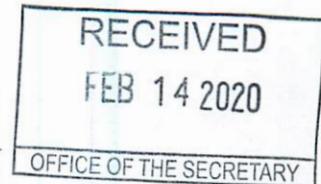




UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

CHICAGO REGIONAL OFFICE
SUITE 1450
175 WEST JACKSON BOULEVARD
CHICAGO, ILLINOIS 60604



BENJAMIN J. HANAUER
SENIOR TRIAL COUNSEL
DIVISION OF ENFORCEMENT

TELEPHONE: (312) 353-8642
FACSIMILE: (312) 353-7398

February 13, 2020

VIA UPS NEXT DAY AIR AND EMAIL

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

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

Dear Judge Patil:

The Division of Enforcement submits this letter pursuant to the Court's February 10, 2020 Order Following Oral Argument. Pursuant to that Order, the Division states as follows:

a. Filing of Visual Presentation

Per the Court's Order, enclosed is a PDF version of the PowerPoint presentation used by the Division at the February 6, 2020 oral argument.

b. Cases

Below is precedent cited by the Division as requested in the Court's Order:

1. Cases in which there was a sole event study finding no materiality, but the decision concluded there was materiality anyway.

The following cases stand for the proposition that a misstatement/omission can be material despite a lack of significant stock price movement. While the cases may not involve event studies, they feature negligible stock price changes that presumably an event study would find to be insignificant.

No. 84 Employer-Teamster Joint Council Pension Trust Fund v. Am. W. Holding Co., 320 F. 3d 920, 934 (9th Cir. 2003), *cert. denied*, 540 U.S. 966 (2003) (holding that the fact that “market did not immediately react” to corrective disclosures did not preclude a finding of materiality and “reject[ing] Defendants’ argument for adoption of a bright-line rule requiring an immediate market reaction”).

United States v. Blizerian, 926 F.2d 1285, 1298-99 (2d Cir. 1991) (affirming materiality finding despite “the absence of any market fluctuation” following SEC filing, and noting “whether a public company’s stock price moves up or down or stays the same after the filing of a [SEC report] does not establish the materiality of the statements made, though stock movement is a factor the jury may consider relevant.”)

SEC v. Monterosso, 768 F. Supp. 2d 1244, 1265 (S.D. Fla. 2011), *aff’d* 557 Fed. Appx. 917 (11th Cir. 2014) (finding materiality despite “negligible” stock price movement: “the Court notes that the movement of a company’s stock price, or lack thereof, is not dispositive of whether a given statement is material. Rather, whether a public company’s stock price moves up or down is simply a factor that may be relevant to materiality ... Typically, stock price movement is evaluated more in the context of determining the issue of reliance in private securities actions. Assuming any movement in GlobeTel’s stock price following any of the alleged false statements was negligible, the Court nonetheless finds GlobeTel’s overwhelmingly inflated revenue statements were materially misstated as a matter of law.”) (emphasis added and citations omitted).

SEC v. Stanard, 2009 U.S. Dist. LEXIS 6068, *64-*70 (S.D.N.Y. Jan. 27, 2009) (finding materiality despite stock price falling less than 0.75% on announcement of restatement).

SEC v. IIT Educ. Servs., Inc., 311 F. Supp. 3d 977, 992-94 (S.D. Ind. 2018) (rejecting *Daubert* challenge to SEC materiality expert premised on expert not performing an event study). The Division notes that Bebo cites *IIT Educ.* in support of her materiality argument in her Supplemental Post-Hearing Response Brief (p. 19).

2. What effect an issuer’s statement in a public filing that a certain disclosure was material has on the question of materiality.

The following cases stand for the proposition that an issuer’s determination that a disclosure was material is evidence that supports a finding of materiality:

Media Gen., Inc. v. Tomlin, 387 F.3d 865, 870 (D.C. Cir. 2004) (“The potential materiality of Prusator’s expanded claims is further supported by the testimony of Park’s counsel Burr. Burr, who knew about the Prusator litigation before the merger closing, stated that he would have wanted to know about Prusator’s expanded claims if he had been in Media General’s position... This testimony is not dispositive, but it certainly suggests that reasonable investors could have concluded that the expanded Prusator claims were material to Media General’s acquisition of Park.”).

SEC v. Mayhew, 121 F.3d 44, 52 (2d Cir. 1997) (“a major factor in determining whether information was material is the importance attached to it by those who knew about it.”).

SEC v. Tex. Gulf Sulphur Co., 401 F.2d 833, 851 (2d Cir. 1968) (“a major factor in determining whether the K-55-1 discovery was a material fact is the importance attached to the drilling results by those who knew about it...No reason appears why outside investors, perhaps better acquainted with speculative modes of investment and with, in many cases, perhaps more capital at their disposal for intelligent speculation, would have been less influenced, and would not have been similarly motivated to invest if they had known what the insider investors knew about the K-55-1 discovery.”).

U.S. v. Ghilarducci, 480 F.3d 542, 547 (7th Cir. 2007) (“the very fact that the defendants made the misrepresentations suggests that the defendants expected the statements to have a tendency to influence prospective investors.”).

3. Whether penalties imposed in a related settled action have an impact on the penalties imposed in a contested proceeding, and to what degree.

The following authority stands for the proposition that the Court appropriately imposes higher penalties against a non-settling respondent:

United States v. Barner, 441 F.3d 1310, 1320-21 (11th Cir. 2006) (“it is commonplace that a defendant can expect to get a more favorable sentence from a plea bargain than from proceeding to trial and losing; were it otherwise, few defendants would forego their right to a trial...the co-defendants who pleaded could expect to get favorable treatment from pleading, and this does not support a presumption of prosecutorial vindictiveness.”)

Frank v. Blackburn, 646 F.2d 873, 883 (5th Cir. 1980) (“Once the bargain—whether it be reduced charges, a recommended sentence, or some other concession—is rejected, however, the defendant cannot complain that the denial of the rejected offer constitutes a punishment or is evidence of judicial vindictiveness. To accept such an argument is to ignore completely the underlying philosophy and purposes of the plea bargaining system. If a defendant can successfully demand the same leniency after standing trial that was offered to him prior to trial in exchange for a guilty plea, all the incentives to plea bargain disappear; the defendant has nothing to lose by going to trial.”)

Sections 21B(c)(5) and (6) of the Securities Exchange Act of 1934 (including as factors for determining penalties: the need for deterrence and “such other matters as justice may require”). Consistent with these provisions, the Division submits that imposing on Bebo – a public company CEO who personally directed the fraud and supervised her co-respondent Buono – a lesser penalty than Buono would provide insufficient deterrence for well-compensated executives like Bebo and would not serve the public interest of imposing greater sanctions against more culpable parties.

c. The Milbank Handwritten Notes

The Division does not object to the admission of the handwritten notes. Indeed, the Division submits that the notes, which are significantly less detailed than the subsequent typed memoranda, support the Division's contention that the memoranda contain multiple levels of hearsay and are not as reliable as the sworn trial testimony of the Milbank interviewees. *See, e.g. Marshall v. Precision Pipeline LLC*, 2015 U.S. Dist. LEXIS 4820, *27 (W.D. Wisc. Jan 14, 2015) ("Marshall's underlying notes are inadmissible hearsay, which eliminates the possibility of admitting the second layer of hearsay as part of an admissible 'chain,' at least for purposes of offering the statements for the truth of the matter asserted. *Furthermore, even if Marshall's notes were admissible, notes of her attorney based on those same notes are not admissible under any exception to the hearsay rule.*") (emphasis added). The Division understands that Bebo's attorneys will be filing the notes as Joint Supplemental Exhibit 2.

d. Exhibits 513 and 529

The Division submits that the Ontario Securities Commission testimony transcripts of board members Hennigar and Ng are admissible under Rules of Practice 235(2) and 235(4), because the witnesses reside in Canada and would not travel to the United States to testify at the hearing. *See* Division's Motion to Introduce Prior Sworn Statements (Apr. 2, 2015). However, the Division does not now seek to admit those transcripts into evidence, in light of its agreement to limit the Court's *de novo* review to evidence previously admitted into the record, subject to certain exceptions not applicable to the Canadian testimony transcripts. *See* AP Rulings Release 6412, Attachment A, ¶ 3 (Dec. 18, 2018). The Division notes that portions of Hennigar's deposition transcript from private litigation involving Bebo, in which Bebo's current law firm participated, are already part of the record as Exhibit 492A.

Respectfully submitted,



Benjamin J. Hanauer

w/enclosures

CC: Marc A. Cameli, Esq. (via email and UPS delivery)

U.S. SECURITIES AND EXCHANGE COMMISSION

Division of Enforcement Oral Argument

In the Matter of Laurie Bebo

AP File No. 3-16293



WHAT THIS CASE IS ABOUT

BRAZEN FRAUD

Three-year scheme committed by a public company CEO

FALSE STATEMENTS

Bebo made repeated false statements in SEC filings that ALC was in compliance with contractual covenants related to occupancy/revenues

MASKED COVENANT FAILURES

Bebo masked covenant failures by personally selecting large numbers of fake occupants and including them in covenant calculations

FAKE REVENUE

Bebo ordered that ALC book fake revenue to account for the phony occupants

Relevant People and Entities



Assisted Living Concepts, Inc.

Assisted Living Concepts
("ALC")
publicly traded senior living provider



Laurie Bebo
ALC CEO



John Buono
ALC CFO

BARRED BY SEC



VENTAS

Ventas

healthcare focused REIT which owned senior living facilities and leased them to operators such as ALC

CaraVita

CaraVita

Senior-living provider that leased 8 facilities from Ventas



Grant Thornton

Grant Thornton

ALC's former outside audit firm

PARTNERS KOEPEL AND ROBINSON BARRED BY SEC

Covenants: Occupancy and Cash Flows (Coverage Ratio)

8.2.5. Financial Covenants. The following financial covenants shall be met throughout the Term of this Lease:

PENALTIES VENTAS COULD IMPLEMENT:

- (1) Terminate the lease;
- (2) Evict ALC from all eight facilities;
- (3) Require ALC to pay the unpaid rent for the entire portfolio for the lease's remaining term.

(Ex. 142, §§ 17.1.2, 17.2, 17.3, 17.4).

- (a) **Coverage Ratio.** Tenant shall maintain a Coverage Ratio with respect to each Facility for the 12 month period ending as of the end of each fiscal quarter of not less than 0.8 to 1.0;
- (b) **Intentionally Omitted;**
- (c) **Portfolio Coverage Ratio.** Tenant shall maintain a Portfolio Coverage Ratio for the 12 month period ending as of the end of each fiscal quarter of not less than 1.0 to 1.0;
- (d) **Minimum Average Occupancy.** As of the end of each fiscal quarter, the minimum average occupancy rate (i) for the quarter then ended for each Facility shall be greater than or equal to 65%, (ii) for the trailing 12 months then ended (1) for each Facility shall be greater than or equal to 75% and (2) for all Facilities in aggregate shall be greater than or equal to 82%.

DIVISION
EXHIBIT
142

EC0008699

EC0008726

Bebo Knew and Was Warned about the Covenants

RE: A couple thoughts... draft

From: "Buono, John" <jbuono@alcco.com>

From:

"Buono, John" <jbuono@alcco.com>

To:

"Bebo, Laurie" <lbebo@alcco.com>

Date:

Fri, 02 Nov 2007 13:40:53 -0500

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. That would be fine if all things were equal, with us giving up an equal guarantor and putting Ventas cash in our pockets. Once they heard ALC, Inc. would guaranty, the suggestion of providing a guarantor similar to Cara Vita was quickly dismissed and resulted in additional negotiations on items they were not excited about negotiating. At that point we still had a guaranty that would seriously restrict our ability to operate our company in a manner to which we are accustomed, namely a proposed guaranty arrangement binding all of ALC for the sake of \$5 million in rental payments per year. Of course as you know we did reach an agreement in this area (although I have not seen if they had any final comment on our suggested language sent yesterday) after offering what would be a very expensive solution to us.

As you are aware, this lease and guaranty are complex. If it were the only part of my business, focusing on complying with each and every nook and cranny would be easy. However it is not. The big issue is not about a .1 coverage ratio, that is only part of the issue. You heard me read one of Joe's colorful emails. There have been more so based on that and our many conversations and correspondence with Ventas and my personal previous experience with sale/leaseback arrangements, I have trouble believing that our relationship with Ventas will be anything but adversarial and they may do what they can to create barriers to our assignment process and future dealings (as demonstrated in their inability to allow for arbitration).

We finished the subject code. And I would be remiss if not asking again, Cara Vita becoming the assignor on the

This deal, but
with
know

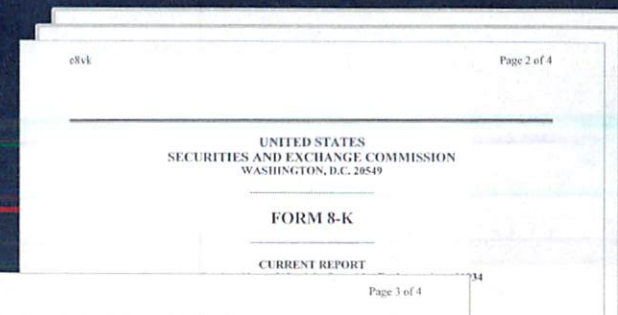
ALC00170961

Timeline of Bebo's Scheme

1/7/08:
ALC 8-K discloses Ventas
lease and covenants.



ALC Announces Ventas Lease in Jan. 7, 2008 Form 8-K



Item 1.01. **Entry into a Material Definitive Agreement.**

On December 31, 2007, subsidiaries of Assisted Living Concepts, Inc. (the “Company”) entered into a master lease agreement with Ventas Realty, Limited Partnership, an affiliate of Ventas, Inc., for eight assisted and independent living communities located in the southeast United States. The lease is effective as of January 1, 2008. The eight communities are: CaraVita Village in Montgomery, Alabama; Greenwood Gardens in Marietta Georgia; Highland Terrace in Inverness, Florida; Peachtree Estates in Dalton, Georgia; Tara Plantation in Cumming, Georgia; The Inn at Seneca in Seneca, South Carolina; The Sanctuary in Acworth, Georgia; and Winterville Retirement Center in Winterville, Georgia. The communities

Index. Rent for first year of the third renewal option will be the greater of the prior year’s rent or the fair market rent as determined by a third party appraiser and increases by 2.5% annually during the balance of the third renewal term. The lease contains customary representations and warranties and affirmative and negative covenants, including financial covenants requiring: each community to maintain a coverage ratio of 0.8 to 1.0; the portfolio to maintain a coverage ratio of 1.0 to 1.0; each community to maintain quarterly occupancy of at least 65% and trailing twelve month occupancy of at least 75%; and the portfolio to maintain trailing twelve month occupancy of at least 82%. The lease is guaranteed pursuant to a guaranty of lease dated January 1, 2008 made by the Company for the benefit of Ventas Realty, Limited Partnership.

ALC Represented its Compliance with the Covenants in Each 10-K and 10-Q in 2009, 2010, and 2011

In addition, the failure to meet certain operating and occupancy covenants in the CaraVia operating lease could give the lessor the right to accelerate the lease obligations and terminate our right to operate all or some of those properties. **We were in compliance with all such covenants as of March 31, 2009**, but declining economic conditions could constrain our ability to remain in compliance in the future. Failure to comply with those obligations could result in our being required to make an accelerated payment of the remaining obligations under the lease through its expiration in March 2015 (approximately \$26.8 million as of March 31, 2009), as well as the loss of future revenue and cash flow from the operations of those properties. The acceleration of the remaining obligation and loss of future cash flows from operating those properties could have a material adverse impact on our operations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 10-Q

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
FOR THE QUARTER ENDED MARCH 31, 2009

OR
TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Assisted Living Concepts, Inc.

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Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Item 4. Controls and Procedures

Part II - Other Information

Item 1. Legal Proceedings

Item 2. Unresolved Staff Comments

Item 3. Defaults on Securities

Item 4. Mine Safety Disclosures

Item 5. Other Information

Item 6. Exhibits

Ventas Cared about ALC's Compliance with the Covenants

- Doman, Butora, and Solari – testified covenants were important and that they communicated this to Bebo.
- Ventas would ultimately have to sell or re-lease properties, Ventas wanted quarterly assurances they were well managed and well occupied.
- Lease required quarterly certifications documenting compliance and GAAP-compliant financial statements for each property. (*Ex. 142, §§ 25.3, 25.4; Ex. 142, Ex. D*)
- Doman and Butora testified that Ventas scrutinized ALC's info each quarter.
- Quarterly calls and site visits with Bebo where Ventas asked questions about occupancy and revenues.

