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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.

THE DIVISION OF ENFORCEMENT'S PREHEARING BRIEF

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I. INTRODUCTION

Over a three-year period, Respondent Laurie Bebo perpetrated a brazen fraud while serving as the CEO of Assisted Living Concepts, Inc. ("ALC"). Bebo's scheme attempted to conceal that ALC was failing certain occupancy and revenue-related covenants contained in a lease by which ALC operated eight assisted living facilities. Bebo hid ALC's covenant failures from ALC's landlord, Ventas, because ALC's breach of the lease could have resulted in ALC's eviction from the facilities and the acceleration of the remaining rent owed under the lease (between $16 and $25 million during the relevant period).

To hide from Ventas the fact that ALC was significantly failing the covenants, Bebo included fake occupants in the covenant calculations that ALC provided to Ventas each quarter. Bebo personally selected the identity of the fake occupants. Most were ALC employees who did not actually visit or stay at the facilities. Some were former ALC employees who had been terminated or were future ALC employees who had been hired but had not yet started. Bebo also falsely listed as occupants her husband and parents (using last names other than "Bebo"), her husband's friend, and the parents and siblings of Bebo's close friend. Bebo went so far as including her friend's *seven year-old nephew* as an assisted living resident, for nine straight months. Bebo selected many of these non-residents to be "occupants" of multiple facilities during the same time period, for months, quarters, and in some cases, years on end. While a small number of ALC employees actually spent a limited number of nights at the facilities, in lieu of staying at hotels, Bebo included these employees in the calculations for periods far greater than their actual stays. The remaining, and vast majority of, "employees" Bebo included in the covenant calculations did not stay at the facilities.

By the height of her scheme, Bebo was including more than 100 fake residents in the covenant calculations. For the purposes of the calculations, ALC treated each fake resident as an occupant for every day of each quarter, regardless of whether and for how long the person actually stayed at the facilities. ALC also recognized revenue associated with the fake occupants in the financial materials ALC provided to Ventas. Ventas knew none of this.

Bebo disputes little of the above facts. Instead, she offers two primary excuses for her misconduct. First, she argues that Ventas somehow agreed to allow an unlimited number of ALC personnel to be included in the covenant calculations, so long as Bebo could manufacture – on a *post hoc* basis after the quarter had ended – some business-related reason for that person to stay at the facilities (even if they never actually travelled or stayed there). Second, Bebo claims that her scheme was fully disclosed to and approved by a slew of ALC attorneys, board members, and auditors.

At the hearing, the Division will show that Bebo's account is both nonsensical and internally inconsistent. Beyond Bebo's story not making any sense, not a single percipient witness or document will corroborate Bebo's alibis. To the contrary, the three individuals Bebo claims were witnesses to her purported agreement with Ventas will all deny that an agreement existed to include *any* employees in the covenant calculations. Nor does any written agreement with Ventas exist.

Moreover, each attorney Bebo claims approved the practice will deny knowing that ALC was including employees in the covenant calculations, let alone approving the practice. Similarly, ALC's directors will deny approving the inclusion of employees in the covenant calculations or knowing key details of Bebo's scheme. ALC's auditors will likewise deny Bebo's claims that she fully disclosed her practice of including employees in the covenant calculations, and will testify that they understood the practice to be based on an actual agreement with Ventas. Again, no document exists corroborating Bebo's account of what she disclosed to, or was approved by, Ventas, the attorneys, the board, and auditors.

Simply put, the Court will have the binary option of believing Bebo, or believing a litany of witnesses who will testify that she is not telling the truth.

At the hearing, the Division will present evidence showing that Bebo violated the securities laws and completely abrogated her responsibilities as a public company CEO. The Division will establish that, through her misconduct, Bebo: (a) fraudulently certified the accuracy of ALC's public filings, which stated that ALC was in compliance with the Ventas lease covenants; (b) caused ALC's books and records to be falsified; (c) circumvented ALC's internal controls; and (d) lied to ALC's auditors. The Division will then request the Court to appropriately sanction Bebo in the public interest, by issuing a cease-and-desist order and orders of disgorgement, prejudgment interest and civil penalties, and barring Bebo from again serving as an officer or director of a public company.[1]

II. FACTUAL SUMMARY

A. ALC and the Ventas Lease

Until she was terminated in mid-2012, Bebo was the CEO and a director of ALC, a publically-traded operator of assisted living facilities. In 2007, ALC was offered the opportunity to acquire the operations of eight assisted living facilities located in the Southeastern United States, comprised of approximately 540 total units. These eight facilities (the "Ventas facilities") were owned by Ventas, a large Chicago-based real estate investment trust. In order to acquire the operation of the Ventas facilities, ALC was required to enter a lease with Ventas.

