

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.

RESPONDENT LAURIE BEBO'S  
SUBMISSION IN RESPONSE TO THE  
DIVISION'S POSITION REGARDING  
HER REQUEST FOR SUBPOENAS

Respondent Laurie Bebo submits the following response to the Division of Enforcement's (the "Division's") Response to the Court's Order Regarding Subpoenas to Produce:

*First*, the Division does not object to the issuance of the subpoenas. Consequently, the subpoenas should issue forthwith. Given the delay in their issuance, the response date of February 2, 2014 may need to be modified (to February 9, 2015), or alternatively Ms. Bebo's counsel will work with the subpoenaed non-parties so that documents will be produced on timely basis but alleviating any undue burden on the non-parties to meet production deadlines. However, the highly accelerated pace of the administrative process necessarily requires those subject to document subpoenas to respond at a prompt but reasonable pace.<sup>1</sup>

*Second*, the Division asserts that "it appears" Ms. Bebo's subpoenas are excessive in scope and that much of the material sought is "irrelevant." (Division's Resp. to Court's Order, ¶ 1.) The Division provides no explanation for its assertions, and they are incorrect. Although the Division may believe that it has already requested and produced the "relevant" documents, it was

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<sup>1</sup> Ms. Bebo does not waive and continues to assert her objection to these proceedings, including but not limited to her constitutional objections, as set forth in more detail in her Answer and Affirmative Defenses to the Order Instituting Proceedings, which Ms. Bebo incorporates by reference.

the Division—Ms. Bebo's adversary—who had the opportunity to decide which documents to request (or not). And the determination of the relevance of information as to Ms. Bebo's defense must be left to Ms. Bebo and her counsel, not the government. Rather, the subpoenas seek critical exculpatory information from the non-parties, and are tailored to obtain, among other things, (1) evidence that will support Ms. Bebo's theory of the case; (2) information to impeach the testimony of witnesses formerly of ALC and currently or formerly of Ventas; and (3) information related to the apparent destruction of Ms. Bebo's notes she took while she was employed at ALC.<sup>2</sup>

*Third*, although it seems clear that the information sought by Ms. Bebo is subject to the broad waiver of privilege set forth in Exhibit 1 to the Division's response, the Division still asserts that "much of the material sought" is privileged. The subpoenas are prepared to focus on information and documents subject to that privilege waiver. The information that the Division chose not to request, allegedly on the grounds of privilege, was likely a strategic determination during the investigation because the Division understood that the information would not support its narrative of the case. This is the very information Ms. Bebo is seeking, and it is neither privileged nor irrelevant.

For example, Ms. Bebo is seeking to subpoena documents from Milbank Tweed related to an internal investigation after which ALC's Board of Directors determined that there was no need for corrective action related to the very disclosures at issue in this case. Indeed, Milbank

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<sup>2</sup> Ms. Bebo was a meticulous note-taker during the course of her employment, typically on legal pads, but also in her board books. Based on the notes that were produced in the course of the Division's investigation and as part of the investigative file, there appear to be pages removed from her note pads and entire pads missing. Moreover, Ms. Bebo believes that a substantial number of note pads were not produced, and she has the right to inquire about their whereabouts. Although a significant number of notepads were produced by the company— and appear to be part of the investigative file— there were virtually no notes related to the matters pertinent to the allegations in the OIP. The missing notes include those from Ms. Bebo's key conversations with other witnesses in the case, including personnel from Ventas and members of ALC's Board of Directors. Other witnesses will corroborate that these notes of key conversations existed in the months prior to her termination and even provide certain details about the content of those notes. Ms. Bebo has averred this spoliation as an affirmative defense in her Answer.

Tweed summarized the results of its investigation for the company's auditors, including the following findings:

- After an extensive investigation that "Milbank was not able to conclude that the Company was not in compliance with the lease
- Milbank communicated with Ventas regarding this issue and Ventas representatives were unable to communicate to Milbank that they had not agreed to the arrangement (employee rented units). Current management of Ventas could not confirm nor deny whether the arrangement was authorized or unauthorized."
- Statements of witnesses as reported in the investigation are inconsistent with statements given to the SEC.

