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.**	**VENTAS'S MOTION TO MODIFY SUBPOENA**

Pursuant to U.S. Securities and Exchange Commission Rule of Practice[1] 232(e)(2), third-party Ventas, Inc. ("Ventas"), moves to modify the Subpoena To Produce Documents that was issued February 5, 2015 (the "Subpoena"), so as to exclude Categories 1-3 and 6-14.

Ventas's Motion should be granted for two principal reasons. ***First***, Subpoena Categories 1-3 and 6-14 seek irrelevant documents. Respondent Laurie Bebo ("Respondent") has been accused of causing the company she helmed to make material misstatements in public securities filings; lying to auditors; and failing to keep accurate books, records, and accounts in accordance with generally accepted accounting principles. Documents that relate to Ventas's dealings with third-parties—the principal preoccupations of the Subpoena—have no bearing on these proceedings. The 22,000 pages of documents that Ventas already produced speak both to the Commission's allegations and to any defenses that Respondent might raise. The documents that Respondent seeks do not.

Second, producing documents responsive to Subpoena Categories 1-3 and 6-14 would be unreasonable, oppressive, and unduly burdensome. Compliance would require Ventas to trawl

[1] The Rules of Practice are codified at Title 17, Part 201, Subpart D of the Code of Federal Regulations.

years' worth of documents related to hundreds of Ventas properties, resulting in substantial costs and fees, and causing significant disruptions to Ventas's business operations. Ventas should not be put to the expense and inconvenience of producing additional documents—particularly given their dubious relevancy, Respondent's failure to explain the basis for her beliefs about what she hopes the documents will show, and the fact that Ventas will produce a witness at the April 2015 merits hearing, Tim Doman, who will be able to testify generally on topics covered by the Subpoena.

BACKGROUND

A. The Commission Alleges That Respondent Engaged in Serious Misconduct.

These proceedings were initiated by the Commission's Order Instituting Proceedings ("OIP"), dated December 3, 2014. The crux of the OIP's allegations is that Respondent caused her employer, Assisted Living Concepts, Inc. ("ALC") to make false or misleading statements in public securities filings. In particular, Respondent (the CEO of ALC) caused ALC falsely to state in Commission Forms 10-K and 10-Q that ALC was complying with lease obligations that ALC owed to its landlord, Ventas. (*E.g.*, OIP ¶¶ 2, 6, 22-27, 34-40, 41-46.)[2]

This case, however, is not about whether Ventas was defrauded by Respondent's conduct. This is a securities case, brought by the Commission, because after purportedly fabricating occupancy numbers to conceal ALC's noncompliance with its Ventas lease, Respondent then caused securities filings to be issued which stated that ALC was compliant with its lease covenants. (*Id.* ¶¶ 41-43.) Respondent also certified to the Commission, among other things, that she had designed or caused to be designed internal controls that provided assurances

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[2] Ventas is a real estate investment trust ("REIT") that owns nearly 1,500 senior housing and healthcare properties in the United States and Canada. (*See* OIP ¶ 10.)

[illegible]

B. [illegible] Respondent's Documents [illegible]

[illegible]

C. Respondent Repeatedly [illegible] Entities When [illegible] Significant Interest [illegible]

Respondent has sought in [illegible] these documents [illegible]

2015 Respondent recorded that he is [illegible] documents [illegible]

that financial reporting and the preparation of financial statements comported with generally accepted accounting principles ("GAAP"). (*Id.* ¶ 44.)

The Commission contends that the Respondent's conduct violated several provisions of federal securities laws. (*Id.* ¶¶ 55-60.) Each provision relates to false statements made in securities filings or to circumventing or failing to put in place adequate internal accounting controls. None of the violations that the Commission has alleged relate to conduct undertaken by non-ALC Ventas tenants, either regarding dealings with Ventas or regarding public securities filings made by those entities.

B. Ventas Produces More Than 22,000 Pages of Responsive Documents to Respondent.

To the extent documents in Ventas's possession shed light on the allegations against Respondent, those documents have already been produced.

On January 10, 2013, the Commission issued a subpoena that required Ventas to produce ten categories of documents related to ALC, including all documents that: were sent to or received from ALC, relate to negotiations over the Ventas/ALC lease, relate to violations of the lease, and relate to ALC's leasing of units at Ventas properties to employees or friends or family members.

Compiling documents in response to the January 10, 2013, subpoena required over 300 hours of attorney time, at a cost in excess of $100,000. The resulting production comprised more than 22,000 pages of documents. All of those documents have been provided to Respondent.

C. Respondent Repeatedly Seeks Numerous Additional Documents Related to Entities With Which She Had No Involvement.

Respondent has sought numerous additional documents from Ventas. On January 14, 2015, Respondent requested the issuance of a subpoena for documents that would have required

Ventas to produce broad categories of documents related to Ventas tenants other than ALC, over a multiple-year period. The Court excluded such categories in a January 23, 2015 order. As a result of the ruling, Ventas was required to produce only documents related to certain former Ventas employees, phone records related to the employees, and documents sufficient to show how Ventas determined the purchase price for certain facilities leased by ALC.

In the Subpoena that is the subject of this Motion, however, Respondent has renewed her efforts to obtain broad categories of documents related to other Ventas tenants over a multiple-year period. Each of the Categories that are the subject of this Motion relates to the conduct of other entities that, like Ventas, are not parties to these proceedings:

- Nos. 1-3: all documents or communications, between April 1, 2005, and December 31, 2007, that relate to how previous tenants of ALC-operated facilities (denominated "Old CaraVita") calculated and reported compliance with occupancy and coverage ratio covenants.
- No. 6: all documents or communications between January 1, 2008, and May 3, 2011, "for any Ventas lessee" that regard or reflect "any instance" where a financial covenant was amended, modified, or waived.
- No. 7: all documents or communications between January 1, 2008, and May 31, 2012, that regard or reflect "any instance where Ventas reached an understanding with a lessee with respect how [sic] any ambiguous terms of a financial covenant should be interpreted or applied."
- No. 8-11: documents between January 1, 2008, and May 31, 2011, sufficient to reflect "all instances" where Ventas asserted an event of default by a tenant based on breach of a financial covenant and all instances where a Ventas tenant disclosed an event of default

due to breach of a financial covenant. Respondent also seeks documents sufficient to reflect how each of the instances above were resolved, as well as all communications between Ventas and the tenant related to the foregoing.

- No. 12: all documents between January 1, 2008, and May 31, 2012, related to quarterly calls between Ventas and operators and/or lessees of Ventas' other "Senior Housing Communities"—defined as the entire portfolio of Ventas's independent living, assisted living, and memory care properties—"including but not limited to agendas, notes, summaries, and communications with the tenants related to the same."
- No. 13: documents between January 1, 2008, and January 1, 2012, sufficient to show the physical location of each Ventas-owned or operated "Senior Housing Community" (as defined in Ventas's SEC filings).
- No. 14: a list of all Ventas tenants, between January 1, 2008, and January 1, 2012, grouped by the entity ultimately responsible for the tenant.

