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 RESPONSE TO MILBANK TWEED HADLEY & MCCLOY LLP'S MOTION TO QUASH RESPONDENT'S SUBPOENA FOR DOCUMENTS**

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Respondent Laurie Bebo ("Bebo"), by her counsel, files this Response to Milbank Tweed Hadley & McCloy LLP's ("Milbank") Motion to Quash Respondent's Subpoena for Documents, which was served upon Ms. Bebo on Monday, February 23, 2015.[1]

INTRODUCTION

Ms. Bebo's subpoena requested documents with respect to three limited factual circumstances (1) what statements did the Division's witnesses make to Milbank attorneys representing the Board of Assisted Living Concepts, Inc. ("ALC" or the "Company") in an investigation of the same factual circumstances at issue in this case; (2) on what basis did ALC conclude, after the Milbank investigation, that it would take no action in response to what was learned through the investigation; and (3) how the handwritten notes she kept in the course of her employment—including notes from conversations and meetings that are critical to the Division's allegations—were collected, preserved, or destroyed. None of the exaggerated rhetoric and vitriol of the brief in support of the motion to quash changes this.

Milbank asserts *all* of the requested documents are either privileged, work product materials, or both; but has failed to establish all of the requisite elements of either doctrine that would absolve Milbank of its responsibility to comply with the subpoena. With respect to the claim of attorney-client privilege, ALC has broadly waived any attorney-client privilege over the investigation.[2] And even if there could be any reasonable basis to conclude that Milbank represented the personal legal interests of any ALC board members in relation to the internal investigation—it expressly disavowed any such representation in correspondence to the

[1] Bebo received a courtesy copy via e-mail on Friday, February 20, 2015. However, for purposes of service, service was completed when delivered by Federal Express on Monday, February 23, 2015. 17 C.F.R. § 201.150(d).

[2] The Division and Ms. Bebo do not agree on much with respect to this case; however, this is one point where the parties do agree. *See* The Division of Enforcement's Response to the Court's Order Regarding Subpoenas to Produce, January 20, 2015, at 2 (agreeing that "ALC generally waives the attorney-client privilege relating to the subject matter of these proceedings.").

Division—this privilege would not apply to protect communications with *non-clients* such as the various ALC employees that Milbank attorneys interviewed in the course of the internal investigation.

Milbank's assertion of work product fairs no better. First, Milbank has failed to demonstrate that the Company's internal investigation was conducted in anticipation of litigation. Given that no litigation was threatened or pending that related to the factual circumstances being investigated, and the reliance of ALC's outside auditors on the findings and conclusions of Milbank's investigation, the inescapable conclusion is that the documents responsive to the subpoena were not prepared in anticipation of litigation. Second, Ms. Bebo can demonstrate a substantial need for the witness statements made to Milbank investigators and the unavailability of the information from other sources. Third, any privilege, including work product protection, was waived when the content of the work product was disclosed to and relied upon by Grant Thornton, ALC's outside auditors, and the Division of Enforcement.

Consequently, Milbank's motion to quash should be denied in its entirety.

FACTUAL BACKGROUND

The allegations of the OIP in this case are based on the assertion that three lines in the Company's form 10-Q's and 10-K's for the periods from approximately late 2009 through 2011 were false or misleading. These three lines—out of hundreds of pages of disclosures and financial statement information (none of which is alleged to be incorrect)—stated ALC's opinion or belief that it was in compliance with "certain operating and occupancy covenants" contained in one operating lease the Company had entered into with an affiliate of Ventas, Inc. ("Ventas"). The lease applied to only eight of the approximately 211 assisted living facilities that ALC owned and/or operated.

The Division contends that ALC and Ms. Bebo acted improperly when the Company set aside rooms at the eight Ventas facilities so they were available for ALC employees that had a reason to travel to the area to serve the operations of those facilities. The Division contends that this was improper despite the fact that Ms. Bebo discussed this arrangement with Ventas ahead of time, and sent correspondence to Ventas confirming ALC's plan to utilize rentals of rooms related to employees.

Although the Division's attempt to convert ALC's interactions with its contractual counterparty into a securities fraud case is new, concerns with respect to ALC's dealings with Ventas—raised internally at the Company in April and May of 2012—are not new.[3] In fact, they are the precise concerns that Milbank investigated for the Company, *which ultimately concluded that the concerns expressed were unfounded.*

Beginning in May 2012, the Company, through the audit committee of ALC's board of directors, retained Milbank to assist the Company in conducting an investigation into the concerns raised by the employee's May 2012 letter. Milbank *was not* retained by the individual members of the audit committee to represent the personal legal interests of those members. None of the audit committee members could reasonably believe this to be the case. Rather, Milbank was retained by the audit committee as an entity in order to serve that committee's function on behalf of ALC. Only two of the four members of the committee signed the Milbank engagement. (Stippich Affidavit in Support of Bebo's Response to ALC's Motion to Quash, March 2, 2015 [hereinafter "Stippich Aff."], Ex. H.)

[3] In April 2012 one of ALC's board members prepared a memorandum that raised concerns about the use of corporate rooms allocated for employees for purposes of reporting to Ventas under the lease. Then in early May 2012, an ALC employee raised similar concerns in a letter to the chair of ALC's audit committee. Ms. Bebo will similarly demonstrate at the hearing, that the concerns were unfounded and that the arrangement with respect to the Ventas covenants was well-known among the ALC board, its internal auditors, its legal counsel, its independent auditors and other officers in the Company.

By July 2012, Ms. Bebo was no longer an officer or director of the Company, and ALC determined that it no longer needed the audit committee to oversee the investigation. (Stippich Aff., Ex. E.) The entire board thereafter oversaw the Company's investigation, with the assistance of Milbank. (*Id.*) As before, it was clear that Milbank did not represent the personal legal interests of any particular board member. And no reasonable board member could think otherwise.

As explained later to ALC's independent auditors, the scope of Milbank's investigation was limited to the allegations contained in the employee's May 2012 letter to the audit committee. (*See* Subpoena Duces Tecum to Produce Documents to Milbank, Ex. A [hereinafter "Grant Thornton Report"]; *see also* Stippich Aff., Ex. E.) Milbank collected a substantial number of documents and electronically stored information. Milbank interviewed various company employees about the matter, including Ms. Bebo, Mr. Buono, and various members of ALC's finance, operational, and legal personnel.[4] (*See generally id.*) Milbank spoke to representatives of Ventas about the matter, who told Milbank that Ventas could not deny that its personnel knew about and approved ALC's rental of units related to employees in the Ventas facilities. (*Id.*)

After approximately four months of investigation, Milbank made a detailed, two hour presentation to the Company's board of directors about its findings and conclusions, so that the board could decide what, if any, action the Company should take in response to the findings of the investigation. (*Id.*) The Company, through the board, concluded that it needed to take no action as a result of the Milbank investigation. (*Id.*; Stippich Aff., Ex. F at pg. 19.) Thus, it

[4] Also reflecting the fact that this was an investigation on behalf of the Company, through the board or audit committee, Milbank interviewed board members as part of its investigative process.

determined to take no adverse action with respect to Mr. Buono's employment.[5] And it determined that none of ALC's prior financial statements or disclosures with respect to the Ventas lease needed to be restated.

The Company and Milbank disclosed these significant details (and other information) about the investigation to its independent auditors, Grant Thornton, in connection with their audit of the year-end 2012 financial statements. In order to accept the Company's conclusion that no restatement of ALC's financial statements or past disclosures was required, Grant Thornton had to either conduct its own investigation, or be satisfied that the Company, through Milbank, had conducted an appropriately thorough investigation that warranted the conclusion ALC reached.

Milbank and the board members' involvement in the 2012 audit is also important because those interactions clearly demonstrate that Milbank was representing the board in their capacity as board members, and that it was *the Company's* investigation being run by the board. Thus, for example, Milbank told Grant Thornton that it was *the Company* that held the privilege over the investigation and any work product. (Stippich Aff., Ex. E at 3.)[6] When revising a representation letter that management would need to sign in connection with the 2012 audit, both Milbank and members of the audit committee were comfortable referring to the investigation as *the Company's* investigation. (Stippich Aff., Ex. D at 6.)

Ms. Bebo believes that the Company's investigation resulted in the correct findings—no wrongdoing occurred and the Company had a firm basis to calculate the covenants under the lease with Ventas in the manner that it did. Ms. Bebo also believes Milbank's investigation was

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[5] Indeed, it appears based on documentation in the investigative file that Mr. Buono received a salary increase in 2013, following the Company's internal investigation. Once ALC was purchased by a private equity firm, Mr. Buono's employment was terminated without cause.

[6] Grant Thornton notes of a discussion with Milbank state, "It is not the *Company*'s intention to waive WP protection." (emphasis added).

conducted in an appropriate, thorough manner by experienced attorneys with significant expertise in this type of work.

And Milbank's findings are critically important in this case because the Division has premised its case on an alleged misstatement that is one of opinion or belief. Thus, the Division must demonstrate both that (1) there was no objectively reasonable basis for the opinion; and (2) ALC and Ms. Bebo did not believe that the statement was accurate. *See Virginia Bankshares v. Sandberg*, 501 U.S. 1083 (1991); *Fait v. Regions Fin. Corp.*, 655 F.3d 105 (2d Cir. 2011). Consequently, not only are the contemporaneous statements made by witnesses to the Milbank investigators of critical importance to Ms. Bebo's case, but the conclusions of the investigation itself are important substantive evidence given the standard governing the statements of judgment or opinions being challenged here. Importantly, the witnesses' testimony upon which the Division relies in the instant prosecution, is inconsistent with the statements those witnesses made to Milbank (as reported to the Company's auditors), all of which is highly relevant to these proceedings and Ms. Bebo's liability.

ARGUMENT

I. Milbank Bears The Burden Of Establishing All The Requisite Elements Of The Attorney-Client Privilege And Work Product Protection.

The SEC rules of practice provide that a party may request "subpoenas requiring the production of documentary or other tangible evidence returnable at any designated time or place." 17 C.F.R. § 201.232(a). If the ALJ determines that "compliance with the subpoena would be unreasonable, oppressive or unduly burdensome," the ALJ "can quash or modify the subpoena, or may order return of the subpoena only upon specified conditions. 17 C.F.R. § 201.232(e)(2). The burden is on the movant to show that compliance would be unreasonable,

oppressive or unduly burdensome. *See Gregory J. Melsen, CPA, et al.*, Admin. Proceeding File No. 3-7998, at 1 (Feb. 2, 1994).

To quash a subpoena for otherwise relevant materials on the basis of attorney-client privilege or work product, Milbank bears the burden of establishing each element of attorney-client privilege or work product protection. *See Woodmen of the World Life Ins. Soc. v. U.S. Bank Nat. Ass'n*, No. 8:09CV407, 2012 WL 354798, at *3 (D. Neb. Feb. 2, 2012); *see also Putnam Investment Management, LLC*, Admin. Proceeding File No. 3-11317 (April 7, 2004) at 2. Similarly, Milbank bears the burden of establishing that a waiver did not occur. *See Woodman*, 2012 WL 354798, at *3.

II. Notes And Summaries Of Witnesses Interviewed In The Course Of The Milbank Investigation Are Not Protected By The Work Product Doctrine (Requests 8 and 9).

The work-product doctrine is a *qualified* privilege, stemming from *Hickman v. Taylor*, 329 U.S. 495 (1947), that is codified in Federal Rule of Civil Procedure 26(b)(3) as follows:

> (A) *Documents and Tangible Things.* Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent). But . . . those materials may be discovered if
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> (i) they are otherwise discoverable under Rule 26(b)(1); and
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> (ii) the party shows that it has a substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.
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> (B) *Protection Against Disclosure.* If the court orders discovery of those materials, it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party's attorney or other representative concerning the litigation.

Fed.R.Civ.P. 26(b)(3)(A), (B).[7]

[7] The underlying purpose of the work product doctrine is not even implicated by this case. The limited purpose for the judicially created work product doctrine was to prevent a party from unfairly benefitting from the work

The party asserting work-product protection has the burden of proving that the materials sought are: (1) documents and tangible things; (2) prepared in anticipation of litigation or for trial; (3) by or for a party or by or for a party's representative. *Caremark, Inc. v. Affiliated Computer Servs., Inc.,* 195 F.R.D. 610, 613 (N.D. Ill. 2000) (citing 8 Wright, Miller & Marcus, *Federal Practice And Procedure:* Civil 2D § 2024 (1994)). However, Milbank has not established the requisite elements of a work product claim, and Ms. Bebo can demonstrate a substantial need for the witness interview notes and memoranda sufficient to overcome any assertion of work product.

A. Milbank has failed to demonstrate that the internal investigation was conducted in anticipation of litigation.

As to the interview notes and memoranda Bebo seeks with Request Nos. 8–9, Milbank has made no showing that they were prepared in anticipation of litigation—a fundamental requirement of work protection protect. *See Caremark, Inc. v. Affiliated Computer Servs., Inc.,* 195 F.R.D. 610, 613 (N.D. Ill. 2000) (citing 8 Wright, Miller & Marcus, *Federal Practice And Procedure:* Civil 2D § 2024 (1994)). The burden was upon Milbank to establish that the witness interview documents were prepared in anticipation of litigation, and it failed to make any showing of the same in its motion.

Indeed, courts have not hesitated to conclude that documents do not qualify for work product protection where there was no showing that the documents were prepared principally or exclusively to assist in anticipated or ongoing litigation. *See In re Sealed Case*, 146 F.3d 881,

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performed by its opposing counsel. *Westinghouse Elec. Corp. v. Republic of Philippines*, 951 F.2d 1414, 1428 (3d Cir. 1991) ("[T]he work-product doctrine promotes the adversary system directly by protecting the confidentiality of papers prepared by or on behalf of attorneys in anticipation of litigation. Protecting attorneys' work product promotes the adversary system by enabling attorneys to prepare cases without fear that their work product will be used against their clients."); *see also* 8 Wright & Miller, Fed. Prac. & Proc. Civ. § 2024 (3d ed.) ("[T]he purpose of the work–product rule is not to protect the evidence from disclosure to the outside world but rather to protect it only from the knowledge of opposing counsel and his client, thereby preventing its use against the lawyer gathering the materials.").

887 (D.C. Cir. 1998) (The work product privilege has "no applicability to documents prepared by lawyers" for "nonlitigation purposes.") (internal quotation omitted); *United States v. Adlman*, 134 F.3d 1194, 1202 (2d Cir. 1998) (As to materials prepared only to aid a client in making a business decision, explaining that "even if such documents might also help in preparation for litigation, they do not qualify for protection because it could not fairly be said that they were created 'because of' actual or impending litigation."); *United States v. Gulf Oil Corp.*, 760 F.2d 292, 297 (Temp. Emer. Ct. App. 1985) (Documents "created primarily for the business purpose of compiling financial statements which would satisfy the requirements of the federal securities laws" do not constitute attorney work product.).

This is no different in the context of internal corporate investigations. For example, *In re Subpoena Duces Tecum served on Wilke Farr & Gallagher*, 1997 WL 118369 (S.D.N.Y. Mar. 14, 1997) the court held that counsel's report following an internal corporate investigation was not work product because litigation was not the "primary motivation" for retaining counsel and creating the report, even though a shareholder suit had been filed and the SEC had begun an informal inquiry. The court concluded that the company had initiated the investigation to address its accounting practices, disclosure practices, and to assure auditor sign-off of financial statements. *Id.* at *2; *see also Woodmen of the World Life Ins. Soc. v. U.S. Bank Nat. Ass'n*, No. 8:09CV407, 2012 WL 354798, at *8–9 (D. Neb. Feb. 2, 2012) (finding no work product protection where a law firm was retained as an independent investigator into the facts surrounding a principal's improper reallocation activities so that the company could credibly represent to its clients and to the SEC that the principal's wrongdoing had been remedied).

In re Leslie Fay Cos., Inc. Securities Litig., 161 F.R.D. 274 (S.D.N.Y. 1995) is also instructive. There, a company retained outside counsel to conduct an investigation to allegations

of corporate wrongdoing. The court held that investigative materials were not prepared primarily in anticipation of litigation where they were also used "to make decisions on firing responsible personnel, to determine the magnitude of the fraud and implement new financial structure, organization, report, and internal control systems...." *Id.* at 280-81; *see also In re Kidder Peabody Sec. Litig.*, 168 F.R.D. 459, 465 (S.D.N.Y.1996) (noting that the company in question "would have hired outside counsel to perform such an inquiry even if no litigation had been threatened" because allegations of wrongdoing "presented [the company] not only with a serious legal problem, but with a major business crisis"); *United States v. El Paso Co.,* 682 F.2d 530, 542-43 (5th Cir. 1982) (analysis prepared by counsel with respect to potential contingent liabilities for purposes of determining whether they needed to be recognized in company financial statements was not prepared in anticipation of litigation).

In this case, the lack of any litigative purpose driving the Milbank investigation is more glaring than in the *Wilkie Farr*, *Leslie Fay*, and *Kidder Peabody* cases. First, Milbank makes no attempt to even demonstrate why the materials were prepared in anticipation of litigation. Second, the context of Milbank providing detailed summaries of its investigation to ALC's independent auditor strongly suggests that the business purpose of obtaining a clean audit, determining whether financials needed to be re-stated, or disclosures needed to be modified—the same non-litigation related concerns at issue in these cases—was driving the investigation in this case. The only ongoing litigation at the time of the investigation, the Ventas lawsuit, did not involve the employee leasing issue on which the investigation was based, and the investigation continued after the Ventas lawsuit was resolved. In other words, the only actual or threatened litigation pending against ALC at the time of the investigation was *not* the driving factor of the

investigation. It is clear that ALC's internal investigation, during and for which Milbank created the materials at issue, was not performed for litigation purposes.

B. Even if the documents reflecting witness interviews constitute work product, Ms. Bebo can establish the requisite showing to overcome the work product protection.

The work product doctrine is not absolute. If the party asserting work-product protection succeeds in establishing the elements discussed above (which Milbank has not), the burden then shifts to the party seeking discovery of work-product material to show substantial need for the material and an inability to obtain its substantial equivalent from another source without undue hardship. *Caremark, Inc. v. Affiliated Computer Servs., Inc.*, 195 F.R.D. 610, 613 (N.D. Ill. 2000). If the work-product material sought is pure "opinion" work product that conveys attorney mental impressions, as opposed to "fact" work product material, the party seeking its disclosure must make a heightened showing of need and unavailability. *U.S. S.E.C. v. Sentinel Mgmt. Grp., Inc.*, Fed. Sec. L. Rep. P 95972, 2010 WL 4977220, at *7 (N.D. Ill. Dec. 2, 2010); *see also Sentinel Mgmt. Grp., Inc.*, 2010 WL 4977220, at *7 (explaining that neither the United States Supreme Court nor the Seventh Circuit have identified the precise standard for overcoming "opinion" work-product protection).

1. The notes and memoranda regarding witness interviews constitute "fact" work product.

Notes and memoranda made by attorneys and their agents during an investigation in anticipation of litigation that contain factual material are discoverable upon a showing of substantial need and unavailability from other sources. *See United States v. Clemens*, 793 F. Supp. 2d 236, 252 (D.D.C. 2011). Though the work product doctrine recognizes that an attorney's interview questions may reveal the attorney's theory or thought processes, and so too would his notes of that interview, that concern is not present in all situations. For example, the

Second Circuit in *In re John Doe Corporation* ordered the production of handwritten attorney notes taken during the interview of an employee because they did not contain the interviewing attorney's mental impressions. 675 F.2d 482 (2d Cir. 1982). Because "[t]he notes recite in a paraphrased, abbreviated form, statements by Employee A relating to events surrounding the payment," the court noted that "their production will not trench upon any substantial interest protected by the work-product immunity." *Id.* at 493. The court further explained that to "the extent that the statements imply the attorney's questions from which inferences might be drawn as to his thinking, those inferences merely disclose the concerns a layman would have as well as a lawyer in these particular circumstances, and in no way reveal anything worthy of the description 'legal theory.'" *Id.*

This is especially true of notes taken during purely fact-finding interviews conducted by attorneys. *Clemens*, 793 F. Supp. 2d at 254. When an attorney's goal is to "encourage a fairly wide-ranging discourse" to learn facts and context before later advising his client based on those facts, his work product is factual in nature and subject to disclosure if the requesting party demonstrates the requisite need and unavailability. *Id.*; *see also United States ex rel. Landis v. Tailwind Sports Corp.*, No. 1:10-CV-00976 (CRC), 2014 WL 7508823, at *3 (D.D.C. Jan. 12, 2014) (ordering production of notes containing "substantially verbatim agent summaries of open-ended discussions of issues relevant to the criminal investigation").