Bebo and ALC's Board Cared about the Covenants

- ALC's accounting department regularly monitored occupancy and revenues at Ventas facilities for compliance.
- Bebo admitted that she kept track of occupancy and covenant compliance.
- Bebo admitted that she knew occupancy began steadily declining after ALC took over the Ventas facilities in 2008.
- Bebo admitted that in August 2008, she contemplated ALC purchasing the Ventas facilities to avoid the ramifications of missing the covenants. *(Tr. 1840:4-1841:22)*
- Bebo knew that the board required management to report on covenant compliance at each meeting. *(E.g., Ex. 86, p. 46 of PDF)*

Bebo and ALC's Board Cared about the Covenants

Cara Vita Covenants

	Actual		Threshold	
	Qtr	LTM	Qtr	LTM
Occupancy				
Per Facility	75.8%-91.7%	75.1%-93.5%	65%	75%
Portfolio	84.5%	83.4%	N/A	82%
Coverage				
Per Facility	.80X - 2.05X	.82X - 2.07X	N/A	.80X
Portfolio	1.31X	1.28X	N/A	1.0X

Assisted Living Concepts, Inc.

Assisted Living Concepts, Inc.
C-07948

Committee Meeting Materials
August 2011

NOT PREPARED BY ASSISTED LIVING CONCEPTS, INC.

DIVISION
EXHIBIT
86

Bebo and ALC's Board Cared about the Covenants

BOARD OF DIRECTORS
Agenda Item 4(g)

Assisted Living Concepts, Inc.

TO: Board of Directors

FROM: John Buono, Sr. VP, CFO & Treasurer

RE: Cara Vita Portfolio Covenants

DATE: October 27, 2008

Background

Occupancy has declined in the portfolio since its purchase January 1, 2008, leading to questions at the August 5, 2008 meeting of the Audit Committee about the implications of any non-compliance with covenants in the Lease and Guaranty. The Committee asked management for additional information about compliance with these covenants. In general, **breach of any of the occupancy or financial coverage covenants would entitle Ventas to terminate the Lease as to all or some of the properties and require payment of the present value of unpaid future rental amounts.**

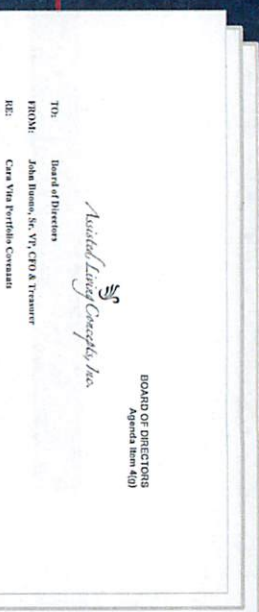
Timeline of Bebo's Scheme

11/3/08 board meeting:
Bebo approves memo re:
occupancy problems and
plan to send taskforce of
employees to properties.

1/7/08:
ALC 8-K discloses
Ventas lease and
occupancy covenants.



Bebo's "Action Plan" to Improve Occupancy



Action Plan

The immediate concern clearly revolves around occupancy. We have deployed a team of sales persons to the Southeast region who are immediately focused on improving census at Greenwood Gardens and Peachtree Estates. Additional marketing efforts will be focused on hosting open houses, advertising, and special rate strategies. From an expense side, all staffing models and food costs are being reviewed by senior management to align with ALC standards. Weekly conference calls are being held with senior management. We are currently making a change to the regional director of operations.

CONFIDENTIAL TREATMENT REQUESTED
BY ASSISTED LIVING CONCEPTS, INC.

ALC00030482

Responsibilities of Task Force Members

SE Task Force Responsibilities

Inspire

- Attitude stand up.
- Jobs to answer phone / take inquiries
- All Hands dining
- # resident interviews / wk
- # family cust service calls/wk
- Trainee walking rounds.
 - cleanliness of common areas
 - visit meeting apts.
 - DR set up for expectations
- Reviews AP system
 - Payments made timely
- Aging collection letters sent out
- Missing items report
- Open House for tours on the weekend

Timeline of Bebo's Scheme

11/18-25/08:
Buono gives Bebo proposal for obtaining covenant relief from Ventas, Bebo fails to raise topic with Ventas CEO.

11/3/08 board meeting:
Bebo approves memo re: occupancy problems and plan to send taskforce of employees to properties.

1/7/08:
ALC 8-K discloses Ventas lease and occupancy covenants.

2008

2009

2010

2011

2012

Buono's Proposal to Suspend the Covenants: Bebo Rejects Suggestion ask Ventas

Ventas Property Negotiations

From:

"Buono, John" <"/o=assisted living concepts/ou=alco/cn=recipients/cn=jbuono">

To:

"Bebo, Laurie" <lbebo@alcco.com>

Date:

Tue, 18 Nov 2008 16:22:13 -0600

8.2.5. Financial Covenants:

- (a) suspend required LTM coverage ratio of 0.8 to 1.0 for each facility for a period of 3 years (or modify downward)
- (b) Blank
- (c) Suspend Portfolio coverage ratio for the LTM of not less than 1.0 to 1.0
- (d) Suspend minimum occupancy requirements for the quarter (currently 65%)
Suspend minimum occupancy requirements for the LTM at each facility (75%)
Suspend aggregate occupancy for the LTM (82%)

Ventas Property Negotiations
From: "Buono, John" </o=assisted living concepts/ou=alcco/cn=recipients/cn=jbuono">
To: "Bebo, Laurie" <lbebo@alcco.com>
Date:

DIVISION
EXHIBIT
156
ALCO007155.10

Timeline of Bebo's Scheme

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for obtaining covenant relief
from Ventas, Bebo fails to
raise topic with Ventas CEO.

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occupancy covenants.



**JAN - DEC 2008
OCCUPANCY DECLINES**

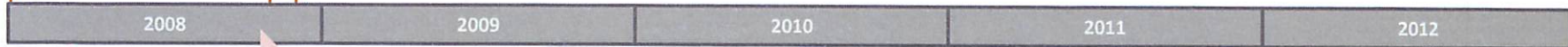
Timeline of Bebo's Scheme

12/2008 Board Meeting:
Bebo believes ALC will soon fail covenants; does not tell Board.

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ALC 8-K discloses Ventas lease and occupancy covenants.

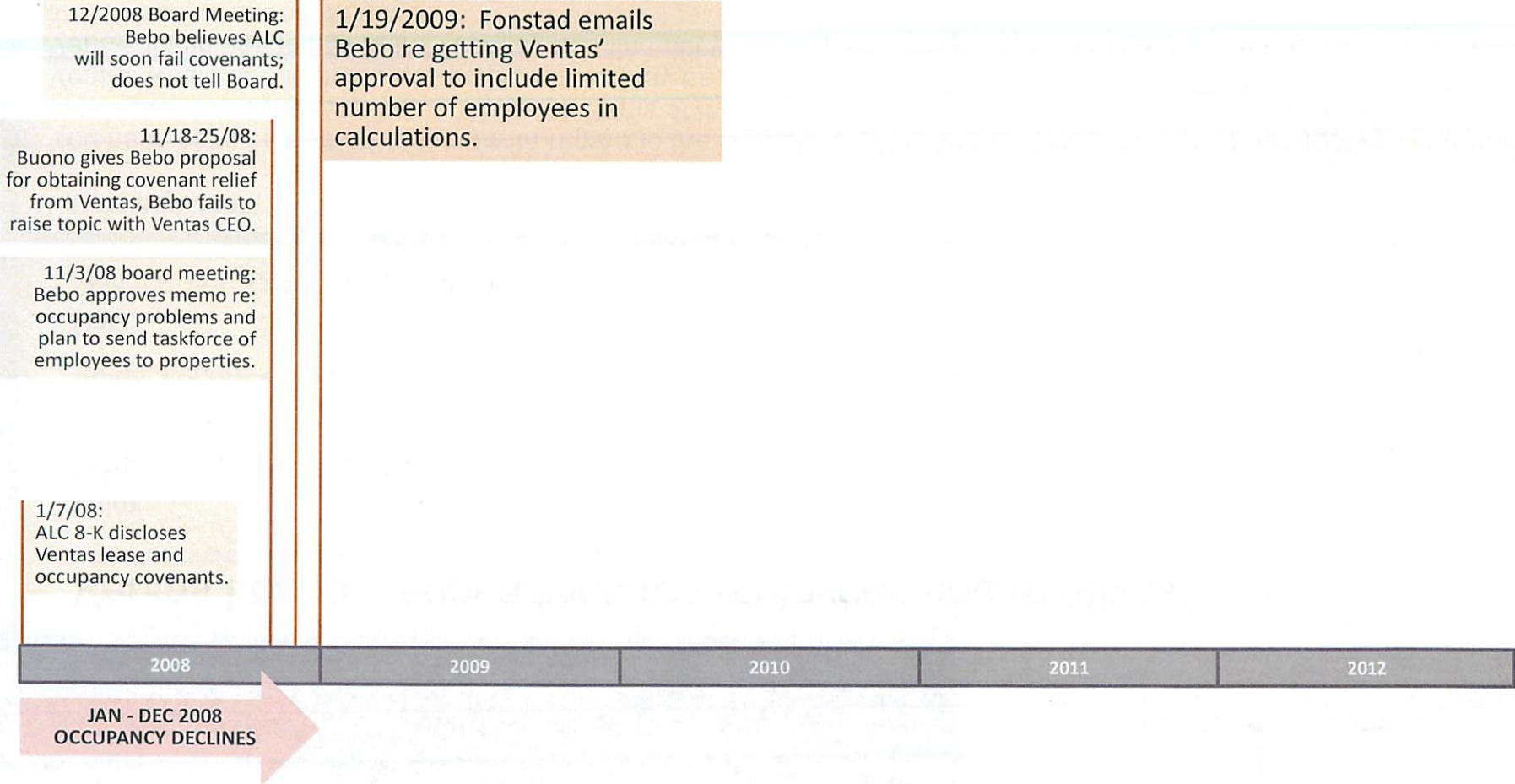


JAN - DEC 2008
OCCUPANCY DECLINES

Bebo's Idea to Include Employees in Covenant Calculations

- Bebo admits that by January 2009 she came up with idea to include employees.
- Genesis of idea was discovery that a legacy CaraVita employee, who was now an ALC employee, was actually living at a facility and renting a room there, and being included in covenant calculations.
- Bebo wasn't sure it was even allowed for employees to live there, due to various restrictions in the lease, so she reaches out to general counsel Fonstad.

Timeline of Bebo's Scheme



Fonstad's Advice: Disclose to Ventas and Get Written Permission

Ventas Lease - legal advice re employees and relatives

From:
"Fonstad, Eric" <efonstad@alcco.com>
To:
"Bebo, Laurie" <lbebo@alcco.com>, "Buono, John" <jbuono@alcco.com>

Ventas Lease - legal advice re employees and relatives

From:

"Fonstad, Eric" <efonstad@alcco.com>

To:

"Bebo, Laurie" <lbebo@alcco.com>, "Buono, John" <jbuono@alcco.com>

Date:

Mon, 19 Jan 2009 17:08:25 -0600

Laurie and John,

You have asked me to advise you with regard to the provisions of the Ventas lease that affect our ability to rent rooms to employees or family members. While the terms of the lease restrict these uses of the facilities, it is not entirely clear that Ventas would find them objectionable – they may be willing to agree to them. I suggest that you discuss the idea with Ventas when you talk to them Tuesday and find out what they will accept. We can then send them a letter that asks them to confirm the understanding.

another person. The definition specifically mentions shareholders and, while it does not expressly list employees and relatives, a fair reading of the definition would include employees and other relatives (parents, siblings, and children).

Fonstad's Advice: Disclose to Ventas and Get Written Permission

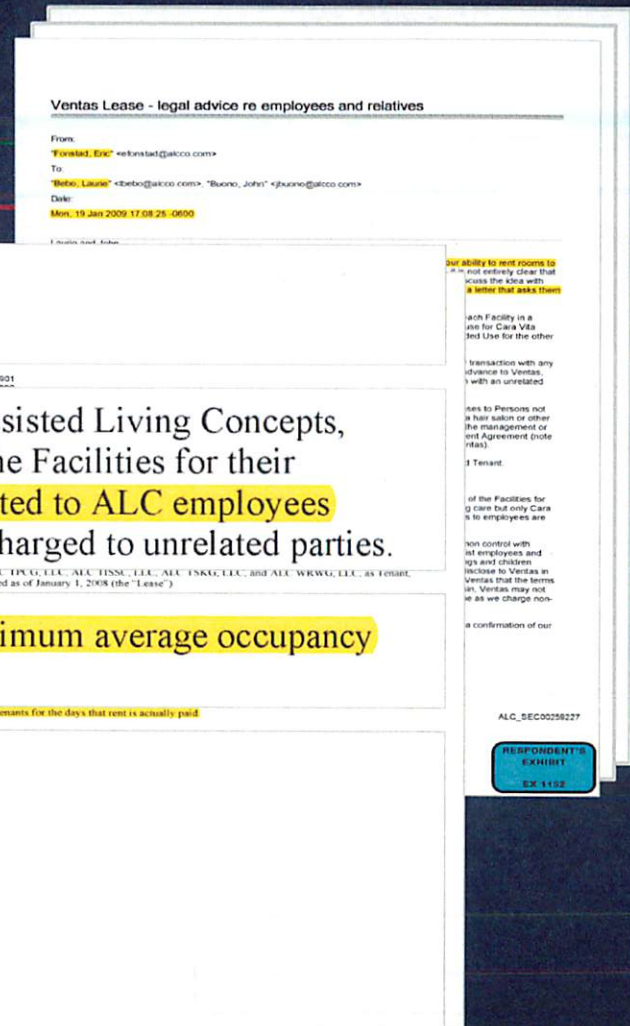
To: Ventas
From: L. B., President of each of the Tenants under the Lease

Tenant proposes to rent a limited number of units to employees of Assisted Living Concepts, Inc. for the purpose of facilitating their ability to assist in operating the Facilities for their Primary Intended Use. It is not expected that the number of units rented to ALC employees would exceed ___ at any one time. Rents paid would be the same as charged to 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.

Acknowledged and agreed on behalf of Landlord by:

Name:
Title:
Date:



Timeline of Bebo's Scheme

12/2008 Board Meeting:
Bebo believes ALC
will soon fail covenants;
does not tell Board.

11/18-25/08:
Buono gives Bebo proposal
for obtaining covenant relief
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raise topic with Ventas CEO.

11/3/08 board meeting:
Bebo approves memo re:
occupancy problems and
plan to send taskforce of
employees to properties.

1/7/08:
ALC 8-K discloses
Ventas lease and
occupancy covenants.

1/19/2009: Fonstad emails Bebo
re getting Ventas' approval to
include limited number of
employees in calculations.

1/20/2009: Bebo and
Buono have call with Solari.
Covenants not discussed.

2008

2009

2010

2011

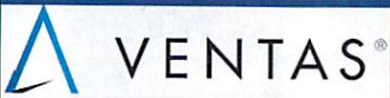
2012

JAN - DEC 2008
OCCUPANCY DECLINES

Solari Testified that the Covenants Were Not Discussed



SOLARI



Q Do you have any recollection of on that phone call, Ms. Bebo ever linking employees visiting the properties with employees being included in the covenant calculations?

A I have no recollection of that.

Q Do you recall any discussion of covenant calculations on that phone call?

A Nope.

Q On that phone call, did you agree to allow employees to be included in the covenant calculations?

A I did not.

Q How do you know?

A Because I would never agree to such a thing. And I didn't have the authority to agree to it, even if I wanted to.

Trial Transcript Day 2 - 4/21/2015, 415:25-416:15, 4/21/2015

Q Do you think that would have been something you would have remembered, having included employees in the occupancy coverage agreement?

A Yes.

Q Why?

A Because it would have struck me as being such an outlandish request.

Trial Transcript Day 2 - 4/21/2015, 417:4-417:10



BUONO

Assisted Living Concepts, Inc.

Buono Corroborates Solari

Q Okay. So now I want to ask you some questions about the actual call with Mr. Solari and Ms. Bebo. What was discussed on that phone call?

A We discussed the hospice situation and the -- our desire to modify the lease to allow us to include leasing to the hospice company and discussed the fact that the prior operator had employees staying at the facilities and that we desired to do the same.

Trial Transcript Day_10 - 5/1/2015 CORRECTED, 2344:8-2344:17

Q And on that call with Mr. Solari, was anything regarding occupancy or coverage ratio covenants discussed?

A No.

Trial Transcript Day_10 - 5/1/2015 CORRECTED, 2344:18-2344:21



BUONO

Assisted Living Concepts, Inc.

Buono Corroborates Solari

Q Now, in response to the discussion about the hospice sublease and then the employees staying at the properties, what did Mr. Solari say in response to that?

A Put your proposal in writing.

Q To what extent, if any, did Mr. Solari actually agree to anything over the phone?

A He did not agree to anything over the phone.