The Ventas lease contained provisions that were potentially onerous to ALC. These included financial covenants (the "financial covenants"), which required that ALC maintain: (1) a quarterly

[1] The OIP in this matter also charged John Buono, ALC's former Chief Financial Officer, for his role in the misconduct alleged therein. On January 29, 2015, the Commission entered an Order accepting Buono's offer of settlement, finding that he violated each securities law provision alleged against him in the OIP, imposing a $100,000 civil penalty, and barring Buono from practicing before the Commission as an accountant or serving as a director of a public company. *In re Laurie Bebo and John Buono, CPA*, Exchange Act Rel. No. 74177.

occupancy of at least 65% at each individual Ventas facility; (2) a trailing twelve-month occupancy of at least 75% at each individual facility; (3) a trailing twelve-month occupancy of at least 82% for the eight-facility portfolio; (4) a trailing twelve-month coverage ratio of at least 0.8 for each facility; and (5) a trailing twelve-month coverage ratio of at least 1.0 for the entire portfolio. The lease defined "coverage ratio" as each facility's cash flow for an applicable period (generally, resident rental income) divided by ALC's rent payments to Ventas for that facility. The cash flow component of the coverage ratio calculation generally correlated to a facility's occupancy, such that a decline in occupancy would result in an attendant decline in coverage ratio, and vice-versa.

The lease's default provisions had significant consequences to ALC. In the event that ALC violated *any* of the financial covenants, Ventas could: (1) terminate the lease in its entirety; (2) evict ALC from all eight facilities; and (3) require ALC to pay damages equal to the net present value of the unpaid rent for the remaining term of the lease (through March 2015) for the entire portfolio.

While Bebo was a strong proponent of entering into the Ventas lease, ALC's general counsel and two members of its board of directors advocated against doing so, due to various unfavorable provisions in the lease including the financial covenants. In response to these concerns, Bebo assured the board that ALC could meet the financial covenants. Based on Bebo's assurances, the board, with the exception of the two opposing directors, voted to enter the lease with Ventas. On January 7, 2008, ALC filed a Form 8-K announcing that it had entered into a "Material Definitive" lease with Ventas. The Form 8-K, which attached the lease as an exhibit, specifically disclosed the financial covenants and the consequences for failing to comply with those covenants.

Thereafter, through year-end 2011, each of ALC's Forms 10-K and 10-Q contained representations that ALC was in compliance with the financial covenants in the Ventas lease. Those filings also disclosed the amount of unpaid rent ALC could be required to pay Ventas if it defaulted on the financial covenants – approximately $16 million to $25 million – and stated that the consequences of a default could have a "material adverse impact" on ALC's operations.[2]

B. Less Than a Year After Entering the Lease, Bebo Realized that a Financial Covenant Default was Likely.

Under the terms of the Ventas lease, ALC was required to demonstrate its compliance with the financial covenants on a quarterly basis. Specifically, the lease required ALC to provide Ventas within 45 days of the end of a quarter: (a) trailing twelve month income statements for each Ventas facility and for the entire portfolio; (b) quarterly financial statements for each facility, prepared in accordance with GAAP; and (c) schedules documenting compliance with the financial covenants. In addition, an ALC executive – in practice, CFO John Buono – was required to attest to the completeness and accuracy of such information by signing an officer's certificate and providing it to Ventas along with the information.