The interview notes and memoranda Ms. Bebo seeks were prepared by Milbank during the fact-finding phase of its representation.

2. Bebo has a substantial need for, and cannot obtain a substantial equivalent of, the notes and other materials she requests.

A party seeking discovery of work product materials can demonstrate substantial need if the information in the documents is important to the party's case. *See generally Estate of Pratt v.*

Roehl Transp. Inc., No. 12-C-1150, 2013 WL 4434449, at *2 (E.D. Wis. Aug. 15, 2013); *see also Stampley v. State Farm Fire & Cas. Co.*, 23 F. App'x 467, 2001 WL 1518787 (6th Cir. 2001) (unpublished). Put another way, the requisite "need" exists where the work product material is central to the substantive claims in litigation. *Mandanes v. Madanes*, 199 F.R.D. 135, 150 (S.D.N.Y 2001).

Courts have also recognized that requiring the production of witness interview documents is particularly appropriate where the factual matters are the same and the statements were made when recollections were fresh and before the involvement of a government investigation that can impact witness testimony. *See In re John Doe Corp.*, 675 F.2d 482, 492 (2d Cir. 1982). In the *John Doe Corp.* case, the court held that:

> The need for the contents of the interviews is self-evident. Quite apart from the truth of the matters asserted therein, which is clearly pertinent, the statements may be relevant simply for the fact they were made because they may tend to prove what Doe Corp. knew and when it knew it. On that issue, the notes may be the only available evidence. . . . Employee B's memory is hazy and other potential witnesses have invoked the privilege against self-incrimination.

Id., 492, n.10 (2d Cir. 1982).

Milbank's investigation on behalf of the Company regarding ALC's compliance with the Ventas lease is certainly "central to the substantive claims" in this litigation such that Bebo has a substantial need for their disclosure. The allegations in this matter directly overlap with the subject of Milbank's investigation. Further, Milbank's interviews took place in 2012 when the witnesses' memories were fresh and prior to the Division's investigation. The results of those interviews and the investigation more broadly were reported to Grant Thornton in late 2012 and early 2013, as reflected in the auditor's notes of the discussions:

- The investigation was not able to conclude that ALC calculated the covenants in a fashion without the knowledge or approval of Ventas.

- ALC management uniformly believed Ventas knew about and had approved the manner in which ALC was calculating the covenants.

- Ventas could not deny ALC had an arrangement with them on corporate leasing of rooms for employees, as described by Ms. Bebo and others at ALC. Ventas reported they had spoken to the former Ventas executive that was present on a phone call discussing the issue, and the executive, Joseph Solari, was unable to deny the ALC's description that he confirmed the understanding.

- ALC's confirmatory e-mail about the practice was sent to other Ventas executives besides Mr. Solari, and no one at Ventas raised any objection to ALC's rental of rooms related to its employees.

- Senior management, Ms. Bebo and Mr. Buono, were "open and transparent to auditors on the topic - which units were set aside for which employees."

- "Both Bebo and Buono were open and forthcoming on the documentation suggests no ill intent by management."

- There was substantial authority to conclude that the accelerated rent provision of the lease with Ventas would be unenforceable under the law governing the lease.

(Stippich Aff., Ex. E.)

Finally, none of the witnesses are available to be deposed in this proceeding prior to the merits hearing, and some of the witnesses reside outside the country and will thus not be amenable to the subpoena power of the Commission. This supports a finding of substantial need and unavailability of the information by other means. *See AT&T Corp. v. Microsoft Corp.*, No. 02-0164 MHP (JL), 2003 WL 21212614, at *6 (N.D. Cal. Apr. 18, 2003) ("[I]f the party seeking production could elicit the same information through deposition, then the need for the documents is diminished, unless there is undue hardship. Undue hardship is demonstrable if witnesses are unavailable or cannot recall the events in question."); *see also A.F.L. Falck, S.P.A. v. E.A. Karay Co.*, 131 F.R.D. 46, 49–50 (S.D.N.Y. 1990) (hardship shown because witness was in Greece); *In re Vitamins Antitrust Litigation*, 211 F.R.D. 1, 4 (D.D.C. 2002) (witnesses asserting their Fifth Amendment rights were unavailable).

3. Bebo meets the heightened requirement of need for production of documents that constitute "opinion" work product.

Finally, even if this Court finds that the materials Bebo seeks contain "opinion" work product, Bebo meets even the *heightened* standard of substantial need and unavailability sufficient to compel production of "opinion" work product. Though the precise standard for overcoming "opinion" work product protection is not well delineated by the courts, Ms. Bebo has made at least as strong a showing of need and unavailability as litigants in other cases who have overcome work production protection for the discovery of "opinion" materials. *See, e.g., U.S. S.E.C. v. Sentinel Mgmt. Grp., Inc.*, Fed. Sec. L. Rep. P 95972, 2010 WL 4977220, at *9 (N.D. Ill. Dec. 2, 2010) (heightened standard met where "witnesses gave lengthy interviews to the SEC despite invoking the Fifth Amendment right against self-incrimination as a basis for refusing to answer questions at a deposition. . . . Whatever their motivation, the point is that the SEC has been able to interview these witnesses at length to find out what they may testify to at trial, yet Bloom has been denied access to them through either an interview or deposition.").

III. Documents Relating to Presentations of the Findings of the Investigation to ALC's Board, Independent Auditors, or the SEC Are Neither Privileged Nor Work Product Protected (Requests 7 and 10-15).

Milbank argues that these documents are protected by both the attorney-client privilege and the work product doctrine. Neither contention has any merit.

A. Any attorney-client privilege with respect to the Company's internal investigation has been waived by the Company.

Milbank asserts the attorney-client privilege applies because "Milbank's communications with ALC's Board of Directors or its Audit Committee relating to the Company's internal investigation were confidential and were made with the purpose of providing legal advice." (Milbank Motion to Quash [hereinafter "Milbank Mot."] at 9; see also id. at 10.) However, that is irrelevant because any attorney-client privilege that might have existed over communications

that fall under these requests has been waived by ALC, the holder of the privilege. Specifically, ALC 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 regarding the internal investigation, among other things. (Stippich Aff., Ex. G.)

Milbank is wrong to argue that ALC's waiver does not apply to these communications because Milbank represented the ALC Board of Directors and its Audit Committee, and not the Company, with respect to these communications. Milbank 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. (*See, e.g,* Stippich Aff., Ex. B (wherein Milbank describes the scope of its engagement with ALC by stating that "our representation of the Company is limited to the specific matters brought to our attention by the Company from time to time ...."); Stippich Aff., Ex. C (August 1, 2012 draft rep letter from ALC to its auditor, Grant Thornton, in which it says that "under the direction of the Company's Audit Committee, the *Company* is involved in an investigation of certain mattes associated with the Ventas lease covenants."); Stippich Aff., Ex. D at pg. 6 (November 2, 2012 email from Milbank attaching its revisions to ALC's draft management rep letter in which ALC refers to the investigation as "[t]he Company's investigation.") To be sure, in discussing with Grant Thornton its conclusions from the internal investigation, Milbank stated that it is the *company*'s decision with respect to privilege over the investigation. (Stippich Aff., Ex. E.)

This is consistent with the law of corporate privilege. A corporation can only act through its agents and representatives and, accordingly, can only seek legal advice and services through its officers and directors. Management's role in obtaining and directing legal services does not,

however, mean that the *corporation's* privilege belongs to individual officers and directors. *Commodity Futures Trading Comm'n v. Weintraub,* 471 U.S. 343, 349 (1985); *In re OPM Leasing Services, Inc.,* 670 F.2d 383, 386 (2nd Cir. 1982).

Even if it were the case that privileges existed between Milbank and the Board and Milbank and the Audit Committee, the company to which the Board and the Audit Committee were fiduciaries would share that privilege. *Nat'l Union Fire Ins. Co. v. Cont'l Illinois Grp.*, No. 85 C 7080, 1987 WL 4806, at *2 (N.D. Ill. May 1, 1987) ("The fiduciary theory stems from the position of trust that one party holds for another, such as corporate directors for the corporation and its shareholders .... Courts will in effect impose the party to whom the fiduciary duty is owed on the fiduciary's lawyer (make him a joint-client) in order to protect that party from disadvantage although the fiduciary's lawyer never formally represented him."); *see also Glidden Co. v. Jandernoa*, 173 F.R.D. 459, 478, 1997 WL 341789 (W.D. Mich. 1997). The documents and communications Milbank had with fiduciaries of ALC must be shared with ALC, and ALC has waived privilege over those communications.

Alternatively, if Milbank's position is that it represented the ALC directors and committee members in their individual, personal capacities, then any communications Milbank had with any *other* ALC employees are not privileged because they would be non-client communications.

B. The work product doctrine does not apply or has been waived.

For the reasons stated above, none of the documents prepared by Milbank in the course of its investigation were prepared in anticipation of litigation and the work product doctrine does not apply *in toto*. However, the work product doctrine also does not apply to requests 11-15 because any work product protection that might have existed over those documents has been

waived. These requests specifically seek documents that were used, distributed, or relied upon in briefing third parties, such as the Company's independent auditors and the SEC.

When a party or its counsel discloses work product to a third party with whom it is not allied in interest and does not have a common litigation objective, the protection of the work product doctrine is waived. *See Medinol, Ltd. v. Boston Scientific Corp.*, 214 F.R.D. 113, 115 (S.D.N.Y. 2002). In *Medinol*, the defendant company, Boston Scientific, shared with the company's independent auditor, Ernst & Young, material it considered attorney work product including minutes of the Special Litigation Committee meetings. *Id.* The court held that this disclosure waived work product protection because "[a]s the outside auditor, Ernst & Young's interests were not necessarily united with those of Boston Scientific; they were independent of them. Moreover, the sharing by Boston Scientific's lawyers of selected aspects of their work product, although perhaps not substantially increasing the risk that such work product would reach potential adversaries ... did not serve any litigation interest, either its own or that of Ernst & Young, or any other policy underlying the work product doctrine." *Id.* at 116.

The same is true of disclosures made to the SEC. *See, e.g. In re Sealed Case*, 676 F.2d 793, 822–23 (D.C. Cir. 1982) (finding waiver of work product privilege when company voluntarily disclosed material to the SEC). The court in *In re Sealed Case* also declined to hold that productions made to the SEC represent a "limited waiver" of work product protection because a party must, in order to limit waiver, identify the material as to which it claims protection at the time it submits that material. *In re Sealed Case*, 676 F.2d at 822–23; *see also In re Steinhardt Partners, L.P.*, 9 F.3d 230, 235–36 (2d Cir. 1993) (trader's submission of legal memorandum to the SEC waived work product immunity); *Westinghouse Elec. Corp. v. Republic of the Philippines*, 951 F.2d 1414, 1428–30 (3d Cir. 1991) (disclosures to the SEC and

Department of Justice during investigations waived protections of both attorney-client privilege and attorney work-product doctrine); *Schultz v. Talley,* 152 F.R.D. 181, 185 (W.D.Mo. 1993) (disclosure to state attorney general investigating college waived work product immunity).

The materials over which Milbank seeks to assert work product protection in requests 11-15 have been shared with Grant Thornton and the SEC, neither of which is allied in interest with or has the same litigation objective as Milbank's client. Milbank has therefore waived any work product protection that might have applied.

IV. Underlying Facts are Not Protectable by Either The Attorney-Client Privilege or the Work Product Doctrine.

As to Bebo's Request Nos. 1–6, which ask for documents related to the collection, perseveration, transfer, and disposition of Bebo's notepads, board books, and other documents, Milbank objects on the grounds that the requests encompass material protected by both attorney-client privilege and work product.

Bebo requests this information because she believes several of her notepads and other similar materials have been improperly withheld from production, and if destroyed, then the same should be admitted. Her document requests on this topic specifically target the *facts* related to the collection and disposition of the materials enumerated in her requests; the who, what, when, where, and how of the collection process are all facts which are not protectable by either the attorney-client privilege or the work product doctrine. *See Upjohn Co. v. United States*, 449 U.S. 383, 395-96 (holding that the attorney-client privilege only protects disclosure of communications, not disclosure of underlying facts); *Resolution Trust Corp. v. Dabney*, 73 F.3d 262, 266 (10th Cir. 1995) (finding the work product doctrine does not protect facts concerning the creation of work product or facts contained within the work product); *Craig v. O'Charley's*

Rest. Props. LLC, No. 3:09-CV-187, 2010 WL 725574 (W.D. Ky. Feb. 25, 2010) ("The work-product doctrine does not protect facts contained within the work product.").

V. The Subpoena Requests Are Narrowly Tailored Such That Milbank's Compliance Will Require Minimal Effort.

The documents Bebo requests cannot be obtained from other sources and her requests have been narrowly tailored in order to limit as best as possible any burden on Milbank to produce response documents. Milbank's concerns about the breadth of Bebo's requests are overblown. Bebo seeks basic and limited information on three topics.

First, Bebo seeks factual information about how two categories of hard copy documents were collected or disposed of: Bebo's notepads and her board books. *See* Subpoena Duces Tecum Request Nos. 1–6. Bebo does not seek broad-based discovery as to the volumes of documents Milbank may have collected as part of its investigation. It should not be difficult for Milbank to find and produce the relevant documents.

Second, Bebo seeks disclosure of facts told by witnesses to Milbank in their interviews as part of the internal investigation. Again this is limited in scope, and should entail minimal burden on Milbank.

Third, Bebo seeks the basis of the Board of Directors' conclusion that ALC's employee leasing practice entailed no wrongdoing. Bebo carefully framed these requests for presentations to the Board or third parties such as Grant Thornton in order to pinpoint the limited set of materials that would contain that information.

CONCLUSION

Milbank has failed to meet its burden to establish that the documents sought are protected from disclosure by privilege or work product or that the requests are unreasonable, oppressive or

unduly burdensome. Based on the foregoing, Bebo respectfully requests an order denying Milbank's Motion to Quash.

Dated this 2nd day of March, 2015.

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

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[redacted]

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 RESPONSE TO ASSISTED LIVING CONCEPTS, LLC'S MOTION TO QUASH OR MODIFY RESPONDENT'S SUBPOENAS FOR DOCUMENTS

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Respondent Laurie Bebo ("Bebo"), by her counsel, files this Response to Assisted Living Concepts, LLC's ("ALC") Motion to Quash or Modify Respondent's Subpoenas for Documents.

BACKGROUND

The Securities and Exchange Commission (the "SEC") instituted these proceedings against Bebo (and co-Respondent John Buono, CPA) on December 3, 2014. (*See* Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission's Rules of Practice (the "OIP")). Given the requirement that the ALJ issue an initial decision not later than 300 days from service of the OIP, Bebo is currently attempting to build her defense via the limited discovery permitted by the Commission's Rules of Practice. As such, on January 14, 2015, Bebo requested the issuance of a subpoena duces tecum to her former employer, ALC. (Bebo Request for Issuance of Subpoenas Duces Tecum, Jan. 14, 2015.) The ALJ issued the subpoena, in part, and with some modifications. (*See* Order on Request for Issuance of Subpoenas, Jan. 23, 2015.)

On February 4, 2015, Bebo renewed her request for two of the categories struck from the initial subpoena in a supplemental subpoena. Categories seven and eight of the initial subpoena, seeking Bebo's telephone records from 2008 to 2012, were struck and the ALJ stated that there was "no apparent relevance to these documents, and the request is overbroad, because it presumably seeks a large number of telephone records irrelevant to the OIP." (*Id.* at 2.) Bebo's supplemental subpoena renews these two requests but drastically limited the time frame, from a four and a half year period to an approximately seven month window. (*See* Supplemental Subpoena, at 3, ¶¶ 1-2.) Further, Bebo also provided a statement describing the relevance of the requested telephone records with her supplemental subpoena request. This statement addresses the three critical time frames (totaling seven months) and explains the relevance of the phone

records for these time periods. The ALJ granted Bebo's request for issuance of a supplemental subpoena to ALC on February 5, 2015.

The parties briefly discussed compliance with the subpoena after its service. Counsel for ALC requested that Bebo provide a list prioritizing her requests. (Affidavit of Ryan S. Stippich, ¶ 2, Ex. A at 5.) Bebo did prioritize its requests and sent that list via email on February 5, 2015. (*Id.* at Ex. A at 3-4.) After Bebo sent the list, however, ALC and Bebo were unable to schedule a conference to further discuss the subpoenas due to scheduling conflicts. (*Id.* at 1-3.)

Bebo was served with ALC's Motion to Quash on Monday, February 23, 2015.[1] Later that day, counsel for ALC and Bebo had a telephone conversation to discuss various issues related to the subpoena and counsel to Bebo made several proposals in an attempt to reduce the burden on ALC in complying. (Stippich Aff. ¶ 3.) ALC and Bebo were able to agree on some of ALC's requested modifications to the subpoena. However, there are certain issues that ALC and Bebo were unable to resolve. The unresolved requests, seeking internal investigation documents, Milbank communications and Bebo's telephone records, should not be quashed because ALC has failed to demonstrate that the documents requested are protected by the attorney-client privilege, or that the requests themselves are unreasonable, oppressive or unduly burdensome.

LEGAL STANDARD

The SEC rules of practice provide that a party may request "subpoenas requiring the production of documentary or other tangible evidence returnable at any designated time or place." 17 C.F.R. § 201.232(a). If the ALJ determines that "compliance with the subpoena would be unreasonable, oppressive or unduly burdensome," the ALJ "can quash or modify the subpoena, or may order return of the subpoena only upon specified conditions. 17 C.F.R. §

[1] Bebo received a courtesy copy via e-mail on Friday, February 20, 2015. However, for purposes of service, service was completed when delivered by Federal Express on Monday, February 23, 2015. 17 C.F.R. § 201.150(d).

201.232(e)(2). The burden is on the movant to show that compliance would be unreasonable, oppressive or unduly burdensome. *See Gregory J. Melsen, CPA, et al.,* Admin. Proceeding File No. 3-7998, at 1 (Feb. 2, 1994).

I. BEBO AND ALC'S RESOLUTION OF CERTAIN ISSUES RAISED IN ALC'S MOTION TO QUASH OR MODIFY THE RESPONDENT'S SUBPOENAS.

A. Bebo Agreed to Modify the Subpoena to Allow Additional Time for Compliance.

ALC requested a modification to a number of the requests to allow ALC additional time to search for and compile responsive documents. After discussing impediments to ALC's search (such as the large number of documents and their storage on backup tapes) with ALC's counsel, Bebo is amenable to extending ALC's time for compliance to March 16, 2015.[2] It is Bebo's understanding that ALC is agreeable to complying with Requests No. 1-6, 11-13, and 21 by March 16, 2015 and there are no other outstanding issues relating to these specific requests.

B. Bebo Agrees to ALC's Modification to Allow It to Respond to Requests Numbered 2 and 3 by Affidavit.

Bebo has requested documents: (a) sufficient to identify the chain of custody of Bebo's notepads and board books after she ceased to be an ALC employee; and (b) documents referring to or relating to the current location of any of Bebo's handwritten notes. (Subpoena, Request Nos. 2, 3.) ALC requested a modification to allow it to respond to these two Requests via affidavit. Bebo is amenable to allowing this modification in lieu of production of documents provided that the affidavit provides a full and complete response to the Requests.[3]

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[2] The extension to March 16, 2015 is acceptable to Bebo only if compliance with the subpoena requests will be completed by this date. A rolling production beginning on this date is unacceptable as she would be severely prejudicial to Bebo and her ability to make use of documents in the production. The Prehearing Scheduling Order set a March 26, 2015 deadline for the exchange of pre-marked exhibits. Bebo needs time to review the ALC production and incorporate such documents into her exhibit list.