A copy of the Subpoena is attached as **Exhibit A** to this Motion.

In response to the Subpoena, Ventas corresponded with counsel for Respondent to inform Respondent of the significant burden that Subpeona Categories 1-3 and 6-14 would impose, as well as Ventas's view that the Subpoena seeks documents that are irrelevant to these proceedings. The correspondence is attached as **Exhibit B** to this Motion. Respondent has refused to withdraw the Categories at issue.

LEGAL STANDARD

Respondent's right to obtain discovery is not limitless. The outer boundaries stretch only "to items material to [her] defense." *Scott Epstein*, 2009 SEC LEXIS 217, at *60 n.54 (Jan. 30, 2009) (quotation marks and citations omitted). And in reaching for that outer boundary, a party

"is not entitled to conduct a fishing expedition . . . in an effort to discover something that might assist him in his defense." *Dan Adlai Druz*, 52 S.E.C. 416, 1995 SEC LEXIS 2572, at *33 & n.41 (Sept. 29, 1995) (citing *John Gordon Simek*, 50 S.E.C. 152, 162 (1989); *Jesse Rosenblum*, 47 S.E.C. 1065, 1072 (1984)).

Additional limits apply when a party to a Commission proceeding subpoenas documents from a third party. In particular, a party's right to discovery is balanced against its burden on the third party. *E.g.*, *Morgan Asset Mgmt., Inc.*, 2010 SEC LEXIS 2200, at *2-3 (July 6, 2010). The Commission Rules of Practice provide in pertinent part that "[i]f compliance with the subpoena would be unreasonable, oppressive or unduly burdensome, the hearing officer or Commission shall quash or modify the subpoena, or may order the return of the subpoena only upon specified conditions." Rule of Practice 232(e)(2). Such conditions "may include but are not limited to a requirement that the party on whose behalf the subpoena was issued shall make reasonable compensation to the person to whom the subpoena was addressed for the costs of copying or transporting evidence to the place for return of the subpoena." *Id.*

ARGUMENT

The majority of the information that Respondent seeks in the Subpoena relates to Ventas' business dealings with non-ALC tenants that have no relationship to the subject matter of this administrative proceeding. The Subpoena also broadly defines the information it seeks and would require Ventas to sift through more than 1 million documents and emails over multiple-year time periods. Further, much of the information that Respondent seeks is proprietary and confidential financial information. Therefore, compliance with Subpoena Categories 1-3 and 6-14 would be unreasonable, oppressive, and unduly burdensome.

The Subpoena should be modified to exclude those Categories.

[illegible]

[illegible]

> [illegible]

[illegible] ... willfully ... [illegible]

... element of that, done deliberately ... Section 13(b)(2) ... [illegible]

... systems or failed to ... sufficient controls in place ... company's ... [illegible]

I. The Old CaraVita Documents (Subpoena Categories 1-3) Should Be Excluded.

Subpoena Categories 1-3 seek information relating to Old CaraVita, a Ventas tenant that is not related to ALC. The sole justification advanced by Respondent for seeking documents related to Old CaraVita is as follows:

> ALC stepped into the shoes of the previous tenant, Old CaraVita. The OIP makes numerous allegations with respect to ALC's reporting under the lease to Ventas, including that it included employees, that at times they reported occupancy over 100%, and that the facility financials failed to comply with GAAP. The implication is that Ventas would not accept this reporting, but this is contradicted by their past practice with the previous tenant, Old CaraVita. Ms. Bebo believes the evidence will establish that Old CaraVita engaged in practices in the terms of lease reporting that (a) included employees in the covenant calculations; (b) included reports with over 100% occupancy; (c) included non-GAAP financials; and (d) shifted expenses from the financials of the facility to an affiliated home health company. Ms. Bebo believes all of this was known to Ventas, and she should be permitted document subpoenas to obtain this evidence that contradicts the Division's theory of the case. As such, these requests are both relevant and narrowly tailored.

(Respondent's Request for Issuance of Supplemental Subpoena *Duces Tecum* at 4, File No. 3-16293 (Feb. 4, 2015) (the "Supplemental Subpoena Request") (emphasis added).)

A. The Documents Sought Are Irrelevant and Constitute a Fishing Expedition.

Respondent's explanation for seeking Old CaraVita documents is a non-sequitur: her argument fails to establish that Old CaraVita documents are relevant, much less that they would be material to Respondent's defense to the allegations in the OIP. Respondent's obligation to tell the truth in securities filings that professed compliance with financial covenants does not turn on what a previous tenant told Ventas about those covenants. The "implication" of what would be "acceptable" to Ventas in this regard is neither an element of the Commission's case nor an element of Respondent's defense. Likewise, Section 13(b)(2)(B)(ii) of the Exchange Act requires an issuer to put sufficient controls in place to "to permit preparation of financial

statements in conformity with generally accepted"—not Ventas-accepted—"accounting principles."

Even if the Old CaraVita documents could theoretically help Respondent, Respondent does not provide any basis for her "belief" about what those documents show. Nor is it obvious how Respondent could have formed such a belief about another entity's financial reporting. Thus, Respondent has not furnished grounds upon which Ventas can reasonably be called upon to search, review, and produce several years' worth of documents. The request constitutes an obvious fishing expedition. *Druz*, 52 S.E.C. 416, 1995 SEC LEXIS 2572, at *33 & n.41 (admonishing against fishing expeditions; collecting cases re same).

B. Compliance Would Be Unreasonable and Unduly Burdensome.

Producing documents in response to Subpoena Categories 1-3 would also be unreasonable, oppressive, and unduly burdensome, because the Subpoena requests document categories that are at once broad and difficult to locate. For example, Category No. 1 requests, over a multiple period that stretches back more than 10 years, all communications relating to the "manner and methodology by which occupancy and coverage ratio covenants" were calculated. Such documents are not accessible by keyword searches. Category 2 requires Ventas to locate and search two and a half years' worth of reports from Old CaraVita. And Category 3 would require Ventas to locate all documents related to whether "Old CaraVita excluded expenses related to services provided by the home health company from the covenant calculations." Given that Respondent fails to establish that the documents she seeks have any relevance to these proceedings, the burden Respondent seeks to impose simply cannot be justified.

II. Ventas' Lease Relationships With All of Its Other Tenants (Subpoena Categories 6-12) Should Be Excluded.

Subpoena Categories 6-12 seek extremely broad categories of documents relating to Ventas' non-ALC tenants' compliance with financial covenants in their leases. In those Categories, Respondent seeks a massive number of documents from a period of time of at least two-and-a-half years (1) regarding or reflecting any instance where a financial covenant was amended, modified, or waived for any Ventas lessee; (2) "regarding or reflecting any instance where Ventas reached an understanding with a lessee" about the meaning of an "ambiguous term" in a lease's financial covenant; (3) reflecting "all instances where Ventas asserted an event of default by a tenant under a lease due to breach of a financial covenant"; (4) reflecting "all instances where a tenant disclosed to Ventas an event of default due to breach of a financial covenant"; (5) showing how every Ventas lease default due to breach of a financial covenant was resolved; (6) reflecting any communication between Ventas and its tenants relating to events of default due to breach of a financial covenant; and (7) relating to quarterly calls between Ventas asset managers and lease operators for any senior housing community that was a Ventas tenant.