(See Ex. A to Milbank Tweed Subpoena.) In a case where the appropriate legal standard is whether there was any reasonable basis to conclude that ALC was in compliance with its lease with Ventas (*see Virginia Bankshares v. Sandberg*, 501 U.S. 1083 (1991); *Fait v. Regions Fin. Corp.*, 655 F.3d 105, 111 (2d Cir. 2011); *Zaluski v. United American Healthcare Corp.*, 527 F.3d 564 (6th Cir. 2008), this is critical evidence to Ms. Bebo's defense.

Milbank Tweed represented Assisted Living Concepts, Inc., its Audit Committee, and its Board of Directors (as a whole) with respect to ALC's internal investigation in 2012-13 regarding the lease disclosures made by ALC. Milbank Tweed did not represent the individual Board members with respect to the internal investigation. Indeed, Milbank Tweed informed the Division of the scope of this representation on March 4, 2014, in response to a request from the Division. A copy of that correspondence is attached hereto, as Exhibit A. Further, ALC specifically waived its attorney-client privilege with respect to communications occurring between January 1, 2012 and March 14, 2013 between ALC Executives (defined to include members of the Board) and Milbank Tweed regarding the internal investigation, among other things. (See Division's Resp. to Court's Order, Ex. 1.)

The Division asserts that it did not subpoena Milbank Tweed "in part due to privilege issues" related to waivers from the individual Board members regarding their communications with Milbank Tweed relating to the internal investigation. (*See id.*, ¶ 4.) But Milbank Tweed did not assert that it represented the Board members in their individual capacities with respect to the internal investigation. (*See Exhibit A at SEC-Internal-E-0002998-99.*) And ALC specifically waived privilege with respect to its communications related to the internal investigation. (*See Division's Resp. to Court's Order, Ex. 1.*) Whether the Division chose to subpoena documents, or why it did not, should have no bearing on whether Ms. Bebo has the opportunity to access exculpatory information. There is no reason why Ms. Bebo should now be denied an opportunity to subpoena documents that would support her defense.

Dated this 21st day of January, 2015.

REINHART BOERNER VAN DEUREN S.C.  
Counsel for Respondent Laurie Bebo

By: \_\_\_\_\_



Mark A. Cameli

WI State Bar No.: [REDACTED]