[3] ALC produced an initial response to the subpoena on February 24, 2015 that contains a statement from ALC's counsel responsive to Request No. 3. Bebo will, of course, need information in a form that could be admissible as evidence at the hearing in this matter such as a declaration or affidavit.

C. Bebo Agrees to Modify Request Number 24 to Limit Her Inspection of the Boxes to a Subset List that will be Provided to ALC.

Bebo requested inspection of the 380 boxes of hard copy ALC documents possessed by ALC's counsel. (Subpoena, Request No. 24.) ALC contended that this would pose a significant cost on ALC. As such, in order to reduce this burden, Bebo agreed to provide a list of a subset of boxes to ALC that she will be able to inspect. Bebo is agreeable to this modification, subject to Bebo's ability to determine what boxes she reasonably believes may contain material relevant to the allegations in the OIP or Bebo's defenses.

II. UNRESOLVED ISSUES RAISED BY ALC IN ITS MOTION TO QUASH.

A. ALC Should Produce Bebo's Hard Copy Board Materials Or Identify The Bates Range Where They Are Located In the Millions of Pages of Documents in ALC's SEC Production.

Bebo requested copes of all hard copies of board materials provided to Bebo during her employment at ALC. (Subpoena, Request No. 26.) The basis for her request is the fact that it appears a vast number of the binders containing her board books and notes regarding board meetings are missing and/or have not been produced. In its motion to quash or modify, ALC asserts that all of the board materials that ALC has (including those provided to other board members) have been produced to the SEC. (ALC Mot. at 13.) ALC's motion attaches a multi-page chart of those materials, and contends that Ms. Bebo can find any of her personal board materials somewhere within those tens of thousands of pages of other materials. (ALC Mot. at Ex. 7) ALC also indicates that it produced Ms. Bebo's board materials in early 2014, but again those materials were apparently produced as a subset of voluminous production of other materials, with no reasonable ability for Ms. Bebo to distinguish between her purported board materials and anyone else's. Consequently, ALC should be required to either produce Ms. Bebo's board materials separately in response to the subpoena or simply identify the much smaller sub-

set of bates ranges where they can be located. Either option would impose minimal burden upon ALC.

B. The Requests for Internal Investigation Materials are not Duplicative and ALC is the Appropriate Party to Provide These Materials.

Bebo requested that ALC produce documents (1) supporting the conclusion of the internal investigation and the Board's determination to not take further action; (2) documents relating to interviews of witnesses in connection with the internal investigation; and (3) documents related to any conclusions of the internal investigations, including presentations (collectively, "internal investigation materials"). (Subpoena, Requests 18-20.) ALC asserts two grounds for refusing to produce the internal investigation materials. The first is that the requests are duplicative because the internal investigation materials have already been produced to the SEC. The second contention is that these documents can be more efficiently obtained from Milbank.

1. ALC Has Failed to Demonstrate that the Requests are Duplicative.

ALC acknowledges that it received an SEC subpoena requesting "[a]ll documents relating to any internal investigation regarding the conduct of Laurie Bebo or John Buono or regarding any information provided to Ventas." (ALC's Mot. at 7.) Further, ALC quotes the SEC's Response to the Court's Order regarding Subpoenas to Produce, which in which the SEC states that the SEC has produced all documents it received from, among others, ALC, to Bebo. (ALC's Mot., Ex. 1, ¶ 2.) However, the SEC's response also states that "it believes that its files contain, and that it produced to Bebo, at least some documents responsive to the following requests: (a) ALC Subpoena paragraphs 15, 16, 17, 20, and 26." (*Id.*, ¶ 3.) It appears that the SEC does not believe it received documents response to Requests 18 and 19, which are also at issue. Further, based on Bebo's review of the SEC's production, Bebo has not seen the documents

relating to the internal investigation. The SEC's response supports Bebo's contention that ALC and/or Milbank have not produced all of the internal investigation materials to either the SEC or Bebo. ALC has failed to show that the requests for internal investigation materials are duplicative and, as such, its request to quash the requests on the grounds of duplication should be denied.

2. ALC, as the Holder of the Attorney Client Privilege, is the Proper Party to Review and Produce These Materials.

It is undisputed that ALC has agreed to a general waiver of the attorney-client privilege over certain documents, as confirmed by ALC's counsel in a February 4, 2014 letter to the SEC. (ALC's Mot., Ex. 4.) With respect to the internal investigation, the waiver letter provides that:

> ALC agrees to waive its attorney-client privilege with respect to communications ... between ALC directors or officers ("Executives"), on the one hand, and ALC's legal counsel, on the other hand ... that relate to (i) the leasing of units in [Ventas] facilities to employees or others... (ii) whether Employees could be included as occupants for purposes of occupancy covenant calculations under the terms of the [Ventas lease], (iii) whether revenue associated with occupancy by Employees could be included in the coverage ratio calculations under the Ventas Lease, or (iv) any disclosures ALC made or contemplated making in Commission filings regarding its compliance with the Ventas Lease covenants.

That, of course, is a description of exactly what Milbank investigated on behalf of the Company and as overseen by the Company's board of directors.

In its motion, ALC acknowledges that ALC contends that, consistent with this waiver, it has produced documents to the SEC related to the internal investigation. This production waives any argument of privilege on the internal investigation materials, which ALC does not appear to contest. Indeed, there are thousands of pages in the SEC's production reflecting communications between Milbank and ALC management and board members.

However, the critical documentation reflecting witness statements made to Milbank and documents reflecting the findings of the investigation as reported to the board, outside auditors,

and the SEC remains withheld by both ALC and Milbank—otherwise they would not have filed motions to quash the subpoenas specifically requesting those documents. Production of these materials would obviously not be duplicative of the earlier productions related to the internal investigation. Moreover, any witness interview notes or memoranda related to the internal investigation would be easily obtained, non-voluminous, and could be produced by ALC with minimal burden.

Given the minimal burden, ALC should not be able to defer to Milbank, with Milbank pointing the finger back at ALC.[4] ALC, as the holder of the privilege, is the appropriate party to review and produce these documents. *Formax Inc. v. Alkar-Rapidpak-MP Equip. Inc.*, No. 11-C-0298, 2013 WL 2368824, at *1 (E.D. Wis. May 29, 2013) ("the attorney-client privilege belongs to the client, who alone may waive it."). ALC has provided a clear statement on the scope of its waiver, prepared by its counsel, and as the holder of the privilege, it should be the party to review and produce documents that fall within the scope of that waiver. To require Milbank, who is not the holder of the privilege and did not determine the scope of the limited waiver, to determine what falls under ALC's waiver of privilege seems to have it backwards.

C. The Communications Between Milbank and the ALC Board of Directors Related to the Internal Investigation are Not Privileged.[5]

Bebo requested that ALC produce certain email communications between Milbank and the ALC board of directors. (Subpoena, Request No. 25.) While Bebo is certainly not arguing that administrative proceedings generally do not protect attorney-client privileged documents, the requested documents sought by this request are not privileged. ALC asserts that these

[4] Bebo does not, frankly, care which party produces the requested documents as long as they are produced. But given that the narrowly circumscribed requests targeted at witness interview notes and statements and documents otherwise reflecting the findings of Milbank and the Company, both parties may be ordered to produce the materials.

[5] Whether communications between Milbank and ALC's former directors are privileged is discussed in further detail in Section III of Respondent's Response to Milbank's Motion to Quash, filed concurrently with this brief.

communications are privileged based on a purported privilege held by the former Board of Directors of ALC. To quash a subpoena for otherwise relevant materials on the basis of attorney-client privilege or work product, ALC bears the burden of establishing each elements of attorney-client privilege or work product protection. *See Woodmen of the World Life Ins. Soc. v. U.S. Bank Nat. Ass'n*, No. 8:09CV407, 2012 WL 354798, at *3 (D. Neb. Feb. 2, 2012); *see also Putnam Investment Management, LLC*, Admin. Proceeding File No. 3-11317 (April 7, 2004) at 2. Similarly, ALC bears the burden of establishing that a waiver did not occur. *See Woodman,* 2012 WL 354798, at *3.

As noted above, ALC has agreed to a waiver of privilege on certain categories of documents, including documents related to Milbank's internal investigation. ALC cannot argue that its waiver does not apply to the communications between Milbank and the Board simply because Milbank represented the ALC board and its audit committee in their fiduciary capacity—*i.e.,* in order so that they could make decisions *on behalf of the Company* about whether to take employment action, restatement financial statements, or change Company disclosures as a result of the investigation.

This contention is addressed in more detail in Bebo's response to the motion to quash filed by Milbank that asserted similar grounds, which Bebo incorporates here by reference. (*See* Bebo's Resp. to Milbank's Motion to Quash at Section III.) Bebo will also summarize the key points here. First, there is no reasonable basis for the *post hoc* assertion that Milbank was representing the directors' personal, individual interests in connection with the Company's internal investigation. It is clear from contemporaneous documents that Milbank represented ALC, its Audit Committee, and its Board of Directors *as a whole* with respect to ALC's internal investigation. *See, e.g,* (Stippich Aff., ¶ 4, Ex. B.) (August 2, 2012 letter from Milbank to Grant

Thornton describing the scope of its engagement with ALC by stating that "our representation of the Company is limited to the specific matters brought to our attention by the Company from time to time ...."); (Stippich Aff., ¶ 5, Ex. C.) (August 1, 2012 draft rep letter from ALC to its auditor, Grant Thornton, in which it says that "under the direction of the Company's Audit Committee, the *Company* is involved in an investigation of certain mattes associated with the Ventas lease covenants."); (Stippich Aff., ¶ 6, Ex. D at pg. 6.) (November 2, 2012 email from Milbank attaching its revisions to ALC's draft management rep letter in which ALC refers to the investigation as "[t]he Company's investigation.") Milbank further confirmed its representation of ALC as a company in discussing with Grant Thornton its conclusions from the internal investigation, where Milbank stated that it is the *company*'s decision with respect to privilege over the investigation. (Stippich Aff., ¶ 7, Ex. E at 3.)

Thus, the Company had the ability to waive the privilege over communications with directors related to the investigation, which it did. This is consistent with the law of corporate privilege. A corporation can only act through its agents and representatives and, accordingly, can only seek legal advice and services through its officers and directors. The Board's role in obtaining and directing legal services does not, however, mean that the *corporation's* privilege belongs to individual officers and directors. *Commodity Futures Trading Comm'n v. Weintraub,* 471 U.S. 343, 349 (1985); *In re OPM Leasing Services, Inc.,* 670 F.2d 383, 386 (2nd Cir. 1982).

Even if it were the case that a privilege existed between Milbank and the Board and Milbank and the Audit Committee, the company to which the Board and the Audit Committee were fiduciaries would share that privilege. Further, privity under a fiduciary contract allows a party, here ALC, control the fiduciary's attorney-client communications. *Nat'l Union Fire Ins.*

Co. v. Cont'l Illinois Grp., No. 85 C 7080, 1987 WL 4806, at *2 (N.D. Ill. May 1, 1987) ("The fiduciary theory stems from the position of trust that one party holds for another, such as corporate directors for the corporation and its shareholders .... Courts will in effect impose the party to whom the fiduciary duty is owed on the fiduciary's lawyer (make him a joint-client) in order to protect that party from disadvantage although the fiduciary's lawyer never formally represented him."). The documents and communications Milbank had with fiduciaries of ALC must be shared with ALC, which entitled ALC to waive privilege over those communications (as they relate to Milbank's internal investigation) as it has done with the limited waiver.

Finally, to the extent that certain communications between Milbank and the individual directors were privileged and not subject to ALC's waiver, ALC cannot claim that these communications, as a whole, are privileged. The more likely case is that most of the documents would not be privileged as relating to the director's personal affairs, and the burden would be on Milbank and/or the directors to show which specific communications fall under this narrow privilege. *See Glidden Co. v. Jandernoa*, 173 F.R.D. 459, 478, 1997 WL 341789 (W.D. Mich. 1997) ("Absent a substantial factual showing, the presumption is that communications to corporate counsel were in the course of the corporation's business rather than the officer's personal affairs."). Given that the privileged nature of the communications would be the exception to the rule, ALC should not be entitled to quash this request based on an assertion of privilege without demonstrating that the documents are actually privileged.

D. ALC should be Required to Conduct a Reasonable Attempt to Locate the Requested Telephone Records.

Bebo's supplemental subpoena requests seek telephone records for Bebo's office land line and cell phone over a seven month period. Bebo's supplemental requests for phone records were reduced in scope to accommodate the ALJ's concerns that the requests were overbroad. (Order

on Request for Issuance of Subpoenas, Jan. 23, 2015, at 2.) In addition to narrowing the time frame for the request, Bebo provided, as part of its request for issuance, a detailed discussion of the relevance of the telephone records. Specifically, the time frames cover three specific events critical to the OIP and Bebo's defense: (1) February-March 2009 when Bebo sought advice of counsel regarding rental of rooms for employees at the CaraVita facilities and Bebo's discussion with Ventas regarding the potential rentals for employees; (2) July-August 2011 during which time ALC was responding to the SEC comment letter and Bebo sought the advice of counsel regarding ALC's response; and (3) March-May 2012, when, according to the OIP, the purported scheme unraveled and Bebo had multiple discussions with board members regarding the leasing of rooms for employees.

The standard of relevance in administrative proceedings is very broad, it does not hinge on admissibility and the documents requested only need to appear to be reasonably calculated to lead to the discovery of admissible evidence. *Gregory M. Dearlove, CPA*, Admin. Proceeding File No. 3-12064 (Jan. 9, 2006) at 2 (noting that the "[w]hen admitting evidence at an administrative hearing before the Commission, the standard of "relevance" is very broad" and that "[t]he standard of relevance is even broader when it comes to document subpoenas.")

Despite the broad standard of relevance and Bebo's detailed statement on the relevance of the requests, ALC asserts that these documents "can only confirm the existence of the phone calls." (ALC Mot. at 14.) However, as Bebo's counsel has already explained to ALC, this is exactly one of the reasons that Bebo is requesting these records. There has been conflicting testimony about each of these events and, as such, they require corroboration. For example, there is conflicting testimony as to whether, and to what extent, Bebo sought and received advice from counsel regarding the SEC comment letter. Phone records from the July - August 2011 time

period would show the number and duration of Bebo's conversations with Quarles & Brady. While the phone records obviously will not provide the substance of the calls, they will support the extent that conversations occurred. These records are critical given that there will be witnesses that will not appear at the hearing or cannot be subpoenaed for the hearing. As such, whether and to what telephone calls occurred would support Bebo's testimony that certain discussions occurred and this may be the only corroboration she will be able to get in these proceedings.

ALC also asserts that it would be unduly burdensome to obtain these documents. During the phone conference between Bebo and ALC, Bebo suggested that ALC, rather than searching for this information in its backup tapes, request the records from its telephone providers. ALC claims that it does not know who the providers were and its motion to quash states that ALC "experienced a near complete turnover of relevant personnel in the intervening years." (ALC's Mot. at 15.) However, ALC's Telecommunications Manager (Lionel Guzman) and its Director of IT (Tim Bates) remain current employees and would have the institutional knowledge that would allow ALC to request these telephone records directly from the providers. ALC, as the account holder, has the right to request its records, whereas Bebo would not have to go through a tedious third party telephone record subpoena process. *See United States v. Approximately $7,400 in U.S. Currency,* 274 F.R.D. 646, 647 (E.D. Wis. 2011) (documents are deemed to be within a person's "possession, custody or control" "if the party has actual possession, custody or control, or has the legal right to obtain the documents on demand").

However, to the extent ALC cannot request the records from its provider, ALC has in its possession the telephone records and will already be restoring the backup tapes for purposes of responding to the other subpoena requests. ALC has not demonstrated a valid reason why it

cannot search for these records with the other documents. Further, ALC has not demonstrated why it cannot, as Bebo has suggested, request the records directly from the telephone providers. As such, ALC has not proven that the subpoena requests are unreasonable, oppressive or unduly burdensome.

CONCLUSION

Bebo has worked with ALC to mitigate the burden caused by the subpoenas issued to ALC. However, the parties were unable to resolve issues regarding the internal investigation documents, the Milbank communications and Bebo's telephone records. ALC has failed to meet its burden to establish that the documents sought are privileged or that the requests are unreasonable, oppressive or unduly burdensome. Based on the foregoing, Bebo respectfully requests an order denying ALC's Motion to Quash any of the Requests, but allowing the modifications agreed to by Bebo and ALC.

Dated this 2nd day of March, 2015.

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

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3. On February 23, 2015, counsel for ALC and Bebo had a telephone conversation to discuss various issues related to the subpoena and counsel to Bebo made several proposals in an attempt to reduce the burden on ALC in complying.

4. Attached as Exhibit B to this Affidavit is a true and correct copy of an August 2, 2012 letter from Milbank, Tweed, Hadley & McCloy ("Milbank") to Grant Thornton, LLP ("Grant Thornton"). This document was produced in this action with the bates label GT-SEC032441.

5. Attached as Exhibit C to this Affidavit is a true and correct copy of an e-mail attaching the August 1, 2012 draft representation letter from ALC to its auditor, Grant Thornton, LLP. This document was produced in this action with the bates label ALC_SEC00120686.

6. Attached as Exhibit D to this Affidavit is a true and correct copy of a November 2, 2012 email from Milbank attaching its revisions to ALC's draft management rep letter. This document was produced in this action with the bates label ALC_SEC00253548.

7. Attached as Exhibit E to this Affidavit is a true and correct copy of a document containing handwritten notes taken by Jeff Robinson of Grant Thornton. A copy of this document was produced in this action with the bates label GT-SEC00600230-240.

8. Attached as Exhibit F to this Affidavit is a true and correct copy of excerpts from ALC's November 2012 Form 10-Q.

9. Attached as Exhibit G to this Affidavit is a letter from Ropes & Gray, LLP to SEC Attorney Scott Tandy, which was attached as Exhibit 1 to the Enforcement Division's Response to the Court's Order Regarding Subpoenas to Produce.

10. Attached as Exhibit H to this Affidavit is a true and correct copy of the May 6, 2012 Engagement Letter from Milbank to the ALC Audit Committee. This document was produced in this action with the bates label ALC_SEC00065390.

Ryan S. Stippich

Subscribed and sworn to before me
this 2nd day of March, 2015

Notary Public, State of Wisconsin
My commission expires permanent

27693682

From: Goel, Asheesh [mailto:[redacted]
Sent: Wednesday, February 18, 2015 2:11 PM
To: Ryan S. Stippich; Shenoi, Sunil
Cc: Laboy, Lydia; Mark A. Cameli
Subject: RE: ALC Subpoena

Ryan, Thursday has evaporated for me unfortunately.

Perhaps we can discuss it during our meeting scheduled on Monday?

-----Original Message-----
From: Ryan S. Stippich [mailto:[redacted]
Sent: Wednesday, February 18, 2015 2:07 PM
To: Shenoi, Sunil
Cc: Goel, Asheesh; Laboy, Lydia; Mark A. Cameli
Subject: RE: ALC Subpoena

We are pretty flexible Thursday. Let us know some times that would work on your end.
-Ryan

-----Original Message-----
From: Shenoi, Sunil [mailto:[redacted]
Sent: Tuesday, February 17, 2015 12:08 PM
To: Ryan S. Stippich
Cc: Goel, Asheesh; Laboy, Lydia; Mark A. Cameli
Subject: Re: ALC Subpoena

Tomorrow is not going to work. Are you free on Thursday?