Trial Transcript Day_10 - 5/1/2015 CORRECTED, 2344:22-2345:5

Q So on that call with Mr. Solari and in the days following receipt of the February 4 e-mail, to what extent did you understand Mr. Solari to agree to include employees in the covenant calculations?

A He didn't agree.

Trial Transcript Day_10 - 5/1/2015 CORRECTED, 2346:9-2346:13

Bebo's Version of the Call Differs Wildly from Solari and Buono



BEBO

Assisted Living Concepts, Inc.

Bebo testified that Solari agreed ALC could include an unlimited number of employees in the covenant calculations as long as they had “reason to go” there, even if:

- Bebo could unilaterally decide whether an employee had a reason to go;
- The employees didn't actually stay at the facilities;
- ALC did not disclose the number of employees to Ventas.
- ALC, not the employees, “paid” rent for the room.
- This arrangement effectively waived the covenants.

Bebo Testified That She Never Told Solari Key Details about Her Scheme

Bebo testified that she *never* told Solari key details about her scheme:

- ALC would fail the covenants without including employees.
- No cash actually changed hands for the employee-rented rooms.
- ALC would treat a room as occupied for an entire month, even if any employee only had reason to be there for a single day.
- Most of the employee rooms ALC would include in the calculations would never be occupied.
- The same employees would simultaneously be listed at multiple properties.



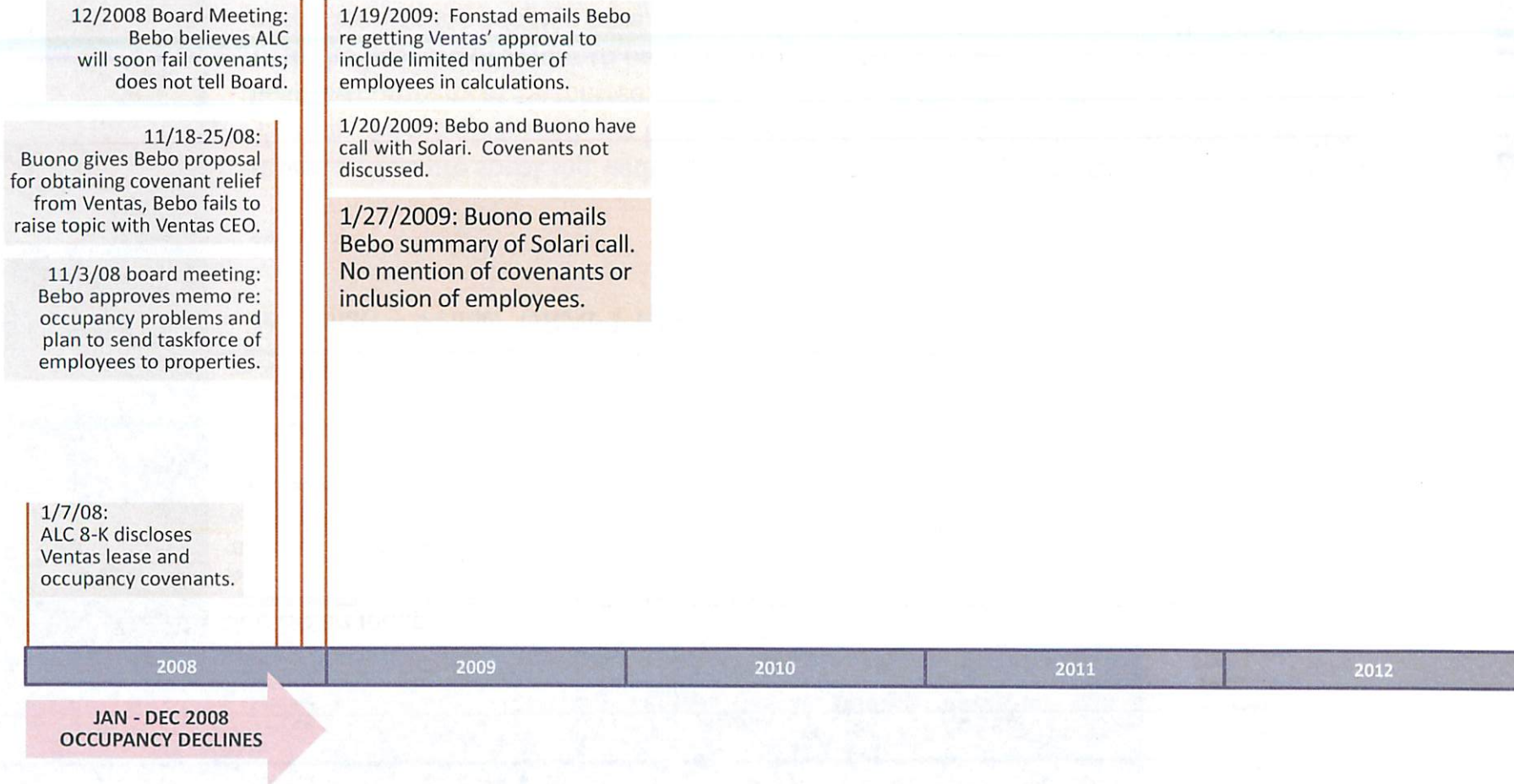
BEBO

Assisted Living Concepts, Inc.

Buono and Fonstad Refute Bebo's Testimony on Aftermath of Call

- Bebo testified that after the call, Buono and Fonstad confirmed that Solari had agreed to this “reason to go” concept for including employees in covenant calculations.
- She also testified that Fonstad retracted earlier advice to get Ventas’ written approval.
- Both Fonstad and Buono refute Bebo, and testified Fonstad didn’t approve any agreement following the call with Ventas.

Timeline of Bebo's Scheme



Buono's Contemporaneous Email Confirms His and Solari's Testimony

Joe Solari letter

From:
"Buono, John" <"buono, john">
To:
"Bebo, Laurie" <lbebo@alcco.com>
Date:
Tue, 27 Jan 2009 11:45:22 -0600
Attachments:
Joe Solari letter.doc (25.09 kB)

Joe Solari letter

From:
"Buono, John" <"buono, john">
To:
"Bebo, Laurie" <lbebo@alcco.com>
Date:
Tue, 27 Jan 2009 11:45:22 -0600
Attachments:
Joe Solari letter.doc (25.09 kB)

Joe Solari – Ventas DRAFT EMAIL

Joe,

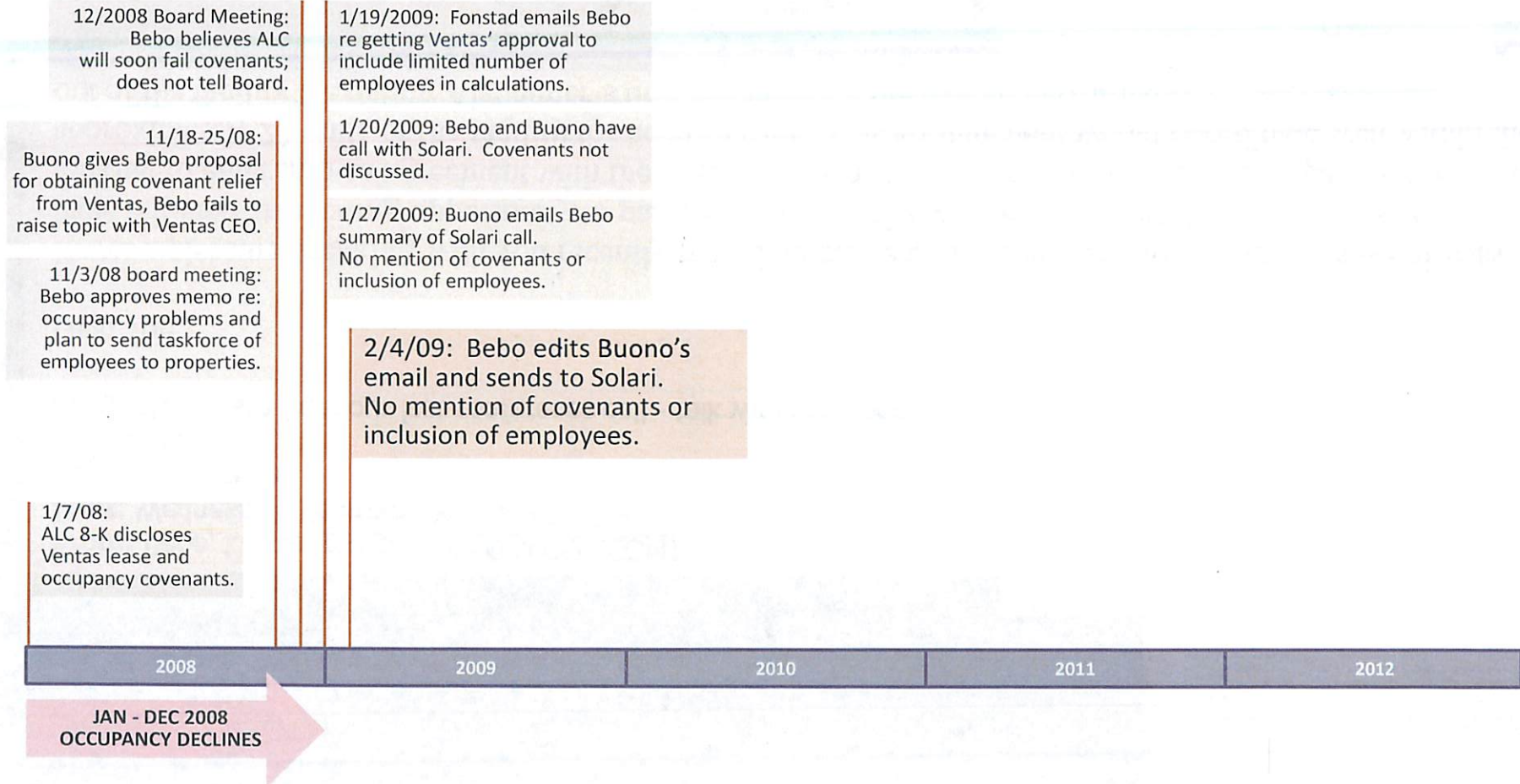
It was a pleasure speaking with you last Tuesday regarding our leased properties with Ventas. As we discussed, we have initiated an exciting opportunity to partner with a hospice company at Peachtree Estates. We will be looking to enter into an agreement with the hospice provider to have the provider pay us a fee to use approximately units of the facility for hospice care. This arrangement would coordinate well with the lay out of the facilities, Alzheimer's unit and improve the overall performance of the residence.

DIVISION
EXHIBIT
179

ALC0007853

8854

Timeline of Bebo's Scheme



Bebo's Contemporaneous Email Confirms Buono's and Solari's Testimony

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.

I appreciate the time you have taken to discuss our operations with you and your team and look forward to moving ahead with a successful arrangement with the hospice company. Please give us a call at your earliest convenience to address any questions you have related to this potential hospice relationship.

Kind regards,

Laurie Bebo
President and CEO
Assisted Living Concepts, Inc.
Cell: 414-803-6111

From: Bebo, Laurie [mailto:lbebo@ALCCO.COM]
Sent: Wednesday, February 04, 2009 3:10 PM
To: Solari, Joseph
Cc: Buono, John
Subject: Update from our last conference call - talk with you soon

Dear Joe,

It was a pleasure speaking with you recently regarding our leased properties with Ventas. As we discussed, we have initiated an exciting opportunity to partner with a hospice company at Peachtree Estates. We will be looking to enter into an agreement with the hospice provider to have the hospice provider pay us a fee to use approximately 23 units of the facility for hospice care. This arrangement would coordinate well within the layout of the facility's existing Alzheimer's unit and improve the overall performance of the residence.

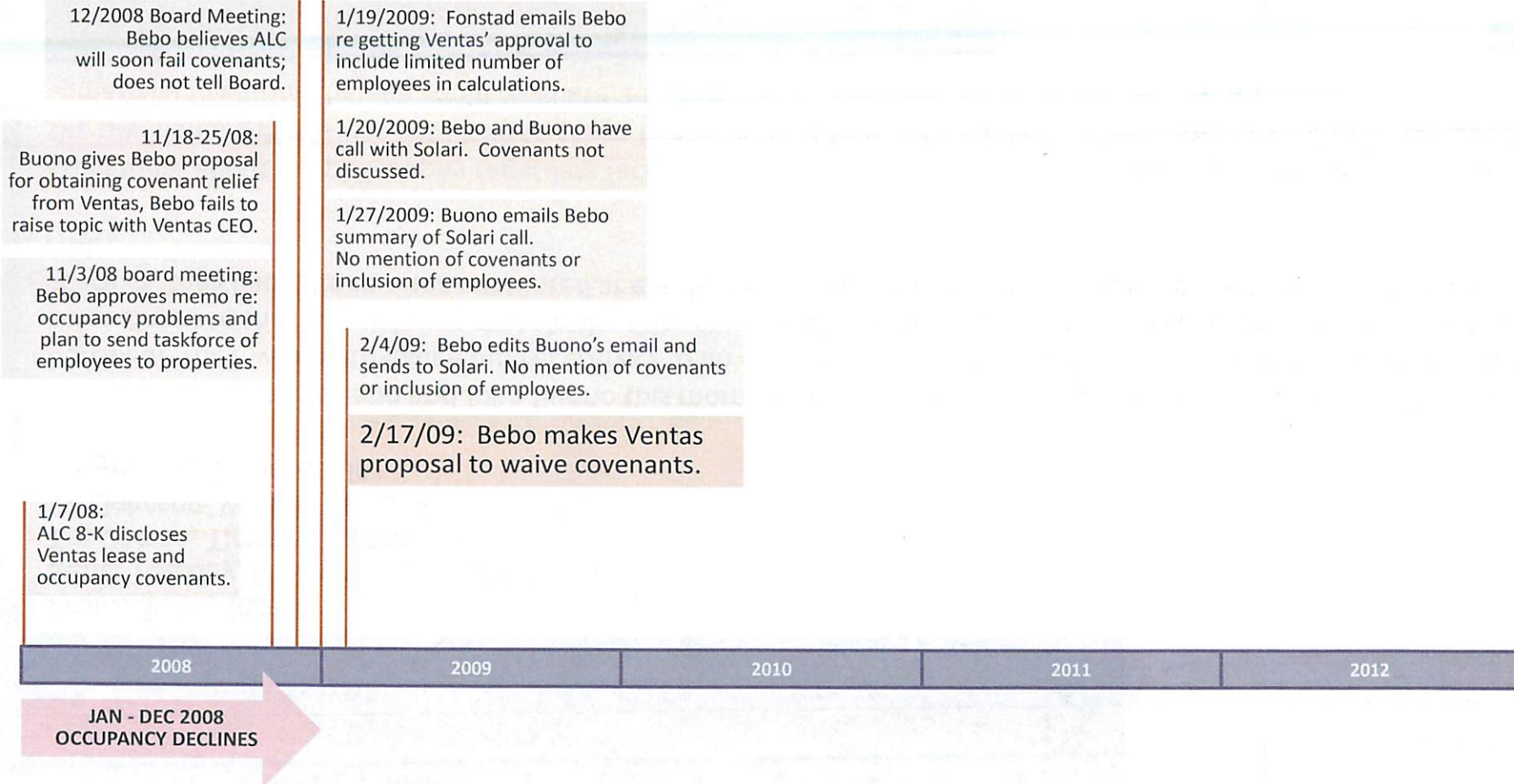
WE WILL NOT BE RESPONSIBLE FOR ANY OPERATIONS AT ANY PART OF THE FACILITY AS DISCUSSED IN SEC. 17.1.16. We will also be requesting your authorization to, if required, certify the facility for hospice care as required under Sec. 8.1.11(b).

CONFIDENTIAL

DIVISION
EXHIBIT
184

VSEC0012093

Timeline of Bebo's Scheme



Bebo's Conduct Shows She Did Not Believe Ventas Agreed to Include Employees in the Covenant Calculations

From: Solaris, Joseph
Sent: Tuesday, February 17, 2009 2:41 PM
To: Doman, Timothy; Cafaro, Debra
Cc: Johnson, William; Lewis, Raymond; Solaris, Joseph
Subject: ALC - Heads Up

I had a call with Laurie Bebo and John Buono this morning about our two Sunwest NM properties and the Caravita portfolio. They wanted to gauge our receptivity to an offer that would package their purchase of the NM assets with an amendment to the financial covenants in the Caravita portfolio, namely occupancy and coverage. When I asked for specifics, they had little to offer but hinted at eliminating the covenants entirely and gave me no guidance on price for NM.

I told them about our philosophy regarding facility cash flow being the primary source of repayment and that eliminating the covenants entirely was not likely to occur, irrespective of their offer for NM. I then encouraged them to submit something in writing that we could evaluate, to which they agreed and are aiming to get us by Friday.