Bebo, Buono, and various members of ALC's accounting department regularly reviewed and monitored occupancy and coverage ratios at the Ventas facilities to ensure that ALC was meeting the financial covenants and to prepare the required quarterly documentation. Accordingly, Bebo was at all times generally aware of the facilities' occupancy rates and coverage ratios. In addition, because of the concerns raised by the two directors before ALC entered the Ventas lease, ALC's board required Bebo and Buono to regularly report on ALC's compliance with the covenants. At each board meeting during the relevant time period, Bebo and Buono reported that ALC was in compliance with the covenants.

[2] Additionally, ALC recorded an "operating lease intangible asset" on its financial statements, which purported to represent the present value of the future income streams associated with the Ventas facilities. At year-end 2009, ALC valued that intangible asset at $11.57 million.

Ventas also paid close attention to ALC's compliance, and considered occupancy and coverage ratio to be key metrics of its properties' performance. First, Ventas considered occupancy and coverage ratio to be indicators of whether the facilities were performing at a level that would ensure the ability of the lessee to make its rent payments, both current and in the future. Second, Ventas's future financial success was dependent on the current performance of the facilities as measured by occupancy and cash flow. Ventas, as an owner/lessor of facilities but not an operator, knew that in the future it would need to find a new tenant to operate the facilities, and future tenants would pay higher rents for facilities with better occupancies and cash flows. Ventas also knew that someday it may sell the facilities and wanted to ensure the value of the properties was preserved while they were being run by ALC. For these reasons, Ventas reviewed and scrutinized the covenant calculations and financial information provided by ALC. Ventas personnel also held quarterly conference calls with Bebo and Buono and periodically visited the facilities, during which Ventas representatives asked detailed questions about the financial performance of the Ventas facilities.[3]

Shortly after ALC assumed operations of the Ventas facilities, occupancy began declining. In response to concerns raised by the board in the August 2008 meeting regarding ALC's ability to meet the financial covenants, Buono prepared a memo for the November board meeting. That memo, which Bebo reviewed and approved, stated that ALC needed "immediate improvement" at four of the facilities to meet the financial covenants.

Because of the looming issues with the financial covenants, Bebo scheduled a meeting with Ventas's CEO for late 2008. One of the purposes of the meeting was to attempt to negotiate relief from the financial covenants. To that end, in advance of the meeting Buono emailed Bebo a proposal

[3] As will be discussed below, in the course of these conference calls and site visits, Bebo took active measures to conceal from Ventas the inclusion of employees in the covenant calculations.

to negotiate with Ventas a suspension of the financial covenants. However, at the meeting with Ventas's CEO, Bebo failed to address the financial covenants.

By mid-January 2009, Bebo knew that ALC would likely default on one or more of the financial covenants in the near future.

C. Bebo's Scheme to Include ALC Employees and Other Non-Residents in the Ventas Lease Covenant Calculations

When it became evident that ALC would default on the financial covenants, Bebo devised a plan to include ALC employees who stayed overnight at the Ventas facilities as occupants of the properties for purposes of the covenant calculations. At this time, a limited number of ALC employees who did not work full-time at the Ventas facilities traveled to the facilities as part of their job responsibilities. In an effort to save money, Bebo directed that some of those employees stay overnight at the facilities in lieu of staying at a hotel. Bebo knew that there were only a handful of employees staying at the Ventas facilities at any one time. However, because ALC had not yet begun missing the covenants by wide margins, including a limited number of employees for the days they actually stayed at the facilities would be sufficient to meet the covenants.

In advance of an upcoming call with Ventas representative Joseph Solari, Bebo sought the advice of ALC's general counsel, Eric Fonstad, on the permissibility of including employees who stayed at the Ventas facilities in the covenant calculations. On January 19, 2009, Fonstad wrote Bebo and Buono an email advising that Bebo's proposal could be permissible, but only if Ventas agreed to it in writing.[4] Fonstad's email suggested that Bebo and Buono discuss the proposal in a telephone conversation scheduled with Solari the following day.

[4] The lease provided that it could only be modified by a writing signed by authorized representatives of both ALC and Ventas and that all "notices, demands, requests, consents, approvals and other communications" under the lease were to be in writing with a copy to Ventas's general counsel.