Sunil V. Shenoi
ROPES & GRAY LLP
[redacted]

EXHIBIT
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A

[redacted]
[redacted]
www.ropesgray.com

> On Feb 17, 2015, at 11:11 AM, Ryan S. Stippich [redacted] wrote:
>
> What does tomorrow afternoon, after 1:30 look like for you guys?
>
> -----Original Message-----
> From: Shenoi, Sunil [mailto[redacted]
> Sent: Monday, February 16, 2015 8:14 PM
> To: Ryan S. Stippich; Goel, Asheesh
> Cc: Laboy, Lydia; Mark A. Cameli
> Subject: RE: ALC Subpoena
>
> Ryan,
>
> Asheesh reached out to Mark on Friday to schedule a call to discuss the subpoena. We can give you an update this week by phone. Please let us know a time that is convenient for you and Mark.
>
> Thanks,
> Sunil
>
>
>
> Sunil V. Shenoi
> ROPES & GRAY LLP
[redacted]
> www.ropesgray.com
>
>
>
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>
> -----Original Message-----
> From: Ryan S. Stippich [mailto:[redacted]
> Sent: Monday, February 16, 2015 2:35 PM
> To: Shenoi, Sunil; Goel, Asheesh
> Cc: Laboy, Lydia; Mark A. Cameli
> Subject: RE: ALC Subpoena
>

> Please let us know your position with respect to our February 5 e-mail related to the document subpoena as soon as possible.
> Thanks,
> Ryan
>
> -----Original Message-----
> From: Shenoi, Sunil [mailto[redacted]
> Sent: Thursday, February 05, 2015 12:38 PM
> To: Ryan S. Stippich; Goel, Asheesh; Mark A. Cameli
> Cc: Laboy, Lydia
> Subject: RE: ALC Subpoena
>
> Thanks Ryan. We will discuss and get back to you.
>
> Best,
> Sunil
>
>
>
> Sunil V. Shenoi
> ROPES & GRAY LLP
> [redacted]
> www.ropesgray.com
>
>
>
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>
> -----Original Message-----
> From: Ryan S. Stippich [mailto:[redacted]
> Sent: Thursday, February 05, 2015 12:33 PM
> To: Goel, Asheesh; Mark A. Cameli; Shenoi, Sunil
> Cc: Laboy, Lydia
> Subject: RE: ALC Subpoena
>
> Asheesh and Sunil,
>
> Here are our thoughts with respect to anticipated production with respect to the subpoena issued by the ALJ at our request.
>
> We deem the following to be high importance or could be produced with minimal burden. Our hope is to receive some or all of these documents next week, if not by the 2/9 return date.
>
> (1) Documents related to Ms. Bebo's notepads and board books (Requests 1-6)
> (2) Documents regarding Party K/Party L (Requests 21-22)
> (3) Bebo's board materials (Request 26 - if in the materials produced to the SEC it would be fine if you could identify the location in lieu of re-producing the documents)
> (4) Herbner and Schelfout salary information (Requests 9-10)

> (5) Zaffke calendar for limited dates (Request 13)
> (6) Ms. Bebo's calendar (Request 12)
> (7) 350 box index (Request 23)
>
> I suspect we may need to discuss further some of the other requests. Here are our thoughts on a few of those items:
>
> -Ms. Bebo's outlook e-mail box. It is our hope that her e-mails have been processed into a database so that they could be searched. Thus, it would not be difficult to produce the entire mailbox to us, segregated from the rest of the materials. We would be willing to agree that production would not result in any waiver of ALC privilege that has not been previously waived. We think Ms. Bebo's laptop hard drive could be handled similarly with respect to any privilege concerns.
>
> -Internal investigation materials. We understand privilege has been waived, and it seems clear that directors were never individually represented in connection with or during the time period of the internal investigation (based on Milbank's letter to the SEC, which we presume you have seen but can be provided). And, in any event, the factual basis for the board's conclusion to take no action would not be privileged. Thus, we think documents responsive to request 18 through 20 could be produced in short order as well. Note, we have also been seeking Milbank's input on this in connection with a subpoena served upon them, but have not yet obtained it.
>
> -Director e-mails (Request 25). It is unclear to us the basis for any assertion of individual director privilege, particularly with respect to the time period of May 2012 to November 2012. Thus we think all e-mails during this time period or the time period prior to May 2012 should be produced forthwith. We can discuss how to handle e-mails during subsequent time periods early next week.
>
> Best regards,
> Ryan
>
> -----Original Message-----
> From: Goel, Asheesh [mailto:[redacted]
> Sent: Monday, February 02, 2015 12:27 PM
> To: Mark A. Cameli; Shenoi, Sunil; Ryan S. Stippich
> Cc: Laboy, Lydia
> Subject: RE: ALC call
>
> Thanks, Mark. I appreciate your willingness to do that.
>
>
>
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>
> -----Original Message-----
> From: Mark A. Cameli [mailto:[redacted]
> Sent: Monday, February 02, 2015 12:25 PM
> To: Goel, Asheesh; Shenoi, Sunil; Ryan S. Stippich
> Cc: Laboy, Lydia
> Subject: RE: ALC call
>
> Thanks Asheesh. We also don't want to create unnecessary work and we were hoping to determine how we could be most efficient in the request. We will send you a responsive email later today and hopefully we can get the ball the rolling. Mark.
>

> -----Original Message-----
> From: Goel, Asheesh [mailto:[redacted]
> Sent: Monday, February 02, 2015 12:20 PM
> To: Mark A. Cameli; Shenoi, Sunil; Ryan S. Stippich
> Cc: Laboy, Lydia
> Subject: RE: ALC call
>
> Mark - Apologies for the confusion. Maybe we could accomplish some pre-work via email. What we really wanted to discuss with you is your document subpoena on ALC. My impressions overall is that you are asking for a very large volume of material. We don't want to dump a huge volume of irrelevant or barely relevant material on you given that trial is just a few months away. Thus, we were hoping we could get a prioritized list of requests from you so we could focus on what you need the most, first. That way we can be efficient with time and costs associated with responding to your subpoena on ALC.
>
> We also wanted to update you on your requests for interviews. Two of the three people you have asked for no longer work at Enlivant. We can discuss making the third person available for an interview.
>
> A
>
>
>
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>
> -----Original Message-----
> From: Mark A. Cameli [mailto:[redacted]
> Sent: Monday, February 02, 2015 12:13 PM
> To: Shenoi, Sunil; Ryan S. Stippich; Goel, Asheesh
> Cc: Laboy, Lydia
> Subject: RE: ALC call
>
> Sunil
>
> When you mentioned on Thursday that you were unavailable for Monday, we filled the calendar. That said, we do have an opening at 3 today if that would work. I just called to discuss. Tomorrow not good? Mark.
>
> -----Original Message-----
> From: Shenoi, Sunil [mailto[redacted]
> Sent: Monday, February 02, 2015 11:24 AM
> To: Mark A. Cameli; Ryan S. Stippich; Goel, Asheesh
> Cc: Laboy, Lydia
> Subject: ALC call
>
> Mark - are you still able to talk today at 1pm? I have not seen any replies to the calendar invitation.
>
>
>
> Sunil V. Shenoi
> ROPES & GRAY LLP
> [redacted]

> [redacted]
> www.ropesgray.com
>
>
>
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> _____
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>
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>

MILBANK, TWEED, HADLEY & McCLOY LLP

1 CHASE MANHATTAN PLAZA

NEW YORK, N.Y. 10005-1413

212-530-5000

FAX: 212-530-5219

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FAX 213-629-5063

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202-835-7500
FAX 202-835-7586

LONDON
44-20 7615-3000
FAX 44-20 7615-3100

FRANKFURT
49 69 71914-3400
FAX 49-69 71914-3500

MUNICH
49-89-25559-3600
FAX 49-89-25559-3700

BEIJING
8610-5969-2700
FAX: 8610-5969-2707

HONG KONG
852-2971-4888
FAX: 852-2840-0792

SINGAPORE
65-6428-2400
FAX: 65-6428-2500

TOKYO
813-5410-2801
FAX: 813-5410-2891

SÃO PAULO
55-11-3927-7700
FAX: 55-11-3927-7777

August 2, 2012

Grant Thornton LLP
[redacted]

Attn: Alyssa Oberst

Re: Assisted Living Concepts, Inc.

Ladies and Gentlemen:

This letter is in response to the letter dated July 23, 2012, from Mary Zak-Kowalczyk, Vice President and Corporate Secretary of Assisted Living Concepts, Inc. (the "Company"), a copy of which is enclosed for your records. We advise you as follows in connection with your interim review of the financial statements of the Company as at June 30, 2012 and for the 3 months and 6 months then ended.

1. Scope of Engagement: We call your attention to the fact that our representation of the Company is limited to the specific matters brought to our attention by the Company from time to time and that there may be many matters of a legal nature involving the Company which could have a bearing on the Company's financial condition with respect to which we have not been consulted.

2. Information: Our response is limited to matters involving professional engagement of this firm as counsel and does not include information received by lawyers in this firm in any other role. We disclaim responsibility to comment on any matters to which any lawyer of our firm may have given substantive attention prior to joining our firm but to which substantive attention has not been given by that lawyer after joining our firm. This letter sets forth information (subject to the qualifications and limitations set forth or referred to in this letter) only with respect to matters which existed as of June 30, 2012 and during the 6 months

CONFIDENTIAL TREATMENT IS
REQUESTED FOR THIS INFORMATION
BY GRANT THORNTON LLP
[redacted]

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then ended, and during the period up to August 2, 2012, and we disclaim any undertaking to advise you of changes which thereafter may be brought to our attention unless you should specifically request such information in writing.

3. Response: Subject to the qualifications and limitations set forth or referred to in this letter, we advise you that since January 1, 2012, we have not been engaged to give substantive attention to, or represent the Company in connection with, material loss contingencies coming within the scope of clause (a) of Paragraph 5 of the Statement of Policy (as defined in paragraph 5 of this letter), except as follows:

Audit Committee Investigation of Alleged Accounting Irregularities Relating to Lease with Ventas Realty Limited Partnership. We are assisting the Audit Committee of the Company's Board of Directors in investigating allegations communicated to the Company confidentially regarding possible accounting irregularities relating to compliance by the Company and subsidiaries with certain covenants under the former Master Lease between Ventas Realty Limited Partnership ("Ventas"), as landlord, and certain of the Company's subsidiaries, as tenants, and the Company, as guarantor. The investigation is continuing, and it therefore would be inappropriate for us to comment in further detail or to speculate as to the likely outcome prior to completion. We note, however, that in connection with the Company's settlement of the litigation initiated by Ventas, mentioned below, and the Company's purchase of certain properties from Ventas, Ventas has released the Company and its affiliates from liability, if any, that might arise or might have arisen under the Master Lease by reason of the matters which are the subject of the Audit Committee investigation.

Laurie Bebo, *plaintiff*, v. Assisted Living Concepts, Inc., *defendant*, Case No. 12CV02039, Circuit Court, Waukesha County, Wisconsin. Plaintiff, the former CEO of the Company and a former director of the Company, filed this action on June 29, 2012 purporting to enforce claimed rights as a director of the Company. She alleges three causes of action, seeking: (1) inspection of corporate books and records of the Company; (2) indemnification by the Company of legal fees and expenses allegedly incurred by plaintiff in connection with the aforementioned investigation being conducted by the Company's Audit Committee; and (3) advancement of legal fees and expenses allegedly incurred by plaintiff in connection with the investigation being conducted by the Company's Audit Committee. On July 19, 2012, the Company filed a motion to dismiss the complaint, which motion is now scheduled to be heard in September 2012. In light of the early stage of the action, and in view of the uncertainties inherent in litigation, we cannot offer a view on the likely outcome at this time.

Laurie Bebo, *claimant*, v. Assisted Living Concepts, Inc., *respondent*, Case No. 51 166 00857 12, American Arbitration Association, Milwaukee, Wisconsin. Claimant initiated this arbitration proceeding on June 29, 2012. Her demand for arbitration asserts that the Company did not have good cause to terminate her employment as CEO and terminated her employment without cause and in violation of "public policy." Claimant demands severance pay allegedly owing under her employment contract in the case of a "without cause" termination of more than $2.4 million. The Company's answer is presently due on August 10, 2012, and the Company presently intends to assert a counterclaim against claimant at that time. In light of the early stage of the arbitration

and view of the uncertainties inherent in litigation, we cannot offer a view on the likely outcome at this time.

Based upon our representation of the Company in connection with the specific matters brought to our attention by the Company from time to time, we understand that the Company is, or during the period at issue was, subject to pending or threatened litigation, claims or assessments, consisting of license revocation proceedings initiated by the States of Georgia and Alabama, and breach of contract litigation—now resolved—filed in the United States District Court for the Northern District of Illinois against the Company and certain of its subsidiaries by Ventas. We have not been engaged by the Company to represent it in connection with such litigation, claims or assessments, and we do not express a view as to the outcome of these contingencies. We understand that the Company has retained separate counsel with respect to such matters. We suggest you contact the Company for the names of such counsel if you wish to obtain information concerning such litigation, claims or assessments.

Please be advised that pursuant to clauses (b) and (c) of Paragraph 5 of the ABA Statement of Policy and related commentary referred to in paragraph 5 of this letter, it would be inappropriate for this firm to respond to a general inquiry relating to the existence of unasserted possible claims or assessments involving the Company. We can furnish information concerning only those unasserted possible claims or assessments upon which the Company has specifically requested, in writing, that we comment, and we cannot comment upon the adequacy of the Company's listing, if any, of unasserted possible claims or assessments or its assertions concerning the advice, if any, about the need to disclose the same.

There being no matters specifically identified in Ms. Zak-Kowalczyk's July 23, 2012 letter and upon which comment has been specifically requested, as contemplated by clauses (b) and (c) of Paragraph 5 of the Statement of Policy, we are not commenting to you with respect to contractually assumed obligations or unasserted possible claims or assessments but rather will be guided by paragraph 5 of this letter.

4. Amounts Due: As of June 30, 2012, accrued time charges and disbursements for all matters involving the Company, including billed and unbilled amounts, were approximately $297,892.12, consisting of $280,965.00 in time charges and $16,927.12 in disbursements. None of those charges remain outstanding as of August 2, 2012.

5. ABA Statement of Policy: The American Bar Association adopted a Statement of Policy in December 1975 relating to lawyers' responses to auditors' requests for information (herein called the "Statement of Policy", which term as used herein includes the accompanying commentary, which is an integral part of the Statement of Policy). The Statement of Policy has been furnished to the accounting profession as Exhibit II to the Statement on Auditing Standards No. 12, "Inquiry of a Client's Lawyer Concerning Litigation, Claims, and Assessments", issued by the Auditing Standards Executive Committee of the American Institute of Certified Public Accountants in January, 1976. This letter and all other communications, written or oral, from this firm to you on the subject matter of this letter, are limited by, and in accordance with, the Statement of Policy; without limiting the generality of the foregoing, the limitations set forth in the Statement of Policy on the scope and use of this response (Paragraphs

2 and 7) are specifically incorporated herein by reference, and any description herein of any "loss contingencies" is qualified in its entirety by Paragraph 5 of the Statement of Policy. Consistent with the last sentence of Paragraph 6 of the Statement of Policy and pursuant to the Company's request, this will confirm as correct the Company's understanding as set forth in Ms. Zak-Kowalczyk's letter of July 23, 2012 that whenever, in the course of performing legal services for the Company with respect to a matter recognized to involve an unasserted possible claim or assessment that may call for financial statement disclosure, we have formed a professional conclusion that the Company must disclose or consider disclosure concerning such possible claim or assessment, we, as a matter of professional responsibility to the Company, will so advise the Company and will consult with the Company concerning the question of such disclosure and the applicable requirements of Statement of Financial Accounting Standards No. 5, now codified as FASB Accounting Standards Codification Subtopic 450-20, Contingencies – Loss Contingencies.

6. Privilege. The Company has advised us that, by making the request set forth in Ms. Zak-Kowalczyk's letter of July 23, 2012, the Company does not intend to waive the attorney-client privilege or the attorney work-product immunity with respect to any information which the Company has furnished to us or any advice we have furnished to the Company. Moreover, please be advised that our response to you should not be construed in any way to constitute a waiver of the protection of the attorney work-product immunity with respect to any of our files involving the Company.

Very truly yours,

Milbank, Tweed, Hadley & McCloy LLP

MLH/TA

cc: Mary Zak-Kowalczyk, Esq.

#4847-4020-8400

Assisted Living Concepts, Inc.

July 23, 2012

Michael L. Hirschfeld
Milb
[redacted]

Dear Sir:

In connection with an interim review of our financial statements at June 30, 2012 and for the 3 months and 6 months then ended, please furnish to our independent auditors, Grant Thornton LLP, information involving matters with respect to which you have been engaged and to which you have devoted substantive attention on behalf of the Company in the form of legal consultation or representation.

Your response should include matters that existed at June 30, 2012 and during the period from that date to the date of your response. To facilitate the evaluation of your response by our auditors, please respond by August 2, 2012. They would appreciate receiving your reply by that date with a specified effective date no earlier than July 31, 2012.

Pending or Threatened Litigation

Please furnish details of any litigation or lawsuits in which the company is involved directly or indirectly, and of any claims asserted against this company even though legal proceedings have not started, including: (1) the nature of the pending or threatened litigation, (2) the progress of the matter to date, (3) the response which is being made or which will be made to the matter, and (4) an evaluation of the likelihood of an unfavorable outcome and an estimate, if one can be made, of the amount or range of potential loss.

Unasserted Claims and Assessments

Management of the company believes that there are no unasserted claims which are probable of assertion or which, if asserted, would have at least a reasonable possibility of an unfavorable outcome.

We understand that whenever, in the course of providing legal services for us with respect to a matter recognized to involve an unasserted possible claim or assessment that may call for financial statement disclosure, if you have formed a professional conclusion that we should disclose or consider disclosure concerning such possible claim or assessment, as a matter of professional responsibility to us, you will so advise us and will consult with us concerning the question of such disclosure and the applicable requirements of Statement of Financial Accounting Standards No. 5. Please specifically confirm to our auditors that our understanding is correct.

We also inform you that we have represented to our auditors that there are no unasserted possible claims that you have advised are probable of assertion and must be disclosed in accordance with

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We also inform you that we have represented to our auditors that there are no unasserted possible claims that you have advised are probable of assertion and must be disclosed in accordance with Statement of Financial Accounting Standards No. 5 in our financial statements at June 30, 2012 and for the year then ended.

Please specifically identify the nature and reasons for any limitation on your response.

Other Matters

We do not intend that either our request to you to provide information to our auditor or your response to our auditor should be construed in any way to constitute a waiver of the attorney - client privilege or the attorney work - product privilege.

Please furnish our auditors:

1. Information about any financing statements filed under the Uniform Commercial Code or any other assignment of the company's assets.
2. Amounts due you, if any, for services and expenses, whether billed or unbilled as of June 30, 2012.

A business reply envelope is enclosed for your convenienc[redacted]n replying directly to Grant Thornton LLP, Certified Public Accountants, Alyssa Oberst, [redacted]

Very truly yours,

Mary L. Zak-Kowalczyk

Mary Zak-Kowalczyk
Vice President and Corporate Secretary
Assisted Living Concepts, Inc

W1 10 N894 Lilly Road • Menomonee Falls, WI 53051-2325 • Office: (262) 257-8888 • Toll Free: (888) 252-5001 • Fax: (262) 251-7562
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From: Alan Bell [redacted]
Sent: Wednesday, August 1, 2012 4:39 PM
To: [redacted]
Subject: Management Rep Letter
Attach: WS_BinaryComparison_#8062278v1_WSLegal_ - Mgmt rep letter v1-#8062278v3_WSLegal_ - Mgmt rep letter v3.pdf; #8062278v3_WSLegal_ - Mgmt rep letter v3.DOC

Jeff/Amy,

Attached is a clean and a blacklined revised draft. Malen and I have concluded it is acceptable although we have not heard from all necessary persons.

Best,
Alan

Date of our report or, if no report, the date of completion of our procedures

Grant Thornton LLP

[redacted]

Dear Sir or Madam:

We are providing this letter in connection with your review of the consolidated interim financial statements of Assisted Living Concepts, Inc. and its subsidiaries (collectively, the "Company") as of June 30, 2012 and December 31, 2011 and for each of the three months and six months ended June 30, 2012 and 2011 ("Interim Financial Statements" or "IFS") for the purpose of determining whether any material modifications should be made to the consolidated interim financial statements for them to conform with accounting principles generally accepted in the United States of America ("US GAAP"). We understand that your review was made in accordance with the Public Company Accounting Oversight Board's ("PCAOB") standards applicable to reviews of interim financial information. We confirm that we are responsible for the fair presentation in the consolidated interim financial statements of financial position, results of operations, and cash flows in conformity with US GAAP. We also acknowledge our responsibility for establishing and maintaining effective internal control over financial reporting, including designing and implementing programs and controls to prevent and detect fraud.