From: Joseph Solaris
Sent: Tuesday, February 17, 2009 2:41 PM
To: Doman, Timothy; Cafaro, Debra
Cc: Johnson, William; Lewis, Raymond; Solaris, Joseph
Subject: RE: ALC - Heads Up

Thank you. Given the performance track, I don't think I would consider modifying or giving up the default on the Caravita portfolio. I would consider occupancy and coverage as a package with the NM assets. I will have our legal team work on other solutions for the Caravita assets.

CONFIDENTIAL

VERC0902247

Buono Emails Bucholtz About the Deal to Waive the Covenants in Exchange for Buying the New Mexico Properties

KB freedom Act

From:

"Buono, John" <"buono, john">

To:

"Bucholtz, Kathy" <kbucholtz@alcco.com>

Date:

Sat, 21 Feb 2009 11:08:26 -0600

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. Call me if you want to discuss. The bad news is you will now own 2 buildings in New Mexico.

KB freedom Act

From:

"Buono, John" <"buono, john">

To:

"Bucholtz, Kathy" <kbucholtz@alcco.com>

Date:

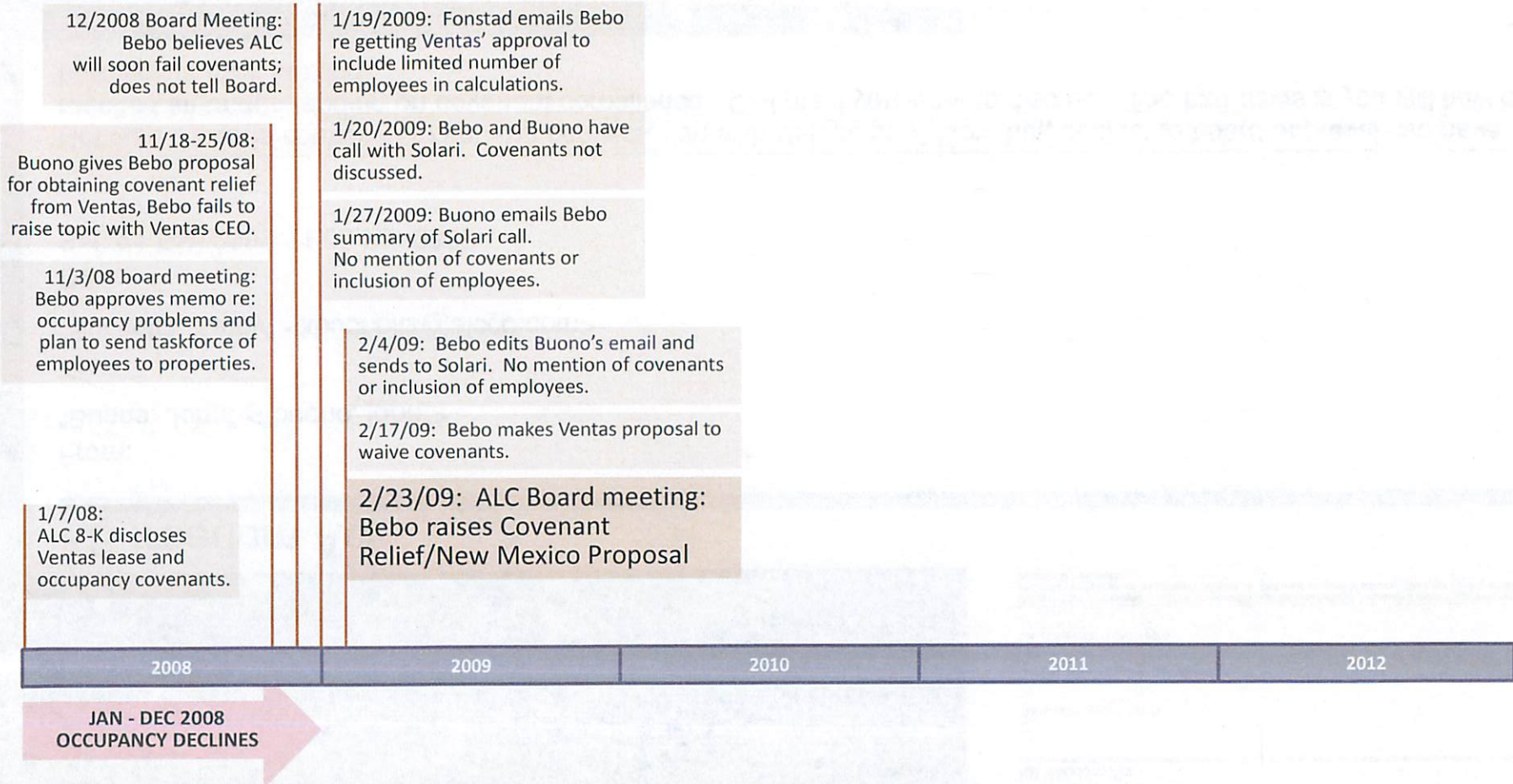
Sat, 21 Feb 2009 11:08:26 -0600

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. Call me if you want to discuss. The bad news is you will now own 2 buildings in New Mexico.

CONFIDENTIAL TREATMENT REQUESTED
BY ASSISTED LIVING CONCEPTS, INC.

ALC00081550

Timeline of Bebo's Scheme



February 23, 2009 Board Meeting: Bebo Informed the Board that ALC Was Meeting the Ventas Covenants

ASSISTED LIVING CONCEPTS, INC.

BOARD OF DIRECTORS

February 23, 2009

In response to questions from the directors, Ms. Bebo reported on residences which reported negative EBITDAR for 2008 and confirmed that the Company was in compliance with all of the covenants under the CaraVita lease as of the end of 2008. She also reported that no impairments were recorded by the Company in 2008. She reviewed factors affecting the valuation of residences and pointed out that short term events do not necessarily affect the long term value of the properties. With regard to the CaraVita leases, she reported on the performance of specific buildings and reported that management may seek some relief from certain of the covenants in connection with a request from the landlord that the Company consider the purchase of two unrelated residences. The directors discussed this information and Ms. Bebo and Mr. Buono responded to their questions.

ASSISTED LIVING CONCEPTS, INC.

BOARD OF DIRECTORS

February 23, 2009

A regular meeting of the Board of Directors of Assisted Living Concepts, Inc. (the "Company") was held commencing at 9:00 a.m. Central Time, on Monday, February 23, 2009, in the Board Room at the Company's corporate offices in Menomonee Falls, Wisconsin.

management may seek some relief from certain of the covenants in connection with a request from the landlord that the Company consider the purchase of two unrelated residences. The directors discussed this information and Ms. Bebo and Mr. Buono responded to their questions.

The meeting was adjourned at 10:11 a.m. Central Time.

4 Management Report

Ms. Bebo reported that the Company has been able to fill all open regional and above positions and will be looking to upgrade some positions as more qualified individuals become available during the current economic slowdown.

Directors held
the
minutes of
the meeting.

DIVISION
EXHIBIT
100

ALC00000272

Many Witnesses Disputed Bebo's Testimony



BEBO'S CLAIM

Bebo Testified that the Board Approved Including in Covenant Calculations Rooms Rented for People "with a reason to go"

REFUTED BY:

Director Bell

Director Buntain

Director Hennigar

Director Rhineland

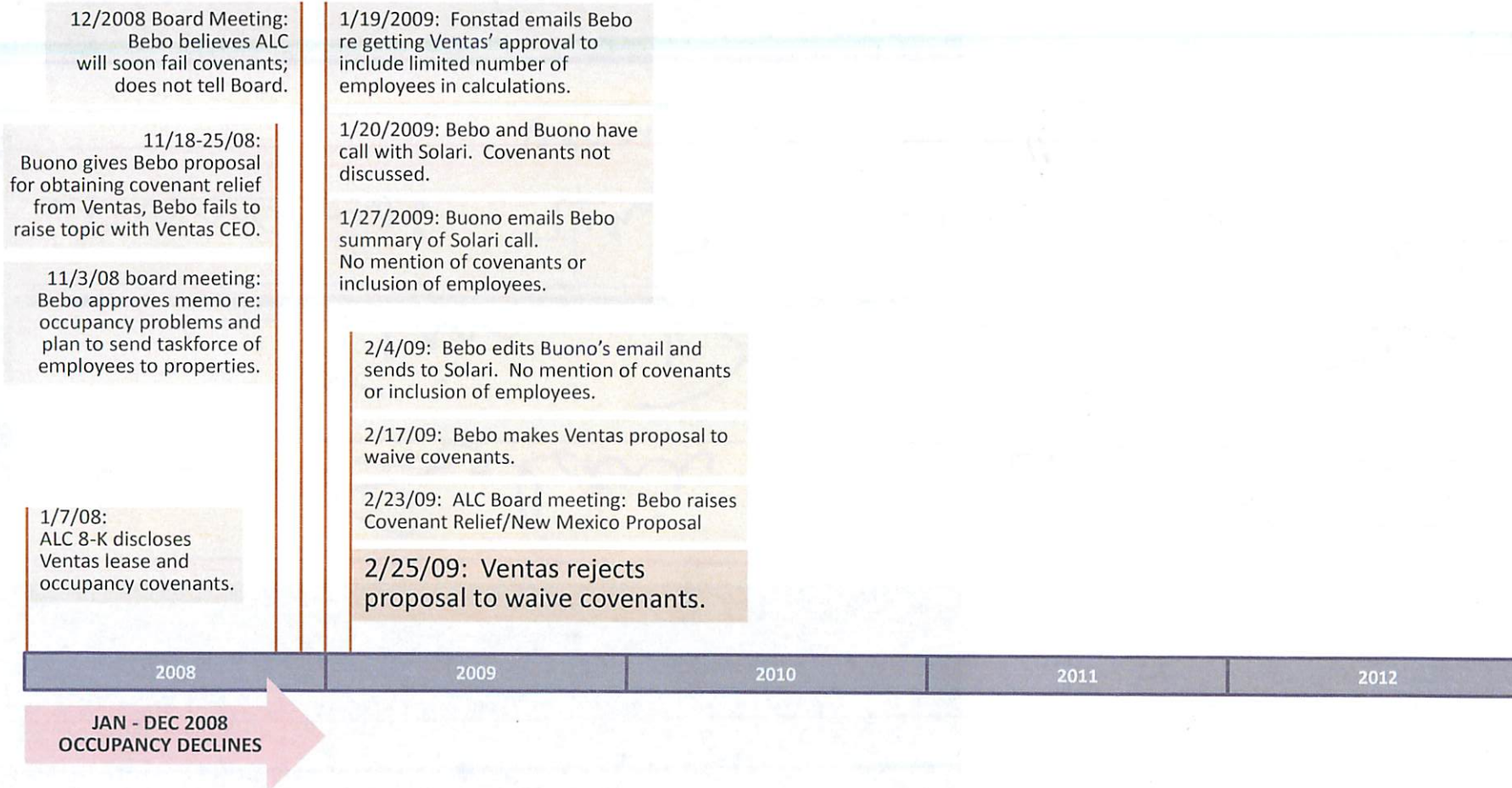
Director Roadman

Eric Fonstad
ALC General Counsel

John Buono

Hokeness
Director of Internal Audit

Timeline of Bebo's Scheme



Fonstad's Notes of Call with Ventas: The New Mexico Deal Falls Through

Joe Solari 2-25-09
Tim Doman SUP
heads Asset Management Gp

Joe Solari 2-25-09

Tim Doman SUP

Covenants: They take covenant violation
very seriously

Confidential Treatment Requested by Assisted Living Concepts, LLC

EXHIBIT
197

ALC_SEC00009992

Bebo Implements Her Scheme

- Following the Jan. 20 call with Solari, Bebo orders Buono to include employees and their related revenue in the covenant calculations.
- Bebo orders Buono not to tell Ventas.
- This is before the Feb. 2009 board meeting where Bebo claims board approves practice.
- Buono knows that Ventas never agreed, but follows Bebo's orders because he fears being fired.
- Buono warns Bebo that she should only include employees who are staying at properties...says practice "had to be something real".

Buono Warns Bebo

RE: Call me.

From: "Bebo, Laurie" </o=assisted living concepts/ou=alc/cn=recipients/cn=lbebo>
To: "Buono, John" <jbuono@alco.com>
Cc: "Herbner, Robin" <rherbner@alco.com>
Date: Tue, 05 May 2009 10:35:49 -0500

Will call in about 10 minutes.

From: Buono, John
Sent: Tuesday, May 05, 2009 10:30 AM
To: Bebo, Laurie
Cc: Herbner, Robin
Subject: Call me.

GT is looking for support on our occupancy in the Cara Vita properties. During their review of these properties they compare our occupancy report to the numbers. The employees staying at the house are not included in that report. So, to complete their work, we are going to give them the letter in which we informed Ventas of our intention to have employees living at our residences. They have not yet requested names, but they may. This is where you come in. We needed 7 more names for Winterville. We have filled in 4 with regional or above people (Io, Paula, Jared, and KB). As you know these four are doubled up which really didn't overly concern you since they were at both buildings, however we need three more.

203

CONFIDENTIAL TREATMENT REQUESTED
BY ASSISTED LIVING CONCEPTS, INC.

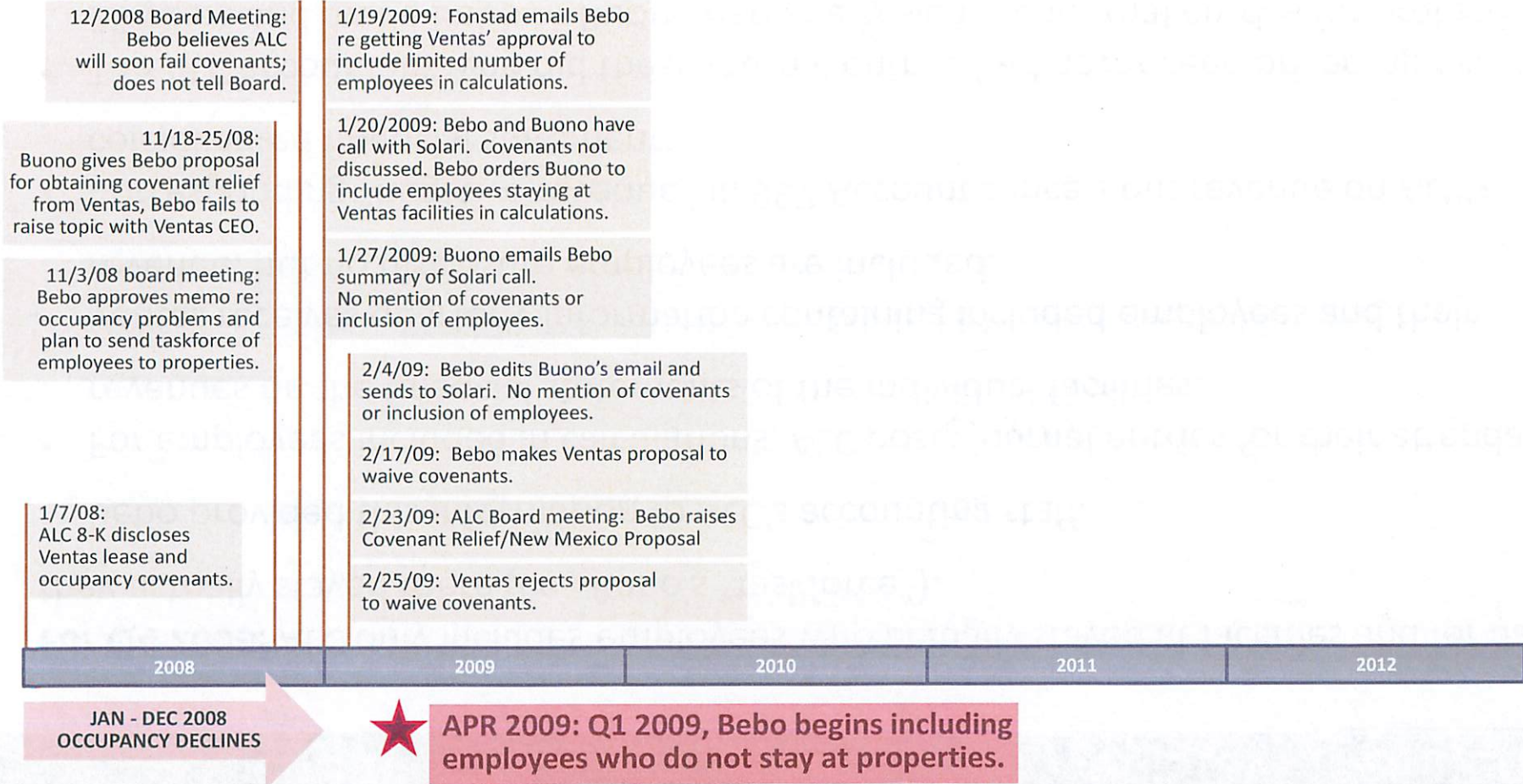
ALC00086026

Bebo's Scheme Begins: Only Real Employee Stays Included

For Q4 2008: ALC only includes employees who actually stayed at facilities and for days they actually stayed there (*i.e.*, Bebo's "taskforce").