Fonstad attached to his email a draft letter to Ventas which could be sent after the phone call, assuming that Ventas agreed to the proposal. The letter included the following language:

> [ALC] proposes to rent a limited number of units to employees of [ALC] for the purpose of facilitating their ability to assist in operating the [Ventas facilities]. *It is not expected that the number of units rented to ALC employees would exceed _ [blank space in original] at any one time.* Rents paid would be the same as charged to unrelated parties.
>
> In addition, from time to time, relatives of ALC employees may become residents of one or more of the Facilities. The rentals would be on terms no less favorable than would be obtained in comparable arms-length transactions with unrelated parties.
>
> The units would only be *considered occupied for purposes of the minimum average occupancy covenants* for the days that rent is actually paid.
>
> Please confirm your agreement that these practices do not violate ... the Lease and that they are permitted under the terms of the Lease. (Emphasis added)

Fonstad's draft letter concluded with a blank signature block for Ventas to sign if it accepted the proposal.

On January 20, 2009, Bebo and Buono spoke with Solari via telephone. Bebo did not tell Solari in advance that she intended to raise the issue of covenant relief during the call. The majority of the call involved an unrelated proposal to sublease certain rooms at one Ventas facility to a hospice provider. On the call, Bebo also briefly discussed a proposal related to ALC employees staying at the Ventas facilities. Bebo admits that she did not reveal to Solari during the call that a default on the financial covenants was imminent or that the purpose of the proposal was to avoid such a default.

Bebo, on one hand, and Buono and Solari, on the other, offer starkly different accounts of the portion of the call that dealt with ALC employees at the Ventas facilities. According to Bebo, she first asked Solari whether he was aware that: an ALC employee had been paying rent to live at one of the Ventas facilities, the employee was being included in the covenant calculations, and the prior operator of the facilities had engaged in the same practice. Bebo claims that she then asked Solari whether ALC could "set aside" and pay rent for units for ALC personnel who had a "reason to visit" the facilities and include the units and rent in the covenant calculations. Bebo claims that Solari agreed to that arrangement as long as ALC paid the same rent as would be paid in an arm's length transaction. In addition, Solari allegedly agreed that the persons for whom units were set aside: (1) did not need to be ALC employees but instead could be anyone performing services for ALC; (2) did not actually have to visit or stay at the facilities; and (3) could be unlimited in number.

Buono disputes Bebo's account, and will testify that the Ventas lease covenants were not discussed on the call with Solari. Instead, Buono will testify that Bebo merely informed Solari that ALC wanted to rent rooms at the Ventas facilities to employees, and that Solari responded that Bebo should put her proposal in writing.

Solari will testify that while he does not recall the specific contents of the call, he did not agree, and would never have agreed, to allow ALC to include employees in the covenant calculations, even if they actually stayed at the facilities. Moreover, Solari will testify that he did not agree, and never would have agreed, to allow an unlimited number of employees, or those that did not stay at the Ventas facilities, to be included in the covenant calculations.

On February 4, 2009, Bebo sent Solari an email in which she summarized their January 20 call. Unlike the suggested language Fonstad sent her in advance of the call with Solari, Bebo's email makes no mention of the Ventas lease covenants and does not request Ventas's agreement to any proposal. Instead, the first four paragraphs of the email address ALC's proposed sublease to the hospice provider. The fifth paragraph, which is consistent with Buono's version of the January 20 call, reads as follows:

> In addition to the potential hospice lease, we are also confirming our notification of our rental of rooms to employees. We confirm that all rentals related to employees are in the ordinary course of business and on terms no less favorable than would be obtained in a comparable arms-length transaction with an unrelated third party.

Ventas never responded to this proposal, in writing or otherwise, and ALC never again raised the issue of employees staying at the Ventas facilities with Ventas. According to Bebo, Ventas's silence confirmed its agreement that ALC could include in the covenant calculations an unlimited number of employees who did not actually stay at the Ventas facilities, as long as those employees had "a reason to go." Bebo's interpretation is not only at odds with Buono's and Solari's accounts of the January 20 call and her summary of the call contained in the February 4 email, but ignores the advice she received from Fonstad: that ALC disclose in writing its intent to include employees in the covenant calculations and Ventas's written approval was needed for ALC to do so.