Certain representations in this letter are described as being limited to matters that are material. Items are considered to be material, regardless of size, if they involve an omission or misstatement of accounting information that, in light of the surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would be changed or influenced by the omission or misstatement.

We confirm, to the best of our knowledge and belief, as of {date of our report or date of completion of the interim review procedures}, the following representations made to you during your reviews. These representations are subject to matters disclosed in the Company's ~~previously filed~~**materials filed with the Securities and Exchange Commission since January 1, 2012 including** Form 12(b)-25 and ~~Current~~ Reports on Form 8-K and the matters disclosed or included the Company's ~~Current Report~~**Reports** on Form 10-Q ~~for the period ended June 30, 2012,~~ as well as items outlined within this letter. We also note that, as publicly disclosed, the Company's Audit Committee is still investigating possible irregularities relating to the Company's **former** lease with Ventas. Management is aware that units leased to employees at facilities subject to the Ventas lease were treated as bonafide rentals by third parties; however, management does not believe that this practice or management's or employees' involvement in such practice involve irregularities.

1. The interim financial statements referred to above have been prepared and are fairly presented in conformity with US GAAP applicable to interim financial statements.

2. We have made available to you all:
   a. Financial records and related data.

b. Minutes of the meetings of stockholders, directors and committees of directors, or summaries of actions of recent meetings for which minutes have not yet been prepared. All significant board and committee actions are included in the summaries.

3. Except for the following, there have been no communications, written or oral, from regulatory agencies or others concerning noncompliance with, or deficiencies in, financial reporting practices. In a memo dated April 3, 2012 from Alan Bell, Re: ALC Developments, indications were made that the "...compliance certificate re: patient revenue is clearly wrong." Management believes that these certificates were appropriate under the terms of the lease.

4. No amount of the accounting support fees assessed by the Public Company Accounting Oversight Board is past due.

5. There are no material transactions that have not been properly recorded in the accounting records underlying the interim financial statements. The adjusting journal entries for the period ended June 30, 2012, which have been proposed by you, are approved by us and will be recorded on the Company's books and records.

6. We believe that the effects of the uncorrected financial statement misstatements, including omitted disclosures aggregated by you during the current review engagement and pertaining to the interim periods in the current year, as summarized in the accompanying schedule, are immaterial, both individually and in the aggregate, to the interim financial statements taken as a whole.

7. There were no significant changes in the design or operation of internal control over financial reporting, as it relates to the preparation of annual as well as interim financial information, that have occurred subsequent to December 31, 2011.

8. We have disclosed to you all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting. We understand that a material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the Company's annual or interim financial statements will not be prevented or detected on a timely basis. A significant deficiency is a deficiency, or a combination of deficiencies, in internal control over financial reporting that is less severe than a material weakness, yet important enough to merit attention by those responsible for oversight of the Company's financial reporting.

9. Except for the matters discussed in the introductory paragraphs of this letter and item ~~28~~**29**, Management is not aware of fraud or suspected fraud affecting the Company involving management, employees who have significant roles in internal control, or others where the fraud could have a material effect on the interim financial statements.

10. We have communicated to you all allegations of fraud or suspected fraud affecting the Company received in communications from employees, former employees, analysts, regulators, short sellers or others.

11. The **Board has established a Facility Strategic Review Committee which will be reviewing various strategic alternatives in respect of certain facilities on both a jurisdictional and individual basis.**

As the Committee has not to date commenced this review, the Company has no plans or intentions that may materially affect the carrying value or classification of assets and liabilities.

12. Related party relationships and transactions and related amounts receivable or payable, including sales, purchases, loans, transfers, leasing arrangements and guarantees have been properly recorded or disclosed in the interim financial statements.

    We understand that "related parties" include (1) affiliates of the entity; (2) entities for which investments in their equity securities would be required to be accounted for by the equity method by the investing entity; (3) trusts for the benefit of employees, such as pension and profit-sharing trusts that are managed by or under the trusteeship of management; (4) principal owners of the entity and members of their immediate families; and (5) management of the entity and members of their immediate families.

    Related parties also include (1) other parties with which the entity may deal if one party controls or can significantly influence the management or operating policies of the other to an extent that one of the transacting parties might be prevented from fully pursuing its own separate interests; and (2) other parties that can significantly influence the management or operating policies of the transacting parties or that have an ownership interest in one of the transacting parties and can significantly influence the other to an extent that one or more of the transacting parties might be prevented from fully pursuing its own separate interests.

13. Guarantees, whether written or oral, under which the Company is contingently liable have been properly recorded or disclosed in the interim financial statements.

14. Significant estimates and material concentrations known to management that are required to be disclosed in accordance with *FASB Accounting Standards Codification*™ (ASC) 275, *Risks and Uncertainties*, are properly disclosed in the interim financial statements.

    Significant estimates are estimates at the balance sheet date which could change materially within the next year. Concentrations refer to volumes of business, revenues, available sources of supply, or markets or geographic areas for which events could occur which would significantly disrupt normal finances within the next year.

15. Except for the matters discussed in the introductory paragraphs of this letter and item 29, Management is not aware of any information indicating that an illegal act, or violations or possible violations of any regulations, has or may have occurred, whether or not perceived to have a material effect on the Interim Financial Statements or as a basis for recording a loss contingency.

    There are no unasserted claims or assessments that our lawyer has advised us are probable of assertion and must be disclosed in accordance with ASC 450, *Contingencies*.

    There are no other liabilities or gain or loss contingencies that are required to be accrued or disclosed by ASC 450.

16. The Company has satisfactory title to all owned assets, and there are no liens or encumbrances on such assets nor has any asset been pledged as collateral, other than what has been disclosed.

17. Subject to the further discussion in item ~~28~~29 below, the Company has complied with all aspects of contractual agreements that would have a material effect on the interim financial statements in the event of a noncompliance.

18. The methods and significant assumptions used to determine fair values of financial instruments are as follows:

    The Company considers the carrying amount of cash and cash equivalents, accounts receivable and accounts payable to approximate fair value because of the short maturities of these financial instruments. The fair value of the debt instruments are based on the approximate borrowing rates currently available to the Company for debt equal to the existing maturities. Investment securities are recorded at fair value based on quoted market prices using public information for the issuers.

    The methods and significant assumptions used have been consistently applied and result in a measure of fair value appropriate for financial measurement and disclosure purposes. In addition, to the best of our knowledge and belief, there have been no subsequent events through the date of this letter that would require adjustment to the fair value measurements and disclosures included in the interim financial statements.

19. Arrangements with financial institutions involving compensating balances or other arrangements involving restrictions on cash balances, line of credit, or similar arrangements have been properly disclosed.

20. Capital stock repurchase options or agreements or capital stock reserved for options, warrants, conversions, or other requirements have been properly disclosed.

21. Management believes that the assumptions used in the projections of the future taxable income that support realization of the Company's deferred tax assets are reasonable and consistent with its public disclosures or statements.

22. Tax planning strategies included in the Company's analysis of the realizability of its deferred tax assets are actions that management would take to realize a tax benefit for deductible temporary differences and carry forwards.

23. We believe that the accrual for bonuses recorded as of June 30, 2012 is adequate and reasonable.

24. Receivables recorded in the financial statements represent valid claims against debtors for services or other charges arising on or before the balance sheet date and appropriate reserves have been provided to account for their estimated net realizable value.

25. The asset retirement obligation is being accreted to management's best estimate of fair value as of June 30, 2012.

26. No events have occurred subsequent to the balance sheet date and through the date of this letter that would require recognition or disclosure in the aforementioned interim financial statements or the previous year's annual financial statements, except as disclosed in Note ~~10~~• of IFS.

27. There have been no changes in internal control over financial reporting or other factors that might significantly affect internal control over financial reporting, including corrective actions taken by management with regard to significant deficiencies and material weaknesses, subsequent to the balance sheet date and through the date of this letter.

28. PLACEHOLDER (to be tweaked upon final accounting): The costs associated with the Ventas purchase have been allocated based on appraisals, with the remainder representing a settlement of litigation and lease termination fees.

29. The Company operates a number of facilities which it formerly leased from Ventas. With regard to these leased facilities:

    a. We have disclosed to you all notifications, agreements, contracts or other documentation in connection with notices to revoke the facilities' operating licenses. The corresponding communications between Ventas and the Company are properly summarized as to chronology and content in the attached memorandum ("Ventas Memo") through April 26, 2012. Our attorneys have advised us that as of March 31, 2012 any events of default which have arisen are not actionable. In addition, as of March 31, 2012, the Company had not been notified by Ventas that it was their intention to take any action, other than to reserve their rights under the lease regarding the leased facilities.

    b. On May 9, 2012, the Company received a letter from Ventas asserting additional covenant violations under the terms of the lease and Ventas amended its filings to include certain of these matters on May 10, 2012. The disclosures in the financial statements for the period ended March 31, 2012 appropriately describe this matter. ~~As of the date of this letter, the Company is involved in discussions with Ventas to resolve these issues.~~

    c. Separately and under the direction of the Company's Audit Committee, the Company is involved in an investigation of certain matters associated with the Ventas lease covenants. We are not aware of any matters that have been discovered in the investigation, through the date of this letter, that would cause us to believe the March 31, 2012 or previously issued financial statements are not in accordance with US GAAP.

    d. Based on the facts described above and the attached memorandum and guidance as provided in ASC 450, *Contingencies*, and ASC 420, *Exit or Disposal Cost Obligations*, accrual of costs associated with defaults under the lease, if any, is not appropriate at March 31, 2012.

    e. We have made available to you:

    (1) all materials filed by and correspondence between the Company and Ventas and their respective counsel pertaining to an action commenced by Ventas in respect of the Ventas lease captioned *Ventas Realty, Limited Partnership v. ALC CVMA, LLC, et al.*, 12-cv-03107 (and as at the date of this letter terminated), and

    (2) copies of all written notices from and correspondence to and from the Company and the regulatory bodies of various States relating to the operation or conduct of the

facilities in respect of alleged non-compliance by the Company in connection with licensing, statutory or regulatory matters.

30. The Company confirms it has previously sent you a letter dated June 13, 2012 from the Securities and Exchange Commission.

Very truly yours,

ASSISTED LIVING CONCEPTS, INC.

_____

Charles H. Roadman II, MD ("Roadman")
President and Chief Executive Officer provided that it is understood that in respect of the last sentence, third paragraph of the first page and the last sentence of paragraph number 3 on page 2, Roadman (a) is not included in the term "Management", and (b) has no knowledge of the matters referred to therein.

_____

John Buono
Senior Vice President, Chief Financial Officer and Treasurer

_____

Walter Levonowich, Vice President and Corporate Controller, subject to my limited knowledge as to the topic of the Company's lease with Ventas, including but not limited to Paragraph ~~28~~29 of this letter, and the last sentence of the third paragraph of this letter which is based solely upon management's prior communications with Ventas regarding such practices and communications from Quarles and Brady, the Company's counsel.

Document comparison by Workshare Professional on 01 August 2012 3:07:15 PM

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Rendering set	standard

Legend:	
Insertion	
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Format change	
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Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	23
Deletions	15
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	38

Date of our report or, if no report, the date of completion of our procedures

Grant Thornton LLP

[redacted]

Dear Sir or Madam:

We are providing this letter in connection with your review of the consolidated interim financial statements of Assisted Living Concepts, Inc. and its subsidiaries (collectively, the "Company") as of June 30, 2012 and December 31, 2011 and for each of the three months and six months ended June 30, 2012 and 2011 ("Interim Financial Statements" or "IFS") for the purpose of determining whether any material modifications should be made to the consolidated interim financial statements for them to conform with accounting principles generally accepted in the United States of America ("US GAAP"). We understand that your review was made in accordance with the Public Company Accounting Oversight Board's ("PCAOB") standards applicable to reviews of interim financial information. We confirm that we are responsible for the fair presentation in the consolidated interim financial statements of financial position, results of operations, and cash flows in conformity with US GAAP. We also acknowledge our responsibility for establishing and maintaining effective internal control over financial reporting, including designing and implementing programs and controls to prevent and detect fraud.

Certain representations in this letter are described as being limited to matters that are material. Items are considered to be material, regardless of size, if they involve an omission or misstatement of accounting information that, in light of the surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would be changed or influenced by the omission or misstatement.

We confirm, to the best of our knowledge and belief, as of (date of our report or date of completion of the interim review procedures), the following representations made to you during your review. These representations are subject to matters disclosed in the Company's materials filed with the Securities and Exchange Commission since January 1, 2012 including Form 12(b)-25 and Reports on Form 8-K and the matters disclosed or included the Company's Reports on Form 10-Q, as well as items outlined within this letter. We also note that, as publicly disclosed, the Company's Audit Committee is still investigating possible irregularities relating to the Company's former lease with Ventas. Management is aware that units leased to employees at facilities subject to the Ventas lease were treated as bonafide rentals by third parties; however, management does not believe that this practice or management's or employees' involvement in such practice involve irregularities.

1. The interim financial statements referred to above have been prepared and are fairly presented in conformity with US GAAP applicable to interim financial statements.

2. We have made available to you all:
   a. Financial records and related data.

b. Minutes of the meetings of stockholders, directors and committees of directors, or summaries of actions of recent meetings for which minutes have not yet been prepared. All significant board and committee actions are included in the summaries.

3. Except for the following, there have been no communications, written or oral, from regulatory agencies or others concerning noncompliance with, or deficiencies in, financial reporting practices. In a memo dated April 3, 2012 from Alan Bell, Re: ALC Developments, indications were made that the "...compliance certificate re: patient revenue is clearly wrong." Management believes that these certificates were appropriate under the terms of the lease.

4. No amount of the accounting support fees assessed by the Public Company Accounting Oversight Board is past due.

5. There are no material transactions that have not been properly recorded in the accounting records underlying the interim financial statements. The adjusting journal entries for the period ended June 30, 2012, which have been proposed by you, are approved by us and will be recorded on the Company's books and records.

6. We believe that the effects of the uncorrected financial statement misstatements, including omitted disclosures aggregated by you during the current review engagement and pertaining to the interim periods in the current year, as summarized in the accompanying schedule, are immaterial, both individually and in the aggregate, to the interim financial statements taken as a whole.

7. There were no significant changes in the design or operation of internal control over financial reporting, as it relates to the preparation of annual as well as interim financial information, that have occurred subsequent to December 31, 2011.

8. We have disclosed to you all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting. We understand that a material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the Company's annual or interim financial statements will not be prevented or detected on a timely basis. A significant deficiency is a deficiency, or a combination of deficiencies, in internal control over financial reporting that is less severe than a material weakness, yet important enough to merit attention by those responsible for oversight of the Company's financial reporting.

9. Except for the matters discussed in the introductory paragraphs of this letter and item 29, Management is not aware of fraud or suspected fraud affecting the Company involving management, employees who have significant roles in internal control, or others where the fraud could have a material effect on the interim financial statements.

10. We have communicated to you all allegations of fraud or suspected fraud affecting the Company received in communications from employees, former employees, analysts, regulators, short sellers or others.

11. The Board has established a Facility Strategic Review Committee which will be reviewing various strategic alternatives in respect of certain facilities on both a jurisdictional and individual basis. As the

Committee has not to date commenced this review, the Company has no plans or intentions that may materially affect the carrying value or classification of assets and liabilities.

12. Related party relationships and transactions and related amounts receivable or payable, including sales, purchases, loans, transfers, leasing arrangements and guarantees have been properly recorded or disclosed in the interim financial statements.

    We understand that "related parties" include (1) affiliates of the entity; (2) entities for which investments in their equity securities would be required to be accounted for by the equity method by the investing entity; (3) trusts for the benefit of employees, such as pension and profit-sharing trusts that are managed by or under the trusteeship of management; (4) principal owners of the entity and members of their immediate families; and (5) management of the entity and members of their immediate families.

    Related parties also include (1) other parties with which the entity may deal if one party controls or can significantly influence the management or operating policies of the other to an extent that one of the transacting parties might be prevented from fully pursuing its own separate interests; and (2) other parties that can significantly influence the management or operating policies of the transacting parties or that have an ownership interest in one of the transacting parties and can significantly influence the other to an extent that one or more of the transacting parties might be prevented from fully pursuing its own separate interests.

13. Guarantees, whether written or oral, under which the Company is contingently liable have been properly recorded or disclosed in the interim financial statements.

14. Significant estimates and material concentrations known to management that are required to be disclosed in accordance with *FASB Accounting Standards Codification*™ (ASC) 275, *Risks and Uncertainties,* are properly disclosed in the interim financial statements.

    Significant estimates are estimates at the balance sheet date which could change materially within the next year. Concentrations refer to volumes of business, revenues, available sources of supply, or markets or geographic areas for which events could occur which would significantly disrupt normal finances within the next year.

15. Except for the matters discussed in the introductory paragraphs of this letter and item 29, Management is not aware of any information indicating that an illegal act, or violations or possible violations of any regulations, has or may have occurred, whether or not perceived to have a material effect on the Interim Financial Statements or as a basis for recording a loss contingency.

    There are no unasserted claims or assessments that our lawyer has advised us are probable of assertion and must be disclosed in accordance with ASC 450, *Contingencies.*

    There are no other liabilities or gain or loss contingencies that are required to be accrued or disclosed by ASC 450.

16. The Company has satisfactory title to all owned assets, and there are no liens or encumbrances on such assets nor has any asset been pledged as collateral, other than what has been disclosed.

17. Subject to the further discussion in item 29 below, the Company has complied with all aspects of contractual agreements that would have a material effect on the interim financial statements in the event of a noncompliance.

18. The methods and significant assumptions used to determine fair values of financial instruments are as follows:

    The Company considers the carrying amount of cash and cash equivalents, accounts receivable and accounts payable to approximate fair value because of the short maturities of these financial instruments. The fair value of the debt instruments are based on the approximate borrowing rates currently available to the Company for debt equal to the existing maturities. Investment securities are recorded at fair value based on quoted market prices using public information for the issuers.

    The methods and significant assumptions used have been consistently applied and result in a measure of fair value appropriate for financial measurement and disclosure purposes. In addition, to the best of our knowledge and belief, there have been no subsequent events through the date of this letter that would require adjustment to the fair value measurements and disclosures included in the interim financial statements.

19. Arrangements with financial institutions involving compensating balances or other arrangements involving restrictions on cash balances, line of credit, or similar arrangements have been properly disclosed.

20. Capital stock repurchase options or agreements or capital stock reserved for options, warrants, conversions, or other requirements have been properly disclosed.

21. Management believes that the assumptions used in the projections of the future taxable income that support realization of the Company's deferred tax assets are reasonable and consistent with its public disclosures or statements.

22. Tax planning strategies included in the Company's analysis of the realizability of its deferred tax assets are actions that management would take to realize a tax benefit for deductible temporary differences and carry forwards.

23. We believe that the accrual for bonuses recorded as of June 30, 2012 is adequate and reasonable.

24. Receivables recorded in the financial statements represent valid claims against debtors for services or other charges arising on or before the balance sheet date and appropriate reserves have been provided to account for their estimated net realizable value.

25. The asset retirement obligation is being accreted to management's best estimate of fair value as of June 30, 2012.

26. No events have occurred subsequent to the balance sheet date and through the date of this letter that would require recognition or disclosure in the aforementioned interim financial statements or the previous year's annual financial statements, except as disclosed in Note • of IFS.

27. There have been no changes in internal control over financial reporting or other factors that might significantly affect internal control over financial reporting, including corrective actions taken by management with regard to significant deficiencies and material weaknesses, subsequent to the balance sheet date and through the date of this letter.

28. PLACEHOLDER (to be tweaked upon final accounting): The cost associated with the Ventas purchase have been allocated based on appraisals, with the remainder representing a settlement of litigation and lease termination fees.