- Bebo provided this information to ALC's accounting staff.
- For employees included in calculations, ALC posts journal entries for their attendant revenues on the financial statements of the individual facilities.
- Ventas receives quarterly information containing included employees and their revenue, but no disclosure employees are included.
- Corresponding "negative revenue" in 997 Account cancels out revenue on ALC's consolidated financial statements.
- The ALC accountant who did these journal entries had never seen offsetting revenue in 25 years and made Bebo or Buono personally sign the journal entries for protection.

Timeline of Scheme



Bebo's Scheme Becomes Much More Fraudulent

Beginning in Q1 2009: Bebo begins including employees regardless of whether they stayed at the facilities.

- ALC's accounting staff calculate REAL occupancy, informs Bebo of shortfall, and asks for list of names as audit evidence for GT.
- Bebo provides the names and directs that they be included as an occupant *every day of the quarter, even at multiple facilities simultaneously.*
- Process occurred after END of each quarter – there was no “renting of rooms”
- Bebo admitted that beginning in Q1 2009, she was selecting employees who did not visit or stay at Ventas properties. (Tr. 1989:25-1990:7)

Herbner Becomes Concerned and Quits

- Robin Herbner was the first ALC accountant to perform the covenant calculations.
- Bebo admits instructing Herbner not to tell Ventas.
- Herbner becomes concerned when Bebo directs her to include parents (with Bebo's mother's maiden name), the best friend of Bebo's husband (Schweer), ALC employees who did not stay at facilities, and employees listed at multiple properties simultaneously.
- Herbner's concerns cause her to quit following the Q2 2009 calculations.

Schelfout Becomes Concerned and Quits

- Schelfout replaces Herbner as the ALC accountant performing the calculations.
- Herbner trains him to “backfill” the number of needed employees, to get the names from Bebo, and to not tell Ventas about the employees.
- Schelfout quickly becomes concerned the practice is illegitimate for same reasons Herbner did.
- His concerns cause him to look for new job, and after Q4 2010 Schelfout quits after getting his first offer.

Grochowski Becomes Concerned and Confronts Bebo

- In January 2011, ALC accountant Grochowski takes over from Schelfout, and performs the same process of determining shortfall and getting names from Bebo.
- Grochowski testified he was uncomfortable from the start.
- He described: “fudging numbers,” “inflating revenue,” “lying to Ventas,” “creating false financial statements” and violating GAAP.
- In November 2011, Grochowksi personally complains to Bebo and says he doesn’t want to be part of process:
 - Bebo tries to get him comfortable by showing him 2/4/09 email, but that only confirmed to Grochowski that Ventas didn’t know what ALC was doing.
 - When Grochowski does not relent, Bebo assigns covenant calculations to Buono.
- Grochowski later submitted a whistleblower complaint in May 2012 because he was concerned the board was unaware of Bebo’s scheme



BUONO

Assisted Living Concepts, Inc.

Buono's Warnings to Bebo

In addition to warning Bebo at the outset of her scheme, Buono again raised his concerns in Q3 2009 when the number of employees exploded:

Q And as you continued to observe that the numbers were getting bigger, did you say anything to Ms. Bebo about that?

A I did.

Q How often?

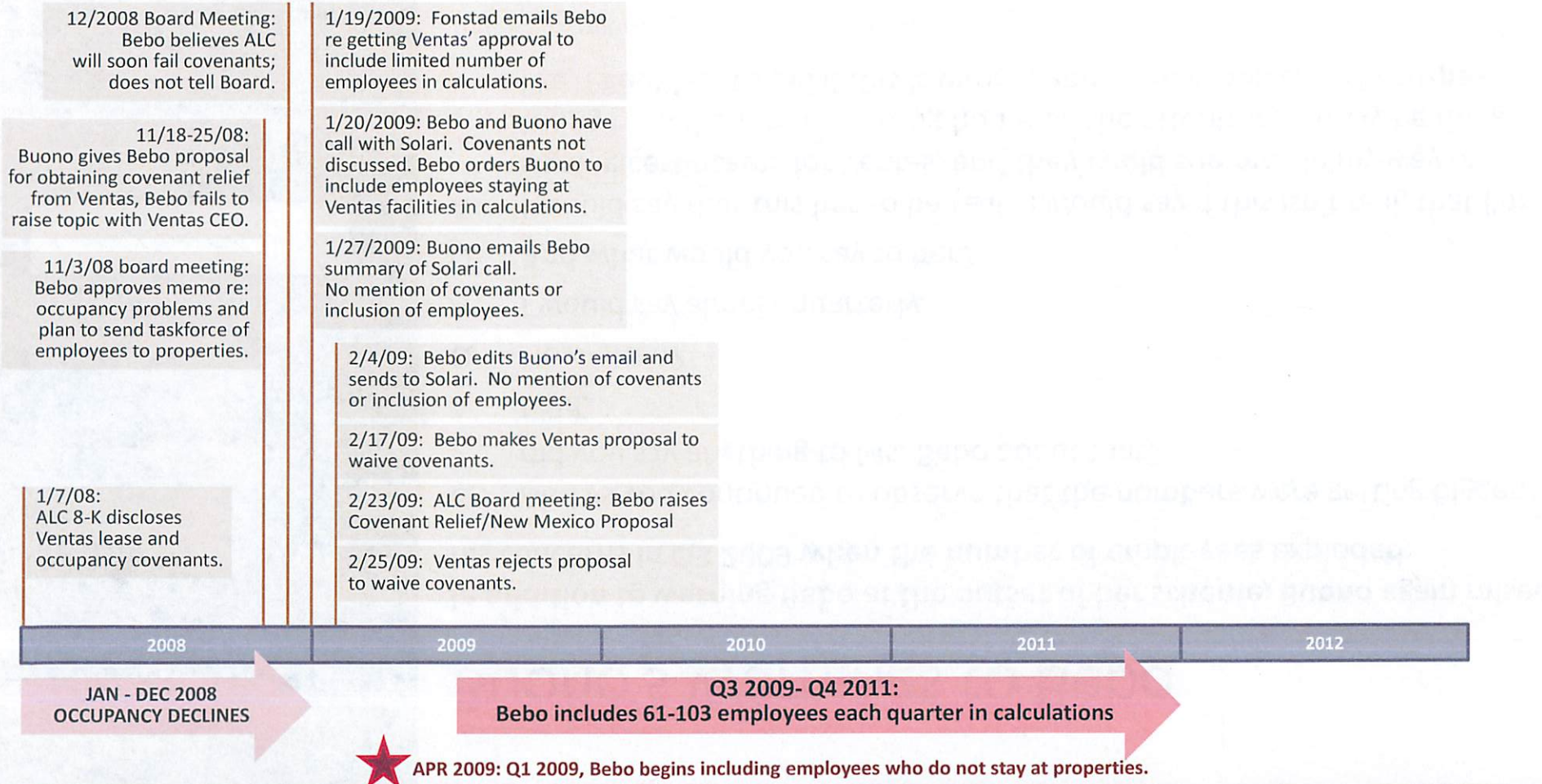
A I would say almost quarterly.

Q And what would you say to her?

A I would say that this has to be real. I would say if this isn't real, that I'm signing certificates for Ventas, and **they could sue me**. In my way of trying to make sure it's hitting home on the attention, I'm saying things like, **I could go to jail** if this is wrong, and **I don't look good in stripes**.

Trial Transcript Day_10 - 2365:8-2365:21, 5/1/2015

Timeline of Bebo's Scheme



Bebo Provided Fake Occupants to Grant Thornton

NICK WELTER (Bebo's husband)

- ✗ Never an ALC employee
- ✗ Listed at multiple properties simultaneously

KEVIN SCHWEER (Welter's friend)

- ✗ Never an ALC employee
- ✗ Listed at multiple properties simultaneously

BEBO'S PARENTS (under mother's maiden name)

KATHY BUCHOLTZ (Bebo's friend and subordinate)

- ✗ Listed at 4 facilities simultaneously

BUCHOLTZ'S parents, siblings, and 7 year old nephew

JARED HOUCK (Bebo's subordinate)

- ✗ Never stayed at facilities
- ✗ Listed at 5 facilities simultaneously

AT LEAST 10 ALC EMPLOYEES

- ✗ Never stayed at facilities
Declarations: Exs. 451, 452, 453, 454, 462,
466, 468, 470, 471,473

FORMER EMPLOYEES

FUTURE HIRES

- ✗ Had not even started at ALC

FULL TIME EMPLOYEES OF THE VENTAS PROPERTIES

- ✗ Lived nearby and had no reason to stay

EMPLOYEES LISTED AT MULTIPLE PROPERTIES AT ONCE

- ✗ An average of 18.5 employees simultaneously listed at multiple properties each quarter

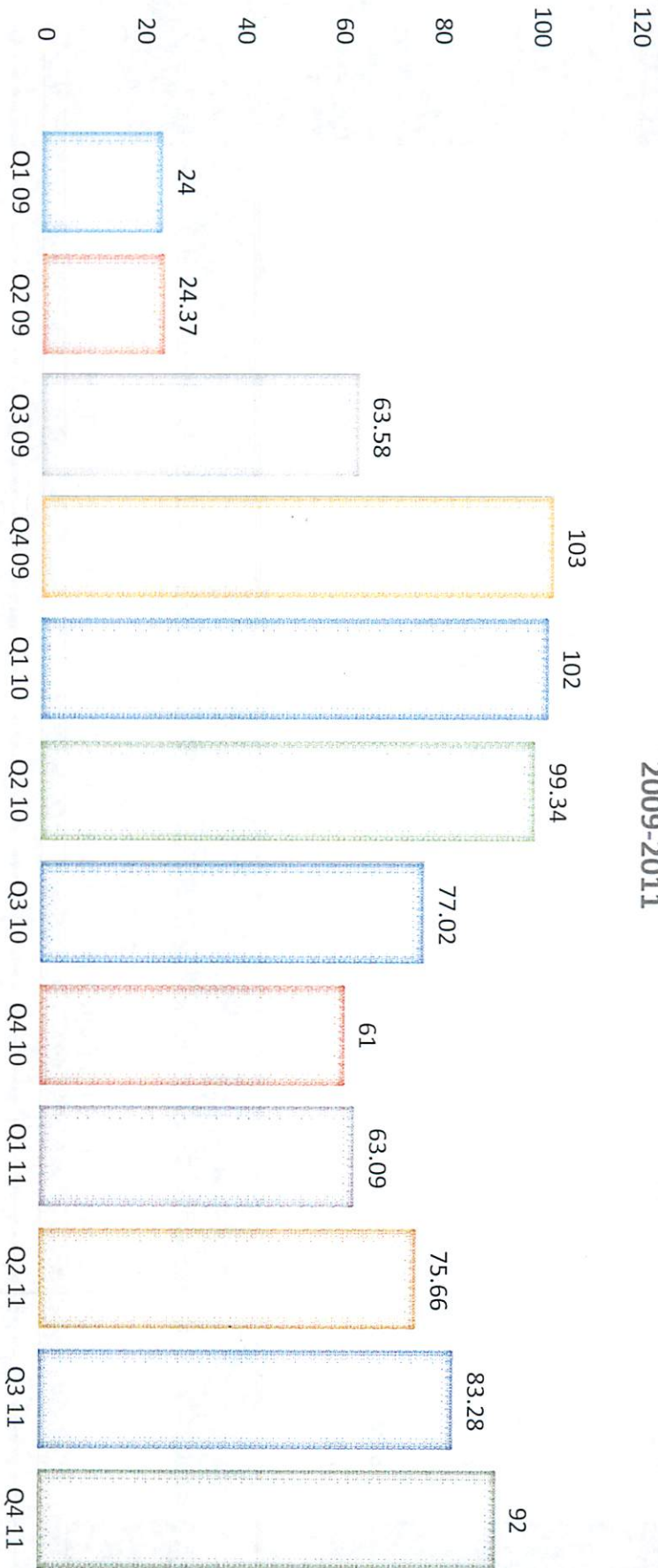
ONLY A SMALL NUMBER OF EMPLOYEE INCLUSIONS REFLECTED ACTUAL STAYS

Bebo Added Large Numbers of Employees

The Division's Expert Calculated How Many Employees Bebo Selected Each Quarter

Bebo Added Large Numbers of Employees

NON-RESIDENTS INCLUDED IN CALCULATIONS
PORTFOLIO TOTAL
2009-2011



Bebo's Use of Employees Masked Widespread Covenant Failures

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	Sanduary 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

Bebo's Use of Employees Masked Widespread Covenant Failures

Trailing 12-Month Coverage Ratios that Failed Covenants

	Winterville Retirement	Highland Terrace	Peachtree Estates	Tara Plantation	Portfolio Total
Q1'09	0.69	-	0.7	-	-
Q2'09	0.58	-	0.77	-	-
Q3'09	0.49	-	-	-	-
Q4'09	0.39	0.76	-	-	0.97
Q1'10	0.32	0.57	-	0.65	0.86
Q2'10	0.3	0.33	-	0.59	0.77
Q3'10	0.38	0.32	-	0.59	0.77
Q4'10	0.49	0.55	-	0.59	0.84
Q1'11	0.61	0.66	-	0.55	0.89
Q2'11	0.62	-	-	0.53	0.93
Q3'11	0.49	-	-	0.51	0.92
Q4'11	0.37	-	-	0.57	0.91

Including Employees Violated GAAP

- Division's Expert (Barron) testified that recording revenue on financial statements of Ventas facilities violated GAAP re revenue recognition.
FASB Concepts Statement 5
- Recording such revenue was improper because no cash changed hands; the Ventas facilities never had a claim to cash; and no evidence existed of an agreement setting forth the terms allowing the facilities to record the revenue. *Ex. 377, p. 28; I.D., 18*
- Bebo offered no testimony that recording employee revenue satisfied GAAP.

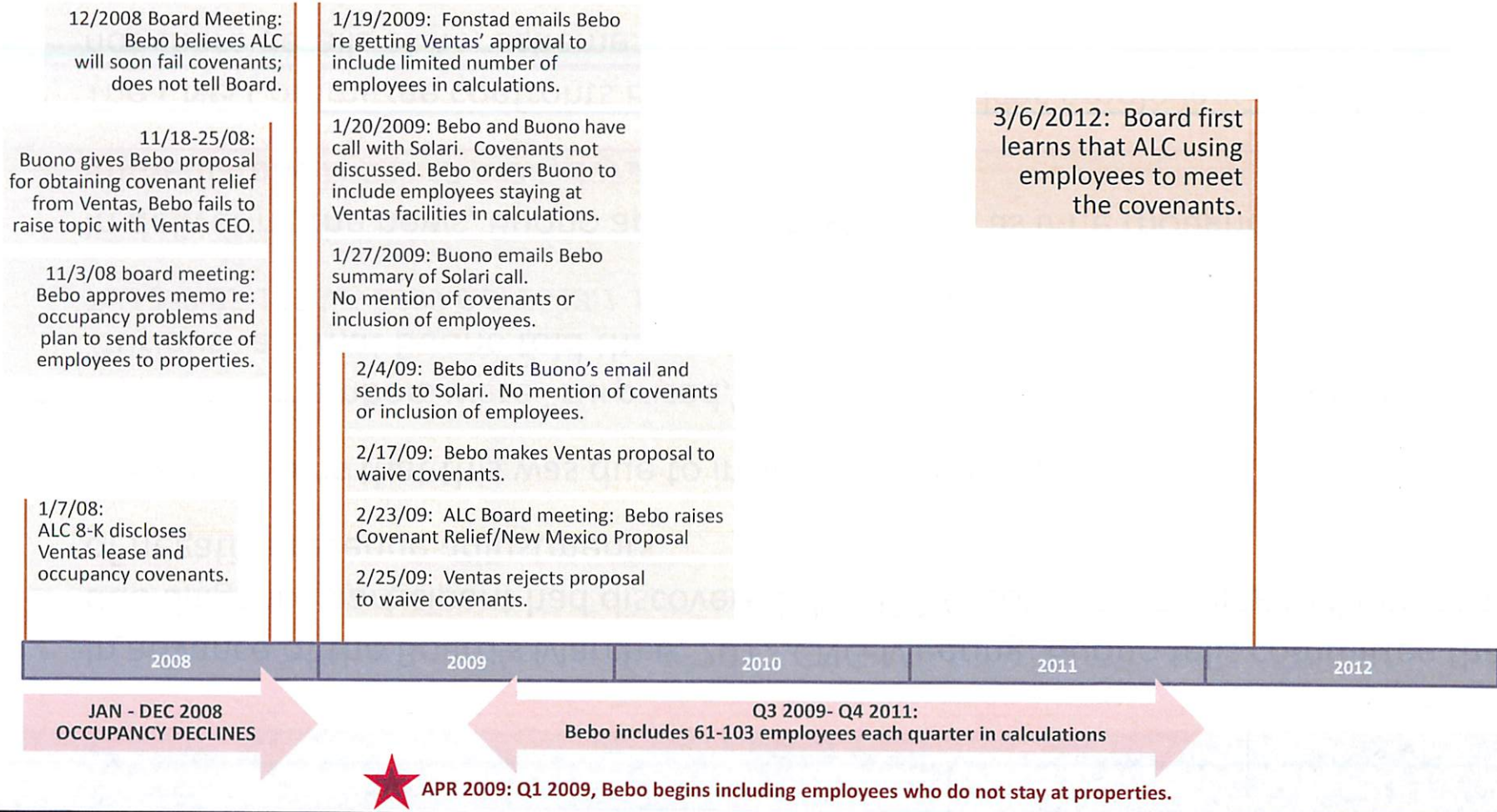
ALC's Commission Filings Show Materiality of Covenants