Respondent hangs these broad categories on a thin reed. According to Respondent, Categories 6-11 are necessary to "challenge . . . the assertions of Ventas representatives with respect to the company's purported practice of not waiving covenants or reaching other accommodations with tenants." (*Supplemental Subpoena Request, supra*, at 5.) With respect to Category 12, which seeks all documents related to Ventas's quarterly conference calls with all of its tenants, Respondent speculates that Ventas's real interest in collecting financial covenant information was gaining greater insight into its competitors. (*Id.* at 5-6.)

A. The Documents Sought Are Irrelevant and Constitute a Fishing Expedition.

As set forth above, conduct by other tenants has no bearing on (a) whether ALC was

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[illegible]

[illegible]

[illegible] than 20% [illegible]

[illegible] to estimate the [illegible]

[illegible]

complying with its lease obligations and (b) whether Respondent lied about that (non)compliance in securities filings. The filings at issue did not report to the public that Ventas had waived compliance with covenants or that ALC and Ventas had reached an accommodation with respect to covenants. The filings did not say that ALC was being cagey with Ventas because it questioned Ventas's purpose in conducting quarterly calls. The filings flatly said that ALC was compliant with its financial covenants.

Moreover, the request for Ventas to search files related to every single tenant self-evidently amounts to a fishing expedition. Respondent has not event attempted to supply a basis for supposing that the (irrelevant) documents she seeks would be found among the documents she would have Ventas search.

B. Compliance Would Be Unreasonable and Unduly Burdensome.

Complying with the panoptic requests in Categories 6 through 12 would be unreasonable and unduly burdensome, requiring Ventas to search documents related to a huge number of properties, at significant burden and expense.

Ventas had more than 1,000 properties during time periods covered by the Subpoena. In meet and confer discussions, Respondent has indicated that it would narrow its request to 244 properties. This is not a reasonable accommodation. As noted above, compliance with the Commission's original subpoena in this matter required Ventas to produce more than 22,000 documents related to a single entity—ALC—that had eight properties. That production required more than 300 hours of attorney time and cost upwards of $100,000. Although it is not possible for Ventas to estimate the cost of searching documents related to thirty times the number of

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[illegible]

[illegible]

properties, completing such a review would, without a doubt, cost in excess of a million dollars.[3]

The potential burden associated with such a review cannot be overstated. A preliminary search to establish the number of documents and communications potentially responsive to Categories —using keywords from the Subpoena and related concepts—returned more than 1 million emails.[4] Beyond email, Ventas maintains a document management system and several network drives and folders that would have to be searched. As to the document management system in particular, Ventas is unable even to identify the pool of potentially relevant electronic documents because more than 172,000 .pdf files in the document management system are document scans that are not currently text searchable. Rendering the documents searchable would require Ventas to run an optical character recognition ("OCR") process on each document and then manually correct for errors in the OCR process. Given that most of Ventas's .pdf documents are maintained at a lower resolution than that which is preferred by OCR systems, the work would be significant. This process alone would impose a substantial burden on and disruption to Ventas's business operations. All this before a single keyword search could be run.

Moreover, the documents that Respondent seeks constitute, in large part, proprietary confidential financial information of hundreds of Ventas tenants who were not involved in the events underlying the OIP. A subset of documents that Respondent has suggested could be

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[3] In a letter dated February 19, 2015, Respondent's counsel states that a narrower set of documents might be produced "as a starting point." (Respondent's February 19 Letter at 3, included in Exhibit B to this Motion.) But Respondent has refused to withdraw her broader request, and the proposal both (a) fails to cure the irrelevancy of the documents Respondent seeks and (b) does nothing to mitigate the confidentiality concerns set forth below.

[4] Note in this context that the Subpoena seeks documents that do not readily admit of keyword searches, such as all documents related to "any instance where Ventas reached an understanding with a lessee with respect how [sic] any ambiguous terms of a financial covenant should be interpreted or applied." (*See* Ex. A, Subpoena Category No. 7.) Further, although Respondent appears to assume that her searches can be limited as to certain properties, Ventas lacks the technological ability to search for—and screen out—most of its documents and communications by property. Although Ventas's document management system allows for searches by property so long as the information was manually coded when the document was uploaded into the system, emails cannot be searched by property at all and only certain electronic documents on network drives can be searched by property.

searched as a "starting point"[5] includes information related to each tenant's rent, taxes, escrows, company finances, debt obligations, security deposits, capital expenditures, and also includes Ventas's strategic plans related to the tenant assets. This confidential information is entirely unrelated to the issues in these proceedings, and some of the information rises to the trade-secret level. Reviewing, redacting, and producing such sensitive documents would require hundreds of hours of attorney time.

In addition, because Ventas's leases with certain tenants include notice requirements before confidential information can be disclosed, Ventas would be required to review each of its leases and ensure that it honors contractual commitments to its tenants even as it attempts to comply with the Subpoena. For example, certain Ventas leases include a requirement that the party whose confidential information is subject to a subpoena be provided individual notice in case the party wishes to separately move to prevent disclosure. Thus, the Subpoena would create a procedural morass—to a dead certainty with respect to Ventas and very likely with respect to this Court.

Respondent has presented no compelling argument for interfering with Ventas's relationship with hundreds of its tenants and compelling the production of thousands of pages of confidential material. Given the irrelevancy of such documents, producing them would be unreasonable. And because Ventas will have a representative at the April hearing who is competent to testify on the general subject matter of the Subpoena, Respondent's voluminous document request violates with the Commission's directive that parties "take reasonable steps to avoid undue burden or expense when they subpoena non-parties." *Morgan Asset Mgmt., Inc.*, 2010 SEC LEXIS 2200, at *2-3; *see also Hyam v. Am. Export Lines, Inc.*, 213 F.2d 221, 222-23

[5]*See supra* note 3.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

(2d Cir. 1954) (Harlan, J.) (underscoring importance and utility of alternative procedures to avoid burdensome discovery).[6]

III. Documents Relating to the Identity and Location of Ventas Tenants (Categories 13 and 14) Are Irrelevant.

Category 13 seeks documents showing the location of every Ventas-owned or operated senior housing community over a period of four years. Respondent's justification for Requests No. 13 is that the documents will show that ALC and Ventas were competitors (presumably by proximity) and that ALC was worried that Ventas was using quarterly calls to acquire non-public information about ALC's "sales and marketing initiatives and administration of its properties" (it is hardly obvious how ALC's worries would appear in such data). (*Supplemental Subpoena Request, supra*, at 6.)