29. The Company operates a number of facilities which it formerly leased from Ventas. With regard to these leased facilities:

    a. We have disclosed to you all notifications, agreements, contracts or other documentation in connection with notices to revoke the facilities' operating licenses. The corresponding communications between Ventas and the Company are properly summarized as to chronology and content in the attached memorandum ("Ventas Memo") through April 26, 2012. Our attorneys have advised us that as of March 31, 2012 any events of default which have arisen are not actionable. In addition, as of March 31, 2012, the Company had not been notified by Ventas that it was their intention to take any action, other than to reserve their rights under the lease regarding the leased facilities.

    b. On May 9, 2012, the Company received a letter from Ventas asserting additional covenant violations under the terms of the lease and Ventas amended its filings to include certain of these matters on May 10, 2012. The disclosures in the financial statements for the period ended March 31, 2012 appropriately describe this matter.

    c. Separately and under the direction of the Company's Audit Committee, the Company is involved in an investigation of certain matters associated with the Ventas lease covenants. We are not aware of any matters that have been discovered in the investigation, through the date of this letter, that would cause us to believe the March 31, 2012 or previously issued financial statements are not in accordance with US GAAP.

    d. Based on the facts described above and the attached memorandum and guidance as provided in ASC 450, *Contingencies,* and ASC 420, *Exit or Disposal Cost Obligations,* accrual of costs associated with defaults under the lease, if any, is not appropriate at March 31, 2012.

    e. We have made available to you:

        (1) all materials filed by and correspondence between the Company and Ventas and their respective counsel pertaining to an action commenced by Ventas in respect of the Ventas lease captioned *Ventas Realty, Limited Partnership v. ALC CVMA, LLC, et al.*, 12-cv-03107 (and as at the date of this letter terminated), and

        (2) copies of all written notices from and correspondence to and from the Company and the regulatory bodies of various States relating to the operation or conduct of the facilities in

respect of alleged non-compliance by the Company in connection with licensing, statutory or regulatory matters.

30. The Company confirms it has previously sent you a letter dated June 13, 2012 from the Securities and Exchange Commission.

Very truly yours,

ASSISTED LIVING CONCEPTS, INC.

_____

Charles H. Roadman II, MD ("Roadman")
President and Chief Executive Officer provided that it is understood that in respect of the last sentence, third paragraph of the first page and the last sentence of paragraph number 3 on page 2, Roadman (a) is not included in the term "Management", and (b) has no knowledge of the matters referred to therein.

_____

John Buono
Senior Vice President, Chief Financial Officer and Treasurer

_____

Walter Levonowich, Vice President and Corporate Controller, subject to my limited knowledge as to the topic of the Company's lease with Ventas, including but not limited to Paragraph 29 of this letter, and the last sentence of the third paragraph of this letter which is based solely upon management's prior communications with Ventas regarding such practices and communications from Quarles and Brady, the Company's counsel.

From: Roadman, Charles [redacted]
Sent: Saturday, November 3, 2012 1:51 PM
To: Alan Bell [redacted]
Subject: FW: Management Rep Letter
Attach: November 2012 mgmt rep letter(1).doc; ATT00001..htm; Change-Pro Redline - November 2012 mgmt rep letter(2) and November 2012 mgmt rep letter(1).doc; ATT00002..htm

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Alan, sorry to dribble this in on you. This may help in the history
chip

From: Charles Roadman [redacted]
Date: Friday, November 2, 2012 12:13 PM
To: "Roadman, Charles" [redacted]
Subject: Fwd: Management Rep Letter

CHIP

Sent from my iPhone
Charles H. Roadman II, MD
Lt. General USAF (Ret
[redacted]

Begin forwarded message:

From: "Arena, Thomas" [redacted]
Date: November 2, 2012,
To: [redacted]
Subject: Management Rep Letter

Malen: Attached is a clean version of the revised management rep letter and a redline showing changes from the original Grant Thornton draft. Best, Tom

Milbank
Litigation
Thomas A. Arena
[redacted]

EXHIBIT
tabbies
D

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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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November 6, 2012

Grant Thornton LLP
[redacted]

Dear Sir or Madam:

We are providing this letter in connection with your review of the consolidated interim financial statements of Assisted Living Concepts, Inc. and its subsidiaries (collectively, the "Company") as of September 30, 2012 and December 31, 2011 and for each of the three months and nine months ended September 30, 2012 and 2011 ("Interim Financial Statements" or "IFS") for the purpose of determining whether any material modifications should be made to the consolidated interim financial statements for them to conform with accounting principles generally accepted in the United States of America ("US GAAP"). We understand that your review was made in accordance with the Public Company Accounting Oversight Board's ("PCAOB") standards applicable to reviews of interim financial information. We confirm that we are responsible for the fair presentation in the consolidated interim financial statements of financial position, results of operations, and cash flows in conformity with US GAAP. We also acknowledge our responsibility for establishing and maintaining effective internal control over financial reporting, including designing and implementing programs and controls to prevent and detect fraud.

Certain representations in this letter are described as being limited to matters that are material. Items are considered to be material, regardless of size, if they involve an omission or misstatement of accounting information that, in light of the surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would be changed or influenced by the omission or misstatement.

We confirm, to the best of our knowledge and belief, as of November 6, 2012, the following representations made to you during your review. These representations are subject to matters disclosed in the Company's materials filed with the Securities and Exchange Commission since January 1, 2012 including Form 12(b)-25 and Reports on Form 8-K and the matters disclosed or included in the Company's Reports on Form 10-Q, as well as items outlined within this letter. We also note that, as publicly disclosed, the Company's Audit Committee initiated an investigation of possible irregularities relating to the Company's former lease with Ventas. This investigation was conducted under the direction of the Board of Directors of the Company. Management is aware that units leased to employees at facilities subject to the Ventas lease were treated as bona fide rentals by third parties; however, management does not believe that this practice or management's or employees' involvement in such practice involve irregularities.

We further note, as publicly disclosed, that on May 29, 2012, the Board of Directors terminated the employment of Laurie Bebo as CEO for cause. On June 29, 2012, Ms. Bebo initiated an arbitration proceeding against the Company disputing the existence of cause for her termination and alleging that she is entitled to more than $2.4 million in severance pay and other termination benefits because her termination was without cause. The Company learned, on or about October 15, 2012, that on July 26, 2012, Ms. Bebo filed a purported Sarbanes-Oxley whistleblower complaint with the Department of Labor, alleging that her

termination was in retaliation for her suggestion that the Company disclose that the reason for the delay in its earnings report and earnings call, announced on May 3, 2012, was the above-described litigation with Ventas. The Company has responded to Ms. Bebo's claim in arbitration, denying the material allegations of Ms. Bebo's demand. In its response to Ms. Bebo's whistleblower complaint to the Department of Labor, which is due by December 5, 2012, the Company intends to assert that Ms. Bebo's complaint is without merit.

1. The interim financial statements referred to above have been prepared and are fairly presented in conformity with US GAAP applicable to interim financial statements.

2. We have made available to you all:
   a. Financial records and related data.
   b. Minutes of the meetings of stockholders, directors and committees of directors, or summaries of actions of recent meetings for which minutes have not yet been prepared. All significant board and committee actions are included in the summaries.

3. Except for the following, there have been no communications, written or oral, from regulatory agencies or others concerning noncompliance with, or deficiencies in, financial reporting practices: The SEC wrote to the Company on June 13, 2012, August 2, 2012, and October 16, 2012, and has subpoenaed certain documents from the Company; the Company has had subsequent communications with the SEC as described in Paragraph 28, below; and the Company has received a whistleblower letter dated May 2, 2012, and the whistleblower complaint from Ms. Bebo dated July 25, 2012.

4. No amount of the accounting support fees assessed by the Public Company Accounting Oversight Board is past due.

5. There are no material transactions that have not been properly recorded in the accounting records underlying the interim financial statements.

6. We believe that the effects of the uncorrected financial statement misstatements, including omitted disclosures, aggregated by you during the current review engagement and pertaining to the interim periods in the current year, as summarized in the accompanying schedule, are immaterial, both individually and in the aggregate, to the interim financial statements taken as a whole.

7. There were no significant changes in the design or operation of internal control over financial reporting, as it relates to the preparation of annual as well as interim financial information, that have occurred subsequent to December 31, 2011.

8. We have disclosed to you all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting. We understand that a material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the Company's annual or interim financial statements will not be prevented or detected on a timely basis. A significant deficiency is a deficiency, or a combination of deficiencies, in internal control over financial reporting that is less severe than a material weakness, yet

important enough to merit attention by those responsible for oversight of the Company's financial reporting.

9. Except for the matters referred to in the introductory paragraphs of this letter, management (i) is not aware of fraud or suspected fraud affecting the Company involving management, employees who have significant roles in internal controls, or others where the fraud could have a material effect on the interim financial statements; and (ii) has no knowledge of any allegations of fraud or suspected fraud affecting the Company received in communications from employees, former employees, analysts, regulators, short sellers or others.

10. The Board has established a Facility Strategic Review Committee which is reviewing various strategic alternatives in respect of certain facilities on both a geographic and individual basis. Except as previously disclosed, the Company has not finalized, nor has the board approved, plans or intentions that may materially affect the carrying value or classification of assets and liabilities.

11. We believe there is no virtual certainty that debt covenants will be violated in future interim or annual periods which would make obligations callable if not cured or waived by the lender.

12. Related party relationships and transactions and related amounts receivable or payable, including sales, purchases, loans, transfers, leasing arrangements and guarantees have been properly recorded or disclosed in the interim financial statements.

    We understand that "related parties" include (1) affiliates of the entity; (2) entities for which investments in their equity securities would be required to be accounted for by the equity method by the investing entity; (3) trusts for the benefit of employees, such as pension and profit-sharing trusts that are managed by or under the trusteeship of management; (4) principal owners of the entity and members of their immediate families; and (5) management of the entity and members of their immediate families.

    Related parties also include (1) other parties with which the entity may deal if one party controls or can significantly influence the management or operating policies of the other to an extent that one of the transacting parties might be prevented from fully pursuing its own separate interests; and (2) other parties that can significantly influence the management or operating policies of the transacting parties or that have an ownership interest in one of the transacting parties and can significantly influence the other to an extent that one or more of the transacting parties might be prevented from fully pursuing its own separate interests.

13. Guarantees, whether written or oral, under which the Company is contingently liable have been properly recorded or disclosed in the interim financial statements.

14. Significant estimates and material concentrations known to management that are required to be disclosed in accordance with *FASB Accounting Standards Codification*™ (ASC) 275, *Risks and Uncertainties*, are properly disclosed in the interim financial information statements.

    Significant estimates are estimates at the balance sheet date which could change materially within the next year. Concentrations refer to volumes of business, revenues, available sources of supply, or markets or geographic areas for which events could occur which would significantly disrupt normal finances within the next year.

15. Except for the matters discussed in the introductory paragraphs of this letter, Management is not aware of any information indicating that an illegal act, or violations or possible violations of any regulations, has or may have occurred, whether or not perceived to have a material effect on the interim financial statements or as a basis for recording a loss contingency.

    There are no unasserted claims or assessments that our lawyer has advised us are probable of assertion and must be disclosed in accordance with ASC 450, *Contingencies*, other than what has been disclosed.

    There are no other liabilities or gain or loss contingencies that are required to be accrued or disclosed by ASC 450.

16. The Company has satisfactory title to all owned assets, and there are no liens or encumbrances on such assets nor has any asset been pledged as collateral, other than what has been disclosed.

17. The Company has complied with all aspects of contractual agreements that would have a material effect on the interim financial or statements in the event of a noncompliance.

18. The methods and significant assumptions used to determine fair values of financial instruments are as follows:

    The Company considers the carrying amount of cash and cash equivalents, accounts receivable and accounts payable to approximate fair value because of the short maturities of these financial instruments. The fair value of the debt instruments are based on the approximate borrowing rates currently available to the Company for debt equal to existing maturities. Investment securities are recorded at fair value based on quoted market prices using public information for the issuers.

    The methods and significant assumptions used have been consistently applied and result in a measure of fair value appropriate for financial measurement and disclosure purposes. In addition, to the best of our knowledge and belief, there have been no subsequent events through the date of this letter that would require adjustment to the fair value measurements and disclosures included in the interim financial statements.

19. Arrangements with financial institutions involving compensating balances or other arrangements involving restrictions on cash balances, lines of credit, or similar arrangements have been properly disclosed.

20. Capital stock repurchase options or agreements or capital stock reserved for options, warrants, conversions, or other requirements have been properly disclosed.

21. Management believes that the assumptions used in the projections of the future taxable income that support realization of the Company's deferred tax assets are reasonable and consistent with its public disclosures or statements.

22. Tax planning strategies included in the Company's analysis of the realizability of its deferred tax assets are actions that management would take to realize a tax benefit for deductible temporary differences and carry forwards.

23. We believe that the accrual for bonuses recorded as of September 30, 2012 is adequate and reasonable.

24. Receivables recorded in the financial statements represent valid claims against debtors for services or other charges arising on or before the balance sheet date and appropriate reserves have been provided to account for their estimated net realizable value.

25. The asset retirement obligation is being accreted to management's best estimate of fair value of September 30, 2012.

26. No events have occurred subsequent to the balance sheet date and through the date of this letter that would require recognition or disclosure in the aforementioned interim financial statements or the previous year's annual financial statements, except as disclosed in Other Information of IFS.

27. There have been no changes in internal control over financial reporting or other factors that might significantly affect internal control over financial reporting, including corrective actions taken by management with regard to significant deficiencies and material weaknesses, subsequent to the balance sheet date and through the date of this letter.

28. The Company confirms it has previously sent you letters dated June 13, 2012, August 2, 2012, and October 16, 2012 from the Securities and Exchange Commission (SEC), and their respective attachments. Counsel for the Company have participated in one meeting, and in a number of electronic and oral communications, with the SEC regarding the subject matter of the foregoing correspondence.

29. The Company's investigation of possible irregularities referred to in the third paragraph of this letter has been concluded. The Board has not reported to management any modifications that should be made to the Company's previously issued financial statements or disclosures related thereto for any period based on the results of the investigation.

Very truly yours,

ASSISTED LIVING CONCEPTS, INC.

_____

Charles H Roadman II, MD ("Roadman")
President and Chief Executive Officer provided that it is understood that in respect of the last sentence, third paragraph of the first page, Roadman (a) is not included in the term "Management", and (b) has no personal knowledge of the matters referred to therein.

_____

John Buono
Senior Vice President, Chief Financial Officer and Treasurer

_____

Walter Levonowich, Vice President and Corporate Controller, subject to my limited knowledge as to the topic of the Company's lease with Ventas, including but not limited to the last sentence of the third paragraph of this letter which is based solely upon management's prior communications with Ventas regarding such practices and communication from Quarles and Brady, the Company's counsel.

November 6, 2012

Grant Thornton LLP
[redacted]

Dear Sir or Madam:

We are providing this letter in connection with your review of the consolidated interim financial statements of Assisted Living Concepts, Inc. and its subsidiaries (collectively, the "Company") as of September 30, 2012 and December 31, 2011 and for each of the three months and nine months ended September 30, 2012 and 2011 ("Interim Financial Statements" or "IFS") for the purpose of determining whether any material modifications should be made to the consolidated interim financial statements for them to conform with accounting principles generally accepted in the United States of America ("US GAAP"). We understand that your review was made in accordance with the Public Company Accounting Oversight Board's ("PCAOB") standards applicable to reviews of interim financial information. We confirm that we are responsible for the fair presentation in the consolidated interim financial statements of financial position, results of operations, and cash flows in conformity with US GAAP. We also acknowledge our responsibility for establishing and maintaining effective internal control over financial reporting, including designing and implementing programs and controls to prevent and detect fraud.

Certain representations in this letter are described as being limited to matters that are material. Items are considered to be material, regardless of size, if they involve an omission or misstatement of accounting information that, in light of the surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would be changed or influenced by the omission or misstatement.

We confirm, to the best of our knowledge and belief, as of November 6, 2012, the following representations made to you during your review. These ~~representation~~**representations** are subject to matters disclosed in the Company's materials filed with the Securities and Exchange Commission since January 1, 2012 including Form 12(b)-25 and Reports on Form 8-K and the matters disclosed or included in the Company's Reports on Form 10-Q, as well as items outlined within this letter. We also note that, as publicly disclosed, the Company's Audit Committee initiated an investigation of possible irregularities relating to the Company's former lease with Ventas. This investigation was conducted under the direction of the Board of Directors of the Company. Management is aware that units leased to employees at facilities subject to the Ventas lease were treated as ~~bona fide~~**bona fide** rentals by third parties; however, management does not believe that this practice or management's or employees' involvement in such practice involve irregularities.

We further note, as publicly disclosed, that on May 29, 2012, the Board of Directors terminated the employment of Laurie Bebo as CEO for cause. On June 29, 2012, Ms. Bebo initiated an arbitration proceeding against the Company disputing the existence of cause for her termination and alleging that she is entitled to more than $2.4 million in severance pay and other termination benefits because her termination was without cause. The Company learned, on or about October 15, 2012, that on July 26, 2012, Ms. Bebo filed a purported Sarbanes-Oxley whistleblower complaint with the

Department of Labor, alleging that her termination was in retaliation for her suggestion that the Company disclose that the reason for the delay in its earnings report and earnings call, announced on May 3, 2012, was the above-described litigation with Ventas. The Company has responded to Ms. Bebo's claim in arbitration, denying the material allegations of Ms. Bebo's demand. In its response to Ms. Bebo's whistleblower complaint to the Department of Labor, which is due by December 5, 2012, the Company intends to assert that Ms. Bebo's complaint is without merit.

1. The interim financial statements referred to above have been prepared and are fairly presented in conformity with US GAAP applicable to interim financial statements.

2. We have made available to you all:
   a. Financial records and related data.
   b. Minutes of the meetings of stockholders, directors and committees of directors, or summaries of actions of recent meetings for which minutes have not yet been prepared. All significant board and committee actions are included in the summaries.

3. Except for the following, there have been no communications, written or oral, from regulatory agencies or others concerning noncompliance with, or deficiencies in, financial reporting practices: ~~In a memo dated April 3, 2012 from Alan Bell, Re: ALC Developments, indications were made that the "...compliance certificate re: patient revenue is clearly wrong." Management believes that these certificates were appropriate under the terms of the lease.~~: The SEC wrote to the Company on June 13, 2012, August 2, 2012, and October 16, 2012, and has subpoenaed certain documents from the Company; the Company has had subsequent communications with the SEC as described in Paragraph 28, below; and the Company has received a whistleblower letter dated May 2, 2012, and the whistleblower complaint from Ms. Bebo dated July 25, 2012.

4. No amount of the accounting support fees assessed by the Public Company Accounting Oversight Board is past due.

5. There are no material transactions that have not been properly recorded in the accounting records underlying the interim financial statements.

6. We believe that the effects of the uncorrected financial statement misstatements, including omitted disclosures, aggregated by you during the current review engagement and pertaining to the interim periods in the current year, as summarized in the accompanying schedule, are immaterial, both individually and in the aggregate, to the interim financial statements taken as a whole.

7. There were no significant changes in the design or operation of internal control over financial reporting, as it relates to the preparation of annual as well as interim financial information, that have occurred subsequent to December 31, 2011.

8. We have disclosed to you all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting. We understand that a material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the Company's annual or interim financial statements will not

be prevented or detected on a timely basis. A significant deficiency is a deficiency, or a combination of deficiencies, in internal control over financial reporting that is less severe than a material weakness, yet important enough to merit attention by those responsible for oversight of the Company's financial reporting.

9. ~~Management~~ Except for the matters referred to in the introductory **paragraphs of this letter, management (i)** is not aware of fraud or suspected fraud affecting the Company involving management, employees who have significant roles in internal controls, or others where the fraud could have a material effect on the interim financial statements~~.~~

; and (ii) has

~~10. Except for the matters referred to in the introductory paragraph of this letter, we have~~ no knowledge of any allegations of fraud or suspected fraud affecting the Company received in communications from employees, former employees, analysts, regulators, short sellers or others.

10. ~~11.~~ The Board has established a Facility Strategic Review Committee which is reviewing various strategic alternatives in respect of certain facilities on both a ~~jurisdictional~~**geographic** and individual basis. ~~As the Committee has not to date completed this review~~**Except as previously disclosed**, the Company has not finalized, nor has the board approved, plans or intentions that may materially affect the carrying value or classification of assets and liabilities.