- ALC's 2009, 2010, and 2011 Forms 10-K and 10-Q falsely represented ALC was "in compliance" with the Ventas financial covenants, and disclosed a covenant default could have a "material adverse impact" on ALC.
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
- Belying Bebo's argument that the disclosures were "boilerplate" and immaterial, the Division of Corporation Finance inquired about ALC's covenant disclosures in a July 2011 comment letter. *Ex. 295*
- In response, ALC's 2011 Form 10-K and Q2 and Q3 Forms 10-Q added the following false and misleading representation: "ALC does not believe that there is a reasonably likely degree of risk of breach of the [Ventas] covenants."
Tr. 1772:7-17; Ex. 11, p. 36; Ex. 12, pp. 36-37; Ex. 13, p. 43

As ALC Considers Selling Company, Bebo Continues Hiding Truth from Ventas

- In 2011, ALC considers selling itself to another company, Ventas is one of the potential buyers.
- ALC sets up a data room for companies performing due diligence, includes ACTUAL occupancy and revenue data at Ventas properties.
- Bebo blocks Ventas from accessing portion of data room containing real occupancy and revenues at Ventas facilities. *Ex. 292*

Timeline of Bebo's Scheme



Bebo's Scheme Starts Unraveling in March 2012

- In advance of the Board's March 6, 2012 CNG Meeting, Buono tells committee that a due diligence participant had discovered the 997 Account containing millions of dollars of negative revenue adjustments.
- Buono explains that this was due to inclusion of employees.
- 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, as if he thought he would be fired immediately. *Tr. 582:17-583:5, 1373:20-24*
- The CNG Committee confronts Bebo, she acknowledges employees included but does not share details of her scheme.

Bebo's Scheme Starts Unraveling in March 2012

Bell April 4, 2012 Memo to Board

TO: File

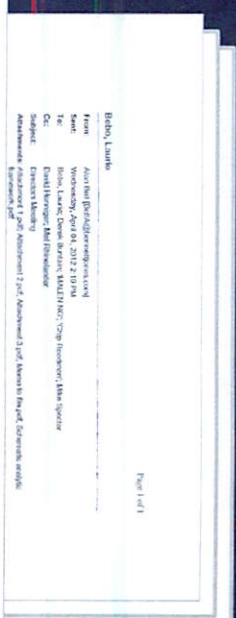
FROM: Alan Bell

DATE: April 3, 2012

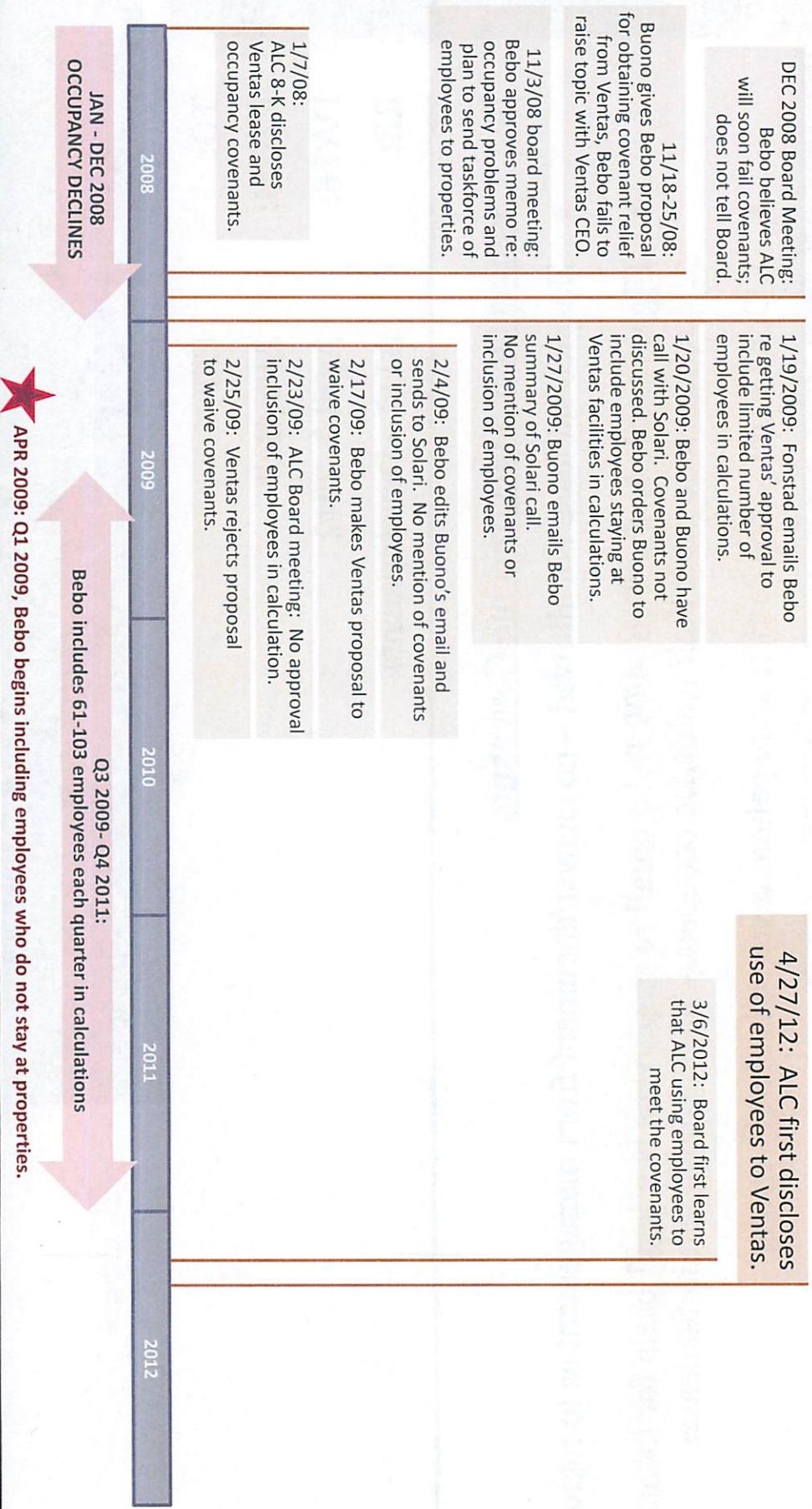
RE: ALC – Developments

A. Yentas Occupancy/Income Covenants

- Hospice sublease not allowed – no answer/document from management as to reason
- Highly unlikely that Feb. 4/09 Bebo email re employees is a legal basis for inclusion of employees to meet their residence occupancy/income covenant in the leases
- J. Bono compliance certificate re patient revenue is clearly wrong



Timeline of Bebo's Scheme



April 27, 12: ALC First Discloses Use of Employees to Ventas

Per our conversation, I know you were interested in keeping this moving

From: "Bebo, Laurie" <"bebo, laurie">
To: "Lewis, Raymond" <rlewis@ventasreit.com>
Date: Fri, 27 Apr 2012 13:55:17 -0500
Attachments: ALC - VENTAS TERM SHEET final 04-27-12.pdf (380.65 kB)

Per our conversation, I know you were interested in keeping this moving

From: "Bebo, Laurie" <"bebo, laurie">
To: "Lewis, Raymond" <rlewis@ventasreit.com>
Date: Fri, 27 Apr 2012 13:55:17 -0500
Attachments: ALC - VENTAS TERM SHEET final 04-27-12.pdf (380.65 kB)

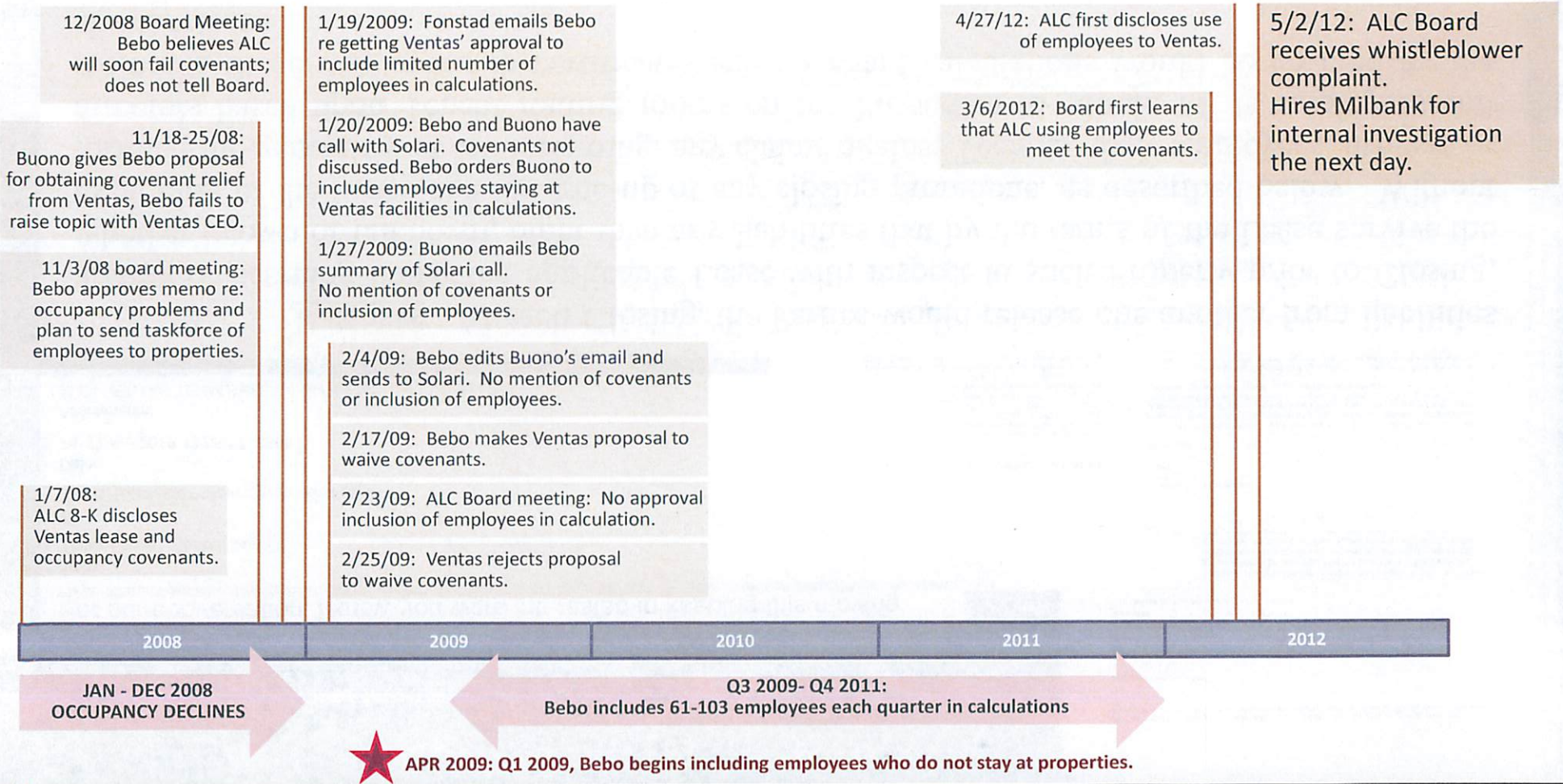
and talk with you first but I want to get this over to you as I know
from a timing perspective. I let our Board know that the timing
I can conceptually agree with this and let me know by the end of
the week moving quickly on our end. I have purposefully left the dollar

SETTLEMENT MATERIALS AND DIS

Assisted Living Concepts, Inc.
April 27, 2012
Page 2
PART ONE
The following paragraphs under Part One of this Letter are non-binding and do not
contain all of the material terms necessary for a complete, definitive agreement (a "Settlement
Agreement") between the Parties regarding the Transactions. Although nothing in this Letter
obligates the Parties to negotiate or to consummate the Transactions, it is proposed that any
Settlement Agreement will include, without limitation, the following:
1. **Termination of Leases and Guaranty.** Landlord would have the right to
terminate the Leases as to one or more properties (the "Properties") that are the subject of the

3. **Releases.** At each Closing, the Parties would release one another from liabilities arising or accruing under the applicable Lease with respect to such Property prior to Closing, whether known or unknown, other than any liabilities that by the terms of the Lease survive the expiration of the Lease and the true-up of any closing prorations, as described below. Without limiting the generality of the foregoing, any claims against Tenants, their employees, officers or directors based upon Tenant renting rooms on the Properties to certain of its employees and including those employees in certificates and covenant calculations would be covered by the above release.

Timeline of Bebo's Scheme



Bebo 5/3/2012 Letter:
"We are offside on the covenants...
facing a material financial impact"

Mike background - Mike and Ryan here told me
and I have Steve Mely-Bruil and Alan talks w/ Q&B
directly - they are known we need to file the
8K. They know we are offside on the covenants
and and we are facing a material financial
impact. Thanks to Alan since we he has done
us want to take control and deal w/ Vento.

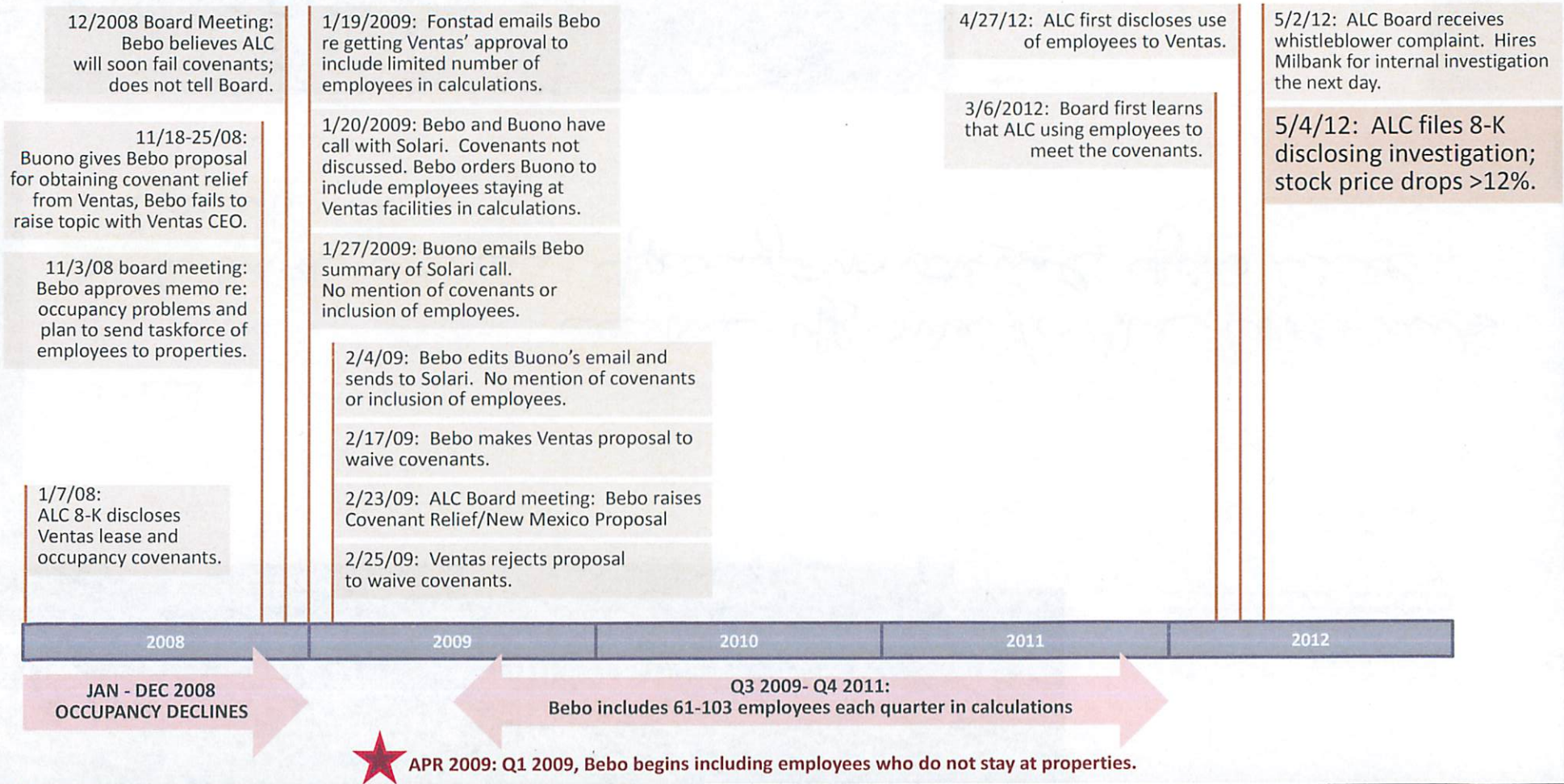
John, Sam, Bill - notes - re financial
statements and other notes also
Re and II are very financial, in the debt
and capital. Many is also but the
a second day involved. John has been in
the

checks when he wants to look to Q&B and
he wants to understand them.

