were aware that ALC was including: (1) Bebo's friends and family; (2) non-employees; (3) large numbers of employees; (4) employees at multiple properties; or (5) employees who did not travel to the properties.

Bebo also hid key aspects of her scheme from Grant Thornton. Bebo lied to Grant Thornton by telling its audit partners that Ventas had agreed to include employees in the covenant calculations. Bebo selected the list of fake occupants knowing that Grant Thornton wanted documentary support for ALC's covenant practices, but never told Grant Thornton that the list contained her friends or family members, or employees who did not stay at the Ventas facilities.

Bebo's version of the events – particularly her claims of Ventas's purported agreement and her supposed full disclosure to the board, attorneys, and auditors – defies reality and should not be believed. Indeed, no document exists corroborating Bebo's story of what was disclosed to, or approved by, Ventas, the attorneys, the board, and the auditors. And her story of an agreement with Ventas and full disclosure of ALC's covenant practices was refuted by every percipient witness who testified. Even Bebo's best friend, Bucholtz, testified that Bebo had credibility issues, which was confirmed by the fact Bebo was impeached at least 35 times.

Simply put, Bebo lied to Ventas, lied to ALC's board, lied to Grant Thornton, and lied to the Court. And she lied to investors by continuously representing in ALC's Commission filings that ALC was complying with the Ventas covenants. Such behavior by a public company CEO cannot be countenanced. For these reasons, and those discussed below, Bebo should be found liable for all of the charges alleged in the OIP, and the Court should impose the substantial sanctions necessary to protect investors, hold Bebo accountable for her misconduct, and deter other public company executives from engaging in fraud.

II. FACTS

A. ALC and the Ventas Lease

ALC was a publicly traded company that operated assisted living facilities. (Ex. 2, p. 6). Bebo was ALC's CEO and a member of its board of directors. (Tr. 1764:8-10, 1767:3-7). The majority of ALC's voting shares were controlled by a holding company owned by the family of ALC's chairman, David Hennigar. (Tr. 547:10-548:4, 562:2-6, 1786:17:21, 3821:3-22).

Ventas is a healthcare-focused real estate investment trust. (Tr. 159:17-20). In 2008, it owned between 400 and 500 properties, including eight facilities in Alabama, Florida, Georgia and South Carolina which, prior to 2008, were operated by CaraVita pursuant to a lease. (Tr. 162:12-14; Ex. 1). During 2007, ALC and Ventas negotiated an agreement under which ALC would lease the eight facilities (the "Ventas facilities") and acquire the operations of CaraVita, with Bebo taking part in the negotiations. (Tr. 167:23-168:3, 1777:4-20; Ex. 1).

The lease contained provisions that were potentially onerous to ALC. These included financial covenants (the "financial covenants"), which required ALC to maintain at least: (1) 65% quarterly occupancy at each individual Ventas facility; (2) 75% trailing twelve-month occupancy at each individual facility; (3) 82% trailing twelve-month occupancy for the eight-facility portfolio; (4) a 0.8 trailing twelve-month coverage ratio for each facility; and (5) a 1.0 trailing twelve-month coverage ratio for the entire portfolio. (Ex. 142, § 8.2.5). The lease defined "coverage ratio" as each facility's cash flow for an applicable period (generally, resident rental income) divided by ALC's rent payments to Ventas for that facility. (Ex. 142, p. B-5).

The lease required ALC to demonstrate its compliance with the financial covenants on a quarterly basis. Specifically, the lease required ALC to provide Ventas within 45 days of the end of a quarter: (1) financial statements for each facility and the portfolio, prepared in accordance

with GAAP; and (2) schedules documenting compliance with the financial covenants.[2] (Ex. 142, §§ 25.3, 25.4; Ex. 142, Ex. D). In addition, an ALC executive – in practice, Buono – was required to certify the completeness and accuracy of such information by signing an officer's certificate and providing it to Ventas. (*Id.*; Tr. 2323:10-2324:23; Exs. 32-45).

The lease's default provisions had significant consequences to ALC. In the event ALC violated *any* of the financial covenants, Ventas could: (1) terminate the lease in its entirety; (2) evict ALC from all eight facilities; and (3) require ALC to pay damages equal to the net present value of the unpaid rent for the remaining term of the lease (through March 2015) for the entire portfolio. (Ex. 142, §§ 17.1.2, 17.2, 17.3, 17.4).

Bebo knew Ventas was unwilling to negotiate the covenants and other key provisions, and that Ventas had communicated to ALC, in regards to the lease, that ALC could either "take it or leave it." (Tr. 552:3-8, 1299:4-20, 1777:16-20; Ex. 1572). Before ALC decided to enter the lease, Buono raised to Bebo his concerns about the covenants. (Tr. 2313:7-2314:1). Buono also observed in an email to Bebo:

> "Working with Ventas and in particular Joe Solari has been difficult. He approaches these negotiations with the premise that they will not 'give away' anything they had with you…I have trouble believing that our relationship with Ventas will be anything but adversarial…"

(Ex. 140). ALC did not attempt to negotiate with Ventas either a reduction in the covenant thresholds or a modification of the consequences of non-compliance. (Tr. 2317:16-2320:8).

Bebo was a strong proponent of entering into the Ventas lease, and presented the proposed lease to ALC's board. (Tr. 548:12-20, 1354:5-14, 1778:11-25, 2803:11-13, 2936:20-

[2] Ventas required that ALC maintain and provide it with GAAP-compliant financial statements because otherwise Ventas would not be able to rely on the information prepared by ALC. (Tr. 896:7-25; Ex. 142, §§ 25.1, 25.2, 25.3, 25.4).

2937:3, 3885:20-3886:1). Despite Bebo's enthusiasm, ALC's general counsel, Eric Fonstad, and two members of its board of directors, Alan Bell and Derek Buntain, advocated against entering the lease due to various unfavorable provisions including the financial covenants. (Tr. 550:1-552:2; 1298:13-1299:3, 1299:15-1300:12, 1355:5-1357:1, 1779:20-1780:19, 2320:9-24, 2804:1-8, 3900:13-3901:11). In response to these concerns, Bebo assured the board that ALC could meet the covenants. (Tr. 551:5-20, 1781:3-16, 2640:14-2641:16, 2804:9-2805:4). Based on Bebo's assurances, the board, with the exception of Bell and Buntain, voted to enter the lease. (Tr. 552:12-553:6, 1356:12-1357:1, 2805:5-10).

After reviewing the lease in its entirety, Bebo signed the lease on behalf of ALC. (Ex. 142; Tr. 168:24-169:11, 1781:17-1782:1). On January 7, 2008, ALC filed a Form 8-K announcing its entry into a "Material Definitive" lease with Ventas. (Ex. 1). The Form 8-K, which attached the lease as an exhibit, specifically disclosed the financial covenants and the consequences if ALC failed to comply. (Ex. 1, p. 2).

Thereafter, through year-end 2011, each of ALC's Forms 10-K and 10-Q contained representations that ALC was in compliance with the financial covenants. (Ex. 2, p. 30; Ex. 3, p. 38; Ex. 4, p. 42; Ex. 5, p. 45; Ex. 6, p. 34; Ex. 7, p. 36; Ex. 8, p. 38; Ex. 9, p. 45; Ex. 10, p. 32; Ex. 11, p. 36; Ex. 12, pp. 36-37; Ex. 13, p. 43). Those filings also disclosed the amount of unpaid rent ALC could be required to pay Ventas if it failed the covenants – approximately $16 million to $25 million – and stated that the consequences of a default could have a "material adverse impact" on ALC's operations. (*Id.*).[3]

B. Ventas Closely Scrutinized ALC's Compliance with the Covenants.

Ventas paid close attention to ALC's compliance with the covenants, and considered

[3] Additionally, ALC recorded an "operating lease intangible asset" on its financial statements, which represented the present value of the future income streams associated with the Ventas facilities. At year-end 2009, ALC valued that intangible asset at $11.57 million. (Ex. 5, p. 71).

occupancy and coverage ratio to be key metrics of its properties' performance. (Tr. 191:8-192:25, 195:24-196:5, 404:17-405:1, 894:7-895:25). Ventas considered, and communicated to Bebo, that occupancy and coverage ratio were indicators of whether the facilities were performing at a level that would ensure the ability of ALC to make its rent payments, both current and in the future. (Tr. 178:16-24, 401:4-15, 908:16-909:8; Ex. 190, p. 3; Ex. 198). Ventas also knew that in the future it would need to find a new tenant to operate the facilities, and future tenants would pay higher rents for facilities with better occupancies and cash flows. (Tr. 175:22-176:13, 381:24-382:19, 961:6-962:3). For these reasons, Ventas reviewed and scrutinized the covenant calculations and financial information provided by ALC on a quarterly basis. (Tr. 191:8-197:15, 894:7-895:25, 897:1-898:25; Exs. 46-60, 147). Ventas also communicated to ALC that Ventas wanted to preserve the value of its properties while they were being run by ALC. (Tr. 2326:11-2327:12; Ex. 198).

In addition to scrutinizing the covenant calculations, Ventas held quarterly conference calls or meetings with Bebo and Buono and periodically visited the facilities to monitor the performance of its properties. During these discussions, Ventas staff asked detailed questions about the financial performance of its facilities. (Tr. 197:16-208:5, 899:1-908:15, 910:2-932:4, 2295:23-2297:1; Exs. 144, 147, 207, 208, 215, 217, 240, 241, 279, 300, 301).

C. By Late 2008, Bebo Realized that a Covenant Default Was Likely.

When ALC started operating the Ventas facilities in early 2008, the properties were performing well in terms of occupancy. (Tr. 750:9-13, 2327:13-16). However, soon thereafter, occupancy quickly began declining. (Tr. 750:14-22, 2327:20-2328:5, 3958:5-21).

Bebo, Buono, and members of ALC's accounting department regularly reviewed and monitored occupancy and coverage ratios at the Ventas facilities to ensure that ALC was meeting the covenants and to prepare the required quarterly documentation. (Tr. 838:14-22, 1839:5-13,

2321:3-20, 2327:20-2328:5; Ex. 150). As a result, Bebo knew occupancy was trending downward throughout 2008 and, for the purpose of the covenants' trailing twelve-month calculations, that ALC was losing its strongest quarters as time progressed. (Tr. 1849:13-23, 1859:22-1860:16, 3958:22-3959:25; Ex. 160; Ex. 3252, p. 3). By August 2008, Bebo and Buono first contemplated ALC purchasing the Ventas facilities to avoid the ramifications of missing the covenants. (Tr. 1840:4-1841:22; Ex. 3015).

Bebo understood that ALC's board and its chairman, Hennigar, considered it important to know whether ALC was complying with the financial covenants. (Tr. 1785:14-1786:21, 1834:9-25). For this reason, and because of the initial concerns raised by Bell and Buntain, ALC's board required Bebo and Buono to regularly report on ALC's compliance with the covenants. (Tr. 557:7-11, 576:24-578:6, 1357:5-14, 1785:18-1786:2, 2321:21-2322:2, 2807:21-2808:6; Ex. 98, p. 5; Ex. 150). Thus, at each board meeting through early 2012, Bebo and Buono reported, and presented PowerPoint slides showing, that ALC was in compliance with the covenants. (Tr. 554:21-555:2, 1357:5-18, 1837:9-22, 2322:3-18, 2641:17-2642:7, 2808:2-14; *see, e.g.*, Ex. 81, pp. 53-54; Ex. 82, pp. 5, 48; Ex. 86, pp. 27, 46).

At the August 2008 board meeting, the directors questioned Bebo and Buono about the facilities' declining occupancy and the implications of breaching the covenants. (Ex. 150). In response to these concerns, Bebo approved a memo, which was distributed to the board prior to the November 2008 meeting, describing occupancy issues at the Ventas facilities and stating: "breach of any of the occupancy or financial coverage covenants would entitle Ventas to terminate the Lease … and require payment of the present value of unpaid future rental amounts." (*Id.*; Tr. 2811:8-2812:15).

At the November meeting, Bebo addressed the board's concerns about the Ventas

facilities' declining occupancy. (Tr. 559:1-560:2; Ex. 97, p. 4). Bebo told the board that she would attempt to improve occupancy by sending a "taskforce" of ALC employees, who worked elsewhere, to the Ventas facilities to improve sales and operations. (Tr. 559:1-560:2, 2328:12-2330:4, 2812:16-2813:3, 2939:2-9, 3070:22-3074:17, 4725:6-4726:19; Ex. 97, p. 4; Ex. 150, p. 4; Ex. 567). Bebo did not tell the board she would include the taskforce members in the covenant calculations. (Tr. 560:3-9, 2645:3-25, 2813:21-25).

After the November 2008 board meeting, Bell instructed Buono to attempt to negotiate covenant relief with Ventas. (Tr. 2330:5-24, 3045:11-25). Based on Bell's directive, Buono explored the accounting implications of obtaining "a modification or waiver" of the covenants in exchange for ALC accelerating its lease payments to Ventas. (Tr. 2330:5-2331:20; Ex. 152). Buono expected Bebo to make a covenant relief proposal at a meeting Bebo requested in late November with Ventas's CEO, Debra Cafaro. (Tr. 1850:2-7, 2331:21-2333:5). On November 18, Buono emailed Bebo his recommendation to seek a suspension of the covenants, and Bebo planned to discuss this proposal at their meeting with Cafaro. (Tr. 1851:5-1853:13, 1855:3-1856:9; Ex. 156). However, when they met with Cafaro, Bebo decided not to discuss the covenants, and afterwards Buono expressed his disappointment to Bebo that she had dodged the issue. (Tr. 410:13-413:13, 1856:10-22, 1858:4-1859:9, 2333:20-2334:11). ALC also did not address covenant relief during any subsequent discussion with Ventas in 2008. (Tr. 412:14-413:13, 1859:15-21).

By the December 16, 2008 board meeting, Bebo and Buono believed that ALC would eventually default on the covenants. (Tr. 2334:12-2335:15). Robin Herbner, ALC's field accounting manager, who prepared occupancy projections in advance of the meeting, also believed ALC would miss the covenants unless occupancy markedly improved. (Tr. 754:2-13;

Ex. 548). Nevertheless, at that board meeting, in response to a question from Hennigar, Bebo reported that ALC would meet the covenants as of the end of the year. (Tr. 560:23-561:16, 753:9-754:13, 1861:12-1862:5, 2335:16-2336:11; Ex. 98, p. 5).