11. ~~12.~~ We believe there is no virtual certainty that debt covenants will be violated in future interim or annual periods which would make obligations callable if not cured or waived by the lender.

12. ~~13.~~ Related party relationships and transactions and related amounts receivable or payable, including sales, purchases, loans, transfers, leasing arrangements and guarantees have been properly recorded or disclosed in the interim financial statements.

We understand that "related parties" include (1) affiliates of the entity; (2) entities for which investments in their equity securities would be required to be accounted for by the equity method by the investing entity; (3) trusts for the benefit of employees, such as pension and profit-sharing trusts that are managed by or under the trusteeship of management; (4) principal owners of the entity and members of their immediate families; and (5) management of the entity and members of their immediate families.

Related parties also include (1) other parties with which the entity may deal if one party controls or can significantly influence the management or operating policies of the other to an extent that one of the transacting parties might be prevented from fully pursuing its own separate interests; and (2) other parties that can significantly influence the management or operating policies of the transacting parties or that have an ownership interest in one of the transacting parties and can significantly influence the other to an extent that one or more of the transacting parties might be prevented from fully pursuing its own separate interests.

13. ~~14.~~ Guarantees, whether written or oral, under which the Company is contingently liable have been properly recorded or disclosed in the interim financial statements.

14. ~~15.~~ Significant estimates and material concentrations known to management that are required to be disclosed in accordance with *FASB Accounting Standards Codification*™ (ASC) 275, *Risks and Uncertainties,* are properly disclosed in the interim financial information statements.

Significant estimates are estimates at the balance sheet date which could change materially within the next year. Concentrations refer to volumes of business, revenues, available sources of supply, or markets or geographic areas for which events could occur which would significantly disrupt normal finances within the next year.

15. ~~16.~~ Except for the matters discussed in the introductory paragraphs of this letter, Management is not aware of any information indicating that an illegal act, or violations or possible violations of any regulations, has or may have occurred, whether or not perceived to have a material effect on the interim financial statements or as a basis for recording a loss contingency.

There are no unasserted claims or assessments that our lawyer has advised us are probable of assertion and must be disclosed in accordance with ASC 450, *Contingencies,* other than what has been disclosed.

There are no other liabilities or gain or loss contingencies that are required to be accrued or disclosed by ASC 450.

16. ~~17.~~ The Company has satisfactory title to all owned assets, and there are no liens or encumbrances on such assets nor has any asset been pledged as collateral, other than what has been disclosed.

17. ~~18.~~ The Company has complied with all aspects of contractual agreements that would have a material effect on the interim financial or statements in the event of a noncompliance.

18. ~~19.~~ The methods and significant assumptions used to determine fair values of financial instruments are as follows:

The Company considers the carrying amount of cash and cash equivalents, accounts receivable and accounts payable to approximate fair value because of the short maturities of these financial instruments. The fair value of the debt instruments are based on the approximate borrowing rates currently available to the Company for debt equal to existing maturities. Investment securities are recorded at fair value based on quoted market prices using public information for the issuers.

The methods and significant assumptions used have been consistently applied and result in a measure of fair value appropriate for financial measurement and disclosure purposes. In addition, to the best of our knowledge and belief, there have been no subsequent events through the date of this letter that would require adjustment to the fair value measurements and disclosures included in the interim financial statements.

19. ~~20.~~ Arrangements with financial institutions involving compensating balances or other arrangements involving restrictions on cash balances, ~~line~~**lines** of credit, or similar arrangements have been properly disclosed.

20. ~~21.~~ Capital stock repurchase options or agreements or capital stock reserved for options, warrants, conversions, or other requirements have been properly disclosed.

21. ~~22.~~ Management believes that the assumptions used in the projections of the future taxable income that support realization of the Company's deferred tax assets are reasonable and consistent with its public disclosures or statements.

22. ~~23.~~ Tax planning strategies included in the Company's analysis of the realizability of its deferred tax assets are actions that management would take to ~~realized~~**realize** a tax benefit for deductible temporary differences and carry forwards.

23. ~~24.~~ We believe that the accrual for bonuses recorded as of September 30, 2012 is adequate and reasonable.

24. ~~25.~~ Receivables recorded in the financial statements represent valid claims against debtors for services or other charges arising on or before the balance sheet date and appropriate reserves have been provided to account for their estimated net realizable value.

25. ~~26.~~ The asset retirement obligation is being accreted to management's best estimate of fair value of September 30, 2012.

26. ~~27.~~ No events have occurred subsequent to the balance sheet date and through the date of this letter that would require recognition or disclosure in the aforementioned interim financial statements or the previous year's annual financial statements, except as disclosed in Other Information of IFS.

27. ~~28.~~ There have been no changes in internal control over financial reporting or other factors that might significantly affect internal control over financial reporting, including corrective actions taken by management with regard to significant deficiencies and material weaknesses, subsequent to the balance sheet date and through the date of this letter.

28. ~~29.~~ The Company confirms it has previously sent you letters dated June 13, 2012 ~~and~~, August 2**, 2012, and October 16**, 2012 from the Securities and Exchange Commission (SEC). ~~We have not received any additional~~**, and their respective attachments. Counsel for the Company have participated in one meeting, and in a number of electronic and oral** communications ~~from~~**, with** the SEC **regarding the subject matter of the foregoing correspondence.**

29. ~~30.~~ The Company's investigation of possible irregularities referred to in the third paragraph of this letter has been ~~preliminarily concluded and a presentation has been made to the Company's Board of Directors. We are not aware of~~**. The Board has not reported to management** any modifications that should be made to the Company's previously issued financial statements or disclosures related thereto for any period based on the results of the investigation.

Very truly yours,

~~ASSITED~~**ASSISTED LIVING CONCEPTS, INC.**

Charles H Roadman II, MD ("Roadman")
President and Chief Executive Officer **provided that it is understood that in respect of the last sentence, third paragraph of the first page, Roadman (a) is not included in the term "Management", and (b) has no personal knowledge of the matters referred to therein.**

_____

John Buono
Senior Vice President, Chief Financial Officer and Treasurer

_____

Walter Levonowich, Vice President and Corporate Controller, subject to my limited knowledge as to the topic of the Company's lease with Ventas, including but not limited to the last sentence of the third paragraph of this letter which is based solely upon management's prior communications with Ventas regarding such practices and communication from Quarles and Brady, the Company's counsel.

✓ Malen Ng
✓ Alan Bell

- Michael Herschfeld
- Tom Arena
- ~~Gene Cahill~~
- Chris Shearer ✓
✓ Matt Roller ✓
✓ Jeff Robinson

(A/C file)

Scope

Misrepresentation to Veritas & the public ~~re mis-rep~~ on the compliance with the covenants in the lease

Interviewed Co. officers & employees
a) whistleblower

Bebo	Lucey
Buono (2x)	Bucholtz
Kowalczyk	Ferraro
Jevanovich	Hamm
Hauh	Fonstadt
Herbner	

5 Board members - Henneger Rhinelander
Button, Bell, Ng

Most done face to face. 6 couple telephonically

212-602-8830

Document collection:
Co. engaged FTI consulting to collect documents
Collecting & imaging D.T. computers, U drive,
searched Email server, shared drives, BU tapes
file shares & BU drives - Back to 2008.

CONFIDENTIAL TREATMENT IS
REQUESTED FOR THIS INFORMATION
BY GRANT THORNTON LLP
[redacted]

GT-SEC00600230

EXHIBIT
E

- Custodians of information for preservation
Bebo, - Buono, Levonovich, Kowalczyk, Lucey, Grabowski, Ferrari, Holeness, Phil Bell (ops pres.) Amber Brooke, legal, Richards, Paralegal, Rosenthal, legal spec. Kell - A/P, Christian - A/C Valadez - A/C, VanZee, regn A/C (+) Warner, +1 Rasmus - Perry Region - RSDM Perry. Hart, EA, Nichol, EA, Schneider, EA, Burr, former, Shawn?, Forstadt - former CC

Principal document review -
E mails + documents between Bebo & Buono based on the WB letter and discussions with WB that these two would be at the heart of the issue. Additionally

Compliance Cert w/ Vestas, supporting documentation, re leasing decision & presentations to the Board eg; - external documentation showing compliance w/ and u/s of 'll use 2009-2012

Scope was never expanded. ~~[illegible]~~ No line of inquiry that suggested another area should have been pursued. No cost considerations limited the scope of the investigation

CONFIDENTIAL TREATMENT IS
REQUESTED FOR THIS INFORMATION
[redacted]

GT-SEC00600231

Report was made to the entire Board of Directors in September for 2 hrs in call with the BOD

Information disclosed to us does not waive atty client privilege or work product protection. It is not the company's intention to waive WP protection

→ Began as an Audit Committee investigation & Bebo was a director at the time. After Jamie left the Board in July, it was changed to an investigation of the entire BOD.

→ Follow up meeting about a week later when reporting to the BOD was complete

Findings

(1.) Determined that ARC had used ice accounts to calculate Mon. Acc. Cov. (MOC) under Veritas lease. Without recourse to units for SG acc, ARC would not have been in compliance from during 2009 – 2012

(2.) However, not able to determine that units for employee use to calc. MOC was done without the knowledge & approval of Veritas

(a.) Understanding of ARC Mgmt that

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[redacted]

GT-SEC00600232

this had been addressed by and approved by Veritas

(b.) Communicated w/ Veritas Counsel on this topic - They(V) were unable to say they(V) had not agreed to the EE use - Current management had no knowledge about whether it was authorized by Veritas or not.

(c.) Veritas' Counsel ~~spoke to~~ worked out to Jon Solare, a Veritas lessor to ALC, terminated in 4/2009 due to downsizing, after he received the 2/4/2009 email on EE leasing arrangements. This was the person who had the reported arrangement. He was unable to deny the Bebo representations of his approval

(d.) April 4, 2009 email, which details leasing to a hospice provider. Towards the end of the email, she confirms the agreement w/ Solare the leasing of EE use. This email was distributed to Solare's ~~boss~~ supervisor @ Veritas. A follow up email to Jamie to ~~be~~ set a meeting to discuss the hospice, but it was silent on the EE leasing issue which evidences confirmation of Bebo's assertion that the agreement

had been confirmed by Ventas

(3.) Absent ~~clarification~~ by Ventas, we use would ~~not~~ be in conflict with the lease terms [in the absence with the kind of arrangement of Bebo, the ~~lease~~ use of ee rooms would not be in accordance w/lease - but could find nothing indicating Ventas disapproval

(4.) Since no proof that there was no evidence that the ee rooms was not they were not able to conclude that it was not in compliance with the lease - ∴ no modifications to the financial statements

~~with~~ those spoken to at Ventas

(5) No one could testify that the Bebo ee leasing inclusion was not accurate

(6.) Circumstantial arguments could poke holes in the story of Bebo on ee leasing - ∴ "sloppy" description of arrangement. Discussed as leased by employees - however, really leased by AHC for use by employees - However, no formal lease was entered into

(7.) 2/4/2009 emails could lead to ALC loss → Employee for use. However, ALC leased from ~~Re~~ lessor for use by potential ~~Re~~ employees when traveling to the rent. - ~~Hard~~ Employees were not actually at the premises, but potentially could have been at the premises.

(8) Re. management open & transparent to auditors on this topic. - which units were set aside for which employees. Both Bebo & Breone were open & forthcoming on the documentation suggests no ill intent by management.

(9) Lease contained L.D. provision re event of default at option of Vendor to accelerate all remaining rent. Substantial legal authority to prevent such a liquidated damage. Governed by Ill. law which is strict to prevent these "penalties". Argument is substantial that this clause would be unenforceable under Ill. laws.

The investigation did not lead to any internal disciplinary actions. Bebo's terminated unrelated to investigation

(10) "Sloan" - Process was pursued on a monthly basis to develop the list of 'ee's. Concern by WB that Bebo's parents were on the list of EE's. At least one or two

indicated that they were tested because the individuals would do some "mystery shopping" in the area to investigate competition & pricing. Some rooms were occupied (particularly in 2009) after the facilities were taken over by ALC due to Δ's in operations post acquisition. In addition, ee's were required to stay in facilities if available. It is clear that rooms set aside were not used by ee's in many instances.

Were able to ascertain that T-E records of ees were not on premises. However, ALC leased at arms length prices units for potential employee use.

Bank note 7b rooms -

Purpose to ensure covenant compliance. Proposal that to Colore in order to get through tough times - so no ambiguity. This would have been allowed under the arrangements.

SEC states

Good relationship with the SEC. Initial staff atty on the project from SEC was pulled for another project. Turned over some binders and other documents. Another presentation was delivered to the second staff atty who said good cooperation, [redacted]

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[redacted]

GT-SEC00600236

He also asked for, after recognizing the presentation was focused on the Ventas issues, "How do they know there were no other compliance matters?" Is ALC willing to engage a forensic accountant to look at other compliance certifications to provide a level of comfort that there are no other issues going on which could have problems"
ALC agreed, SEC selected Forensic Acct reviews to be performed, selected one geographies for 3 contractual engagements. These are ongoing. Hopeful analysis will be completed by year end. Capstone is reviewing now.

We will provide a follow up upon completion

Document subpoena renewed July/Aug of 2012. Very broadly framed. Now in October, a revised subpoena now focuses on Ventas. 45,000 documents provided to SEC so far. Now second submission being made. SEC asked for more, but limited to 6 people from Jan 2005 - 2012 under certain search terms. This generated 100,000 emails. Now a first level review being done by a contractor to Milbank. Then Milbank will do another review. Expects that ± 25,000 docs

custodians → (Rebo, Bruno, Burr, Shelfoth, Grabowski, Anthony, Lurie.

SEC could make an inquiry of individuals or could of Grant Thornton.

[redacted]

Grant Thornton will be subpoena'd. based on our discussions with the SEC.

Jahnell asked ?? ~~Bebo~~ Were there any other situations where Bebo was involved?

Ans. Not as part of the Madison internal investigation.

Chris Spencer - Was everyone aware that the rooms were being reserved in order to meet the covenants?

Ans - ~~Bebo~~ There was an understanding by Sr. Mgmnt that the rooms was going to be used to meet the covenant, and not occupied

However, Board believed that the ~~rooms~~ were to be used and paid for by ~~Bebo~~ AEC. Board learned of the broader arrangements in 2012. This was disclosed in a discussion between Bruno and Chairman. ~ March/April 2012.

Bruno was aware of True purpose of the practice prior to 2012. He was involved in creation of internal documentation and he participated in the conversation between Bebo & Solano But ~~Bebo~~ Bruno was not involved in which ~~lees~~ were listed.

Sullivan Q In interviews or review of docs, was there any ~~of~~ concern over auditor perception?

A Don't recall seeing anything indicating concern. Koeppel, Jeff Pabst for additional support. They supported 2/14/13 email. - That put the matter to rest.

JR Q Did you see the LL rooms for the compliance certificates.

A. Internal documentation showed that LL lease units were excluded in the counts. Nothing that they recall seeing to show LL rooms included.

Chris Shean Q Was there corroborating evidence to support the WB assertion that Ventas was not to see the employee list?

A. Internal documentation shows contemporaneous listing of employee name to be excluded. This was not provided to Ventas, but no ~~specific~~ instructions to omit the list ~~it~~ was found.

Dena Q ~~Other documents to be looked at~~

Philbrook Previous lessee was a small operator and so Ventas was concerned over their revenue stream so lease included provisions ensuring Ventas that previous lessee could make

lease payments. ~~Further~~ The lease was assumed by ALC, with whom the lessor was not as concerned over ability to pay

SEC concern on additional compliance review was focused on the impact that the rental compliance on other contracts did not include ~~of~~ the intercompany Carabita leases

Income statements filed from prior period did not include employee leases. and Consolidations eleminated the revenues.

Not able to conclude that the modification had not happened : Not able to conclude Compliance certificate were not in accordance with what Ventas had agreed to.

[redacted]

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

Form 10-Q

(Mark One)

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

For the quarterly period ended September 30, 2012

OR

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

For the transition period from to

Commission file number: 001-13498

Assisted Living Concepts, Inc.

(Exact name of registrant as specified in its charter)

Nevada	**93-1148702**
(State or other jurisdiction of incorporation or organization)	*(I.R.S. Employer Identification No.)*
W140 N8981 Lilly Road **Menomonee Falls, Wisconsin**	**53051**
(Address of principal executive offices)	*(Zip Code)*

Registrant's telephone number, including area code: (262) 257-8888

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☑ No☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☑ No☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☐	Accelerated filer ☑	Non-accelerated filer ☐	Smaller reporting company ☐

(Do not check if a smaller reporting company)

Indicate by a check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No☑

As of October 31, 2012, the Company had 20,072,122 shares of its Class A Common Stock, $0.01 par value per share, outstanding

and 2,898,356 shares of its Class B Common Stock, $0.01 par value per share, outstanding.

INDEX

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

12. COMMITMENTS AND CONTINGENCIES

We are involved in various unresolved legal matters that arise in the normal course of operations, the most prevalent of which relate to commercial contracts and premises and professional liability matters. Although the outcome of these matters cannot be predicted with certainty and favorable or unfavorable resolutions may affect the results of operations on a quarter-to-quarter basis, we believe that the outcome of such legal and other matters will not have a material adverse effect on our consolidated financial position, results of operations, or liquidity.

On April 26, 2012, a lawsuit captioned Ventas Realty, Limited Partnership v. ALC CVMA, LLC, et al. was filed by Ventas in the Northern District of Illinois. In connection with the purchase of the 12 previously leased properties from Ventas Realty, this litigation was terminated on June 15, 2012.

The previously disclosed internal investigation being conducted by the Board of Directors has been completed. The Board has determined not to take any action.

On May 29, 2012, the Board of Directors terminated Ms. Bebo's employment as CEO for cause. On June 29, 2012, Ms. Bebo initiated an arbitration proceeding against ALC disputing the existence of cause for her termination and alleging that she is entitled to more than $2.4 million in severance pay and other termination benefits because her termination was without cause. In addition, ALC learned, on or about October 15, 2012, that on July 26, 2012, Ms. Bebo filed a purported Sarbanes-Oxley whistleblower complaint with the Department of Labor, alleging that her termination was in retaliation for her suggestion that the Company disclose that the reason for the delay in its earnings report and earnings call, announced on May 3, 2012, was the above-described litigation with Ventas. ALC has responded to Ms. Bebo's claim in arbitration, denying the material allegations of Ms. Bebo's demand. ALC must submit its response to Ms. Bebo's whistleblower complaint to the Department of Labor by December 5, 2012. ALC will assert that Ms. Bebo's complaint is without merit, and ALC will vigorously defend against Ms. Bebo's arbitration demand and the whistleblower complaint. ALC determined not to file a counterclaim in the arbitration, but retains the ability to file claims against Ms. Bebo, including for matters relating to her conduct and performance in her capacity as CEO of ALC.

On June 29, 2012, a lawsuit captioned Laurie Bebo v. Assisted Living Concepts, Inc. was filed in Waukesha County Circuit Court, State of Wisconsin. The lawsuit seeks (1) an order requiring ALC to produce certain company records previously requested by Ms. Bebo as a former director of ALC and (2) a judgment requiring ALC to indemnify Ms. Bebo for all expenses incurred in connection with the Company's internal investigation relating to the Ventas lease as well as to advance Ms. Bebo all expenses incurred by her in connection with this investigation. On October 19, 2012, the court granted ALC's motion to dismiss Ms. Bebo's claim for access to company records and denied the motion to dismiss the claims for indemnification. ALC will vigorously defend against Ms. Bebo's claims.

On August 2, 2012, ALC was informed by the United States Securities and Exchange Commission (the "SEC") that the SEC staff is conducting an investigation relating to ALC. As part of this investigation, the SEC issued a subpoena to ALC. The subpoena, subsequently withdrawn and replaced by a new subpoena requesting additional information, requires ALC to produce documents on a number of topics, including, among others, compliance with occupancy covenants in the now-superseded lease with Ventas Realty, Limited Partnership and leasing of units for employee use. ALC intends to cooperate fully with the SEC in its investigation.