Category 14 seeks a list of every Ventas senior housing community tenant during the same time period and asks that the tenants be organized by the entity ultimately responsible for the lease (apparently the guarantor(s)). The justification for Request No. 14 is that the requested information would show that ALC was a small part of Ventas's portfolio, "refuting the allegation that Ventas either did not or would not have agreed to the practice utilized by ALC to meet the covenants." (*Id.*)

The above explanations are not sufficient to impose third-party discovery burdens on Ventas. Again, the issue in these proceedings is not what sort of competition Ventas was engaged in or whether Ventas would have tolerated ALC's practices on the rationale that the latter was small potatoes. The issue is whether ALC's unvarnished statements that it was complying with financial covenants—statements that Respondent caused to be made—run afoul

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[6] The Commission has issued a subpoena for Tim Doman to testify at the hearing. Tim Doman is the Chief Portfolio Officer at Ventas and has already provided testimony relating to Categories 6 through 12.

of federal securities laws.

In sum, the location and identity of Ventas' senior housing community tenants has no relevance to the subject matter of this proceeding, and such information is not likely to lead to the discovery of evidence that makes any fact alleged in the OIP more or less probable. Requiring Ventas to gather and produce such information would therefore be unreasonable and unduly burdensome—particularly given that Schedule III of Ventas's 10-K forms lists Ventas properties by city and state on a yearly basis and are publicly available. Categories 13 and 14 should be excluded from the Subpoena.

CONCLUSION

For the foregoing reasons, third-party Ventas requests that the Court enter an order modifying the Subpoena to exclude Categories Nos. 1-3 and 6-14. If Ventas is ordered to produce documents in response to these Categories, Ventas respectfully requests that Respondent bear all costs and fees. In addition, Ventas's time to comply should be extended to accommodate the vast quantities of confidential data that respondent seeks.

Dated: March 3, 2015

Respectfully submitted,

/s/ *Roger H. Stetson*

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Attorneys for Ventas, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on March 3, 2015, I caused a copy of the foregoing **Ventas's Motion to Modify Subpoena** to be served on the parties listed below by mailing the papers through the U.S. Postal Service by first class mail pursuant to SEC Rule of Practice 150(c), 17 C.F.R. § 201.150(c):

Honorable Cameron Elliot
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-2557

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Senior Trial Counsel
Securities and Exchange Commission
175 W. Jackson St., Ste. 900
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Securities and Exchange Commission
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A.

SUBPOENA TO PRODUCE DOCUMENTS

Issued Pursuant to U.S. Securities and Exchange Commission Rules of Practice 111(b) and 232, 17 C.F.R. §§ 201.111(b), 201.232.

1. TO
Ventas, Inc.
353 N. Clark Street
Suite 3300
Chicago, IL 60654

This subpoena requires you to produce documents or other tangible evidence described in Item 7, at the request of the Party described in Item 4, in the U.S. Securities and Exchange Commission Administrative Proceeding described in Item 6.

2. PLACE OF PRODUCTION
Reinhart Boerner Van Deuren s.c.
1000 N. Water St., Suite 1700
Milwaukee, WI 53202

3. DATE AND TIME PRODUCTION IS DUE
February 20, 2015

4. PARTY AND COUNSEL REQUESTING ISSUANCE OF SUBPOENA
Ryan S. Stippich
Counsel for Laurie Bebo
Reinhart Boerner Van Deuren s.c.
1000 N. Water St., Suite 1700
Milwaukee, WI 53202

5. THE PRODUCTION OF DOCUMENTS OR OTHER TANGIBLE EVIDENCE IS ORDERED BY

The Honorable Cameron Elliot

Administrative Law Judge
U.S. Securities and Exchange Commission

6. TITLE OF THE MATTER AND ADMINISTRATIVE PROCEEDING NUMBER

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

7. DOCUMENTS OR OTHER TANGIBLE EVIDENCE TO BE PRODUCED (ATTACH PAGES AS REQUIRED)

See attachment

DATE SIGNED	SIGNATURE OF ADMINISTRATIVE LAW JUDGE
FEB. 5, 2015	

GENERAL INSTRUCTIONS

MOTION TO QUASH

The U.S. Securities and Exchange Commission's Rules of Practice require that any application to quash or modify a subpoena comply with Commission Rule of Practice 232(e)(1). 17 C.F.R. § 201.232(e)(1).

DEFINITIONS AND INSTRUCTIONS

1. You are instructed to produce documents and/or electronically stored information evidencing, commemorating, reflecting and/or relating to the following list.

2. Unless otherwise specified, the relevant time frame is January 1, 2008 to the present.

3. The terms "Assisted Living Concepts, Inc.," and "ALC" refer to Assisted Living Concepts, Inc. and includes (a) all of its affiliates, divisions, units, successor and predecessor entities, subsidiaries, parents, and assigns, including but not limited to Assisted Living Concepts, LLC (d/b/a Enlivant); (b) all of its present and former officers, directors, agents, employees, representatives, accountants, investigators, and attorneys; (c) any other person acting or purporting to act on its behalf; or (d) any other person otherwise subject to its control, which controls it, or is under common control with it.

4. The terms "Ventas" and "Ventas REIT" refers to Ventas, Inc. and includes (a) all of its affiliates, divisions, units, successor and predecessor entities, subsidiaries, parents, and assigns; (b) all of its present and former officers, directors, agents, employees, representatives, accountants, investigators, and attorneys; (c) any other person acting or purporting to act on its behalf; or (d) any other person otherwise subject to its control, which controls it, or is under common control with it.

5. The term "Senior Housing Communities" means Ventas' portfolio of independent and assisted living communities, and communities providing care for individuals with Alzheimer's disease and other forms of dementia or memory loss as described in Ventas' annual reports.

6. The term "Ventas lease" refers to the Amended and Restated Master Lease Agreement between and among Ventas Realty, Limited Partnership and affiliates of ALC, dated January 1, 2008, whereby ALC rented eight independent and assisted living facilities located in several states in the Southeast United States (referred to herein as the "CaraVita Facilities").

7. The term "Old CaraVita" refers to the entities operating the CaraVita Facilities, including BBLRG, LLC, CVSC, LLC and the principal managers of those entities, Josh Coughlin and Laura Elizabeth "Beth" Cayce, and any representatives of the eight special purpose entities that owned the facilities.

8. "Communication" means any oral, written, electronic, or other transfer of information, ideas, opinions or thoughts by any means, from or to any person or thing.

9. "Including" means "including without limitation."

10. "Relate to," "related to" and "relating to," mean mentioning or describing, containing, involving or in any way concerning, pertaining or referring to or resulting from, in whole or in part, directly or indirectly, the stated subject matter.

11. The terms "and" as well as "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these requests any document or thing which might otherwise be construed to be outside their scope.

12. "Document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a), including, without limitation, writings, drawings, graphs, charts, photographs, sound records, images, electronic or computerized data compilations and other electronically stored information, and any versions, drafts or revisions of any of the above. Any document which contains any comment, notation, addition, insertion or marking of any kind which is not part of another document which does not

contain a comment, notation, addition, insertion or marking of any kind which is part of another document, is to be considered a separate document.