On December 19, 2008, Buono emailed Bebo, and again recommended ALC attempt to negotiate covenant relief with Ventas. (Tr. 2336:12-2337:3; Ex. 164). On December 30, 2008, Buono learned that another assisted living company which leased facilities from Ventas would be purchasing those properties from Ventas for a very high price. (Tr. 2337:4-2339:5). Buono believed the reason the lessor company was paying such a high price was because it ran into "covenant issues" with Ventas, and alerted Bebo to his concerns in emails Buono titled: "Yuck." (Tr. 1864:1-13, 2337:4-2339:5; Exs. 165, 166).

D. Bebo's Scheme to Include ALC Employees and Other Non-Residents in the Ventas Lease Covenant Calculations

By January 2009, as ALC's struggles at the Ventas facilities accelerated and Bebo knew ALC would have trouble meeting the covenants, Bebo came up with the idea of including employees in the covenant calculations. (Tr. 1865:8-24, 1866:11-14, 1900:24-1901:3, 2339:6-21, 3046:10-3047:3; Ex. 172). The genesis for Bebo's idea was her discovery that a legacy CaraVita employee had signed a lease and was living at one of the Ventas facilities. (Tr. 1882:18-1883:2, 3993:24-3994:9). Bebo did not know whether CaraVita had included the employee, or any other employees, in the covenant calculations, prior to ALC entering the Ventas lease. (Tr. 1886:14-24, 1886:25-1887:15).

At the time, ALC required certain low-level employees who travelled to its properties to spend the night there in lieu of staying at a hotel. (Tr. 1874:18-1877:7, 1878:22-1879:1). In advance of an upcoming call with Ventas representative Joseph Solari, Bebo sought the advice of ALC's general counsel, Fonstad, on whether the lease permitted ALC to rent rooms to those

employees and include such employees in the covenant calculations. (Tr. 1307:14-1308:6, 1888:22-1890:18, 2339:16-2340:8, 3994:23-3995:16). Fonstad understood a limited number of employees travelled to the Ventas facilities in an effort to improve operations, and believed Bebo's proposal was restricted to employees who actually stayed at the facilities. (Tr. 1305:25-1307:9, 1308:10-1309:17, 1314:8-16, 1316:24-1317:10).

Fonstad learned Bebo would be discussing her proposal with Ventas and, on his own initiative, prepared a January 19, 2009 email containing his legal advice on Bebo's proposal. (Tr. 1309:18-1310:11; Ex. 1152). Fonstad's email suggested that Bebo discuss the proposal in a telephone conversation scheduled with Ventas the following day. (Ex. 1152). Fonstad's email advised that Bebo's proposal could be permissible, but only if Ventas agreed to it in writing.[4] (Tr. 1319:18-1320:5; Ex. 1152). Bebo admits Fonstad advised her that Ventas's agreement was required in order to include employees in the covenant calculations. (Tr. 1895:12-17).

Fonstad attached a draft letter to send to Ventas, in the event Ventas agreed to the proposal. (Ex. 1152, p. 2). Fonstad's letter included the following language:

> [ALC] proposes to rent a limited number of units to employees of [ALC] for the purpose of facilitating their ability to assist in operating the [Ventas facilities]. *It is not expected that the number of units rented to ALC employees would exceed* _ [blank space in original] *at any one time.* Rents paid would be the same as charged to unrelated parties.
>
> In addition, from time to time, relatives of ALC employees may become residents of one or more of the Facilities. The rentals would be on terms no less favorable than would be obtained in comparable arms-length transactions with unrelated parties.
>
> The units would only be *considered occupied for purposes of the minimum average occupancy covenants* for the days that rent is actually paid.

[4] The lease provided that it could only be modified by a writing signed by authorized representatives of both ALC and Ventas and that all "notices, demands, requests, consents, approvals and other communications" under the lease were to be in writing with a copy to Ventas's general counsel. (Ex. 142, § 42.6).

> Please confirm your agreement that these practices do not violate ... the Lease and that they are permitted under the terms of the Lease.

(Ex. 1152, p. 2 (emphasis added)). Fonstad, who believed a signature was required to document Ventas's acceptance, concluded his draft letter with a blank signature block for Ventas to sign if it accepted the proposal. (Tr. 1319:18-1320:5; Ex. 1152, p. 2).

E. The January 20, 2009 Solari Call and Bebo's February 4, 2009 Email

On January 20, 2009, Bebo and Buono participated in a telephone call with Solari. (Tr. 413:23-414:1, 2342:17-2343:14). Solari's responsibilities at Ventas dealt with acquisitions as opposed to the management of Ventas's properties, which was the responsibility of the asset management group. (Tr. 399:8-20, 408:19-409:2). Solari lacked the authority to modify the terms of the ALC lease without the approval of Ventas's CEO. (Tr. 409:25-410:12).

Bebo concedes that, going into the call, ALC had not told Solari the covenants would be discussed. (Tr. 1901:8-1902:6). That morning, prior to the call, Buono sent Bebo an email describing which Ventas facilities were most in danger of missing the covenants. (Ex. 174). Buono's email warned Bebo that for the fourth quarter of 2008, *which had already ended*, ALC was in violation of the covenants at one of the facilities. (Tr. 1900:6-23; Ex. 174, p. 2).

According to Solari, they discussed two topics on the call: (1) subleasing units at one of the Ventas facilities to a hospice provider; and (2) whether ALC corporate employees travelling to the facilities could overnight there instead of hotels. (Tr. 414:2-12). On the call, Solari did not agree to any of Bebo's proposals. (Tr. 415:15-18). Solari did not recall any discussion of the covenants, but was emphatic he did not agree to allow employees to be included in the covenant calculations. (Tr. 416:8-15). Solari is confident of this because he never would have agreed to such a proposal – which he would have considered an "outlandish request" that would "circumvent the integrity of the financial covenants" – and because he lacked the authority to do

so. (Tr. 416:8-417:10, 422:21-423:12).

Solari is similarly confident he did not agree to include in the covenant calculations: (1) employees who did not actually visit the properties; (2) employees who had a "reason to go;" (3) large numbers of employees; (4) employees to be included at multiple properties at once; or (5) non-employees such as family members or friends of ALC personnel. (Tr. 418:4-421:5). Solari was presented with, and unambiguously denied, Bebo's version of the call. (Tr. 423:13-426:6).

Buono testified consistently with Solari. To that end, Buono testified that Bebo discussed with Solari the potential hospice sublease and a proposal to have ALC employees stay at the Ventas facilities.[5] (Tr. 2344:8-17). Buono confirmed no covenants were discussed, and that Solari did not agree to anything. (Tr. 2344:18-2345:5).

Bebo offered a starkly different version of the call. According to Bebo, Solari agreed that ALC, at Bebo's discretion, could include an unlimited number of employees and others in the covenant calculations who had a "reason to go" to the facilities, even if: (1) those employees did not stay at the facilities; (2) ALC did not disclose to Ventas the number of employees included in the calculations; and (3) ALC, instead of the employees, "paid" rent for the units. (Tr. 1904:22-1907:13, 1907:14-18, 1908:12-23, 1912:7-1913:16, 4005:2-5).

However, Bebo concedes she spent more time discussing the hospice sublease proposal on the call than the issue of employees leasing rooms. (Tr. 1914:6-18). She also concedes she never told Solari that: (1) ALC would fail any covenants without including employees; (2) no cash would change hands for the employee-leased rooms; (3) ALC would treat a room as occupied for an entire month even if the employee stayed there for only one night or never

[5] The hospice sublease proposal would have increased occupancy, because ALC would have leased a block of rooms to the hospice provider, and counted all of those rooms as occupied even if they were not always filled with patients. (Tr. 2343:15-2344:7).

stayed there at all; (4) most of the rooms ALC would include in the calculations would never be occupied; (5) Bebo's friends and former ALC employees would be included in the calculations; and (6) the same employee could be included at multiple facilities during the same time period. (Tr. 1903:7-12, 1920:11-1923:3, 4007:19-4008:4).

On January 27, 2009, Buono prepared an initial draft of an email to Solari. (Tr. 2467:15-2470:9, 2756:22-2758:18; Ex. 179; Ex. 1320A). That draft email is consistent with Buono's and Solari's account of the January 20 call, makes no mention of the Ventas lease covenants, and does not request Ventas's agreement to any proposal. (Ex. 179).

On February 4, 2009, after collaborating with her best friend Bucholtz to edit Buono's draft, Bebo sent Solari an email which purported to summarize their January 20 call. (Tr. 1931:14-1932:2, 1934:12-1935:12, 2354:1-5, 2949:7-2950:7, 2987:12-2992:23; Exs. 184, 1320, 1320A). Contrary to her own account of the Solari call, Bebo's email does not mention any covenants. (Ex. 184). Instead, the first four paragraphs address ALC's proposed sublease to the hospice provider. (Ex. 184). The fifth paragraph, reads as follows:

> In addition to the potential hospice lease, we are also confirming our notification of our rental of rooms to employees. We confirm that all rentals related to employees are in the ordinary course of business and on terms no less favorable than would be obtained in a comparable arms-length transaction with an unrelated third party. (Ex. 184).

Ventas never responded to this proposal, and Bebo agreed that prior to April 2012, ALC did not inform Ventas that ALC was including employees in the covenant calculations. (Tr. 428:25-429:5, 1918:3-1919:11, 2022:6-2023:13, 2345:6-2347:20). According to Bebo, Ventas's silence confirmed its agreement that ALC could include in the calculations (both occupancy and coverage ratio) an unlimited number of employees who did not actually stay at the facilities, as long as those employees had a "reason to go." (Tr. 1936:13-1938:18, 1938:23-1941:8, 1942:9-13, 1948:7-16). Bebo also claims Solari agreed that Bebo had the discretion to decide whether a

person had a "reason to go" to a Ventas facility, even if that person was not an ALC employee. (Tr. 1942:24-1943:16, 1944:15-1945:10). Because of her extremely broad definition of who ALC could include in the calculations, Bebo considered Solari's purported agreement to be tantamount to a waiver of the covenants. (Tr. 1945:11-1946:4).

Bebo's interpretation is at odds with Buono's and Solari's accounts of the January 20 call and her February 4 email's summary of the call, but ignores the advice she received from Fonstad: that it was necessary to disclose in writing ALC's intent to include employees in the covenant calculations and to obtain Ventas's written approval. (Ex. 1152).

F. The February 2009 Board Meeting and ALC's Proposal to Purchase New Mexico Properties in Exchange for Covenant Relief

Despite the agreement Bebo claimed was reached on their January 20 call, on February 17, 2009, Bebo and Buono discussed with Solari a new proposal for ALC to purchase two Ventas properties in New Mexico in exchange for Ventas waiving both the occupancy and coverage ratio covenants. (Tr. 429:15-431:19, 1951:23-1952:5; Ex. 188). On February 19, Bebo followed up with Solari with an offer to purchase the two properties in exchange for revising the lease such that the only remaining covenant would be a portfolio-wide coverage ratio covenant that would be reduced from 1 to 0.9. (Ex. 190, p. 3). Bebo's email stated: "In putting together this proposal, we have tried to address your concerns that the properties be managed to adequately support lease payments." (*Id.*).

Consistent with Bebo's February 19 email, on February 21 Buono drafted a proposal for ALC's board's consideration seeking a waiver of the financial covenants (save for the reduced portfolio-wide coverage ratio covenant) in exchange for purchasing the two New Mexico properties. (Tr. 1950:18-1951:15, 2358:10-2359:15; Ex. 193). Based on conversations with Solari, Buono apparently believed that ALC had reached a deal with Ventas. (Tr. 2360:13-

2361:1). To that end, Buono emailed Bucholtz: "Not sure if Laurie conveyed to you our conversation with Ventas on Friday, but, subject to board approval, we have reached an understanding on covenant compliance...The bad news is you will now own 2 buildings in New Mexico." (Ex. 192). Similarly, at the February 23 board meeting, Bebo reported that ALC may seek covenant relief from Ventas in connection with the purchase of two New Mexico properties. (Tr. 562:11-563:19, 1980:12-1981:8, 2815:1-2816:2; Ex. 100, pp. 2-3).

Despite the contemporaneous emails and minutes showing that Bebo proposed to the board ALC obtaining covenant relief in exchange for purchasing the New Mexico properties, Bebo testified that at the February 23 meeting the board approved the practice of including in the covenant calculations rooms ALC rented for "people with a reason to go." (Tr. 1970:19-1971:23).

Five directors – Bell, Buntain, Hennigar, Rhinelander, and Roadman – refute Bebo. These directors testified that the inclusion of employees in the covenant calculations did not come up at the February 23, 2009 meeting, and that the board did not approve the practice. (Tr. 563:24-564:6, 567:4-23, 1363:10-25, 2646:15-2648:8, 2816:3-14, 2824:13-22; Ex. 492A).

Fonstad, who attended the February 23 board meeting and took the minutes as ALC's secretary, similarly testified that the inclusion of employees in the covenant calculations was never discussed at any board or audit committee meeting he attended, including the February 23 meeting. (Tr. 1521:22-1524:2; Exs. 99, 100). Buono likewise testified the board did not approve the inclusion of employees in the covenant calculations. (Tr. 2761:19-23). The minutes of the February 23 board and audit committee meetings also make no reference to the use of employees in the covenant calculations, let alone board approval of the practice. (Exs. 99, 100).

In the days following the board meeting, Ventas countered ALC's bid to purchase the

New Mexico properties with an offer for ALC to purchase the properties at an increased price, along with ALC purchasing Peachtree, a poorly performing property that was part of ALC's lease. (Tr. 224:6-225:11; Ex. 196). However, Ventas was only willing to temporarily waive the individual facility coverage ratios, and would not waive the portfolio-wide coverage ratio component. (Tr. 225:19-226:13, 435:4-436:12; Exs. 194, 196). When Buono received Ventas's counter-offer, he sent Bebo an email titled "OMG," writing: "Did you read [Solari's] counter proposal? Hope you['re] sitting down." (Ex. 195).