On August 29, 2012, a putative securities class action lawsuit was filed against ALC and Ms. Bebo on behalf of individuals and entities who allegedly purchased or otherwise acquired ALC's Class A Common Stock between March 12, 2011 and August 6, 2012. The complaint, which has not yet been served on ALC, is captioned *Robert E. Lifson, Individually and On Behalf of All Others Similarly Situated, v. Assisted Living Concepts, Inc. and Laurie A. Bebo, 2:12-cv-00884*, and was filed in the United States District Court for the Eastern District of Wisconsin. The lawsuit seeks damages and other relief for alleged violations of Section 10(b) of the Securities Act of 1934, as amended, and Rule 10b-5 promulgated thereunder. The allegations relate to disclosures made by ALC pertaining to ALC's former lease with Ventas Realty, Limited Partnership. On or about October 19, 2012, Steve Pasek filed a motion for appointment as lead plaintiff and approval of selection of lead counsel in this litigation. ALC intends to vigorously defend itself against these claims.

ROPES & GRAY LLP
[redacted]
WWW.ROPESGRAY.COM

February 4, 2014

Asheesh Goel
[redacted]

FOIA CONFIDENTIAL TREATMENT REQUESTED

VIA E-MAIL AND HAND DELIVERY

Scott B. Tandy, Senior Attorney
U.S. Securities and Exchange Commission
Chicago Regional Office
175 West Jackson Boulevard, Suite 900
Chicago, IL 60604

Re: *In the Matter of Assisted Living Concepts, Inc.* (C-7948)

Dear Mr. Tandy:

As you know, we represent Assisted Living Concepts, LLC. Pursuant to Section 4.3 of the SEC Enforcement Manual, consistent with ALC's desire to cooperate fully with your investigation referenced above and pursuant to the request made by the Staff of the Enforcement Division of the U.S. Securities and Exchange Commission, ALC agrees to waive its attorney-client privilege with respect to certain limited communications, as follows:

1) ALC agrees to waive its attorney-client privilege with respect to communications:

   a. occurring between December 1, 2008 and May 8, 2013;

   b. between ALC directors or officers ("Executives"), on the one hand, and ALC's legal counsel, on the other hand;

   c. involving advice that ALC Executives sought from any of those lawyers; and

EXHIBIT
6

d. that relate to (i) the leasing of units in CaraVita facilities[1] to employees or others, including independent contractors, former employees, relatives of employees and friends of employees (collectively, "Employees"), (ii) whether Employees could be included as occupants for purposes of occupancy covenant calculations under the terms of the Amended and Restated Master Lease Agreement between and among Ventas Realty, Limited Partnership and affiliates of ALC, dated January 1, 2008 (the "Ventas Lease"), (iii) whether revenue associated with occupancy by Employees could be included in coverage ratio calculations under the Ventas Lease, or (iv) any disclosures ALC made or contemplated making in Commission filings regarding its compliance with the Ventas Lease covenants.

2) ALC further agrees to waive its attorney-client privilege with respect to certain limited communications:

a. occurring between January 1, 2012 and March 14, 2013;

b. between ALC Executives, on the one hand, and ALC's legal counsel, on the other hand;

c. involving advice that ALC Executives sought from any of those lawyers; and

d. that relate to disclosures or contemplated disclosures regarding: (i) an internal investigation; (ii) whether ALC had any material weaknesses or significant deficiencies in its internal controls; or (iii) whether ALC needed to restate its financials.

3) ALC further agrees to waive its attorney-client privilege with respect to certain limited communications:

a. between ALC Executives, on the one hand, and ALC's legal counsel, on the other hand;

[1] The CaraVita facilities include CaraVita Village, Greenwood Gardens, Highland Terrace, Peachtree Estates, Tara Plantation, The Inn at Seneca, The Sanctuary, and Winterville Retirement.

b. involving advice that ALC Executives sought from any of those lawyers; and

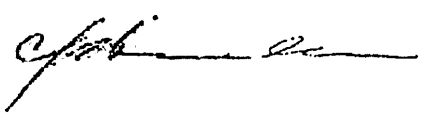
c. that relate to ALC's response to a letter from the SEC's Division of Corporation Finance to ALC, dated July 21, 2011.

We appreciate the opportunity to assist the Staff in its investigation and look forward to continuing to work with you in a collaborative fashion.

* * * * *

Please be advised that this letter and the enclosed materials contain confidential, commercial, financial, or personal information, the disclosure of which would cause significant harm, economic or otherwise, to ALC and its affiliates and employees. Pursuant to Rule 83 of the Commission's Rule on Information and Requests, 17 C.F.R. § 200.83, we hereby request on behalf of ALC that this letter and the enclosed materials, and the contents of this letter and the enclosed materials, be accorded confidential treatment and not be disclosed in response to any request under the Freedom of Information Act, 5 U.S.C. § 552. In order to ensure confidentiality of the enclosed materials, they have been clearly marked "Confidential Treatment Requested by Assisted Living Concepts, LLC." If this letter, the enclosed documents, or any of the contents of this letter or enclosed documents is the subject of a Freedom of Information Act request, please inform me and I will provide further substantiation of this request for confidential treatment. Finally, we request that these documents, as well as any copies made thereof, be returned to us, as counsel for ALC, upon conclusion of the Commission's examination.

Best regards,



Asheesh Goel

cc: FOIA Office
100 F Street NE, Mail Stop 2736
Washington, DC 20549

MILBANK, TWEED, HADLEY & McCLOY LLP

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FAX: 49-89-25559-3700

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FAX: 8610-5969-2707

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FAX: 852-2840-0792

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65-6428-2400
FAX: 65-6428-2500

TOKYO
813-5410-2801
FAX: 813-5410-2891

SÃO PAULO
55-11-3927-7700
FAX: 55-11-3927-7777

May 6, 2012

The Audit Committee
Assisted Living Concepts, Inc.
W140 N8981 Lilly Road
Menomonee Falls, WI 53051
Attention: Malen S. Ng, Chair of Audit Committee

Dear Ms. Ng:

I am delighted to confirm the engagement (the "Engagement") of Milbank, Tweed, Hadley & McCloy LLP to represent the Audit Committee of Assisted Living Concepts, Inc. (the "Client"). This letter, including the standard Terms of Engagement set forth in the Attachment hereto (which is an integral part of this letter), sets forth our mutual agreement with respect to the Engagement and any and all matters we may undertake on your behalf subsequent hereto.

The Engagement will consist of our rendering of legal services in connection with an internal investigation relating to the Client's lease with Ventas Realty, Limited Partnership.

Our fees for legal services are based predominantly on the time which we devote to our clients' matters. Our standard hourly billing rates currently range from $825 to $1,140 for Partners, $795 to $995 for Of Counsel, $295 to $750 for Associates, and $130 to $290 for Legal Assistants.

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EXHIBIT
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Our statements will be rendered monthly and upon completion of the Engagement and each subsequent representation, describing in summary form the nature of the services performed.

This letter shall be governed by and interpreted in accordance with the law of the State of New York. This letter constitutes the entire agreement between us with respect to the subject matter hereof and may not be modified except in a writing signed by each of us.

We very much look forward to working with you in connection with the Engagement, and to a productive and mutually satisfactory relationship. I would appreciate your telephoning me as soon as possible if you have any questions regarding the matters referred to in this letter or any aspect of the legal services that we will be performing.

Very truly yours,

Mark Mandel

Mark Mandel

AGREED:

By: _____

By: _____

#4838-4968-7311

MILBANK, TWEED, HADLEY & MCCLOY LLP (the "Firm")

TERMS OF ENGAGEMENT

(please see the letter to which these Terms of Engagement are attached for defined terms)

The following terms of engagement will apply to any representation that the Firm undertakes on behalf of the Client:

1. The Engagement.

The legal services to be provided by the Firm will encompass all services normally and reasonably associated with this type of engagement which the Firm is requested and able to provide and which are consistent with the Firm's ethical obligations. The Client authorizes the Firm to take any and all action that the Firm deems advisable on the Client's behalf in connection with the Engagement. The Firm's advice is limited to the law of the jurisdictions in which its Partners are principally admitted and licensed to practice, except as otherwise specified to the Client. As legal counsel, the Firm is not in a position to, and the Client has not retained the Firm to, provide financial or accounting advice.

The Firm is being engaged only by the Client. With respect to the Client's subsidiaries, affiliated parties and officers, directors, shareholders, partners or other equityholders (collectively, "Affiliates"), it is the understanding with the Client that the Firm is not being asked to provide, and will not be providing, legal advice to, or establishing an attorney-client relationship with, any such Affiliate and will not be expected to do so unless the Firm has been asked and agreed specifically to do so. Representation of the Client will not give rise to any conflict of interest in the event that other clients of the Firm are adverse to any such Affiliate.

2. Fees and Other Charges.

From time to time the Firm reassesses the rates that are detailed in the letter to which these Terms of Engagement are attached to account for increases in costs, augmentation of the experience and ability of legal personnel, and other factors, and thus the Firm's current rates may change and will be applied prospectively from the date of change. In addition to hourly rates, the Firm may, in consultation with the Client, take account of the types of services involved; the size, scope, complexity, and time limitations involved; the results obtained; and other relevant circumstances permitted under applicable ethical rules.

The Firm's statements will cover, in addition to fees for legal services, office charges and expenses in connection with the provision of legal services, such as telephone charges, duplicating, travel, document preparation and secretarial charges, messenger and courier services, expenses associated with required overtime assistance and other similar charges. The Firm's charges for these services reflect the Firm's costs, including administrative expenses. Although word processing, photocopying and other services are generally performed in the Firm's offices, in some circumstances the Firm will outsource such work to a third party vendor; in those circumstances, the Client will be billed the invoiced amount plus a charge for administrative services. Where large expenses are anticipated, the Firm may ask for them to be paid directly by the Client or for funds to be advanced by the Client to cover them. If the Client requests copies of any relevant documents after the conclusion of the Engagement, the Firm may charge the Client for the reasonable costs of retrieving documents, whether in paper or electronic form, from their storage media and producing them to the Client.

The Firm expects each statement to be paid promptly upon presentation free of taxes and other charges. If it becomes necessary for the Firm to file suit or to engage a collection agency for

the collection of fees or expenses, the Client shall pay, or reimburse the Firm on demand for, all related costs and expenses, including reasonable attorneys' fees.

It may be appropriate, with the Client's advance approval, to retain other counsel, and/or persons with special training or expertise to assist in the rendition of legal services, such as accountants, economists or investigators. Because of privileges that may apply to services that an attorney requests from a third party, it will often be advisable for the Firm directly to hire such experts. Notwithstanding that the contractual relationship may be between such experts and the Firm, the Client agrees that it will bear the responsibility directly to pay the invoices for the fees and expenses incurred by these persons.

If a representation involves litigation, the Client may be required to pay the opposing party's trial costs. Such costs may include filing fees, witness fees, and fees for depositions and documents used at trial. The Firm will not settle litigated matters without the Client's express consent. The Firm requires the Client's active participation in all phases of the case.

3. Retainer.

The Firm may require as a condition of the representation the receipt of an initial retainer/on account payment (a "Retainer") in an amount separately agreed and may require additional retainer payments in connection with any additional representation. The submission of each invoice constitutes a request for payment and, upon transmittal of the invoice, the Firm will draw upon the relevant Retainer (as may be supplemented from time to time by supplemental retainers) in the amount of the invoice. Within five days of the Client's receipt of the invoice, the Client shall wire the invoice amount to the Firm as replenishment of the relevant Retainer (and, if so agreed, a supplemental retainer amount), without prejudice to the Client's right to advise the Firm of any differences the Client might have with respect to such invoice. The Firm shall have the right to apply a Retainer to any outstanding invoice at all times subject to, and without prejudice to, the Client's opportunity to review statements.

4. Conflicts of Interest.

The Firm wishes to avoid any circumstance in which the Client would regard the Firm's representation of another client to be inconsistent with the Firm's duties to and understandings with the Client. The Firm employs over 600 attorneys worldwide, and has a large and diversified legal practice that encompasses representation in litigation and transactional matters of many kinds of clients, including commercial and investment banks, private equity and hedge funds, insurance companies, commercial and industrial companies and many other entities, as well as individuals. Because of the geographic and substantive scope of the Firm's practice, it is likely that some of the Firm's clients may now or in the future have interests adverse to the Client and/or the Client's Affiliates, including in contract negotiations, debt restructurings and bankruptcy proceedings and other legal proceedings. The Client consents and waives any objection to representation by the Firm now or in the future of any other client of the Firm in any matter that is not substantially related to the Firm's representation of the Client in which the Client or any Affiliate of the Client may have an interest adverse to that of such other client; provided, however, that (1) the Firm will not accept such a representation if the Firm believes that the exercise of its independent professional judgment on behalf of the Client would be adversely affected thereby or if the Firm does not believe that it will be able to provide competent and diligent representation to the Client (as well as to any such other client) and (2) this consent and waiver shall not extend to litigation in which the Client is named as a party adverse to our other clients. The Firm will maintain all confidential information gained by it in the course of its representation of the Client in accordance with applicable ethical rules and will, where appropriate to that end, establish internal procedures to ensure that such confidentiality will be preserved.

The Client agrees that the Firm may secure legal advice about compliance with laws or rules of professional conduct applicable to the Firm in connection with the Firm's representation of the Client from internal or outside counsel. The Client consents to any conflict of interest that might be deemed to arise out of any such consultations, waives and relinquishes any claim related thereto and agrees that such consultations are protected from disclosure by the Firm's attorney-client privilege (and

that it will not seek to discover or inquire into them). Of course, nothing in the foregoing shall diminish or otherwise affect our obligation under applicable ethical rules to keep the Client informed of material developments in the Engagement, including any conclusions arising out of such consultations to the extent that they affect the Client's interests.

5. Financial Restructuring Matters.

Without limiting paragraph 4 above, the Client should understand that the Firm has a large and diversified financial restructuring practice that encompasses the representation of domestic and international debtors, financial institutions, lender syndicates, public debt, trade and other creditors, trustees and receivers, examiners, committees of creditors and equity security holders, and entities interested in acquiring troubled companies or their assets in connection with workouts and bankruptcy, insolvency and reorganization matters (collectively, "Financial Restructuring Matters"). Accordingly, the Firm may currently represent or may in the future be asked to represent other parties in Financial Restructuring Matters in respect of entities in which the Client may have an interest. The Client will not object to the Firm's representations of other parties in respect of Financial Restructuring Matters relating to such entities, including parties who may have or hold interests that differ from or conflict with the Client's interests. If the Firm's representation of the Client involves a Financial Restructuring Matter, the Client agrees that the Firm may resign the Engagement if, in the Firm's professional judgment, continuing the Engagement would involve a conflict with another client in connection with Financial Restructuring Matters that has not been or cannot be waived. If the Firm seeks to be appointed as counsel to a committee in any restructuring matter or bankruptcy case in which the Client holds an interest represented by the Firm, the Client consents to the Firm's withdrawal from the Engagement if, in the Firm's professional judgment, such withdrawal is required. In connection with a Financial Restructuring Matter, the advice that the Firm may render to other clients may differ from the advice provided to the Client; and the Client agrees that the advice the Firm provides to the Client will not be disclosed to any third party or used in any negotiation, litigation or adversary proceeding without the Firm's express written consent.

6. Arbitration.

For New York matters: The Firm is required to advise the Client that should a dispute arise regarding fees, the Client may be entitled to arbitration of that dispute under certain circumstances. The Firm will be pleased to provide the Client with relevant information if requested.

For California matters: In the event of a dispute between the Firm and the Client regarding fees, costs, or both, such dispute shall be subject to mandatory arbitration in accordance with the arbitration provisions of the State Bar Act, California Business and Professions Code §§ 6200, *et seq.*

7. Confidentiality.

For the relationship between the Firm and the Client to succeed, it is essential for the Client to provide to the Firm all factual information relevant and material to the subject matter of a representation. The Firm regards its duty to preserve the confidential information of a client with the utmost seriousness. In instances in which the Firm represents a corporation, partnership, or other legal entity, the Firm's relationship is with, and hence this duty of confidentiality is owed to, the entity, and not to the entity's parent or Affiliates. The Client acknowledges that the Firm, during the course of the Firm's representation of the Client, will not be given any confidential information regarding any of the Client's Affiliates. Of course, in the absence of a conflict, the Firm is free to represent such other persons or entities, but will not be deemed to do so without an express agreement to that effect.

8. Termination.

The Client is free to terminate the Firm's representation of the Client at any time. The Firm is entitled to withdraw from the representation subject to the obligation to give the Client reasonable notice and the satisfaction of other applicable ethical rules and any applicable rules of court.

Notwithstanding any such termination or withdrawal, the Client will remain liable to pay all fees and office charges incurred up to the date of termination or withdrawal.

Upon completion of a representation, the attorney-client relationship between the Firm and the Client will end unless the Firm undertakes to represent the Client on other matters. Unless the Client engages the Firm after completion of a representation to provide additional advice on issues arising from such representation, the Firm has no continuing obligation to advise the Client with respect to future legal developments or other matters relating to or affecting such representation. The Firm will maintain its files on a representation in accordance with its normal file retention policy, but shall have no further obligation to the Client other than those the Firm has to all former clients under applicable ethical rules. Upon request of the Client at any time during or after a representation, the Firm will return files in connection with the representation to the Client (subject, to the extent permitted by applicable law, to the Firm's right to retain the same until payment to the Firm of any balance due for fees and expenses), while reserving the right to make and retain copies of such files at the Firm's expense.

8. Other Representations.

These Terms of Engagement will, except to the extent otherwise agreed between the Firm and the Client in writing, apply pending countersignature of the attached letter and to any representation undertaken by the Firm on the Client's behalf, including without limitation the provisions of paragraph 2 hereof relating to fees, paragraph 4 hereof relating to certain conflicts, paragraph 6 hereof relating to arbitration and paragraph 8 hereof relating to the Client's right to terminate.

End of Terms of Engagement

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16293

In the Matter of

LAURIE BEBO, and
JOHN BUONO, CPA

Respondents.

CERTIFICATE OF COMPLIANCE WITH SEC RULE OF PRACTICE 154(C)

I hereby certify that Respondent Laurie Bebo's Response to Milbank, Tweed, Hadley & McCloy LLP's Motion to Quash Respondent's Subpoena for Documents complies with the length limitation set forth in SEC Rule 154(c). According to the word processing system used to prepare this document, the brief contains 6,471 words.

I further certify that Respondent Laurie Bebo's Response to Assisted Living Concept LLC's Motion to Quash or Modify Respondent's Subpoenas for Documents complies with the length limitation set forth in SEC Rule 154(c). According to the word processing system used to prepare this document, the brief contains 4,182 words.

Dated this 2nd day of March, 2015.

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

By: _____

Ryan S. Stippich
IL State Bar No.: [redacted]

[redacted]

Reinhart
Attorneys at Law

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Toll Free: 800-553-6215
reinhartlaw.com

March 2, 2015

Ryan S. Stippich
Direct Dial: [redacted]

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:

1. Respondent Laurie Bebo's Response to Milbank Tweed Hadley & McCloy LLP's Motion to Quash Respondent's Subpoena for Documents;

2. Respondent Laurie Bebo's Response to Assisted Living Concepts, LLC's Motion to Quash or Modify Respondent's Subpoenas for Documents;

3. Affidavit of Ryan S. Stippich;

4. A Certificate of Compliance with SEC Rule of Practice 154(c); and

5. Certificate of Service

Thank you for your assistance.

Yours very truly,

Ryan S. Stippich

31507265

Encs.

cc The Honorable Cameron Elliot (w/encs. by e-mail and U.S. mail)
Patrick S. Coffey, Esq. (w/encs. by e-mail and U.S. mail)
Benjamin J. Hanauer, Esq. (w/encs. by e-mail and U.S. mail)
Scott B. Tandy, Esq. (w/encs. by e-mail and U.S. mail)
Ms. Christina Zaroulis Milnor (w/encs. by e-mail only)
Mark D. Villaverde, Esq. (w/encs. by e-mail and U.S. mail)
Sunil V. Shenoi, Esq. (w/encs. by e-mail and U.S. mail)