13. "Electronically stored information" means all information that is created, manipulated, or stored in electronic form regardless of the medium. Electronically stored information also includes any deleted data that once existed as live data but has been erased or deleted from the electronic medium on which it resided. Even after deleted data itself has been overwritten or wiped, information relating to the deleted data may still remain. When you produce any electronically stored information, it shall be produced in the following format: .pdf.

14. A document or thing is deemed to be in your control if you have the right to secure the document or thing or a copy thereof from another person or entity having actual possession of the document or thing. If any document or thing responsive to this request was, at one time, but is no longer, within your possession or control, state what disposition was made of the document or thing, by whom, the approximate date of the disposition, and the reason for the disposition.

15. If any request for documents is deemed to call for the production of privileged or work product materials and such privilege or work product is asserted, provide the following information with respect to each withheld document:

(a) the privilege(s) and/or work product protection asserted;

(b) the date on which the document was created or finalized;

(c) the number of pages, including any attachments or appendices;

(d) the names of the document's author, authors or preparers;

(e) the name of each person to whom the document was sent, carbon copied or blind carbon copied;

(f) the subject matter of the document or responses, and in the case of any document relating or referring to a meeting or conversation, identification of such meeting or conversation.

DOCUMENTS TO BE PRODUCED

1. All communications with Old CaraVita between April 1, 2005 and December 31, 2007 relating to the manner or methodology by which Old CaraVita calculated the occupancy and coverage ratio covenants under its lease with Ventas governing the CaraVita Facilities.

2. Any documents or communications between April 1, 2005 and December 31, 2007 relating to any instances where occupancy was reported at over 100% at any facility while Old Caravita leased the CaraVita Facilities from Ventas.

3. All documents related to Old Cara Vita's use of an affiliated home health company to provide services at any of the CaraVita Facilities during the time period April 1, 2005 and December 31, 2007 as it pertains to Old CaraVita's calculations of coverage ratio covenants under its lease with Ventas (i.e. whether Old CaraVita excluded expenses related to services provided by the home health company from the covenant calculations).

4. All documents reflecting or referring to communications between June 2012 and the present concerning pertaining to the SEC's investigation of ALC's alleged use of employees in its occupancy or coverage ratio calculations at Ventas properties.

5. All documents reflecting or referring to communications between May 2012 and the present between Ventas and the law firm of Milbank, Tweed, Hadley & McCloy, LLP pertaining to the SEC's investigation of ALC's alleged use of employees in its occupancy or coverage ratio calculations at Ventas properties or Milbank's internal investigation of possible purported irregularities in connection with ALC's lease with Ventas, conducted by Milbank as

disclosed in ALC's May 4, 2012 Form 8-K filed with the U.S. Securities and Exchange Commission (the "SEC").

6. Any documents or communications regarding or reflecting any instance where a financial covenant was amended, modified, or waived for any Ventas lessee between January 1, 2008 and May 31, 2011.

7. All documents or communications regarding or reflecting any instance where Ventas reached an understanding with a lessee with respect how any ambiguous terms of a financial covenant should be interpreted or applied between January 1, 2008 and May 31, 2012.

8. Documents sufficient to reflect all instances where Ventas asserted an event of default by a tenant under a lease due to breach of a financial covenant during the time period January 1, 2008 and May 31, 2011.

9. Documents sufficient to reflect all instances where a tenant disclosed to Ventas an event of default due to breach of a financial covenant during the time period January 1, 2008 and May 31, 2011.

10. Documents sufficient to reflect how each Ventas-asserted default or tenant-disclosed event of default due to breach of a financial covenant during the time period January 1, 2008 and May 31, 2011 was resolved (i.e. waived by Ventas, litigation, or other).

11. Communications between Ventas and the tenant related to events of default due to breach of a financial covenant identified in response to requests 8-10.

12. All documents related to quarterly calls between Ventas asset managers and operators and/or lessees of Ventas' other Senior Housing Communities for the time period January 1, 2008 to May 31, 2012, including but not limited to agendas, notes, summaries, and communications with the tenants related to the same.

13. Documents sufficient to show the physical location of each Ventas-owned or operated Senior Housing Community (as defined in Ventas Inc. SEC filings) as of January 1st of each year from 2008 to 2012.

14. A listing of Ventas' tenants for each of its Senior Housing Communities as of January 1st of each year from 2008 to 2012 grouped by the entity ultimately responsible for the tenant similar to that contained in the "Owned and Loan Portfolio - Operator Concentration" schedule at page 2 of Ventas' Fourth Quarter 2009 Supplemental Data filed on Form 8-K with the SEC on February 8, 2010. Thus, for example, each of the eight CaraVita Facilities would be grouped under ALC because each tenant was its subsidiary and ALC was the guarantor of the tenant's payment obligation.

15. Documents sufficient to reflect the accounting treatment utilized by Ventas in relation to the sale of the CaraVita Facilities to ALC.

B.

[illegible]

Notice that [illegible] documents relating to the relationship [illegible] collection and review of [illegible] documents [illegible] The collection and review [illegible] The document [illegible] this production [illegible]

[illegible]

BARACK FERRAZZANO
Barack Ferrazzano Kirschbaum & Nagelberg LLP

Roger H. Stetson | T. 312.629.7339 | roger.stetson@bfkn.com

February 16, 2015

VIA E-MAIL

Ryan S. Stippich
Reinhart Boerner Van Deuren s.c.
1000 North Water St., Ste. 1700
Milwaukee, WI 53202-6650

Re: **In the Matter of Bebo, AP File No. 3-16293**

Dear Ryan,

As you know, I represent Ventas, Inc. in the above-referenced U.S. Securities and Exchange Commission ("SEC") administrative proceeding ("Proceeding"). I write to follow up on our phone calls of Monday, February 9, 2015 and Monday February 16, 2015 regarding the subpoena that your client, Laurie Bebo ("Respondent"), served on Ventas on February 9, 2015 (the "Subpoena"). A copy of the Subpoena is enclosed for reference.

For the reasons we discussed over the phone, and as explained more fully below, compliance with certain requests in the Subpoena would be unreasonable, oppressive, or unduly burdensome for Ventas. Under the SEC Rules of Practice, the hearing officer "shall quash or modify" a subpoena "or may order return of the subpoena only upon specified conditions" if "compliance with the subpoena would be unreasonable, oppressive or unduly burdensome." *See* SEC Rule of Practice 232(e)(2). Ventas therefore requests that Respondent withdraw the requests for the reasons and on the terms described below. If Respondent is not willing to withdraw the Subpoena, Ventas will move to quash the Subpoena pursuant to SEC Rule of Practice 232(e)(2).[1] If Ventas is forced to file such a motion, Ventas will request "reasonable compensation" from Respondent for costs associated with responding to the Subpoena.

Respondent Has Received Access to All Relevant Information from Ventas

Ventas has already been asked, through subpoena, to collect, review and produce documents related to the relationship between Respondent, ALC, and Ventas. The process to collect and review the ALC documents required over 300 hours of time, at a cost in excess of $100,000. The collection and review resulted in the production of over 22,000 thousand pages of documents. The Respondent was provided a copy of this production on February 7, 2014.