On February 25, 2009, Bebo, Buono, and Fonstad participated in a call with Ventas representatives to discuss the counterproposal. (Tr. 1514:15-1516:6; Ex. 197). On that call, Ventas executive Tim Doman told Bebo that Ventas "takes covenant violations very seriously." (Tr. 1516:10-19). ALC did not accept the counterproposal because it considered its terms unacceptable, the deal was never consummated, and ALC never obtained covenant relief from Ventas. (Tr. 436:13-438:10, 2360:13-2361:9; Ex. 198).

On April 15, 2009, Solari was laid off from Ventas as part of a broader reduction in force involving 10% of Ventas employees. (Tr. 399:23-400:12, 460:15-461:1). Bebo acknowledges that after Solari left Ventas, she never spoke with anyone at Ventas about the use of employees in the covenant calculations. (Tr. 4074:6-9).

G. Bebo Directs Buono and His Staff to Improperly Include Employees and Other Non-Residents in the Covenant Calculations

Following the January 20, 2009 call with Solari, Bebo gave Buono the directive to start including ALC employees – and their attendant revenue – in the covenant calculations. (Tr. 2347:21-2348:3, 2351:13-19). In response, Buono cautioned Bebo that the practice "had to be something real" and that ALC could only include "employees that were staying at the properties." (Tr. 2348:4-12). At the time ALC was performing the first quarter 2009

calculations, Grant Thornton asked Buono for supporting documentation. (Ex. 203). After receiving Grant Thornton's inquiry, Buono sent Bebo an email asking her for a list of names to provide to Grant Thornton because Bebo was the person at ALC who knew which employees were staying at the facilities. (Tr. 2520:24-2521:14; Ex. 203). In that email, Buono referenced: "employees *staying* at the house" and "employees *living at* our residences" and employees "that *were at*" buildings. (Tr. 2361:10-2364:11; Ex. 203 (emphasis added)).

Bebo also directed Buono not to inform Ventas that employees were being included in the covenant calculations, and to provide Ventas with calculations that included the employees and their associated revenue. (Tr. 2348:22-2349:8, 4669:21-4670:5). Buono followed Bebo's directives, despite the fact Solari did not agree to the inclusion of employees, because Buono felt he would be terminated if he disobeyed Bebo. (Tr. 2348:13-21).

H. ALC's Process for Including Non-Residents in the Covenant Calculations

1. ALC's Historical Practices

Each quarter, pursuant to the lease, ALC sent Ventas a package of materials documenting its compliance with the covenants. (Tr. 749:4-8; Exs. 32-45). Prior to going on maternity leave in August 2009, Herbner was responsible for preparing the covenant calculations and the quarterly materials ALC sent to Ventas. (Tr. 511:13-14, 519:4-12, 749:20-750:8).

ALC's historical methodology for calculating occupancy, at all of its facilities, was to divide the number of occupied units by the number of available units at each facility. (Tr. 515:24-516:7, 519:13-25, 830:11-19, 2315:5-8, 3116:17-3118:4). Bebo admits ALC never used any alternative methodology to calculate compliance with the Ventas covenants. (Tr. 4545:9-4546:5). Aside from Bebo, the other witnesses were in agreement that ALC never contemplated calculating occupancy at the Ventas facilities using a different methodology. (*See, e.g.*, Tr.

1304:24-1305:20, 1521:18-1522:3, 2314:14-2315:4). Even Bebo concedes she never asked anyone to perform the calculations using an alternative methodology, and never discussed the idea with ALC's board, audit committee, or auditors. (Tr. 1868:8-18, 1872:7-21). Similarly, Buono and Rhinelander testified that Bebo never proposed to them using any alternative methodology – such as reducing the number of available units or using beds (instead of units) in the numerator – to calculate occupancy at the Ventas facilities. (Tr. 2314:14-2315:8, 2813:4-20).

Bebo further acknowledges that changing the methodology for calculating occupancy would not have impacted the coverage ratio calculation. (Tr. 1870:16-1871:1, 1873:20-1874:4; *see also,* Tr. 2315:9-20). Buono testified that using an alternative methodology – such as allocating expenses in a different manner – would not have impacted ALC's coverage ratio calculations. (Tr. 2315:21-2317:3). Buono also testified he never discussed with Bebo meeting the coverage ratio covenants by allocating expenses differently, and that doing so would be inconsistent with GAAP and the Ventas lease. (Tr. 4684:11-24, 4685:11-4686:1).

2. The "Occupancy Recons" and the "Great Concern" they Caused to ALC Accounting Personnel

ALC began including employees in its Q4 2008 covenant calculations, which were prepared and sent to Ventas prior to the February 2009 board meeting where Bebo claims the board approved the practice.[6] (Tr. 754:14-25, 1974:25-1976:2, 1976:16-1977:4). For that quarter, Bebo and Herbner understood ALC would include only employees who actually stayed overnight at the Ventas facilities. (Tr. 756:13-757:20, 1989:2-9). To perform the calculations, after the quarter had ended, Herbner gathered information from Bebo showing which employees

[6] Bebo acknowledged that at the February 23, 2009 board meeting, when she reported that ALC was meeting the covenants, she did not disclose that the reason ALC was able to do so was because it had previously begun including employees. (Tr. 1974:4-15).

had stayed at the Ventas facilities, and for what days. (*Id.*; Tr. 798:10-802:18, 2944:18-2946:20, 2993:6-25). Herbner performed her calculations on an Excel spreadsheet she referred to as the "Occupancy Recon," which was never shared with Ventas. (Tr. 791:2-793:16).[7] Herbner calculated the revenue associated with the employees and reported the information to assistant controller Anthony Ferreri, who posted journal entries to record the revenue on ALC's general ledger. (Tr. 757:21-758:7, 803:5-804:7, 807:23-808:7). Bebo determined the daily rate used for calculating revenue associated with the added employees. (Tr. 806:19-22, 824:7-11). After Ferreri posted the journal entries, Herbner included the revenue associated with the employees in the financial materials sent to Ventas. (Tr. 808:19-809:14).

Bebo gave Herbner a directive similar to the one she gave Buono: do not disclose to Ventas ALC's use of employees in the covenant calculations. (Tr. 2088:11-2089:25). Accordingly, Bebo understood Ventas was unable to discern the inclusion of employees in the covenant calculations from the quarterly information provided by ALC. (Tr. 2087:12-2088:10).

Herbner also performed the covenant calculations for the first and second quarters of 2009, again doing so after the quarter had ended. (Tr. 811:2-20, 815:14-816:10, 827:23-828:3).[8] In these quarters, Herbner determined the number of employees by calculating the shortfall in occupied units and revenue needed to meet the occupancy and coverage ratio covenants. (Tr. 816:13-21). Herbner again provided the revenue amounts associated with the employees to Ferreri, who processed the journal entries booking the revenue to the Ventas facilities' financial statements. (Tr. 824:22-825:19). Herbner then reached out to Bebo, who selected the names of

[7] The "Occupancy Recons" containing the covenant calculations performed by ALC accounting personnel constitute Exhibits 17 through 31A.

[8] The process always took place after the end of the quarter at issue, and Bebo understood this to be the case. (Tr. 1987:21-1988:11, 2349:23-2350:13)

the employees to be included in the calculations. (Tr. 816:22-817:2, 826:2-7). Unlike the fourth quarter of 2008, Herbner no longer received documentation showing the days, if any, employees actually stayed at the Ventas facilities. (Tr. 817:6-17). Instead, Bebo directed that each employee be considered an occupant for the entire quarter. (Tr. 989:24-990:13, 2352:3-12). Bebo knew that, beginning in the first quarter of 2009, ALC included in the calculations employees who did not visit or stay at the Ventas facilities. (Tr. 1989:10-1990:7).

Herbner became uncomfortable when Bebo directed her to include Bebo's parents (using Bebo's mother's maiden name: "Paremsky") and Kevin Schweer, the ex-husband of a former ALC employee. (Tr. 817:18-818:15, 852:24-853:11). It caused Herbner "great concern" that Bebo instructed her to include non-employees, because Herbner thought it did not make business sense for Ventas to have agreed to the practice. (Tr. 818:16-819:4). Schweer's inclusion additionally concerned Herbner because she did not know if he had actually stayed at the Ventas facilities. (Tr. 819:5-22). Herbner was also concerned ALC included the same employees at multiple properties during the same time period, as this conflicted with her understanding that Ventas had agreed employees could be included only if they stayed at the facilities. (Tr. 819:23-820:14).

Herbner was never asked, by Bebo or others, to verify that the non-residents included in the calculations were appropriately listed or had actually stayed at the facilities. (Tr. 820:25-821:21, 828:15-829:8). Further, as actual occupancy continued to decline throughout 2009, Herbner became concerned that all of the employees being included in the covenant calculations were not actually staying at the Ventas facilities. (*Id.*; Tr. 843:5-11).

Herbner stopped performing the calculations after the second quarter of 2009, when she went on maternity leave. (Tr. 845:11-846:6). The week Herbner returned from her leave she

gave notice that she had found a new job elsewhere. (*Id.*). One of the reasons Herbner left ALC was her discomfort with the Ventas covenant calculations and her desire not to "advance at a company that was constantly pushing the edges of regulators." (Tr. 844:24-845:6, 882:8-14).

Prior to taking maternity leave, Herbner spoke with Sean Schelfout, ALC's treasury manager, who was taking over responsibility for performing the covenant calculations. (Tr. 846:7-12, 965:24-966:3). Herbner trained Schelfout on how she performed the calculations, including how to use the Occupancy Recons to "backfill" the number of employees needed to meet the covenants. (Tr. 970:9-971:7, 973:20-975:19, 982:12-984:10; Ex. 141; Ex. 383). Herbner taught Schelfout to obtain the names of the employees from Bebo. (Tr. 976:3-977:2).

Schelfout originally thought he would be responsible for the calculations only while Herbner was on leave, but after she resigned Schelfout was stuck with the assignment. (Tr. 971:4-20). Schelfout performed the calculations, as trained by Herbner, from the third quarter of 2009 through the end of 2010. (Tr. 978:9-979:2, 1017:14-19). Schelfout described the practice as "adding the employees that need to be added to achieve the occupancy ratio." (Tr. 980:3-9, 992:2-10, 1011:4-12). After determining the number of needed employees, Schelfout sent Bebo or Buono an Occupancy Recon with placeholders for the employee names – such as E3, E4, and E5. (Tr. 988:19-990:4, 998:8-999:3; Ex. 230; Ex. 236; Ex. 387). Bebo then determined the names of the employees. (Tr. 999:4-1001:5, 1009:12-1010:19; Ex. 167, pp. 11-14; Ex. 237).

In the course of training Schelfout, Herbner expressed her concerns about the inclusion of employees, and Schelfout shared her concerns. (Tr. 846:7-847:21, 984:11-23). At the time Schelfout assumed responsibility for the calculations, he became concerned the practice was not legitimate. (Tr. 979:3-23, 985:11-15). Once Herbner resigned, Schelfout began looking for a new job due to his discomfort. (Tr. 979:3-23, 1063:2-16). His concerns intensified when he

realized ALC was including: (1) Bebo's husband; (2) employees who were not staying at the facilities; (3) the same employees at multiple properties; and (4) people who were not ALC employees. (Tr. 980:10-982:11, 997:17-998:3). Schelfout performed the calculations despite his concerns because he feared being fired if he confronted Bebo and Buono, or disclosed the use of employees to Ventas. (Tr. 984:24-985:19, 986:1-987:14, 1027:16-1028:2). Given the scarcity of finance jobs in Milwaukee and the poor state of the economy, Schelfout did not get a job offer for more than a year. (Tr. 1030:25-1031:14). He accepted the first offer he received, and resigned from ALC. (Tr. 985:20-25).

After tendering his resignation, Schelfout trained Daniel Grochowski, ALC's director of tax and treasury, on how to perform the calculations, and gave Grochowski the same instructions provided by Herbner. (Tr. 1029:17-1030:7, 1084:3-23, 1091:23-1093:25). Schelfout explained to Grochowski how to use an algebraic formula to "back in" to the number of employees needed to meet the covenants. (Tr. 1093:11-1095:6). Schelfout gave Grochowski the same instruction Bebo had given to Buono and Herbner: do not inform Ventas that employees were being included in the calculations. (Tr. 1095:7-1096:16, 1207:12-16).

When Schelfout left ALC in January 2011, Grochowski assumed responsibility for performing the covenant calculations. (Tr. 1090:21-1091:5). Grochowski was uncomfortable with the entire process, which involved "fudging numbers," "inflating revenue," "lying to Ventas," and "creating false financial statements." (Tr. 1097:10-24, 1099:1-1101:12). Grochowski also had concerns because ALC was including: (1) employees who did not travel to the properties; (2) the same employees at multiple properties; and (3) people who were not ALC employees. (Tr. 1097:25-1098:25). Grochowski worried that Ventas could sue him personally, because he emailed the quarterly certifications to Ventas. (Tr. 1104:17-1105:5).

Grochowski performed the calculations for three quarters. (Tr. 1105:6-10). However, he refused to follow Herbner's and Schelfout's practice of backing into the necessary number of employees, because he considered it to be "manipulation." (Tr. 1096:25-1097:24). Instead, Grochowski reviewed ALC's occupancy data to determine how much actual occupancy had increased or declined over the past month. (Tr. 1109:10-17). Grochowski provided this information to Buono, who then calculated the number of employees to add or subtract from the calculations. (Tr. 1110:11-21). Bebo then determined the names of the employees to be included in the calculations. (Tr. 1113:3-1114:12, 1126:4-18, 1128:18-1131:18; Ex. 302). On occasion, Grochowski crossed out the names of employees who no longer worked at ALC, knowing that this made Bebo's job more difficult because she would have to come up with substitute employees. (Tr. 1124:8-1125:24).