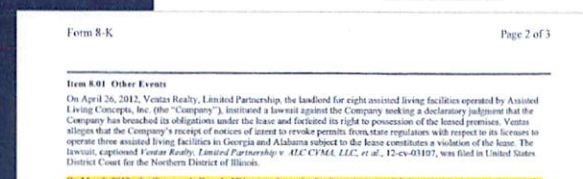
FOIA Confidential Treatment Requested by James Bebo

BEBO 02/0000513

Timeline of Bebo's Scheme



May 4, ALC 8-K Discloses it Had Retained Counsel to Investigate “Irregularities” in Ventas Lease



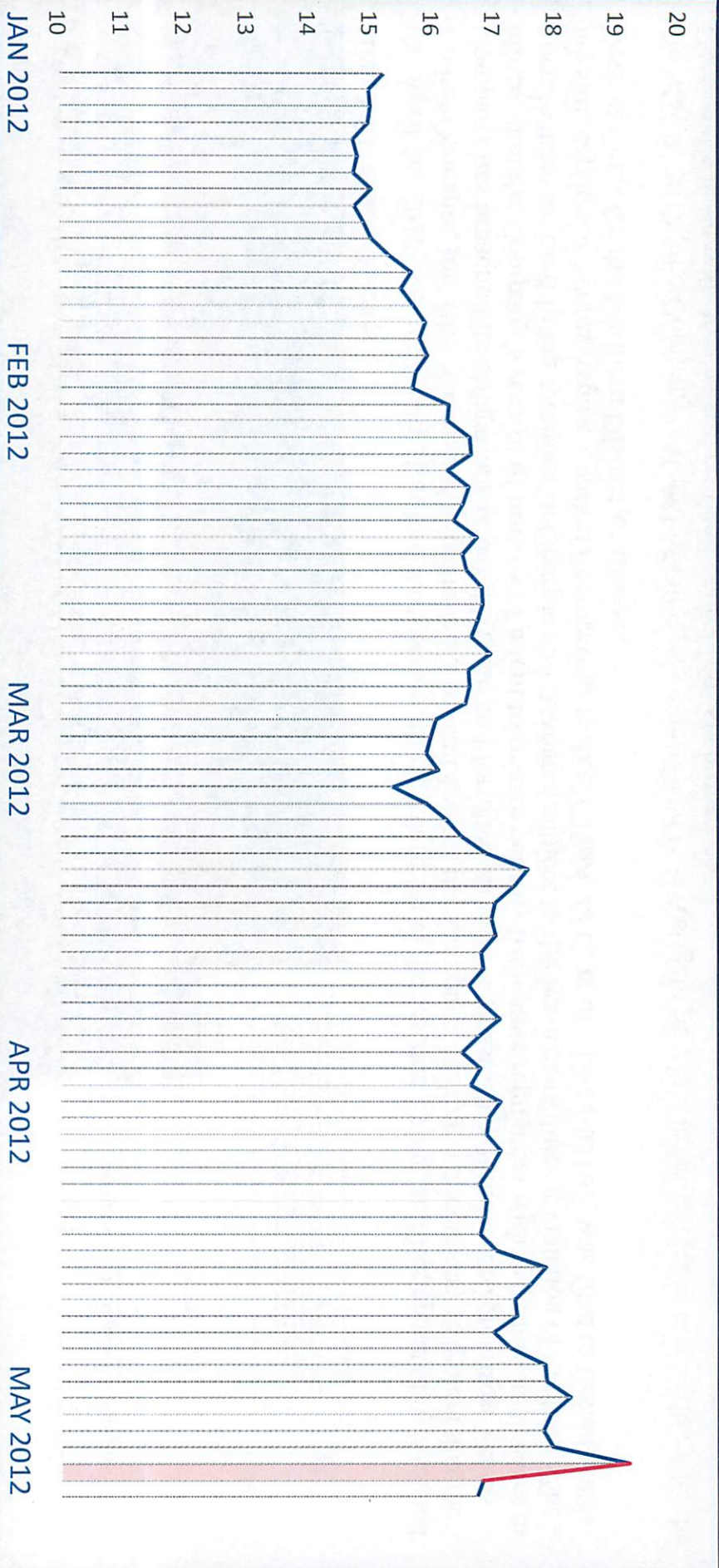
Item 8.01 Other Events

On April 26, 2012, Ventas Realty, Limited Partnership, the landlord for eight assisted living facilities operated by Assisted Living Concepts, Inc. (the “Company”), instituted a lawsuit against the Company seeking a declaratory judgment that the Company has breached its obligations under the lease and forfeited its right to possession of the leased premises. Ventas alleges that the Company’s receipt of notices of intent to revoke permits from state regulators with respect to its licenses to operate three assisted living facilities in Georgia and Alabama subject to the lease constitutes a violation of the lease. The lawsuit, captioned *Ventas Realty, Limited Partnership v. ALC CVMA, LLC, et al.*, 12-cv-03107, was filed in United States District Court for the Northern District of Illinois.

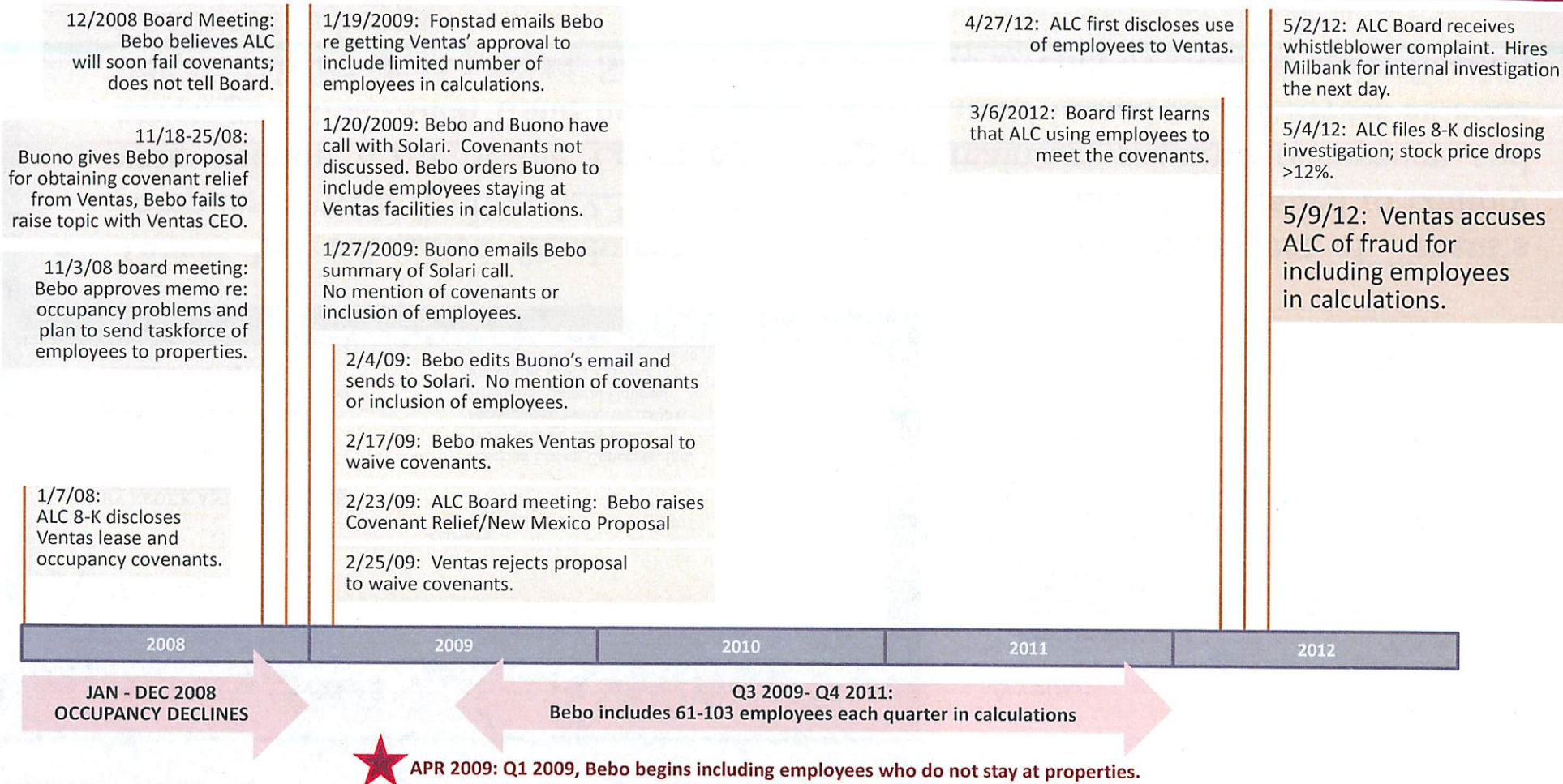
On May 3, 2012, the Company’s Board of Directors determined to investigate possible irregularities in connection with the Company’s lease with Ventas and retained counsel for such purpose.



ALC Stock Price Drops >12% After 5/4/12 8-K



Timeline of Bebo's Scheme



May 9, 2012

Ventas Accuses ALC of Fraud



5/9/2012

BY FEDEX AND FACSIMILE

Assisted Living Concepts, Inc.
W140 N8981 Lilly Road
Menomonee Falls, WI 53051
Attention: Chief Financial Officer
Facsimile: (262) 251-7562

Assisted Living Concepts, Inc.
W140 N8981 Lilly Road
Menomonee Falls, WI 53051
Attention: General Counsel
Facsimile: (262) 251-7627

12

09:01:38 p.m. 05-09-2012 4/12



5/9/2012

BY FEDEX AND FACSIMILE

Assisted Living Concepts, Inc.
W140 N8981 Lilly Road
Menomonee Falls, WI 53051
Attention: Chief Financial Officer
Facsimile: (262) 251-7562

Assisted Living Concepts, Inc.
W140 N8981 Lilly Road
Menomonee Falls, WI 53051
Attention: General Counsel
Facsimile: (262) 251-7627

Re: Amended and Restated Master Lease Agreement by Ventas Realty, Limited Partnership, as "Landlord" and ALC CVMA, LLC, ALC GGMG, LLC, ALC HTIF, LLC, ALC PEDG, LLC, ALC TPOG, LLC, ALC TISSC, LLC, ALC TSKG, LLC, AND ALC WRWG, LLC collectively as "Tenant", dated as of January 1, 2008 and later amended (as amended, the "Lease")

Dear Sir or Madam:

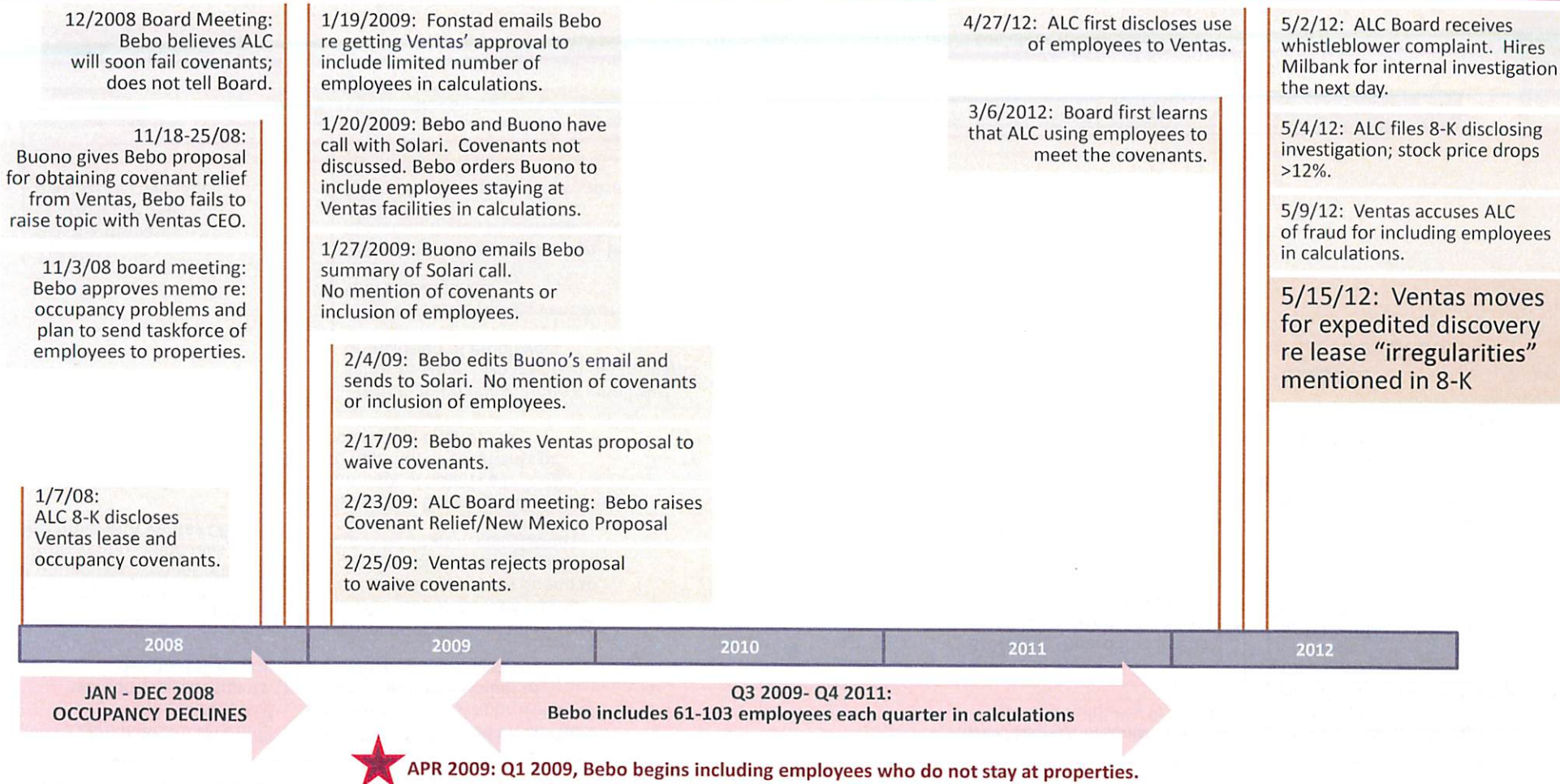
Capitalized terms used and not otherwise defined herein shall have the respective meanings ascribed to them in the Lease.