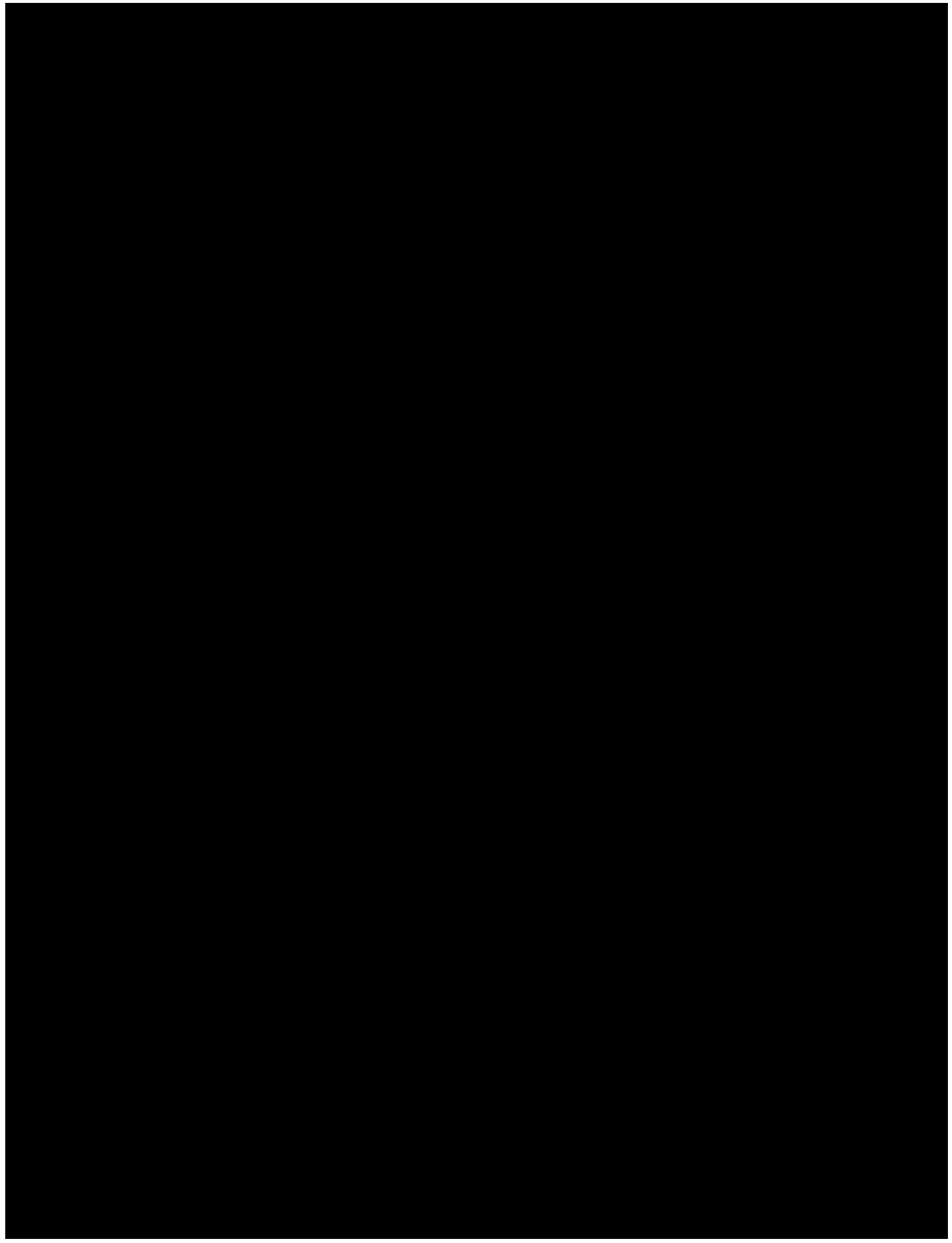
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[REDACTED]



Dated this 21st day of January, 2015.

REINHART BOERNER VAN DEUREN S.C.  
Counsel for Respondent Laurie Bebo

By:   
\_\_\_\_\_  
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**From:** Perry, Daniel [REDACTED]  
**Sent:** Tuesday, March 04, 2014 7:30 PM  
**To:** Tandy, Scott B.  
**CC:** Hanauer, Benjamin J.; Javorski, Jean M.; Kerstetter, Charles J.; Nichols, Lynette; Vincus, Thomas E.; Goel, Asheesh  
**Subject:** RE: ALC (C-7948)  
**Attachments:** [Untitled].pdf

Scott:

Our response to your email below is attached.

Dan

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**Daniel M. Perry | Milbank**  
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**From:** Tandy, Scott B. [REDACTED]  
**Sent:** Friday, February 28, 2014 2:48 PM  
**To:** Perry, Daniel  
**Cc:** Hanauer, Benjamin J.; Javorski, Jean M.; Kerstetter, Charles J.; Nichols, Lynette; Vincus, Thomas E.  
**Subject:** ALC (C-7948)

Dan:

I am wondering whether you can answer a question for me.

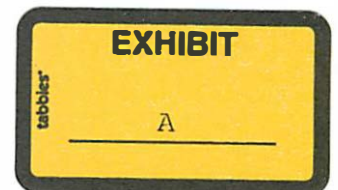
Specifically, I am wondering whether Milbank represented: (1) ALC's Audit Committee as a whole; (2) ALC's Board of Directors as a whole; (3) ALC, the company; (4) any or all of the directors on ALC's Board of Directors individually; and/or (5) any or all of ALC's employees individually.