In November 2011, Grochowski decided to confront management. (Tr. 1151:24-1152:11). He and Ferreri were afraid they would lose their CPA licenses due to their roles in the practice. (*Id.*). So Grochowski and Ferreri approached Buono and told him they: (1) did not want to be involved in the covenant calculations anymore; (2) did not think ALC's practices were appropriate; and (3) were concerned about their careers. (Tr. 1152:12-17, 2375:23-2376:6).

A few days later, Bebo summoned Grochowski to her office. (Tr. 1152:18-1153:6). Grochowski told Bebo he was not comfortable performing the calculations and he did not want to be involved anymore. (Tr. 1153:12-20, 2376:1-21, 4191:7-19). Grochowski told Bebo he was concerned the inclusion of employees in the covenant calculations violated GAAP. (Tr. 1153:25-1155:8). He also pointed out that Bebo's friend, Kevin Schweer, was not an ALC employee but was included in the calculations. (Tr. 1155:9-18). Bebo tried to allay Grochowski's concerns by showing him her February 4, 2009 email to Solari. (Tr. 1157:10-

1159:16). But the email only validated Grochowski's concerns. (Tr. 1159:17-1161:14).

When Grochowski refused to back down, Bebo said he no longer needed to perform the calculations. (Tr. 1161:24-1162:20). This was the first time Bebo allowed an employee to be relieved of duties the employee did not want to perform. (Tr. 2377:4-11). Bebo then assigned Buono to perform the calculations himself, and thereafter Buono was responsible for preparing the Occupancy Recons. (Tr. 1162:21-1163:1, 2376:12-2377:3, 2377:19-2378:16). Following the meeting, Bebo awarded Grochowski a $35,000 "stay-on" bonus. (Tr. 4193:1-11). Only two other ALC employees received "stay-on" bonuses, and each received $8,000. (Tr. 4194:3-9, 4729:24-4730:21).

3. The Journal Entries

Ferreri supervised the posting of journal entries to ALC's general ledger. (Tr. 1221:25-1222:8, 1223:2-1225:2). Journal entries were the mechanism by which accounting transactions were recorded on ALC's general ledger and, ultimately, its financial statements. (Tr. 1223:12-16). The journal entries used to record revenue associated with the employees were prepared and posted after the end of the month reflected in the journal entry. (Tr. 1236:1-17). These entries recorded revenue on the accounts of the eight Ventas facilities, and recorded a corresponding amount of "negative revenue" in a corporate-level revenue account known as the 997 account. (Tr. 1225:10-24; Exs. 378-425, 427-450).[9] The two transactions offset, so there was no impact on ALC's consolidated financial statements. (Tr. 1230:22-1231:6, 1240:4-1241:1, 1244:22-1245:20). As a result, the added revenue ALC reported to Ventas was not reported in ALC's Forms 10-K and 10-Q. (Tr. 2771:17-2772:4).

[9] Exhibits 378 through 425 and 427 through 450 are the journal entry materials reflecting the recording of employee-related revenue to the Ventas facilities and the corresponding negative revenue in the 997 account.

When Ferreri was assigned to post the employee revenue journal entries, he became anxious because of the unusual nature of the transactions, which Ferreri considered "definitely not consistent with GAAP." (Tr. 1227:16-1228:10, 1243:24-1244:7). In his 25-year career as an accountant, Ferreri had never seen an arrangement that involved offsetting positive and negative revenue, as opposed to the typical situation involving revenue and an offsetting expense. (Tr. 1221:4-1222:14, 1228:11-21, 1253:6-1254:5, 1261:17-22). Also, ALC accountants were otherwise not involved in posting revenue-related journal entries, which occurred automatically at the point a resident purchased a good or service. (Tr. 1228:22-1230:21). Ferreri's concerns intensified when he learned the journal entries related to the covenants in the Ventas lease. (Tr. 1254:6-15).

Because of his discomfort with the process, Ferreri requested either Buono or Bebo sign off on the employee revenue journal entries. (Tr. 1246:6-1247:15). Such a step was highly unusual because Buono and Bebo did not sign any other journal entries, and because Ferreri never before requested a CEO or CFO to approve a journal entry. (Tr. 1246:6-1248:14). To get Buono and Bebo to sign the journal entries, Ferreri gave them the cover story that their approval was required under the Sarbanes-Oxley Act. (Tr. 1248:1-8).

After Grochowski confronted Bebo and was relieved of his duties, Bebo summoned Ferreri. (Tr. 1256:7-19). Ferreri acquiesced to Bebo's request that he continue recording the journal entries, so long as Buono personally prepared the supporting schedules. (*Id.*) Ferreri continued to record the entries because Bebo assured him the process was "proper and correct" and Ferreri feared being terminated if he refused to obey Bebo. (Tr. 1260:14-1261:16).

Ferreri's assessment that booking revenue associated with the employees included in the covenant calculations did not comport with GAAP was shared by the Division's expert, John

Barron. Barron testified that recording revenue on the financial statements of the Ventas facilities, which the lease required to be prepared in accordance with GAAP, violated GAAP's revenue recognition criteria contained in FASB Concepts Statement 5. (Ex. 377, pp. 27-29). Specifically, Barron testified that the recording of revenue was improper because no cash changed hands, the Ventas facilities never had a claim to cash, and there was no evidence of an agreement between ALC and the Ventas facilities setting forth the terms of an arrangement that allowed revenue to be recorded on the facilities' financial statements. (Ex. 377, p. 28). Bebo offered no evidence (expert testimony or otherwise) to show that recording revenues associated with the included employees was consistent with GAAP.

4. Bebo's Role in the Process

In addition to ordering the inclusion of employees, Bebo was at all times responsible for determining the identities of the employees and other non-residents included in the covenant calculations. (Tr. 2350:19-25).[10] Bebo also understood the process by which ALC accounting personnel determined the number of employees and the associated revenue needed to meet the covenants. (Tr. 1996:25-1997:18, 1998:4-10, 1998:11-1999:21, 2354:14-2355:21). On occasion, Bebo gave the accounting staff directives to get the coverage ratio above certain levels. (Tr. 2374:19-2375:19; Ex. 304).

Bebo testified that each quarter, Buono or his staff would provide her the number of employees needed to meet the covenants, and that she would supply the names. (Tr. 4076:20-4077:17). Bebo understood the list of names was provided to Grant Thornton along with ALC's other covenant calculation materials. (Tr. 2699:15-2700:6, 4070:19-4073:7, 4124:3-23). Buono

[10] Bebo claims she did not always select the names, but concedes she typically did. (Tr. 1994:5-15, 1999:22-2000:12). No other witness testified that anyone but Bebo selected the names.

and his staff did not perform a substantive review of the list of names or otherwise review the list for accuracy. (Tr. 2352:20-2353:7). Bebo never instructed Buono to do so. (Tr. 2017:14-2018:2, 4559:23-4560:4).

The names Bebo selected for inclusion in the covenant calculations included:

- Her husband, Nick Welter, who was never an ALC employee. (Tr. 2006:24-2007:11; Ex. 167, p. 11). Bebo listed her husband as an occupant of multiple facilities during the same time period. (Tr. 2010:11-2011:15; Ex. 167, p. 13).

- Her parents, who Bebo listed under her mother's maiden name. (Tr. 2007:15-2008:8; Ex. 167, p. 12).

- Her husband's friend, Kevin Schweer, who was never an ALC employee and was simultaneously listed as an occupant of multiple properties. (Tr. 2011:9-2012:18; Ex. 167, pp. 12-14).

- Her friend and ALC executive, Kathy Bucholtz, who Bebo listed as an occupant of four facilities at once. (Tr. 2013:25-2014:22; Ex. 167, pp. 11-13).

- Bucholtz's parents, brother and sister-in-law, and seven-year old nephew. (Tr. 2046:1-2047:13, 2049:4-13, 2050:13-21; Ex. 237, pp. 5 and 7).

- Jared Houck, an ALC executive who never stayed at the Ventas facilities. Bebo reviewed Houck's expense reports showing that he stayed at hotels and not the facilities, yet simultaneously listed Houck as an occupant of five facilities. (Tr. 1465:5-13, 1468:14-1469:1, 1470:19-1471:2 1500:3-9; Ex. 21, pp. 6-8; Ex. 22, pp. 6-8).

- Numerous other ALC employees who never stayed at the Ventas facilities. (Exs. 451, 452, 453, 454, 462, 466, 468, 470, 471, 473).

- Tim Cromer, who was never an ALC employee. (Tr. 2053:9-2055:10; Ex. 256, pp. 6-7). Cromer was the husband of another ALC employee who herself was separately listed as an occupant of multiple facilities. (*Id.*).

- Other individuals such as former employees, future hires who had not yet started working for ALC, and full-time employees of the Ventas facilities. (Ex. 552A, Tr. 2224:4-2239:19).

- Large numbers of employees who were simultaneously listed at multiple properties. Starting in the third quarter of 2009, Bebo listed an average of 18.5 employees at multiple properties each quarter. (Ex. 552A, Tr. 2224:4-2239:19).

In addition to selecting the names, Bebo also signed journal entries which recorded the revenue associated with the employees included in the covenant calculations. (Tr. 2055:13-2056:21, 2059:10-2060:11, 2061:11-2062:1, 2068:20-2069:21; Ex. 427; Ex. 433, p. 4; Ex. 447, p. 1; Ex. 449, p. 1). Bebo knew the purpose of the journal entry was to record the employee revenue and that ALC utilized the 997 account to cancel out revenue from ALC's consolidated financial statements.[11] (Tr. 2031:6-14, 2061:21-2062:1, 2065:17-2066:9, 2067:10-2068:11, 2771:17-2772:19, 4129:15-4130:16, 4133:14-4134:9, 4137:16-4138:2, 4585:15-4587:1).

Bebo also understood there was never any actual reserving or "setting aside" of rooms at the Ventas facilities for the employees who did not actually stay there. Indeed, she testified the on-site staff at the Ventas facilities did not know rooms at their facilities were being reserved for employee use, or that non-resident rooms were being included in the covenant calculations. (Tr. 2071:16-2072:4). Moreover, the notion of setting aside or reserving rooms is inconsistent with the fact ALC made the determination of how many rooms to include in the calculations *only after the end of each quarter.*

5. Bebo Relied on the Inclusion of Large Numbers of Non-Residents Who Did Not Stay at the Ventas Facilities to Avoid Failing the Covenants.

Throughout 2009 and into 2010, actual occupancy continued to decline at the Ventas facilities. (Ex. 377, ¶¶ 81-82). The following chart, depicting actual trailing twelve-month occupancy, shows that without the inclusion of employees ALC experienced multiple covenant failures at each of the Ventas facilities.[12]

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[11] Bebo additionally understood that ALC's Commission filings, which disclosed company-wide occupancy information, did not contain the non-resident occupants included in the figures reported to Ventas. (Tr. 2074:16-2075:14).

[12] Without including the employees, ALC would also have repeatedly failed the 65% quarterly occupancy covenant at each of the facilities and the coverage ratio covenants at five of the

Trailing 12-Month Occupancy Percentages that Failed Covenant Thresholds

2009 through 2011

	Winterville Retirement	Greenwood Gardens	Highland Terrace	Peachtree Estates	Tara Plantation	The Inn at Seneca	CaraVita Village	Sanctuary at North Star	Portfolio Total
Q1'09	74.7	-	-	71.6	-	-	-	-	-
Q2'09	68.7	-	-	71.3	-	-	-	-	**80.4**
Q3'09	62.8	-	-	70.5	-	-	-	-	**76.9**
Q4'09	56.5	74.1	74.4	70	71.2	-	73.9	72.1	**72.3**
Q1'10	55.7	72.2	66.1	68.5	65.7	-	71.1	71.1	**68.9**
Q2'10	59.8	71	61.7	65.5	62.6	67	69.6	71.4	**66.9**
Q3'10	68.5	71.2	64.1	64.6	63.4	59.8	68.6	-	**67.5**
Q4'10	-	72	71.2	64.2	64.4	63.6	66.8	-	**69.5**
Q1'11	-	71.1	-	66.7	63.7	65.9	64.9	-	**70.4**
Q2'11	-	70.9	-	70	66.2	69.2	62.1	-	**71.1**
Q3'11	70	72.4	-	74.1	68.2	-	59.4	-	**71.4**
Q4'11	59.5	-	-	-	72.2	-	56.9	-	**71**

(Ex. 377, ¶ 82).

To meet these substantial shortfalls in actual occupancy, ALC included large numbers of non-residents in the calculations. (Tr. 2767:2-5). As seen in the chart below, which shows the number of non-residents included at each Ventas facility, by the end of 2009 ALC was including over 100 non-residents to meet the covenants, and continued including large numbers through the end of 2011. (Ex. 377, ¶ 80). Bebo was aware of the large numbers of non-residents she was selecting for inclusion in the covenant calculations. (Tr. 2051:17-2052:4).

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facilities. (Ex. 377, ¶¶ 81, 84). Even if ALC had reduced the denominator in the calculations by 10%, it still would have violated the occupancy covenants in excess of 40 times. (Tr. 4568:25-4569:14; Ex. 583A).

Non-Residents Included in Covenant Calculations

2009 through 2011

	Winterville Retirement	Greenwood Gardens	Highland Terrace	Peachtree Estates	Tara Plantation	The Inn at Seneca	CaraVita Village	Sanctuary at North Star	Portfolio Total
Q1'09	10	1	-	10	-	-	3	-	**24**
Q2'09	10.15	1.02	-	10.15	-	-	3.05	-	**24.37**
Q3'09	10	5.32	8.32	10	11	3.26	7.33	8.32	**63.53**
Q4'09	14	12	10	12	14	15	12	14	**103**
Q1'10	14	11	10	12	14	15	12	14	**102**
Q2'10	10.35	11	10	12	14	15	12.99	11.67	**97.01**
Q3'10	4	6	7.35	12	10	11	15	4	**69.35**
Q4'10	4	6	3	12	12	7.67	16.33	-	**61**
Q1'11	4	5.34	1.03	9.69	12.03	9	22	-	**63.10**
Q2'11	9	5	0.67	8	10.66	8.33	34	-	**75.66**
Q3'11	14.96	5	-	8	12.35	4.67	38.30	-	**83.28**
Q4'11	21	5	-	8	11	4	43	-	**92**

(Ex. 377, ¶ 80)

In the third quarter of 2009, Buono learned that a significant increase in the number of employees was necessary to avoid defaulting on the covenants. (Tr. 2364:13-21). Buono again cautioned Bebo that the practice had to be "real," and repeated this warning on an almost quarterly basis. (Tr. 2365:8-15). Also, on multiple occasions Buono expressed concern to Bebo that Ventas could sue him if the officer certificates he signed were not accurate, that he could go to prison, and that he did not "look good in stripes."[13] (Tr. 2365:8-25). In response, Bebo assured Buono the program was legitimate, and that ALC would never fail the covenants because it had large numbers of employees it could send to the properties. (Tr. 2366:1-15).