[1] Since we agreed to accept service of the Subpoena on February 9, 2015, we consider February 24, 2015 the due date for filling the motion to quash pursuant to SEC Rule of Practice 232(e)(2). If you contend that the date is different, please advise me immediately.

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[illegible]

[illegible]

Furthermore, Ventas voluntarily provided Respondent access to interview Joe Solari on matters relevant to the Proceeding on October 17, 2013. Consequently, Respondent has had possession of all relevant documents and information related to the subject of the Proceeding from Ventas for over a year.

Subpoena Requests 1-3 and 6-14 are Unreasonable, Oppressive and Unduly Burdensome[2]

Although Respondent has possession of the relevant documents concerning Ventas and ALC, Respondent seeks to compel Ventas to review and produce all documents and communications relating to leases with over 1400 tenants over at least a three-and-a-half year time period.[3] The scope of the Subpoena is not reasonable and compliance would place an undue burden on Ventas.

Specifically, requests No. 1-3 and 6-12 seek broad categories of documents relating to Ventas' non-ALC tenants' compliance with financial covenants in their leases. For example, Respondent seeks *all* documents from a period of time of *at least three-and-a-half years* (1) regarding or reflecting any instance where a financial covenant was amended, modified, or waived for *any* Ventas lessee; (2) "regarding or reflecting any instance where Ventas reached an understanding with a lessee" about the meaning of an "ambiguous term" in a lease's financial covenant; (3) reflecting "all instances where Ventas asserted an event of default by a tenant under a lease due to breach of a financial covenant"; (4) reflecting "all instances where a tenant disclosed to Ventas an event of default due to breach of a financial covenant"; (5) showing how *every* Ventas lease default due to breach of a financial covenant was resolved; (6) reflecting any communication between Ventas and its tenants relating to events of default due to breach of a

[2] Ventas is not formally requesting Respondent to withdraw Requests No. 4 and 5 because, after the consultation with you on February 10, 2015, Ventas has concluded that it is not in possession of responsive documents. Specifically, Requests No. 4 and 5 seek documents and communications regarding the SEC's investigation of ALC's use of employees in its occupancy or coverage ratio calculation at Ventas properties, and documents and communications regarding Milbank, Tweed, Hadley & McCloy, LLP's internal investigation of irregularities in connection with ALC's lease with Ventas. During our phone call, you explained that Respondent is seeking non-privileged documents and communications of a substantive nature. Ventas has not found any documents that are responsive to Requests No. 4 and 5 and that are not protected from disclosure by the attorney-client privilege.

At this juncture, Ventas is not seeking Respondent to withdraw Request No. 16 because we understand from our conversation that Respondent is seeking information the request is seeking information duplicative of Request No. 26 in Respondent's previously served subpoena.

[3] The subpoena seeks documents relating to Ventas' tenants during the 2008-2012 timeframe. As of December 31, 2012, Ventas owned more than 1,400 properties, including seniors housing communities, skilled nursing and other facilities, MOBs, and hospitals, in 46 states, the District of Columbia and two Canadian provinces, with three new properties under development.

financial covenant; and (7) relating to quarterly calls between Ventas asset managers and lease operators for any senior housing community. None of the requests is reasonable because they are not targeted to the ALC relationship that gave rise to Proceeding.

The Subpoena's requests are overly broad and would require a massive search. As you know, Ventas acquires and owns seniors housing and healthcare properties and leases the properties to unaffiliated tenants. As the landlord, the creation of documents and communications by and between Ventas personnel and the over 1400 facility tenants regarding lease matters, including the compliance and modification of the lease agreements, is the ordinary course of daily business for Ventas and the tenants. Ventas does not maintain its business records in a segregated manner that would permit a targeted extraction of the documents requested by the Respondent. Consequently, compliance with the subpoena would require a comprehensive sweep of all communications and files related to each of the 1400 tenants. Requiring Ventas to engage in this exercise is patently oppressive as compliance with the Subpoena would require the review of millions of pages of documents unrelated to ALC and the Respondent.

In addition to being unreasonable in terms of being overbroad and seeking irrelevant information, the Subpoena is unreasonable in terms of resources that would be required for compliance. A simple comparison of the resources already spent on the production focused exclusively on ALC with the resources required to comply with the Subpoena illustrates the unreasonableness of requiring Ventas to comply with the Subpoena. The ALC portfolio consisted of 8 facilities. The production of the documents relating to the ALC portfolio required over 300 hours of time reviewing tens of thousands of pages at a cost in excess of $100,000. The Subpoena issued by Respondent requests Ventas to conduct a similar review for the entire Ventas portfolio of over 1,400 facilities. The Subpoena, therefore, is seeking the review of a pool of information *175 times larger* than the ALC portfolio. Compliance with the Subpoena would require thousands of hours to review the documents and cost millions of dollars to complete.[4]

Furthermore, there is an added element of hardship associated with complying with the Subpoena on top of the sheer volume and cost of the production. The Subpoena targets documents related to the financial covenants of the tenants' leases which would require the production of proprietary and confidential financial information of both Ventas and the 1,400 facilities. Compliance with the Subpoena would require hundreds of additional hours conferring with the tenants and coordinating the production to protect the tenants' proprietary information in compliance with the lease agreements between Ventas and the tenants. This additional consequence of disrupting the business between Ventas and every tenant relationship in the

[4] Even if Ventas only reviewed the documents relating to the 659 senior housing communities, owned as of December 31, 2012, the review pool would be 82 times larger than the 8 facility ALC portfolio. Such a review would similarly require thousands of hours and seven figures in fees to complete.

Ventas portfolio is an additional undue burden which would be placed on Ventas if required to comply with the Subpoena.

In addition to withdrawing Requests No. 1-3 and 6-12 as discussed above, Respondent should withdraw Requests No. 13 and 14. Request No. 13 seeks documents showing the location of every Ventas-owned or operated senior housing community over a period of four years. Request No. 14 seeks a list of every Ventas senior housing community tenant during the same time period. The location and identity of Ventas' senior housing community tenants has no relevance to the relationship between Ventas and ALC. As such, requiring Ventas to gather and produce such information would be unreasonable and unduly burdensome.

As we discussed today on the phone, we are willing to consider alternative avenues to providing some of the information Respondent is seeking in the Subpoena, but we cannot consent to reviewing and producing the pool of information identified in the Subpoena. We request that Respondent confirm that she is withdrawing the Subpoena by February 19, 2016. Please contact me if you would like to discuss the Subpoena further.

Sincerely,

R. H. Stetson

Roger H. Stetson

cc: Alison R. Leff, Esq.
Benjamin J. Hanauer, Esq.

Reinhart
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February 19, 2015

SENT BY E-MAIL

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

I write to respond to your letter, dated February 16, 2015, regarding the Subpoena *duces tecum* served on Ventas on February 9, 2015 (the "Subpoena"). We disagree with your assertion that compliance with the Subpoena would be unreasonable, oppressive or unduly burdensome. Further, we proposed numerous ways to limit the scope of the requests or to conduct limited searches for responsive documents that would eliminate the need for the broad and expansive searches of e-mails that Ventas contends would be necessary to comply with the Subpoena. Indeed, it seems your letter is written from the perspective as if we had never discussed these matters.

