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SECURITIES AND EXCHANGE COMMISSION
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July 8, 2020

VIA EMAIL

Honorable Jason S. Patil
Administrative Law Judge
Securities and Exchange Commission
100 F. Street, N.E.
Washington D.C. 20549
alj@sec.gov

Re: ***In the Matter of Laurie Bebo and John Buono, CPA*** **(AP File No. 3-16293)**

Dear Judge Patil:

The Division of Enforcement respectfully submits this letter in response to the email from your office dated June 24, 2020.

The Division believes that the disgorgement of bonuses is still appropriate after the Supreme Court's decision in *Liu v. SEC*. However, given the unique record in this case, the Division believes that it would be more appropriate to proceed with statutory penalties. For the reasons stated in the Division's original and supplemental post-hearing briefing, the Division maintains that our recommended multi-million dollar statutory penalty is an appropriate monetary remedy. *See*, *e.g.*, Division's Supplemental Post-Hearing Response Brief, at 40-42 (Nov. 1, 2019); Division's Post-Hearing Reply Brief, at 58-59 (Aug. 28, 2015).

The Division additionally submits that Bebo's discretionary bonuses constitute "unjust enrichment" for the purposes of assessing penalties under Exchange Act Section 21B(c)(3). Various ALC board members who were responsible for determining Bebo's bonus – directors Bell, Roadman, and Rhinelander – testified that they would not have awarded Bebo 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 similar circumstances, courts have considered an executive's bonuses when assessing penalties. *See, e.g., SEC v. Koenig*, 532 F. Supp. 2d 987, 994-96 (N.D. Ill. 2007) (imposing penalty equal to CFO's bonuses and holding: "Disgorgement and injunctive relief are not sufficient to deter Koenig and others from committing future securities violations … To hold otherwise would impermissibly increase the incentive to violate the securities laws. Without civil penalties, the only financial risk to violators is forfeiture of their ill-gotten gains."), *aff'd*, 557 F.3d 736, 745 (7th Cir. 2009) ("the district court was entitled to treat the disgorged bonuses, plus prejudgment interest, as Koenig's 'pecuniary gain' and to impose an equal penalty in 2009 dollars."); *SEC v. Conaway*, 697 F. Supp. 2d 733, 770-72 (E.D. Mich. 2010) (ordering disgorgement of forgiven $5 million loan which company would not have forgiven if it knew of CFO's fraud, and imposing $2.5 million penalty determined as 50% of loan forgiveness amount because the "statutory penalty amount, even if tripled with a separate statutory penalty for each of the three securities violations … is not a sufficient penalty given the facts of this case."); *SEC v. Razmilovic*, 822 F. Supp. 2d 234, 256-59, 281-82 (E.D.N.Y. Sept. 30, 2011) (ordering disgorgement of CEO's bonuses and severance payments, and imposing penalties based on disgorgement amount), *aff'd* 738 F.3d 14 (2d Cir. 2013).

Consistent with these decisions, the Court should consider Bebo's bonuses when determining civil penalties. As detailed in the Division's earlier briefing, substantial penalties are necessary to punish Bebo for her fraud and deter other highly compensated corporate executives from engaging in similar misconduct. *See*, *e.g.*, *SEC v. Zenergy Int'l, Inc.*, 2016 U.S. Dist. LEXIS 127630, *15 (N.D. Ill. Sept. 20, 2016) ("A civil penalty serves to punish and deter wrongdoers because disgorgement 'does not result in any actual economic penalty or act as financial disincentive to engage in securities fraud.'") (citations omitted); *see also* Exchange Act Section 21B(c)(5) (Commission considers need for deterrence when formulating penalties). Indeed, the public interest for sizable penalties only increases should the Court decline to impose disgorgement.

Respectfully submitted,

/s/ Benjamin J. Hanauer _

Benjamin J. Hanauer

CC: Mark A. Cameli, Esq. (via email)