Contrary to Bebo's assurances to Buono, Bebo selected for inclusion in the covenant calculations large numbers of employees who did not stay at the Ventas facilities during the

[13] Bebo admits Buono made the "I don't look good in stripes" comment in connection with the inclusion of employees in the covenant calculations. (Tr. 4126:4-17).

periods they were included in the calculations. (Tr. 2249:4-2264:19; Ex. 552A). Indeed, over the course of the scheme, such individuals conservatively constituted well over half of the "employees" Bebo included in the calculations. (*Id.*).

I. ALC's False and Misleading Disclosures in its Commission Filings

Bebo understood that, as CEO, she had responsibility to ensure ALC's Commission filings were accurate and appropriate. (Tr. 1767:6-1768:10, 3845:17-20). To that end, Bebo signed ALC's Forms 10-K and, as part of ALC's Forms 10-K and 10-Q, certified that : (1) ALC's filings did not contain any material misstatements or omissions; (2) ALC's filings fairly presented in all material respects ALC's financial condition, results of operation and cash flows; and (3) she designed or caused to be designed such internal controls to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with GAAP. (Tr. 1767:6-1768:10; Exs. 2-13).

ALC's Forms 10-K for 2009, 2010 and 2011, and its Forms 10-Q for the first three quarters of those years, falsely represented ALC was "in compliance" with the financial covenants in the Ventas lease. (Tr. 1770:2-6; Ex. 2, p. 30; Ex. 3, p. 38; Ex. 4, p. 42; Ex. 5, p. 45; Ex. 6, p. 34; Ex. 7, p. 36; Ex. 8, p. 38; Ex. 9, p. 45; Ex. 10, p. 33; Ex. 11, p. 36; Ex. 12, pp. 36-37; Ex. 13, p. 43). Bebo knew that ALC's filings contained this representation and further represented that a covenant default could have a "material adverse impact" on ALC's operations. (*Id.*; Tr. 1771:13-18). ALC's 2011 Form 10-K and its Forms 10-Q for the second and third quarter of that year contained the following additional false and misleading representation: "ALC does not believe that there is a reasonably likely degree of risk of breach of the [Ventas financial] covenants." (Tr. 1772:7-17; Ex. 11, p. 36; Ex. 12, pp. 36-37; Ex. 13, p. 43).

J. Bebo Actively Sought to Prevent Ventas from Learning of the Non-Residents Included in the Covenant Calculations.

Bebo took a variety of actions to conceal from Ventas ALC's inclusion of employees in the covenant calculations. Her conduct demonstrates she knew Ventas had never agreed to the practice and that she knew what she was doing was wrong.

For instance, in the course of its quarterly meetings or calls with ALC, Ventas inquired about changes in occupancy or coverage ratio. (Tr. 227:18-237:9, 2101:10-2102:11, 2366:16-223; Exs. 207, 208, 280). For the discussions in which Bebo participated, she gave various reasons for the changes but never disclosed the changes were due to the addition or subtraction of employees in the calculations. (Tr. 2366:16-2367:15, 2369:14-2371:12). For meetings Bebo did not participate in, she directed Buono how to answer Ventas's questions about occupancy changes without disclosing the inclusion of employees. (Tr. 2367:16-2368:13).

Similarly, on July 28, 2009, a Ventas employee sent Herbner an email seeking explanations for the "significant increases in occupancy" at five of the Ventas facilities. (Ex. 211). Herbner believed she would have faced repercussions if she disclosed ALC's inclusion of employees, so she asked Bebo for assistance answering Ventas's questions. (Tr. 833:9-22, 834:12-836:2; Ex. 211). Bebo admits she then dictated to Herbner reasons to give Ventas for the occupancy increases – none of which involved the true reason for the increases, the inclusion of employees – and Herbner forwarded Bebo's answers to Ventas. (Tr. 835:18-838:22, 839:9-840:10, 2090:22-2092:12; Ex. 212).

Bebo also attempted to thwart Ventas's ability to determine actual occupancy during Ventas's periodic inspections of the facilities. During the site visits, Bebo and Buono always accompanied the Ventas personnel touring the properties. (Tr. 2368:14-22). Bebo further refused to allow ALC onsite employees to speak with the Ventas representatives. (Tr. 2368:23-

2369:3). Bebo also told Buono that Ventas could not conduct the site visits during meal times, because Ventas would realize the number of residents in the dining room was inconsistent with ALC's reported occupancy figures. (Tr. 2369:4-13). Likewise, Bebo admitted instructing Jared Houck, who oversaw the operations of the Ventas facilities, to remove the placards containing the names of residents which hung outside of the residents' rooms at one facility. (Tr. 1475:11-25, 4154:18-4155:1). This prevented Ventas from counting the number of occupied rooms. In advance of another site visit, despite Ventas's purported agreement to include employees, Bebo told Bucholtz: "We really need the occupancy numbers to 'pop.'" (Ex. 569).

Bebo later tried preventing Ventas from visiting the facilities altogether. On December 11, 2010, Bebo emailed Houck that Ventas could not visit the facilities for the remainder of the year. (Ex. 262). In that email, Bebo wrote she was "getting overly concerned" with occupancy at one of the facilities, which had fallen to 61%. (*Id.*; Tr. 2099:3-2100:11).[14]

In summer 2011, ALC was exploring a sale of the company and prepared due diligence materials to be reviewed by potential buyers, one of which was Ventas, via a "data room." (Tr. 2114:9-13, 2116:6-8, 2371:15-2372:16, 2828:18-2830:15). Among the data room materials were ALC's internal occupancy figures for all of its properties, including the Ventas facilities. (Ex. 287). Bebo was afraid Ventas would learn through the data room that actual occupancy was lower than that reported by ALC in the quarterly certifications. (Tr. 2120:9-2121:22, 2122:21-2123:8, 2126:9-15; Ex. 292). For this reason, Bebo instructed ALC's investment bank to prohibit Ventas from accessing the occupancy materials made available to the other due

[14] Bebo made similar efforts to limit Grant Thornton from conducting its own periodic visits of the Ventas facilities. Specifically, in October 2009, when Bebo learned Grant Thornton wanted to visit certain Ventas facilities in the course of its audit, Bebo directed her staff that Grant Thornton could not visit the Ventas facilities for the remainder of 2009. (Tr. 2093:15-2098:19; Exs. 220, 223)

diligence participants. (Tr. 2116:9-2117:23, 2829:22-2831:15; Exs. 287, 292).

During the sale process, Buono cautioned Bebo that the potential buyers performing due diligence would discover the negative revenue in the 997 account, ask ALC where it came from, and then contact Ventas. (Tr. 2372:21-2373:16). Bebo herself believed that neither ALC's buyer nor Ventas would credit her purported agreement with Solari. (Tr. 2128:13-2131:10, 2132:13-2134:8). Bebo and Buono determined that the only way to avoid this issue would be for ALC to purchase the Ventas properties. (Tr. 2373:23-2374:1, 2835:2-2836:24).

On April 11, 2012, after the board finally learned ALC was including large numbers of employees in the covenant calculations and after ALC received notices of revocation of its licenses for three Ventas facilities, Bell prepared a draft settlement letter to send to Ventas. (Ex. 568). Bell's draft letter contained the following statement: "As you know, ALC has ... placed employees in the [Ventas] facilities to meet the occupancy thresholds." (Ex. 568, p. 4). After receiving Bell's draft letter, Bebo forwarded it to Buono, and advocated removing the reference to "placed employees" because Bebo believed raising the issue would "create other disagreements" with Ventas. (Ex. 570; Tr. 4721:6-4723:10).

As a result of Bebo's deception, Ventas remained unaware that ALC was including employees in the covenant calculations. (Tr. 215:10-216:14; 237:17-22).

K. The Board Was Unaware of ALC's Covenant Calculation Practices.

In addition to concealing the inclusion of employees in the covenant calculations from Ventas, Bebo also hid key aspects of her scheme from ALC's directors. Directors Bell, Buntain, Hennigar, Rhinelander, and Roadman each testified they did not learn ALC was using employees in the covenant calculations until the March 6, 2012 Compensation/Nomination/Governance ("CNG") committee meeting. (Tr. 564:7-565:14, 567:4-571:15, 1360:13-1361:23, 1455:6-10, 2592:16-2593:18, 2645:11-2646:11, 2648:22-2651:7, 2816:15-2822:13; Ex. 492A at 53:20-

56:19). Other witnesses who regularly attended board meetings – Fonstad, internal auditor David Hokeness, and ALC attorney Mary Zak – also testified the inclusion of employees in the covenant calculations was not brought to the board's attention prior to March 2012. (Tr. 1523:2-6, 3134:21-3135:11, 4339:10-4340:16, 4344:6-4345:22). Consistent with these witnesses' testimony, the minutes of ALC's board and audit committee meetings, and the materials distributed in advance of board meetings, make no mention whatsoever of the use of employees in the covenant calculations. (Exs.74-90, 92-120).[15] Even Buono testified that, prior to March 2012, there was only a single reference to employees being included in the covenant calculations made at a board meeting (by Buono, not Bebo, in August 2011), and that no details or specifics were given regarding the practice. (Tr. 2382:12-2383:19, 2384:25-2388:3, 4631:7-4632:20).

In sharp contrast to the documentary evidence and the testimony of every other percipient witness, Bebo testified that by late 2009, she had informed the board of all the minutia of her scheme. Specifically, Bebo claimed she told the board at its Q3 2009 meeting: (1) ALC was including in the covenant calculations people who did not actually visit the Ventas properties; (2) Ventas had agreed that ALC could include an unlimited number of employees, so long as they had a "reason to go;" (3) ALC was including large numbers of employees; (4) ALC was including non-employees; (5) ALC was including employees who actually worked at, as opposed to visited, the Ventas properties; (6) ALC was including employees at multiple properties at the same time; and (7) the process by which ALC performed its accounting for the practice, including the cancellation of revenue through the 997 account. (Tr. 2023:18-2024:25, 2025:11-

[15] As a board member, Bebo reviewed the draft minutes in advance of board meetings and voted to approve the minutes. (Tr. 2034:6-2035:4).

2026:15, 2027:11-2028:10, 2030:7-23, 2031:1-14).[16] Despite her uncorroborated account of what she told the board, Bebo concedes she never told the board ALC would fail the covenants without including employees, ALC was including her family and friends, or ALC was including large numbers of employees who did not visit the Ventas facilities. (Tr. 2035:11-25).

The board was also unaware that, in advance of its August 2011 meeting, management had prepared an alternative response to a comment letter from the Division of Corporation Finance. (Tr. 571:16-574:21, 1448:17-1449:19, 2833:22-2834:23; Exs. 294, 295). The version of the response letter which ALC filed with the Commission, and was discussed at the board meeting, stated that ALC did not believe there was a reasonably likely degree of risk of breach of the Ventas covenants. (Tr. 571:16-574:21, 2599:21-2602:12, 2832:12-2834:1; Ex. 295). However, the alternative version of the letter, which was not disseminated outside of management, reached the exact opposite conclusion. (Tr. 571:16-574:21, 2651:8-2652:3; Ex. 294). Even Bebo concedes the alternative letter was not shared with the board, Grant Thornton, or ALC's securities counsel, Quarles & Brady. (Tr. 2109:6-19; 2110:20-2112:7).

The board first began learning details surrounding the inclusion of employees in the covenant calculations at the March 6, 2012 CNG committee meeting. (Tr. 579:6-18, 1373:8-12, 2385:13-2387:22, 2836:25-2838:6; Ex. 492A at 53:20-56:19). In advance of the meeting, one of the potential buyers of ALC discovered, and questioned Buono about, the existence of the 997 account. (Tr. 579:19-580:25, 2359:4-2360:5). Buono disclosed the inquiry to Hennigar, who told Buono to address this with the CNG committee members. (Tr. 579:19-580:25, 2388:4-

[16] Bebo also testified that at the August 2011 audit committee meeting, she again provided the board (and Grant Thornton) with similar details regarding ALC's covenant calculation practices. (Tr. 2167:13-2170:12, 4702:19-4703:12). However, Bebo was impeached with her investigative testimony in which she claimed that, following the November 2009 board meeting, she did not discuss the inclusion of employees with the board until March 2012. (Tr. 2040:20-2042:14).

2389:5). At the CNG meeting, Buono explained the 997 account and its role in the Ventas revenue calculations. (Tr. 581:1-18). The board members were "surprised," "shocked," "dumbfounded," "confused," and "furious" at what Buono told them. (Tr. 1373:25-1374:2, 2389:6-9, 2613:1-13, 2652:10-2653:1, 2837:18-2838:1). In delivering the news, Buono appeared frightened and scared, and looked like he thought he would be fired immediately. (Tr. 582:17-583:5, 1373:20-24).

The CNG committee then summoned Bebo to confront her with what Buono revealed. (Tr. 583:6-11). Bebo testified the committee asked her questions in a manner in which they sounded unaware that ALC included employees in the covenant calculations. (Tr. 2171:12-2173:20, 4436:20-4437:11). While Bebo admitted to the committee that ALC was using employees in the calculations, she failed to reveal key aspects of the practice, such as ALC's inclusion of: (1) employees who were not staying at the properties; (2) her friends and family members; and (3) employees at multiple properties during the same time period. (Tr. 583:9-587:5, 1376:6-1377:7). Indeed, Bebo would never disclose to the board any of these facets of her scheme. (Tr. 586:6-587:5, 1376:6-1377:7, 2389:10-14, 2653:2-12, 2839:16-2840:21).