And, can you let me know the beginning and end dates for each of the representations?

It would be helpful if you could provide this information to me fairly quickly.

Thanks, Scott

Scott Tandy  
Senior Attorney  
U.S. Securities and Exchange Commission  
Chicago Regional Office  
175 W. Jackson Blvd., Ste. 900  
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[REDACTED]  
[REDACTED]



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IRS Circular 230 Disclosure: U.S. federal tax advice in the foregoing message from Milbank, Tweed, Hadley & McCloy

LLP is not intended or written to be, and cannot be used, by any person for the purpose of avoiding tax penalties that may be imposed regarding the transactions or matters addressed. Some of that advice may have been written to support the promotion or marketing of the transactions or matters addressed within the meaning of IRS Circular 230, in which case you should seek advice based on your particular circumstances from an independent tax advisor.

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March 4, 2014

**VIA EMAIL**

Scott Tandy, Esq.  
Senior Attorney  
U.S. Securities & Exchange Commission  
Chicago Regional Office  
175 W. Jackson Blvd., Suite 900  
Chicago, IL 60614

Re: Assisted Living Concepts, Inc. (C-7948)

Dear Scott:

I write on behalf of Milbank, Tweed, Hadley & McCloy LLP (the "Firm"), in response to your email of February 28, 2014 requesting information regarding legal representation of Assisted Living Concepts, Inc. ("ALC" or the "Company").

Below is the information you requested regarding the Firm's representation of the Company, members of its Board of Directors, and others. This information is based solely on the Firm's records and discussion with the Firm's attorneys. The Firm has not conferred with its former clients in responding to your request for information. Accordingly, the Commission should not rely solely on any of the information below to make a determination about the extent and nature of the Firm's representation of the various persons and entities discussed below. *See, e.g., Merck Eprova AG v. ProThera, Inc.*, 670 F.Supp.2d 201, 210 (S.D.N.Y. 2009) (citations omitted) ("The formation of an

Scott Tandy, Esq.  
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attorney-client relationship hinges upon the client's reasonable belief that he is consulting a lawyer in that capacity and his manifested intention to seek professional legal advice. No special formality is required to demonstrate the establishment of the relationship."); *see also* 23 Williston on Contracts §62:3 (4th ed.) (attorney-client relationship may be implied by conduct of the parties). The Firm's specific response to your questions is set forth below:

**(1) ALC's Audit Committee as a whole.**

The Firm represented ALC's Audit Committee with respect to the Company's investigation regarding certain lease disclosures by ALC (the "Internal Investigation"). That representation began in May 2012 and concluded in November 2013.

**(2) ALC's Board of Directors as a whole.**

The Firm represented the ALC Board of Directors as a whole in relation to the Company's Internal Investigation. That representation began in July 2012 (after Ms. Bebo was removed from the Board of Directors) and concluded in November 2013.

**(3) ALC, the Company.**

The Firm represented ALC in relation to the SEC's currently ongoing investigation ("SEC Investigation"). That representation began in June 2012 and concluded in November 2013.

The Firm also represented ALC in relation to a stockholder derivative action styled *George Passaro v. Laurie A. Bebo, et al.*, 12 CV 010106, filed in the Circuit Court, Milwaukee County, for the State of Wisconsin (the "Passaro Action"). That representation began shortly after the Company was named as a defendant in that action in September 2012 and concluded after the action was dismissed in June 2013.

The Firm represented ALC in relation to five stockholder actions filed in the Eighth Judicial District Court for the State of Nevada and for Clark County and consolidated under the caption *In re Assisted Living Concepts, Inc. Shareholder Litigation*, Case No. A-12-6754054-C (consolidated with Case Nos. A-13-677683-C, A-13-677797-C, A-13-677838-C, and A-13-677902-C) (the "Nevada Actions"). That representation began shortly after the Company was named as a defendant in the first of these actions in December 2012 and concluded after the actions were settled in April 2013.