In addition, your letter inaccurately states that we already have access to all relevant information from Ventas. While we appreciate your previous cooperation, we have, by no means, received all relevant documents from Ventas. During our lengthy phone calls on February 9, 2015 and February 16, 2015, we discussed the relevance of the requested documents to Ms. Bebo's defense in detail. At no time during either of those calls did you express a disagreement with the relevance of the documents to those defenses or these proceedings generally. We explained the relevance of the requested documents on those calls. In addition, we were required to make a showing of relevance that satisfied the administrative law judge in this matter prior to issuance of the Subpoena. I will not rehash those explanations, and attach a copy of our relevance statement filed with the Commission.

With respect to the scope of the Subpoena, I will address Request Nos. 1-3 and 6-14 separately because they involve distinct considerations, though your letter discusses them together and, therefore, only addresses Request Nos. 6-14. Request Nos. 1-3 involve communications between Ventas and the prior lessee and operator of the eight CaraVita facilities

that were subsequently leased to Assisted Living Concepts, Inc. ("ALC"). As you are no doubt aware, ALC basically stepped into the shoes of the old lessee and the lease terms are similar—they are identical with respect to the financial covenants. Ventas has made no showing that it would be unduly burdensome to collect documents reflecting communications with the prior operator. Indeed, we proposed that Ventas limit its search of e-mails between Ventas and the principal of the prior operator, Josh Coughlin. His e-mail address at the time was joshc@caravita.com. We also requested that Ventas produce Old CaraVita's quarterly compliance reports communicated to Ventas (if they were provided by someone other than Coufhlin). It would seem to us that these requests, as limited, would require minimal time on the part of either Ventas personnel or its counsel, and Ventas has made no demonstration or assertion otherwise.

With respect to Requests Nos. 6-14, your concerns with the size of the search that would be required to comply with the Subpoena were discussed in detail on both of our calls. In an attempt limit the scope of the search to address Ventas' burden concerns, we offered numerous options for narrowing the requests. For example, during our first phone call on February 9, 2015, we proposed limiting all of these requests to Ventas' Senior Housing Communities (defined in instruction No. 5 and in Ventas' annual reports). And so your constant reference to Ventas' current 1400 properties/tenants is inaccurate and misleading because it encompasses all of Ventas' properties/tenants. It is further misleading because it describes Ventas today, which is a much different company than it was back during the time period relative to this matter (it had about one-third of the number of properties). For clarification, the Subpoena issued by the administrative law judge referred to "page 2 of Ventas' Fourth Quarter 2009 Supplemental Data filed on Form 8-K with the SEC on February 8, 2010," which indicates there are only 244 Senior Housing Community facilities and only 505 facilities total.

But more to the point is the fact that within the Senior Housing Community subset, there appear to be only a handful of operators like ALC. For all Ventas operators, which include all of the non-Senior Housing Community facilities, the filing lists only 12 operators total. We explained this during our phone calls. We also offered to limit the time period of the requests to 2008-2010 to try and address the concerns you raised about scope and burden. And the requests are already limited to discreet topics: amendments, modification, or waivers of lease covenants; and how Ventas dealt with events of defaults with this handful of operators during the relevant time period.

If the requests are limited to senior housing, and are further limited in time frame, Ventas should be able to comply with the requests. Should Ventas maintain that this limited scope is still unduly burdensome, to show a good faith attempt at compliance, it would be helpful to provide evidence that an attempt was made to determine the amount of documents a search would produce.

As another alternative to running e-mail searches, we requested that the asset management quarterly monitoring documentation be gathered as a starting point. Based on our review of the Ventas production and testimony by Ventas personnel, it seems that the information about potential waivers, modifications, and events of default would be included in these quarterly reports prepared by the asset managers assigned to the handful of operators of the Senior Housing Communities. We hoped that these notes would provide a source of particular tenants or facilities that could be focused on, in lieu of senior housing generally. You informed us on our call this week that some of these documents likely contained relevant, substantive information but you declined to produce these pursuant to the Subpoena. The basis for your refusal was that the documents contained tenants' and/or Ventas' confidential and/or proprietary information. I proposed that a protective order could be entered in order to address those concerns. Because your correspondence fails to acknowledge this offer, we presume that you are refusing to produce these relevant, responsive documents, even with an appropriate protective order.

Finally, the request to withdraw Requests No. 13 and 14, which request documentation of the locations of Ventas-owned or operated senior housing, as unreasonable and/or unduly burdensome is baseless. As previously discussed, the evidence is relevant to the proceedings because it supports the contention that Ventas was a competitor of ALC and it had Senior Housing Communities that were located such that they were in direct competition with ALC's properties. ALC would be therefore appropriately circumspect in its discussions with Ventas about their own operations.

Further, as I emphasized on our call (but as is also clear from the requests themselves) we are simply seeking a list of where the houses are located as of the end of each calendar year, which could be compiled in a variety of ways from data that a national landlord would have available. In fact, Ventas' website has a map showing an approximate location of the current senior housing facilities:

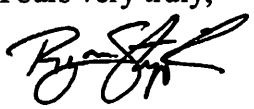
Similar maps identifying Ventas facilities by state are included in each of Ventas' annual reports. Obviously, the particular address or a listing of the city and state of each Senior Housing Community is readily available. Any assertion that providing a list of the addresses for these facilities would be unduly burdensome is unsupportable.[1]

We remain open to narrowing the requests and/or considering alternative avenues for compliance that will be cost-effective for your client but will allow our client to gather the relevant evidence needed to mount her defense. As we discussed on our phone call on Monday, we are willing to extend the deadline for compliance to accommodate further discussions, but at

[1] Finally, we did not agree to withdraw Request Number 15 as duplicative. However, in a further effort to accommodate Ventas, we agreed to wait and see what Ventas produced in response to the initial subpoena before having Ventas pursue Request 15.

this point we will not be withdrawing the subpoena. Please contact me to discuss this further.

Yours very truly,



Ryan S. Stippich

31400587

cc Benjamin J. Hanauer, Esq.
Mark A. Cameli, Esq.

BARACK FERRAZZANO
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Roger H. Stetson | T. 312.629.7339 | roger.stetson@bfkn.com

February 27, 2015

VIA E-MAIL

Ryan S. Stippich
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1000 North Water St., Ste. 1700
Milwaukee, WI 53202-6650

Re: **In the Matter of Bebo, AP File No. 3-16293**

Ryan,

As you know, I represent Ventas, Inc. ("Ventas") in the above-referenced U.S. Securities and Exchange Commission administrative proceeding ("Proceeding"). This letter is in response to your February 19, 2015 letter ("February 19 Letter") regarding the subpoena that your client, Laurie Bebo ("Respondent"), served on Ventas on February 9, 2015 (the "Subpoena").