When the full board met the following day, March 7, 2012, Bebo did not confront the board with her claim that the board had previously approved including employees in the covenant calculations. (Tr. 2202:11-13, 2203:5-11).

L. Bebo Concealed Key Facts About Her Scheme From Grant Thornton.

Bebo testified Koeppel and Robinson were the only Grant Thornton personnel with whom she discussed the inclusion of employees in the covenant calculations. (Tr. 2137:13-2138:20). Bebo lied to both audit partners when she told Koeppel and Robinson that Ventas agreed to include employees in the covenant calculations. (Tr. 3366:5-17, 3495:25-3496:13).

As for Koeppel, the partner in charge of the 2009 and 2010 audits, Bebo admitted she

never told Koeppel ALC was including in the covenant calculations: (a) employees who did not actually visit the Ventas properties; (b) non-employees; or (c) Bebo's friends and family. (Tr. 2150:4-18, 2150:25-2151:15, 2151:22-2154:16). Thus, by Bebo's own admission, she did not disclose these key facts to Grant Thornton for the first two years of her scheme.

Bebo testified her only discussions with Robinson, who did not join the ALC engagement until 2011, about the inclusion of employees in the covenant calculations, prior to March 2012, took place at two audit committee meetings in 2011. (2159:10-2161:1, 2163:7-20, 3382:6-11). This was inconsistent with her investigative testimony, where she claimed to have had only one such discussion. (Tr. 2161:2-19). As was the case with Koeppel, Robinson testified Bebo never told him that ALC was including Bebo's friends and family members, or employees who did not actually stay at the Ventas facilities. (Tr. 3401:24-3402:15, 3498:15-3499:6, 3495:25-3496:13). Bebo also did not tell Robinson that, instead of actually reserving rooms in advance for employee use, ALC simply figured out the covenant shortfall after the quarter had ended and included the needed employees in the covenant calculations. (Tr. 3497:20-3498:9).

M. Bebo's Scheme Unravels

Following the March 6, 2012 CNG committee meeting, the board tasked Bell with investigating ALC's practice of including employees in the covenant calculations. (Tr. 589:6-14, 2598:2-2599:4, 2841:16-19). Bell advised that ALC inform its potential purchasers of the $2 million of negative revenue recorded in the 997 account. (Tr. 589:19-594:9; Ex. 322). Bebo responded by advocating that ALC not make such a disclosure. (Tr. 595:6-597:21, 2207:12-25, 2209:4-22; Exs. 325, 326). When Bell learned this, he wrote Rhinelander: "I think very risky with no upside ... Generally ALC has been too cute by a 1/2 and better to end." (Ex. 326). Rhinelander overruled Bebo, and ALC made Bell's recommended disclosure. (Tr. 597:22-598:3).

On March 19, Bell sent Bebo and Buono an email asking for the covenant calculations without the inclusion of employees. (Ex. 328). Bell did so because he wanted to know the Ventas facilities' actual occupancy figures. (Tr. 598:4-599:1). When Bebo responded by asking "Why do we want to relook at the calculations and do them a different way?", Bell forwarded her email to Hennigar, writing: "More of the same – unbelievable!" (Tr. 598:4-601:6; Ex. 328).

On April 4, 2012, Bell sent the other directors an email informing them that ALC had recently received license revocation notices for three of the Ventas facilities. (Ex. 333). Bell attached a memo to his email in which he wrote: "Highly unlikely that Feb. 4/09 Bebo email re employees is a legal basis for inclusion of employees to meet their residence occupancy/income covenants in the leases" and "J. [Buono] compliance certificate re patient revenue is clearly wrong." (Ex. 333, p. 3; Tr. 602:14-605:23). When Bebo received Bell's memo, she asked him to withdraw these two conclusions, but Bell refused. (Tr. 2216:18-2218:2).

After informing ALC that the license revocation notices constituted Events of Default, Ventas insisted on conducting a site visit on short notice, such that Bebo and Buono would be unable to attend. (Tr. 2213:4-2215:21; Ex. 330). Buono forwarded Ventas's email demanding the short-notice visit to Bebo, writing: "This is a problem." (Ex. 330).

On April 26, 2012, Ventas sued ALC for breach of the lease's regulatory covenants resulting from the license revocation notices. *Ventas Reality, L.P. v. ALC CVMA, LLC*, Case No. 1:12-cv-3107 (N.D. Ill.), Docket No. 1. Over Bebo's objection, the directors insisted that any settlement with Ventas contain a specific release relating to the inclusion of employees in the covenant calculations. (Tr. 611:15-613:22, 2846:3-2848:4; Ex. 351). On April 27, Bebo emailed Ventas a proposed settlement containing a specific release relating to ALC "renting rooms ... to certain of its employees and including those employees in certificates and covenant

calculations..." (Ex. 350, p. 3). Bebo's transmittal email stated: "I have purposefully left the dollar amount blank ... By leaving it blank for now and letting you know that the other items are important to our agreement in principle, we could work better to meet your timeframe." (Ex. 350). When Ventas received the settlement proposal, it learned for the first time that ALC had been including employees in the covenant calculations. (Tr. 246:7-247:18; Ex. 350).

On May 2, 2012, the directors – with the exception of Bebo – received a whistleblower letter from Grochowski, who submitted the letter because he had become worried that the board did not know the details of ALC's use of employees in the covenant calculations.[17] (Tr. 613:23-614:25, 1163:2-1164:23, 1167:11-1168:11; Exs. 352, 353). The letter described the list of names Bebo prepared as a "sham," and disclosed that ALC was including in the calculations: (1) the same employees at multiple properties at the same time; (2) employees who did not travel to the Ventas facilities; and (c) non-employees such as Bebo's relatives and friends. (Ex. 353). This was the first time any of this information had been brought to the directors' attention. (Tr. 605:24-606:14, 614:20-616:17, 1384:1-20, 2653:13-2654:4, 2848:5-2849:1).

The following day, May 3, the board retained Milbank, Tweed, Hadley & McCoy LLP ("Milbank") to conduct an internal investigation. (Tr. 616:18-617:2, 1384:21-1385:8, 2613:18-23, 2849:2-5). On May 4, prior to the market opening, ALC disclosed in a Form 8-K that it retained counsel to investigate "irregularities" in the Ventas lease. (Tr. 3640:8-12; Ex. 14). That day, ALC's stock price dropped from $19.17 to $16.80 – a price drop Bebo's own expert witness conceded was a "significant abnormal decline." (Tr. 3637:5-3638:4).

Over the course of May 3 and 4, 2012, Bebo, wrote a 21-page handwritten letter

[17] In April 2012, Grochowski filed a similar whistleblower complaint with the Commission. (Tr. 1165:14-1166:3).

expressing her concerns that the board and Quarles would not speak with her.[18] (Tr. 2227:15-2228:3, 4519:13-4522:6; Ex. 354). Bebo's letter acknowledged: "we are off-side on the covenants and we are facing a material financial impact." (Tr. 2229:3-12; Ex. 354, p. 2).

On May 9, 2012, Ventas sent ALC a letter alleging ALC engaged in fraud by "treating units leased to employees as bona fide rentals by third parties," and that doing so constituted an Event of Default. (Ex. 356). Ventas also filed a motion to obtain expedited discovery, in part because ALC had not provided details regarding the lease "irregularities" disclosed in its Form 8-K, which Ventas understood to involve the occupancy covenants. (Tr. 384:8-386:6; Ex. 357).

After receiving the May 9 letter alleging fraud, ALC's directors believed the situation was "going from bad to worse," which "put more pressure" on ALC to "solve the Ventas problem." (Tr. 617:3-618:10). ALC's board quickly authorized the purchase of the Ventas properties for up to $100 million, with the offer predicated on a "full and unconditional" release from Ventas "of all its possible claims against [ALC]." (Tr. 618:11-619:13; Ex. 123, p. 2).

ALC ultimately paid $100 million to settle the litigation and purchase the facilities (and four others), even though independent appraisals only valued the purchased facilities at $62.8 million. (Ex. 544, pp. 27, 29). Thus, in its financial statements for the second quarter of 2012, ALC included as an expense $37.2 million for "lease termination and settlement" and also wrote off the entirety of the remaining $8.96 million lease intangible asset associated with the Ventas facilities. (Ex. 544, p. 11). The financial impact associated with the settlement resulted in ALC sustaining a $25 million loss in what otherwise would have been a profitable quarter. (Tr. 4683:22-4684:6).

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[18] At the time, Bebo was unaware the board had received the whistleblower letter and was attempting to retain a law firm, and that Quarles faced a potential conflict because Buono's wife was a partner there. (Tr. 1427:15-1428:1, 4519:13-4522:6).

Various witnesses testified ALC purchased the properties for significantly more than fair value. Based on Bell's calculations, ALC overpaid by at least $24 million. (Tr. 620:2-621:4). Buntain believed ALC purchased the properties for $20 million more than they were worth. (Tr. 1385:13-1386:20). Roadman testified the settlement contained a "penalty" component. (Tr. 2636:8-2637:2, 2657:15-24). ALC was willing to pay so much because failure to resolve all of the disputes with Ventas, including the use of employees in the covenant calculations, would jeopardize the process of selling ALC. (Tr. 621:5-11, 1386:17-23, 1390:1-8).

Grant Thornton confirmed ALC paid more than market value to acquire the Ventas facilities, and did so in part because it breached the *occupancy* covenants. Specifically, Grant Thornton's analysis of ALC's accounting for the purchase of the properties concluded:

> "...ALC was put into a position of being forced to acquire the properties above market, which doesn't indicate true fair value between market participants in normal circumstances. ALC was essentially paying not only the lease termination fee, but also for *damages as a result of occupancy rates falling significantly below required covenant occupancy rates*."

(Ex. 3369, pp. 7-8 (emphasis added)).

ALC terminated Bebo's employment on May 29, 2012. (Tr. 621:12-19). At the time, Milbank's investigation was still in its early stages. (Tr. 621:12-623:10, 1385:9-12).

N. Bebo's Story is Refuted by All of the Relevant Witnesses.

The heart of Bebo's defense is her claim that Ventas agreed to the inclusion of employees in the covenant calculations, and that she fully disclosed the practice to various attorneys, auditors, and ALC's board. Notably, there is no documentary evidence to support Bebo. And more importantly, each of the percipient witnesses refuted Bebo's version of the events.

Solari and Buono participated on the January 20, 2009 call during which Bebo claims Ventas approved the use of employees in the covenant calculations. Both witnesses denied Solari ever agreed to the practice, on that call or otherwise. (Tr. 423:13-426:6, 2344:18-2345:5).

Moreover, Bebo's February 4, 2009 email, which purported to summarize the January 20 call, is consistent with Solari's and Buono's version of the events. (Ex. 184).

Bebo also claims various attorneys either approved or knew about nearly every aspect of her conduct in connection with ALC's covenant calculation practices. ALC's in-house lawyers, Fonstad and Zak, and Quarles attorney Bruce Davidson, each testified that they never approved, or were made aware of, the inclusion of employees in the covenant calculations prior to March 2012. (Tr. 1507:24-1512:17, 2292:4-2295:16, 4339:10-4340:16, 4344:6-4345:22). In fact, Bebo utterly disregarded the legal advice from the one attorney she consulted on the issue – Fonstad – who expressly advised her to disclose to Ventas her proposal to include employees in the covenant calculations and to obtain Ventas's signed approval.[19] (Ex. 1152). Buono likewise testified that Fonstad, Zak, and Quarles never approved the inclusion of employees in the covenant calculations. (Tr. 2380:7-2381:4). Indeed, Bebo admitted in her investigative testimony she never discussed the issue with Zak or any Quarles lawyer. (Tr. 2184:15-2185:17, 2187:16-2189:9, 2192:8-2193:1).

Similarly, each of the eleven witnesses other than Bebo who attended board meetings – Bell, Buono, Buntain, Fonstad, Hennigar, Hokeness, Koeppel, Rhinelander, Roadman, Robinson and Zak – all dispute Bebo's account that Bebo disclosed to the board that ALC was including employees in the covenant calculations. (Tr. 567:4-571:15, 1363:10-1366:16, 1523:2-6, 2382:12-2383:19, 2384:25-2388:3, 2645:11-2646:11, 2648:22-2651:7, 2825:2-2827:17, 3134:21-3135:11, 3329:18-3330:11, 3366:5-3368:17, 3430:11-3431:6, 3496:4-3497:24, 4339:10-4340:16, 4344:6-4345:22; Ex. 492A). These eleven witnesses further refute Bebo's

[19] Bebo conceded she never disclosed to any attorney, including Fonstad, that ALC would fail the covenants without using employees or that ALC was including non-employees in the covenant calculations. (Tr. 2193:5-2195:5).

claim that she, or anyone, told the board the numbers of employees being included in the calculations, that ALC was including employees who did not stay at the Ventas facilities, and that the applicable criteria for the employees' inclusion was whether they had a "reason to go." (*Id.*).

Bebo's account is also disputed by Grant Thornton witnesses Robinson and Jim Trouba, who denied Grant Thornton was told that ALC included employees in the covenant calculations who did not actually stay at the Ventas facilities. (Tr. 2168:3-14, 3401:24-3402:15, 3495:25-3496:13, 3591:15-24).

Even Bebo's best friend, Bucholtz, testified that Bebo was not always an honest person. Bucholtz testified that she knew Bebo to "twist the truth" and had "lied to get what she wanted." (Tr. 3016:3-3017:23). Bucholtz's assessment of Bebo's credibility proved accurate, as Bebo was impeached approximately 35 times over the course of the hearing.[20] (Tr. 1782:23-1784:8, 1840:18-1841:22, 1850:17-1853:13, 1858:4-1859:9, 1875:20-1877:7, 1904:22-1906:15, 1909:9-1911:8, 1912:20-1914:5, 1917:5-1919:11, 1939:24-1941:8, 1945:11-1946:4, 1955:18-1957:22, 1981:23-1983:5, 1984:8-1961:1, 1995:21-1997:19, 1998:11-1999:21, 2017:14-2018:4, 2029:19-2030:23, 2040:5-2042:14, 2088:11-2089:25, 2120:9-2021:22, 2021:23-2123:8, 2126:1-25, 2127:16-2131:12, 2139:7-2140:8, 2152:9-2153:7, 2160:13-2161:22, 2168:22-2169:18, 2184:15-2187:9, 2187:16-2189:13, 2192:8-2193:1, 2194:3-24, 2222:6-2223:21, 2229:3-2231:3, 4692:5-4693:17).