In addition, the Firm represented the Company in relation to a securities class action styled *Robert E. Lifson, individually and on behalf of all others similarly situated, plaintiff, against Assisted Living Concepts, Inc. and Laurie A. Bebo, defendants*, Case No. 12-cv-884, filed in the United States District Court for the Eastern District of Wisconsin. That representation began shortly

after the Company was named as a defendant in August 2012 and concluded after the action was dismissed in December 2013.

The Firm also represented ALC in actions filed against the company by Laurie Bebo:

- On June 29, 2012, Laurie Bebo filed an action against the Company styled *Bebo v. Assisted Living Concepts, Inc.*, Case No. 2012CV002039, in the Circuit Court, Waukesha County, for the State of Wisconsin. The Firm's representation began shortly after the action was filed and concluded after the action was dismissed in June 2013.
- On June 29, 2012, Laurie Bebo filed an arbitration demand against the Company with the American Arbitration Association, Case No. 51 166 857 12 (the "Bebo Arbitration"). The Firm's representation began shortly after the arbitration demand was filed and concluded after the demand for arbitration was dismissed in October 2013.
- On July 26, 2012, Laurie Bebo filed a purported Sarbanes-Oxley whistleblower complaint under Section 806 of the Sarbanes-Oxley Act with the U.S. Department of Labor Occupational Safety and Health Administration ("OSHA"), identified by the file name "Assisted Living Concepts/Bebo/5-3100-12-045" (the "Bebo SOX Action"). The Firm's representation began in October 2013, when OSHA first informed the Company that the complaint had been filed, and concluded after the complaint was dismissed in November 2013.
- On May 15, 2013, the State of Wisconsin, Department of Work Force Development, Equal Rights Division notified the Company that in March 2013 Laurie Bebo had filed a retaliation complaint under the State of Wisconsin's Elder Abuse/Healthcare Worker laws. The Firm's representation began shortly after the Company was notified of the complaint and concluded after the complaint was dismissed in November 2013.

**(4) Any or all of the directors on ALC's Board of Directors individually.**

The Firm represented the individual members of the ALC Board of Directors (other than Bebo) in relation to the Passaro Action and the Nevada Actions. That representation was concurrent with The Firm's representation of the Company in those actions.

In addition, in connection with the Firm's representation of the Company in the Bebo Arbitration and the Bebo SOX Action, the Firm defended certain individual members of the ALC Board of Directors at depositions in those matters. The individual directors were witnesses appearing

Scott Tandy, Esq.  
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Page 4

on behalf of the Company at the Company's direction/request and were no longer on the Board of Directors at the time they appeared.

The Firm also represented the individual members of the ALC Board of Directors (other than Bebo) in relation to the SEC Investigation. That representation began in the Spring of 2013, at the time of the SEC's oral request for documents from the directors, and concluded in November 2013.

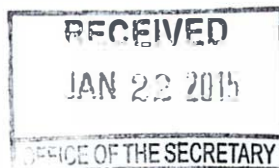
**(5) Any or all of ALC's employees individually.**

The Firm has not represented any ALC employees individually.

If you have any questions, please do not hesitate to contact me by phone at (212) 530-5083, or via email at [dperry@milbank.com](mailto:dperry@milbank.com).

Sincerely,

  
Daniel M. Perry



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January 21, 2015

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DELIVERED BY COURIER

Brent J. Fields, Secretary  
Office of the Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Dear Mr. Fields:

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

I enclose for filing in the above-referenced matter an original and three copies of Respondent Laurie Bebo's Submission in Response to the Division's Position Regarding Her Request for Subpoenas, and Certificate of Service.

Thank you for your assistance.

Yours very truly,

Ryan S. Stippich

29416622RSS:amb

Encs.

cc The Honorable Cameron Elliot (w/enc.)  
Patrick S. Coffey, Esq. (w/enc.)  
Benjamin J. Hanauer, Esq. (w/enc.)  
Scott B. Tandy, Esq. (w/enc.)  
Ms. Christina Zaroulis Milnor (w/enc.)