Respondent Has Received Access to All Relevant Information from Ventas

Ventas disagrees with Respondent's position on the relevance of the documents that the Subpoena would require Ventas to collect and review. As detailed in previous correspondence, Respondent has been in possession of all of Ventas's relevant documents and information related to the subject of the Proceeding for over a year. Ventas previously produced approximately 22,000 pages of documents that specifically relate to the relationship between and among Ventas, ALC, and Respondent.

Subpoena Categories 1-3 are Unreasonable, Oppressive, and Unduly Burdensome

In Category Nos. 1-3 Respondent seeks "communications between Ventas and the prior lessee and operator of the eight CaraVita facilities." (*See* February 19 Letter at 1.) According to Respondent, these communications are relevant to the Proceeding because ALC "basically stepped into the shoes of the old lessee." (*Id.* at 2.) ALC did not step into the shoes of the former operator. ALC was subject to a new master lease agreement with Ventas. Further, there is no plausible argument that collecting, reviewing, and producing *all* communications with the former CaraVita operator over a three-year period is a reasonable request or related to the subject matter of the Proceeding.

Despite the unreasonable and undue burden of the requests, if Respondent agrees to withdraw Category Nos. 6-12, Ventas will produce all email communications in its possession

with Mr. Coughlin (to and from the email address you identified to us) between April 1, 2005, and December 31, 2007, that relate to any covenant calculation under the Old CaraVita lease.

Subpoena Categories 6-12 are Unreasonable, Oppressive, and Unduly Burdensome

Category Nos. 6-12 are overly broad and would require a massive undertaking to collect, review, and produce. Compliance with the Subpoena, *as drafted and served,* would require a comprehensive sweep of all communications and files related to each of the 1400 tenants that existed in 2012. Requiring Ventas to engage in this exercise is oppressive, as compliance with the Subpoena would require the review of millions of pages of documents unrelated to ALC and the Respondent.

In my letter to you on February 16, I explained several of Ventas's objections to these requests including the fact that the Subpoena is drafted in such a way as to require Ventas to collect and review all documents and communications for all tenants during the 2008 to 2012 period. Respondent's February 19 response contends that this objection is "inaccurate and misleading because it encompasses all of Ventas' properties/tenants." (*See* February 19 Letter at 2.) Respondent further states that Ventas's objection to searching files of 1400 tenants is misleading because the objection relates to Ventas "today, which is a much different company than it was back during the period relative to this matter." (*Id.*)

Respondent's contentions on this score are deficient. *First*, Respondent fails to cite any language in the Subpoena that would limit the number of tenants whose documents must be searched. No such language exists. *Second*, Ventas's statement regarding the number of tenants to which the Subpoena applies is accurate. The scope of the Subpoena is January 1, 2008 through May 31, 2011 (Category Nos. 6, 8, 9, 10 and 11) and January 1, 2008, through May 31, 2012 (Category Nos. 7 and 12). In 2011, Ventas owned 1,378 properties located in 46 states, the District of Columbia, and two Canadian provinces. As of December 31, 2012, Ventas owned more than 1,400 properties. Respondent's reliance on 2008 numbers alone simply ignores the temporal scope of the Subpoena.

Respondent also contends that Ventas exaggerates the unreasonable nature of the Subpoena because Respondent offered to narrow it to only documents and communications related to: (1) the Senior Housing Community facilities owned by Ventas; and (2) over a 3 year period (2008, 2009 and 2010). In 2010, Ventas owned 240 Senior Housing Communities. The subset of documents and communications that Respondent now proposes is still unreasonable. The review and production of the documents for the 8 facility ALC portfolio required over 300 hours of time to collect and review. To review all communications and documents related to 240 facilities, or ***30 times*** the number of facilities in the ALC portfolio, is oppressive and unduly

burdensome because it would require thousands of hours of review time at a cost in excess of a million dollars.

Finally, Respondent proposes that as an alternative to all of the communications between Ventas and the tenants, Ventas produce "quarterly monitoring documentation" of all 240 facilities as a "starting point" for responding to Category Nos. 6-12. The proposal is not acceptable for a number of reasons.

First, Respondent's proposal is not an offer to narrow the scope of the Subpoena. Instead, Respondent couches the proposal as a "starting point" to continue her expansive fishing expedition into information that is irrelevant to her, but proprietary and confidential to others.

Second, producing the quarterly monitoring documentation would require Ventas to conduct an analysis of each lease related to the 240 facilities to assess legal obligations to each tenant and then hundreds of additional hours conferring with tenants and coordinating production to protect the tenants' proprietary information to comply with whatever obligations exist. For example, Respondent need look no further than Section 46 of the ALC Master Lease Agreement for an example of the type of laborious procedure that Ventas could be required to follow in order to produce the quarterly monitoring documentation.

Third, even if Ventas secured consent from the tenants and complied with disclosure requirements under the leases (as applicable) for 240 senior housing facilities, the time and cost associated with producing the quarterly monitoring documentation would be unreasonable, oppressive, and unduly burdensome. Specifically, while the documents do contain information relating to the tenants' compliance with coverage ratios, the quarterly monitoring documentation also includes information related to each tenant's rent, taxes, escrows, company finances, debt obligations, security deposits, capital expenditures and also includes Ventas's strategic plans related to the tenant assets. This confidential information is entirely unrelated to the issues in the Proceeding, some of which rises to the trade secret level, and would require hundreds of hours associated with the redaction of thousands of pages of reports over three years. Ventas is not going to produce such information and Ventas reiterates the request that Respondent withdraw Category Nos. 6-12.

Subpoena Categories 13-14 are Unreasonable, Oppressive, and Unduly Burdensome

Respondent has not articulated a reasonable basis for Ventas to incur the cost to compile the information requested in Category Nos. 13 and 14. However, if Respondent agrees to

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withdraw Category Nos. 6-12, Ventas will agree to produce the state and city for each Ventas owned facility for the years 2008 through 2011.[1]

Conclusion

In sum, if Respondent agrees to withdraw Category Nos. 6-12, Ventas will produce:

(1) all communication in its possession with Mr. Coughlin (to and from the email address you identified) between April 1, 2005, and December 31, 2007, that relate to any covenant calculation under the Old Cara Vita; and

(2) documentation which identifies the state and city for each Ventas owned facility for the years 2008 through 2011.

Please advise us by noon on Monday, March 2, 2015, if this proposal is acceptable to Respondent. If Respondent is not willing to accept this proposal, Ventas will move to quash the Subpoena in its entirety pursuant to SEC Rule of Practice 232(e)(2). If Ventas is forced to file such a motion, Ventas will request "reasonable compensation" from Respondent for costs associated with responding to the Subpoena.

Sincerely,

Roger H. Stetson

cc: Alison R. Leff, Esq.
Benjamin J. Hanauer, Esq.

[1] Respondent's February 19 Letter states that it is not currently requesting documents in response to Category No. 15 and indicates that Respondent will review previously produced material on the same subject matter. Ventas presumes that previously provided information is sufficient. Please advise us if Respondent has a different view.