[20] Bebo's lack of credibility was further evidenced by her evasiveness on the witness stand, and her repeated refusal to answer the question asked or provide concise answers to simple questions.

III. LEGAL ANALYSIS

The Division proved, by a preponderance of the evidence, that Bebo violated, or caused violations of, the securities laws provisions at issue in the OIP.[21] *In re Flannery and Hopkins,* AP File No. 3-14081, 2014 SEC LEXIS 4981, *65 n.102 (Dec. 15, 2014) (*citing Steadman v. SEC*, 450 U.S. 91, 102 (1981)).

A. Bebo Violated the Exchange Act's Antifraud Provisions

Section 10(b) of the Exchange Act and Rule 10b-5 thereunder prohibit, in connection with the purchase or sale of securities: (1) employing any device, scheme or artifice to defraud; (2) making material misstatements of fact or statements that omit material facts; or (3) engaging in any act, practice or course of business which operates or would operate as a fraud or deceit. A misstatement or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988). Scienter may be established by showing the respondent acted with either knowing intent or reckless disregard for the truth. *Flannery and Hopkins,* 2014 SEC LEXIS 4981, *30 and n.24; *SEC v. Jakubowski*, 150 F.3d 675, 681 (7th Cir. 1998).

Section 10(b) and Rule 10b-5 are violated by fraudulent misstatements, "the falsification of financial records to misstate a company's performance, [and] the orchestration of sham transactions designed to give the false appearance of business operations." *Flannery and Hopkins*, 2014 SEC LEXIS 4981, *40-42 (citations omitted); *see also Francis V. Lorenzo*, AP File No. 3-15211, 2015 SEC LEXIS 1650, *36 (Apr. 29, 2015) (respondent's "role in producing

[21] To prevail on its causing charges, the Division need only establish that "(1) a primary violation occurred, (2) there was an act or omission by the respondent that was a cause of the violation, and (3) the respondent knew, or should have known, that his conduct would contribute to the violation." *Robert M. Fuller,* 56 S.E.C. 976, 984 (Aug. 25, 2003). Negligence is sufficient to establish causing liability if scienter is not a requirement of the primary violation. *See KPMG Peat Marwick LLP,* 54 S.E.C. 1135, 1175-76 (Jan. 19, 2001).

and sending the [misleading] emails constituted employing a deceptive 'device,' 'act,' or 'artifice to defraud' for purposes of liability under Section 10(b) [and] Rule 10b-5(a) and (c).").

1. Bebo's False and Misleading Representations

Bebo violated the antifraud provisions when she signed and/or certified ALC's periodic reports which she knew, or was reckless in not knowing, contained misstatements and omissions regarding ALC's compliance with the Ventas covenants. Specifically, ALC's Forms 10-K and 10-Q contained the false representation that ALC was in compliance with the Ventas financial covenants. ALC's 2011 Form 10-K and Forms 10-Q for the second and third quarter also falsely represented that "ALC does not believe that there is a reasonably likely degree of risk of breach of the [Ventas financial] covenants." These statements were false and misleading because actual occupancy and coverage ratio at the Ventas facilities was far below the covenant thresholds.

Each of these filings also omitted the critical fact that the sole basis for ALC's so-called compliance with the covenants was its improper inclusion of large numbers of employees and other non-residents. *See, e.g., Omnicare, Inc. v. Laborers' Dist. Council Constr. Indus. Pension Fund*, 135 S. Ct. 1318, 1329 (2015) ("[i]f a registration statement omits material facts about the issuer's inquiry into or knowledge concerning a statement of opinion, and if those facts conflict with what a reasonable investor would take from the statement itself, then [the Securities Act of 1933's] §11's omissions clause creates liability).[22]

[22] The Supreme Court's recent *Omnicare* decision addressed the circumstances in which statements of opinion could be considered untrue statements of fact that create liability under the securities laws. As *Omnicare* explains, ALC's statements that it was "in compliance" with the Ventas covenants – as opposed to statements that ALC "believed" or "thought" it was in compliance – were statements of fact as opposed to statements of opinion. 135 S. Ct. at 1325-1326. Even if this Court were to consider ALC's statements regarding its compliance with the covenants to be opinions, *Omnicare* confirms that ALC's filings omitted the material fact that ALC was only meeting the covenants by virtue of the improper inclusion of employees.

Numerous courts have held that an issuer's false statements that it is in compliance with contractual covenants violate Section 10(b) and Rule 10b-5. Indeed, one such decision was issued in a securities fraud class action against Bebo arising from these very same facts. In that case, the court expressly held the plaintiff investors had "pled facts sufficient to establish that ALC and Bebo provided false statements when they stated that ALC was in compliance with its Lease with Ventas." *Pension Trust Fund for Operating Eng'rs v. Assisted Living Concepts, Inc.* 2013 U.S. Dist. LEXIS 87568, at *27, *45-46 (E.D. Wis. June 21, 2013).[23]

Likewise, other courts routinely hold that a company's false or misleading statement of compliance with contractual covenants can support a securities fraud charge. *See, e.g., DVI, Inc. Sec. Litig.*, 2010 U.S. Dist. LEXIS 92768, at *16-17 (E.D. Pa. Sept. 3, 2010) (denying motion to dismiss allegations that Defendant's Forms 10-K "contained material misrepresentations relating to 'DVI's...compliance with its loan covenants.'"); *Williams Sec. Litig.*, 339 F. Supp. 2d 1206, 1229 (N.D. Okla. 2003) ("The Complaint also sufficiently alleges that ... Defendants falsely stated that WCG ... was fully able [to] meet all debt covenants..."); *Aviva Ptnrs. LLC v. Exide Techs.*, 2007 U.S. Dist. LEXIS 17347, at *6-7, *56-57 (D.N.J. Mar. 13, 2007) (allowing securities fraud claim premised on statement that company "believed it would comply with the financial covenants contained in its Senior Credit Agreement 'for the foreseeable future.'"); *In re Suprema Specialties, Inc. Sec. Litig.*, 334 F. Supp. 2d. 637, 646-47 (D.N.J. 2004) (allowing fraud claim based on misrepresentation regarding compliance with loan covenants).

As in the above cases, including the lawsuit filed against Bebo by ALC investors, Bebo's false statements that ALC was complying with the Ventas covenants were material. First, Bebo admitted in ALC's Commission filings that breach of the covenants "could have a material

[23] Bebo and ALC settled that lawsuit, with the plaintiffs, ALC investors, receiving $12 million. *Pension Trust Fund*, Case No. 12-C-884-JPS, Docket No. 70-1 (E.D. Wis. Sept. 6, 2013).

adverse impact on [ALC's] operations." The Division's expert, Barron, offered unrebutted testimony that compliance with the Ventas covenants was material, by significant margins, to ALC's financial statements. (Ex. 377, pp. 16-22). Barron's conclusion is confirmed by the fact that after Ventas sued ALC for violating the lease, and ALC disclosed to Ventas that it was including employees in the covenant calculations, ALC settled Ventas's lawsuit by purchasing the Ventas facilities for more than $34 million in excess of their appraised value.[24]

Materiality is further established by the evidence that ALC investors and potential investors considered ALC's compliance with the Ventas covenants to be important. For instance, Hennigar, who represented ALC's controlling shareholders, as well as the other directors who were all ALC investors, repeatedly inquired at board meetings about ALC's compliance with the financial covenants. (*See, e.g.*, Ex. 95, pp. 4-5; Ex. 100, p. 2; Ex. 104, pp. 2-3). Buntain testified that knowing whether ALC was in compliance with the covenants was important to him as an investor. (Tr. 1357:22-1358:17). Buntain further testified Hennigar also cared about ALC's compliance with the covenants, and that he spoke with Hennigar about the effect non-compliance would have on ALC's stock price. (Tr. 1359:6-15).

The testimony of Bebo and her expert also confirmed the materiality of the financial covenants to ALC. Bebo conceded that in the course of ALC putting itself up for sale, it would have been important to ALC's purchaser (*i.e.*, a potential ALC investor) whether there was a valid agreement to include employees in the covenant calculations. (Tr. 2134:17-2136:23). Likewise, Bebo's expert witness, Smith, acknowledged that the $2.37 drop in stock price

[24] At the time of the Ventas lawsuit, Bebo herself believed Ventas's allegations of covenant defaults, if proven true, would have a material impact on ALC. (Tr. 2222:6-2223:18). Bebo acknowledged that the specific lease covenants breached – whether regulatory or financial – made no difference in their financial impact to ALC. (Tr. 2230:19-2231:3).

following ALC's May 4, 2012 disclosure of the investigation into "irregularities" in the lease was a "significant abnormal decline." (Tr. 3637:5-3638:4).

2. Bebo's Fraudulent Scheme

Beyond the false representations in ALC's filings, Bebo further violated the antifraud provisions by orchestrating the scheme to hide ALC's breach of the covenants from Ventas and investors by using employees and other non-residents in the covenant calculations. It is undisputed Bebo ordered the inclusion of employees in the calculations and provided the names of the included employees. Further, every percipient witness other than Bebo testified Bebo concealed key aspects of ALC's covenant calculation practices from Ventas and ALC's board, attorneys, and auditors. Moreover, Bebo's scheme involved the falsification of the financial information ALC sent to Ventas on a quarterly basis and concealed from investors that ALC was breaching the Ventas covenants. *See, e.g., Robert W. Armstrong, III,* AP File No. 3-9793, 58 S.E.C. 542, 559 (June 24, 2005) (executive violated antifraud provisions by directing his staff to make improper accounting entries and himself providing false information to his company).

Bebo also demonstrated a high level of scienter as she engaged in numerous deceptive acts designed to conceal her scheme, as described in Sections II(J)-(M) above. She ordered that ALC not inform Ventas of the use of employees in ALC's covenant calculations. She gave false answers to Ventas about the reasons for changes in ALC's reported occupancy. She took measures to prevent Ventas from determining the number of actual occupants in the course of its site visits. And she hid key details of her scheme from ALC's board, ALC's attorneys, and ALC's auditors. Bebo's scienter is further demonstrated by her refusal to follow the advice of Fonstad and heed the numerous warnings from Buono and other ALC accounting personnel. And Bebo's scienter is confirmed by her false testimony at hearing that she fully disclosed her

scheme to, and received approval from, Ventas, attorneys, the board, and Grant Thornton.[25]

B. Bebo Caused Violations of the Exchange Act's Reporting Provisions.

Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder require that issuers like ALC file annual and quarterly reports with the Commission. *Robert W. Armstrong, III*, 58 S.E.C. at 567. Rule 12b-20 requires that an issuer's annual and quarterly reports contain all material information necessary to make the required statements in the reports not misleading. *Id.* at 567-568. An issuer violates these provisions by filing materially false or misleading reports or omitting material information necessary to render statements in the reports not misleading. *Id.* at 568; *SEC v. Koenig*, 469 F.2d 198, 200 (2d Cir. 1972); *SEC v. Wills*, 472 F. Supp. 1250, 1268 (D.D.C. 1978). No showing of scienter is necessary to establish a violation of Section 13(a) or the rules thereunder. *See SEC v. McNulty*, 137 F.3d 732, 740-41 (2d Cir. 1998).

ALC violated these reporting provisions by filing Forms 10-K and 10-Q containing false and misleading statements regarding its compliance with the Ventas covenants, as described above. Bebo caused ALC's violations by: (1) signing and/or certifying ALC's false and misleading Commission reports; and (2) directing the above-referenced fraudulent scheme.

C. Bebo Violated, and Caused Violations of, the Exchange Act's Books and Records and Internal Controls Provisions.

Exchange Act Section 13(b)(2)(A) requires issuers to "make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect the transactions ... of the issuer." *See SEC v. BankAtlantic Bancorp.*, 2012 U.S. Dist. LEXIS 73891, *70-71 (S.D. Fla. May 29, 2012) (complaint sufficiently pled Section 13(b)(2)(A) violation by alleging that

[25] Even if the Court were to accept Bebo's claims that she was acting at the direction of Rhinelander or Hennigar, which both witnesses deny, she would still be liable. As the Commission has observed: "Courts have repeatedly affirmed that someone who participates in a fraudulent scheme by following his superior's instructions to carry out fraudulent acts can be liable as a primary violator under Section 10(b) and Rule 10b-5." *Robert W. Armstrong, III*, 58 S.E.C. at 563 (citations omitted).

issuer's records were not GAAP-compliant). Section 13(b)(2)(B) requires issuers to devise and maintain a system of internal accounting controls sufficient reasonably to assure that transactions are recorded as necessary to permit the preparation of financial statements in conformity with GAAP. "Examples of internal controls include manual or automated review of records to check for completeness, accuracy and authenticity; a method to record transactions completely and accurately; and reconciliation of accounting entries to detect errors." *McConville v. SEC*, 465 F.3d 780, 790 (7th Cir. 2006). No showing of scienter is required to establish a violation of Section 13(b)(2)(A) or 13(b)(2)(B). *SEC v. World-Wide Coin Inv., Ltd.*, 567 F. Supp. 724, 749-752 (N.D. Ga. 1983); *Rita J. McConville*, AP File No. 3-11330, 58 S.E.C. 596, 622 (June 30, 2005), *aff'd, McConville v. SEC*, 465 F.3d 780.

Exchange Act Section 13(b)(5) prohibits any person from knowingly: (1) circumventing or failing to implement a system of internal accounting controls; or (2) falsifying any book, record or account required to be kept by an issuer under Section 13(b)(2) of the Exchange Act. Exchange Act Rule 13b2-1 also prohibits any person from directly or indirectly falsifying any book, record or account. A showing of knowledge is required to prove a violation of Section 13(b)(5), but scienter is not necessary to prove liability under Rule 13b2-1. *McConville v. SEC*, 465 F.3d at 789; *SEC v. Kelly*, 765 F. Supp. 2d 301, 322-23 (S.D.N.Y. 2011).