This letter constitutes notice of the following defaults and Events of Default under the Lease, many of which you have already received notice of:

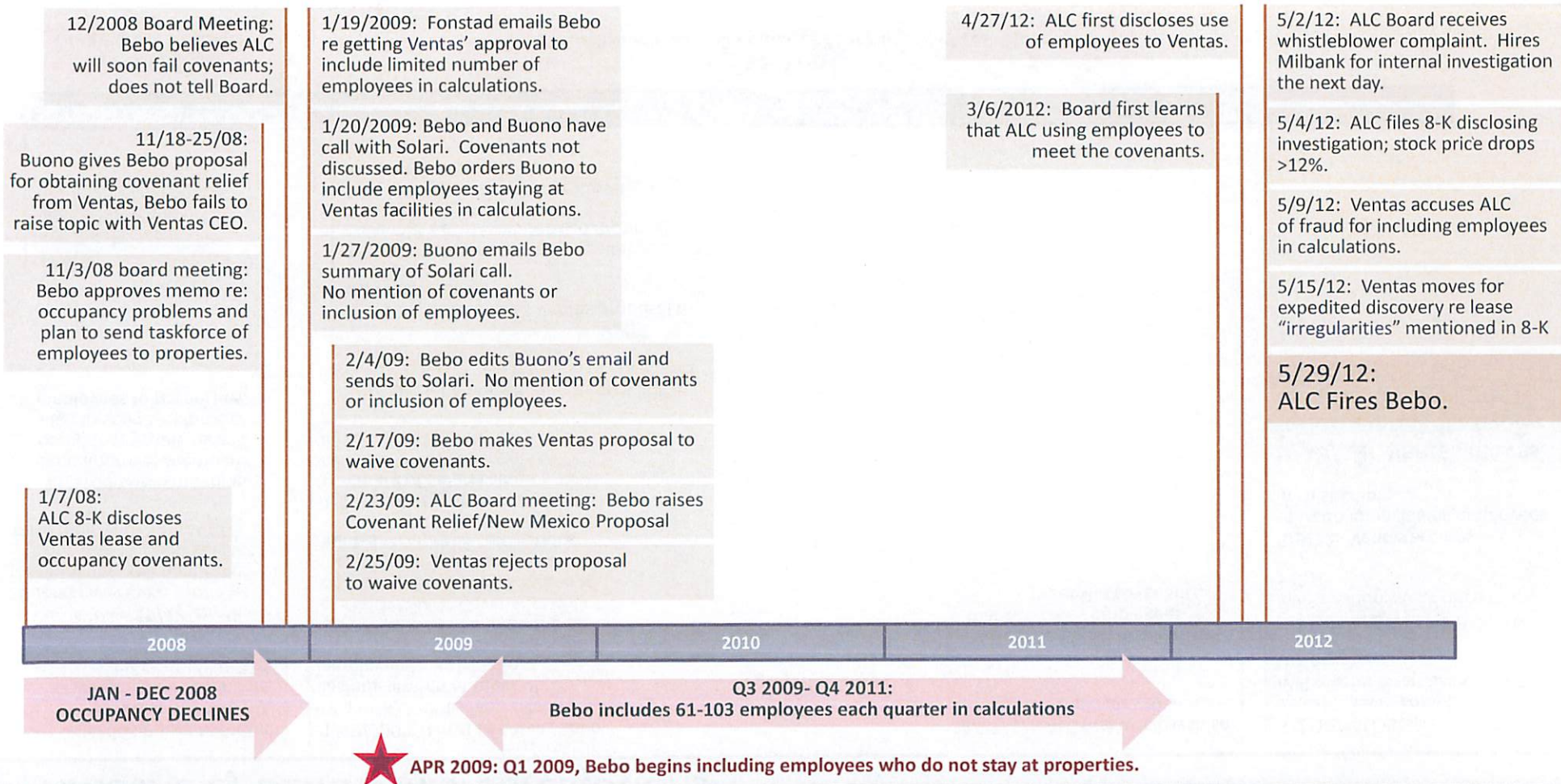
- Your attempt to relinquish the assisted living license for the CaraVita Village Facility constitutes an Event of Default under Section 17.1.2 of the Lease, because the attempt violated Tenant's covenant under Section 8.3 of the Lease, which requires remedying the conditions at the Facility when a license has been placed in jeopardy rather than attempting to surrender the license. Such attempt is also a default under Sections 6.2 and 8.2.1 of the Lease and if such attempt were successful, it would constitute an

- Tenant has submitted fraudulent information to Landlord in respect of Tenant's compliance with Section 8.2.5 of the Lease and Tenant may have failed to comply with Section 8.2.5 of the Lease by failing to maintain required occupancy and coverage ratios. Such fraud has included treating units leased to employees as bona fide rentals by third parties. Such actions constitute Events of Default under Section 17.1.5 of the Lease.

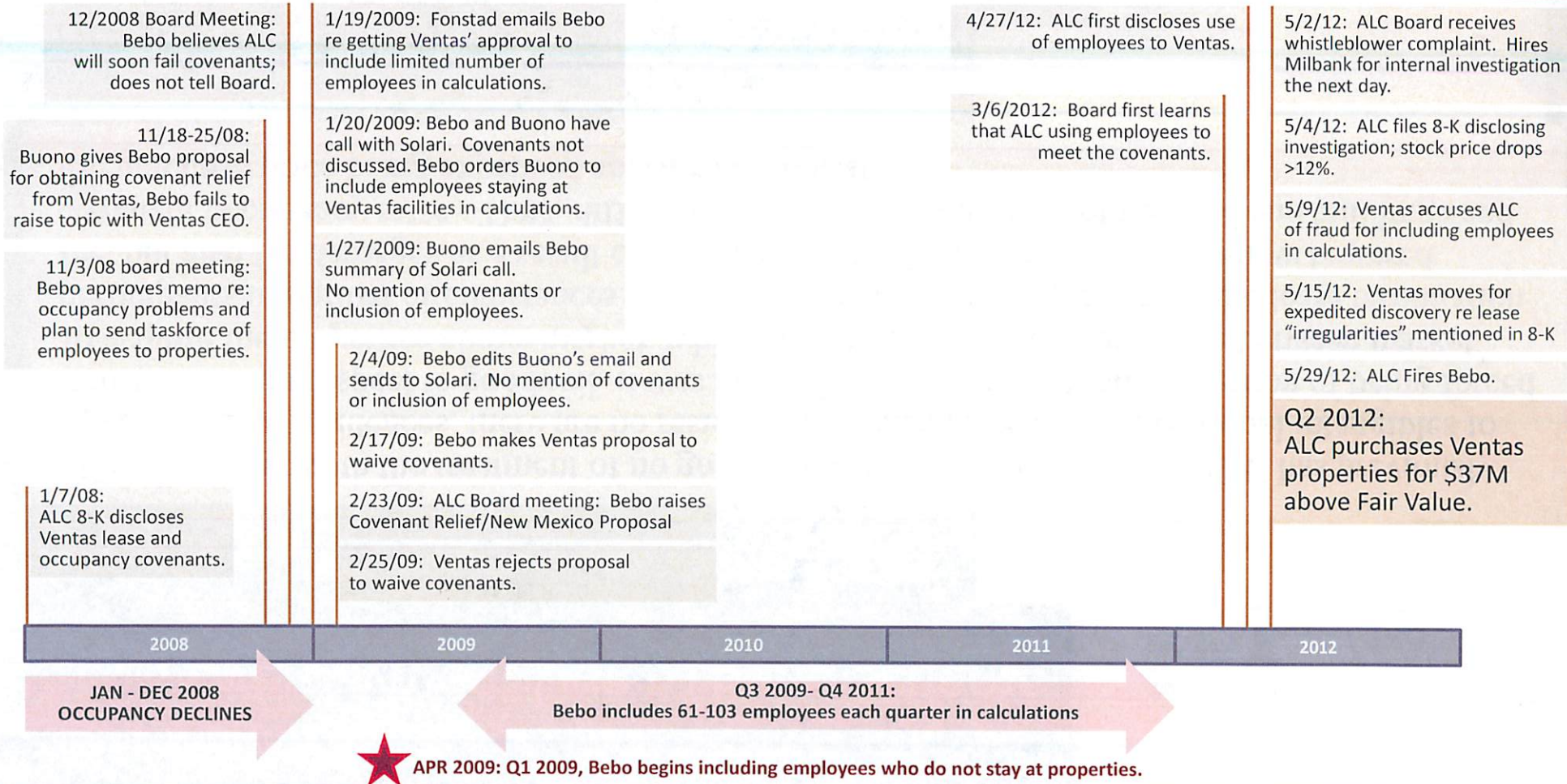
Timeline of Bebo's Misrepresentations



Timeline of Bebo's Misrepresentations



Timeline of Bebo's Misrepresentations



Grant Thornton: ALC's Overpayment Due to Bebo Scheme

(H) We concur with the treatment of no goodwill or other intangibles. As ALC has previously operated these residences, there are no resident relationships or other operational intangibles to consider. With respect to goodwill, it was noted that 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. Thus, difference between the fair value of the land and buildings and the purchase price being expensed appears appropriate.

Legal Name: Assisted Living Concepts, Inc. State: Approved

ASSISTED LIVING CONCEPTS, INC.
ANNOUNCING
TO: The Public
FROM: John Loney
DATE: July 18, 2011
The purpose of this notice is to document the central performance monitoring
and reporting system for the company. The system is a part of the company's
operational reporting system.

Legal Name: Assisted Living Concepts, Inc. State: Approved

Legal Name: Assisted Living Concepts, Inc. State: Approved

CONFIDENTIAL TREATMENT
REQUESTED FOR THIS INFORMATION
BY GRANT THORNTON LLP
2011 11/16/11
CHICAGO, ILLINOIS 60604

CONFIDENTIAL TREATMENT
REQUESTED FOR THIS INFORMATION
BY GRANT THORNTON LLP
2011 11/16/11
CHICAGO, ILLINOIS 60604

Page 14

07/06/2011/11

Material Impact of Ventas Settlement on ALC's Financials

- Q2 2012 financial statements: ALC has \$37 million “lease termination and settlement expense” and wrote off a \$8.96 million intangible asset associated with the lease.
- Ventas settlement caused ALC to sustain a \$25 million loss in what would otherwise have been a profitable quarter.
- Unrebutted testimony from Barron that 5% of net income materiality threshold under SAB 99 never exceeded \$1.73M.

Bebo's Deception Towards Ventas Shows Her Scienter

Bebo hid ALC's inclusion of employees from Ventas during:

- Quarterly meetings/calls
- In response to inquiries from Ventas (*Herbner emails Ex. 211/212*)
- Periodic Site Visits:
 - Bebo or Buono always chaperoned
 - Bebo prevented visits during meal times (when occupants could be counted)
 - Bebo instructed Houck to remove name placards from doors
 - Bebo altogether prevented certain visits (*Ex. 262*)
- Bebo prevented Ventas from accessing occupancy figures in Data Room when ALC was putting itself up for sale
- After board learned of scheme, Bebo advocated against disclosing to Ventas in settlement agreement (*Ex. 570*)

Bebo's Deception towards Board Shows her Scienter and Discredits Her Reliance Defense

- At least 8 witnesses testified that Bebo did not disclose inclusion of employees until March 6, 2012 CNG Committee Meeting.
 - Board Members: Bell, Buntain, Hennigar, Rhineland, Roadman
 - ALC Attorney Zak
 - Internal Auditor Hokeness
 - Fonstad
- Witnesses consistent with board and audit committee meeting minutes, which make no mention of the use of employees or any agreement by Ventas. *Exs. 74-90, 92-120*
- Buono said that first time there was a reference at Board meeting was in August 2011, when Buono generally mentioned inclusion of employees and gave no details.
 - This was 2.5 years into Bebo's scheme.

Even Bebo Admits She Never Told the Board the Key Aspects of Her Scheme:



ALC would fail
covenants without
employees



She included family
and friends in the
covenant calculations



ALC including large
number of employees
who did not visit facilities

Even Bebo Admits She Never Told the Board the Key Aspects of Her Scheme



BEBO

Assisted Living Concepts, Inc.

- Q You never told the board that ALC would violate the Ventas covenants without including employees.
- A Correct, nor did I believe that.
- Q And you never told the board that you were including family and friends in the Ventas covenant calculations.
- A At a full board meeting, I believe that's correct.
- Q And you never told the board the amount of people included in the covenant calculations who didn't actually visit the Ventas properties.
- A I believe that's correct.

Trial Transcript Day 8 - 4/29/2015, 2035:11-2035:23

Many Witnesses Disputed Bebo's Testimony

BEBO'S CLAIM	REFUTED BY:
✗ Bebo's account of the Jan. 20 call	Buono and Solari
✗ Bebo obtained board approval and disclosed the details of her scheme	All 11 witness who attended board meetings (Bell, Buono, Buntain, Fonstad, Hennigar, Hokeness, Koepfel, Rhinelander, Roadman, Robinson and Zak)
✗ Bebo obtained legal advice that she could include employees in covenant calculations	Attorneys Fonstad, Zak, Davidson
✗ Bebo apprised Rhinelander of her scheme, in Herbner's presence, before Feb. 2009 board meeting	Internal Accountant Herbner Board Member Rhinelander
✗ Ferreri was comfortable with the journal entries and Bebo told him the criteria was whether employees had a "reason to go."	Internal Accountant Ferreri
✗ Bebo told GT that ALC was including employees who did not stay at Ventas facilities	Grant Thornton's Robinson and Trouba

Bebo's Repeated Impeachment Shows Her Lack of Credibility

30+

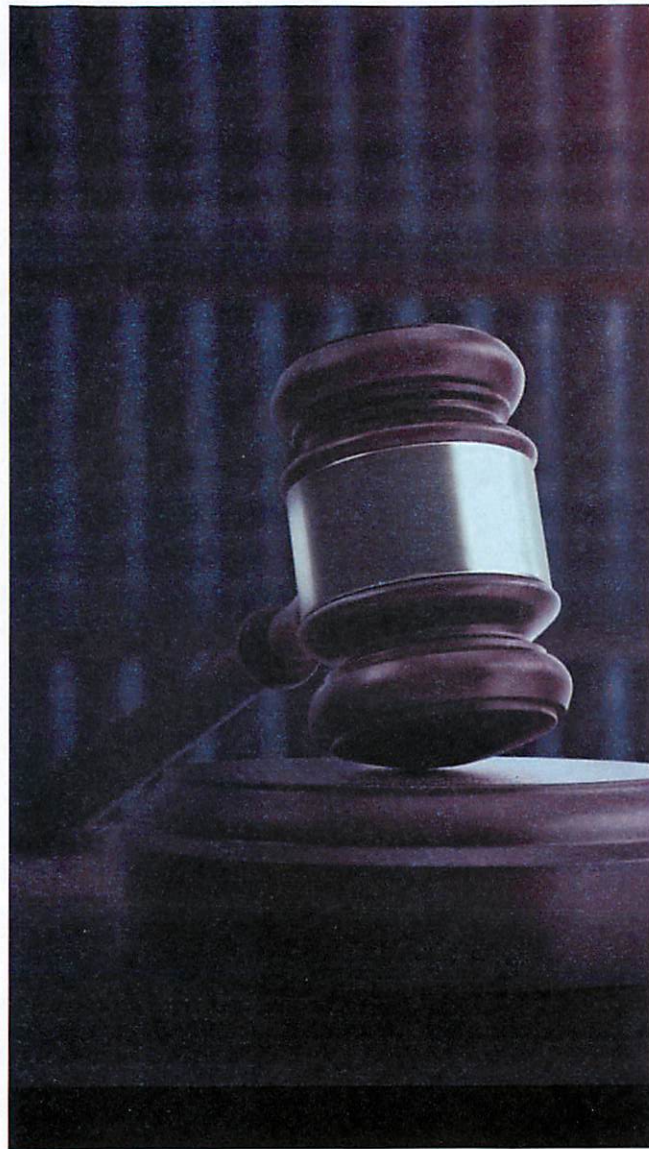
Bebo was impeached
more than 30 times
at trial with her
investigative testimony

see p. 45 of Div Post Hearing Br. 7.31.15

13

Bebo's Milbank interview
memo contained
at least 13 statements
inconsistent with her trial testimony

see pp. 24-26 of Div Supp. Br. 9.27.19



Bebo's Conduct as a Witness Demonstrates Her Lack of Credibility

A review of her trial testimony shows Bebo:

- Was evasive;
- Not answering questions;
- Ignores Judge Elliot's admonishments to answer question asked or give concise answers;

Bebo's Best Friend, Kathy Bucholtz, Testified Bebo Would "twist the truth" and Had "lied to get what she wanted."

Q Let me ask you, is it your testimony that Ms. Bebo is an honest person?

A I think she's a good person.

Q Is she an honest person?

A **I've known her to twist the truth once or twice.**

Q Okay. You were on a flight together with Ms. Bebo once, correct?

A Yes.

Q You guys pulled away from the gate --

A Yes.

Q -- correct? And the plane got basically stuck there; it was on the runway, right?

A Yes.

Q For an extended period of time?

A Yes.

Q And Ms. Bebo wanted to get off the plane, correct?

A Yes.

Q And she was trying to get them to bring the plane back to the bridge so she could get off, right?

A Yes.

Q She was asking the flight attendants to bring the plane back?

A Yes.

Q And she told the flight attendant that she had insulin in her bag stored below, correct?

A Yes.

Q And she needed to get it, right?

A Yes.

Q And in fact the truth was, there was no insulin in the bag below, correct?

A Correct.

Q She -- she doesn't have diabetes, does she?

A No.

Q And she doesn't need to use insulin, does she?

A No.

Q But she really wanted to get off that plane, correct?

A Yes.

Q **And so she lied to get what she wanted, right?**

A **Yes.**

Trial Transcript Day 12 - 5/5/2015, Tr. 3016:3-3017:23