As detailed above, throughout Bebo's fraudulent scheme, ALC's books and records reflecting the occupancy and revenue of the Ventas facilities were not merely inaccurate, they were intentionally falsified. For instance, ALC's journal entries, including the ones Bebo signed, improperly recorded revenue associated with the fake occupants in the accounts of the Ventas facilities. (Ex. 377, pp. 27-29). Similarly, the financial information ALC provided to Ventas on a quarterly basis – which purported to comply with GAAP – included both the fake occupants

and the revenues associated with their phantom stays at the Ventas facilities. These falsified records were created at the specific direction of Bebo. Bebo also failed to establish sufficient internal controls, which allowed the falsified transactions to be recorded in ALC's general ledger. (Tr. 1739:11-1744:5; Ex. 377, pp. 29-32). Accordingly, Bebo caused ALC's violations of Sections 13(b)(2)(A) and 13(b)(2)(B) and violated Section 13(b)(5) and Rule 13b2-1.

Bebo's claimed ignorance of GAAP is no defense. As discussed above, intent is an element of Section 13(b)(5) but not the other books and records/internal controls charges. Moreover, Bebo was not ignorant of GAAP and other accounting matters. Bebo admitted she understood the mechanics of the 997 account and how the revenue reported to Ventas was eliminated from ALC's consolidated financial statements. (Tr. 2771:17-2772:19, 4585:15-4587:1). Moreover, Bebo testified that she was "familiar with GAAP." (Tr. 4587:19-22). Bebo also had previously taken courses in accounting at college and later at Harvard, and "developed a knowledge" of her employers' financial statements such that she has "always been comfortable with the financials" of the companies for which she worked. (Tr. 2067:4-9, 3808:18-3809:10, 4588:2-4). Bebo also felt competent to testify whether certain alternative methodologies of calculating the coverage ratio would have been consistent with GAAP. (Tr. 4579:19-4580:10).

Given her understanding of corporate accounting issues in general and ALC's specific accounting for the covenant calculations, her directives that ALC treat empty rooms as occupied and record revenue associated with the fake occupants, and the fact she signed journal entries authorizing those transactions, Bebo violated and caused ALC's violations of the Exchange Act's books and records and internal controls provisions.

D. Bebo Misled ALC's Auditors in Violation of Exchange Act Rules.

Exchange Act Rule 13b2-2 prohibits an officer or director of an issuer from, among other things, making or causing to be made a materially false or misleading statement, or omitting to

state information necessary to render statements not misleading, to an accountant in connection with any required audit of the issuer's financial statements or the preparation of a report required to be filed with the Commission. No showing of scienter is required to establish a violation of Rule 13b2-2. *SEC v. Das*, 723 F.3d 943, 954 (8th Cir. 2013).

In connection with the audits of ALC's 2009, 2010, and 2011 financial statements, Bebo signed representation letters addressed to Grant Thornton, in which she falsely represented that ALC "complied with all aspects of contractual agreements that would have a material effect on the financial statements in the event of a noncompliance." (Exs. 61-73). Buono and Robinson testified this paragraph applied to the Ventas lease. (Tr. 2379:6-2380:3, 3412:11-3413:9). Given the inclusion of employees and other non-residents in the Ventas covenant calculations, Bebo either knew, or should have known, that this representation to Grant Thornton was false and misleading and omitted material information. *See, Rita J. McConville*, 58 S.E.C. at 625 (executive liable for signing auditor representation letter containing false representations).

Moreover, Bebo's representation letter in connection with Grant Thornton's audit of ALC's 2011 financial statements represented that Bebo had no knowledge of any allegations of fraud or suspected fraud by any ALC employee. (Ex. 72, p. 4). Bebo either knew, or should have known, that this statement was false and misleading, given that Grochowski had earlier confronted Bebo with concerns that the inclusion of employees in the Ventas covenant calculations was inappropriate. (Tr. 2172:19-2173:7).

In addition to the false representation letters, for each quarter at issue, Bebo provided Grant Thornton with fictitious lists of employees or other non-residents, and their fictitious length of stays at the facilities. (Tr. 3324:5-25, 3342:3-5, 3373:17-23, 3401:24-3402:15). Bebo admits she was the one who selected the names of employees and that she knew the names were

sent to Grant Thornton. (Tr. 2058:20-2059:9, 2056:13-21, 2060:4-11). Bebo also lied by telling Grant Thornton that Ventas had agreed to include employees in the covenant calculations. (Tr. 3322:7-3323:5, 3328:8-24, 3366:5-3368:24, 3491:24-3492:20, 3495:25-3496:21).

For all of these reasons, Bebo violated Exchange Act Rule 13b2-2.

E. Bebo Violated the Certification Rule of the Exchange Act

Exchange Act Rule 13a-14 requires an issuer's CEO to sign certifications which are included as exhibits to the issuer's periodic reports. The certifications must state that the signing officer has reviewed the report and based on the officer's knowledge: (1) the report does not contain any material misstatements or omissions; (2) the financial statements fairly present, in all material respects, the financial results of operations; and (3) she has designed or caused to be designed such internal controls to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with GAAP. 15 U.S.C. § 7241. A CEO who certifies periodic reports that contain material misstatements and omissions violates Rule 13a-14. *China Ruitai Int'l Holdings Co., Ltd.*, AP File No. 3-15544, 2015 SEC LEXIS 424, *47-48 (Feb. 5, 2015) (Elliot, J.); *SEC v. E-Smart Techs., Inc.*, 2015 U.S. Dist. LEXIS 17094, *37-38 (D.D.C. Feb. 12, 2015).

Bebo certified ALC's Forms 10-K and 10-Q which she knew, or was reckless in not knowing, contained material misstatements and omissions regarding the Ventas covenants. Accordingly, Bebo violated Rule 13a-14. *See SEC v. Das*, 2012 U.S. Dist. LEXIS 190311, *2-3 (D. Neb. May 29, 2012) (Rule 13a-14 violated when executives certified reports "that contained untrue statements of material fact or omitted material facts necessary to prevent the reports from being misleading and that Defendants 'knew of the misrepresentation or omission' when they certified the false or misleading reports"), *aff'd*, 723 F.3d 943 (8th Cir. 2013).

IV. THE COURT SHOULD IMPOSE SANCTIONS IN THE PUBLIC INTEREST.

Sanctioning Bebo furthers the interests of the investing public. In determining whether sanctions should be imposed in the public interest, the Court may consider the following elements: the egregiousness of the actions; the isolated or recurrent nature of the infractions; the degree of scienter involved; the sincerity of respondent's assurances against future violations; a respondent's recognition of the wrongful nature of her conduct; and the likelihood that a respondent's occupation will present opportunities for future violations. *See Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds,* 450 U.S. 91 (1981); *Flannery and Hopkins,* 2014 SEC LEXIS 4981, *138. The Commission stresses flexibility in analyzing these factors, such that "no one factor is dispositive." *Flannery* at *138. The Court also may consider the extent to which a sanction will have a deterrent effect. *See Schield Mgmt. Co.*, AP File No. 3-11762, 58 S.E.C. 1197, 1217 (Jan. 31, 2006); *Flannery* at *151.

Bebo's misconduct was egregious, involved scienter, and occurred from early 2009 through 2012. She has offered no assurances against future violations, or acknowledged the wrongful nature of her conduct. To the contrary, she testified that she does not believe she did anything wrong and repeatedly gave false testimony. (Tr. 4127:12-25). She is relatively young, and absent an appropriate sanction, will have opportunities to commit future violations.

A. The Court Should Enter a Cease-and-Desist Order.

Section 21C of the Exchange Act authorizes the Commission to issue a cease-and-desist order against any person who "has violated" the statute or rules thereunder, and Bebo's violations raise a sufficient risk of future violations to support the entry of such an order. In making this determination, the Commission may appropriately issue a cease-and-desist order upon a showing "significantly less than that required for an injunction." *KPMG Peat Marwick*

LLP, 54 S.E.C. 1135, 1191 (Jan. 19, 2001). Moreover, "[e]vidence of a past violation ordinarily suffices to establish a risk of future violations" for purposes of a cease-and-desist order. *Flannery,* 2014 SEC LEXIS 4981, at *145; *see also KPMG Peat Marwick* at 1185 ("evidence showing that a respondent violated the law once probably also shows a risk of repetition that merits our ordering him to cease and desist."). Given Bebo's repeated violations of the securities laws, including the antifraud provisions, and her failure to recognize the wrongful nature of her conduct, the Court should impose a cease-and-desist order.

B. The Court Should Order Disgorgement and Prejudgment Interest.

Section 21C(e) of the Exchange Act authorizes the Court to order disgorgement, plus reasonable interest. Bebo's discretionary bonuses for 2009, 2010, and 2011 were, respectively, $340,185, $374,063, and $399,750. (Stipulations filed Apr. 15, 2015, ¶¶ 13-15).[26] Various board members who were responsible for determining Bebo's salary and bonus testified that they would not have awarded her a discretionary bonus had they known she was engaged in fraud at the expense of ALC's shareholders, board of directors, or Ventas. (Tr. 653:22-655:1, 2659:11-23, 2850:5-2851:3). In these circumstances, the disgorgement of Bebo's bonuses is appropriate. *See, e.g., SEC v. Black*, 2009 U.S. Dist. LEXIS 37309, *5-15 (N.D. Ill. Apr. 30, 2009) (ordering disgorgement of salary and compensation received by CEO when SEC established that board would have terminated him had it known of CEO's fraud); *SEC v. Conaway*, 2009 U.S. Dist. LEXIS 26588, *68 (E.D. Mich. Mar. 31, 2009) ("Maintaining a fraudulent scheme so that one may continue to reap the benefit of a salary or other employment related benefits is enough to support a disgorgement order." (citations omitted)).

[26] Bebo's salary for those years was $424,000 (2009), $500,000 (2010), and $520,000 (2011). (Stipulations filed Apr. 15, 2015, ¶¶ 13-15).

C. The Court Should Impose Civil Penalties.

The public interest also supports requiring Bebo to pay significant civil penalties for her misconduct. In considering whether to impose civil penalties, the factors to consider include: (1) whether the violations involved fraud, deceit, manipulation or reckless disregard of a regulatory requirement; (2) the harm caused to others; (3) the extent to which any person was unjustly enriched; (4) prior violations by the respondent; (5) the need for deterrence; and (6) such other matters as justice may require. Exchange Act Section 21B(c).

Here, third-tier penalties against Bebo are warranted for each of the seven quarters (following the July 21, 2010 enactment of the Dodd-Frank Act) in which Bebo made false statements/certifications in ALC's Forms 10-K and 10-Q, lied to auditors, falsified ALC's books and records, and engaged in her fraudulent scheme.[27] *See* Exchange Act § 21B(b)(3); *see also Francis V. Lorenzo*, 2015 SEC LEXIS 1650, *61 (for purposes of assessing penalties, respondent committed two violations by "sending two different customers a materially misleading email.").

Bebo's misconduct involved fraud, deceit, manipulation and the deliberate disregard of regulatory requirements and her responsibilities as a public company CEO. Bebo created both a substantial risk of loss to ALC and its investors and, in fact, caused substantial losses. In particular, after Ventas learned of ALC's inclusion of employees, ALC settled Ventas's lawsuit by purchasing the Ventas facilities for $34 million in excess of their appraised value. Grant Thornton confirmed the significant overpayment constituted "damages as a result of occupancy rates falling significantly below required covenant occupancy rates." (Ex. 3369, pp. 7-8). ALC paid an additional $12 million when it settled with the investors who sued it and Bebo for the false statements in ALC filings that ALC was complying with the Ventas covenants.

[27] Should the Court determine that third-tier penalties are not warranted, the Division requests the imposition of second or first tier penalties.

For these reasons, the amount of any civil penalty assessed against Bebo should be sufficient to deter her and others from engaging in the type of conduct at issue in this proceeding.

D. The Court Should Bar Bebo From Serving as an Officer or Director of a Public Company.

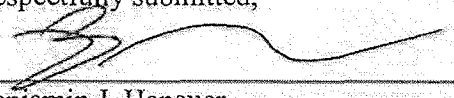
Exchange Act Section 21C(f) authorizes the Commission to prohibit a person who has violated Section 10(b) and Rule 10b-5 from acting as an officer and director of a public company if that person's conduct demonstrates unfitness to serve as an officer or director. Courts have outlined six factors, which are neither exclusive nor mandatory, to consider in assessing unfitness: (1) the egregiousness of the underlying securities law violations; (2) the defendant's repeat offender status; (3) the defendant's role or position when she engaged in the fraud; (4) the defendant's degree of scienter; (5) the defendant's economic stake in the violation; and (6) the likelihood that the misconduct will recur. *SEC v. Bankosky*, 716 F.3d 45, 48-49 (2d Cir. 2013). Again, Bebo's conduct was egregious and involved scienter, and she orchestrated her scheme from the highest-possible corporate position. As a result of Bebo's misconduct, she should no longer be afforded the privilege of serving as an officer or director of a public company.

V. CONCLUSION

The Division of Enforcement respectfully requests that the Court issue an Initial Decision finding that Respondent Bebo engaged in the violations described in the Order Instituting Proceedings and imposing appropriate sanctions.

Dated: July 31, 2015

Respectfully submitted,



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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16293

In the Matter of

LAURIE BEBO, and
JOHN BUONO, CPA,

Respondents.

CERTIFICATE OF SERVICE

Benjamin J. Hanauer, an attorney, certifies that on July 31, 2015, he caused a true and correct copy of the foregoing The Division of Enforcement's Post-Hearing Brief to be served on the following by overnight delivery and email:

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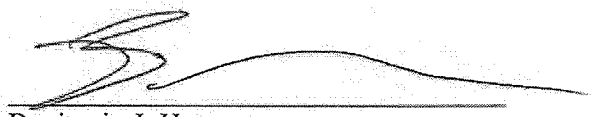

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