D. Bebo Directs ALC Personnel to Improperly Include Employees and Other Non-Residents in the Covenant Calculations.

ALC's accounting department typically performed the covenant calculations after the close of a given quarter, and following the January 20, 2009 call with Solari, the accounting department performed the Q4 2008 calculations. In performing those calculations, Bebo instructed ALC's accounting personnel to include ALC employees. Bebo directed that ALC should include only employees who had stayed at the Ventas facilities that quarter. Bebo also directed that, with a few minor exceptions, ALC should include employees in the calculations for the actual number of days which they had stayed. While doing so was sufficient to meet the Q4 2008 covenants, by the end of Q1 2009, there were not enough employees actually staying at the Ventas facilities for sufficient time periods to avoid defaulting on certain of the covenants.

Rather than report the covenant violations to Ventas or ALC's board of directors, Bebo directed Buono and his staff to continue improperly including employees in the covenant calculations. As actual occupancy and coverage ratio at the Ventas facilities continued to decline throughout 2009 and 2010, and failed to improve sufficiently in 2011, ALC needed to include large numbers of employees to meet the covenants. By September 2009, ALC was including 75 employees and non-residents for every day of the month in the covenant calculations. For Q4 2009 and Q1 2010, ALC averaged more than 100 employees and non-residents each day in the covenant calculations. Thereafter, through Q4 2011, each quarter ALC included an average of between 61 and 97 employees and non-residents, per day, in the calculations.

Bebo admits that she personally determined the identity of the non-residents that ALC included in the covenant calculations. These persons included:

a. ALC employees who never stayed at or traveled to the Ventas facilities;

b. ALC employees who occasionally stayed at the Ventas facilities, but were included in the covenant calculations well beyond the limited periods they actually stayed at the facilities;

c. Bebo's friends and family members, including her parents and her husband (under different last names than Bebo);

d. Family members, including the seven-year old nephew, of one of Bebo's friends;

e. Former ALC employees who had been terminated by the company;

f. Employees who ALC anticipated hiring but who had not yet started working for the company;

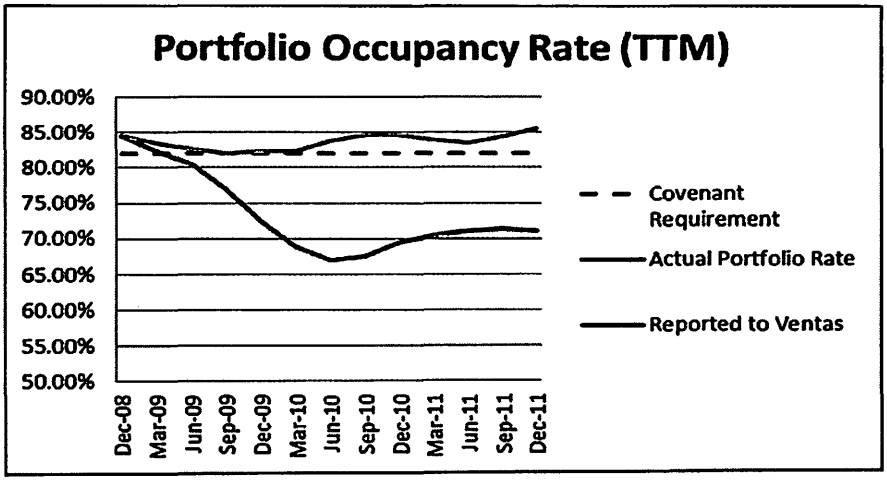
g. Employees who were full-time employees of the Ventas facilities, who lived nearby to the facilities at which they were listed as occupants;

h. ALC employees and other individuals who ALC listed as occupants of multiple Ventas facilities for the same time period; and

i. Other individuals who were neither ALC employees nor residents of the Ventas facilities.

When ALC included such non-residents in the covenant calculations, ALC generally included each person in the calculations for every day of the quarter. For each quarter during 2009 through 2011, ALC would have failed various occupancy and coverage ratio requirements in the Ventas lease, by significant margins, without the inclusion of "employees" in the covenant calculations.

The chart below depicts the actual combined trailing twelve months ("TTM") occupancy at the Ventas facilities as compared to: (1) the covenant requirement of 82%; and (2) the occupancy reported to Ventas which included employees. As can be seen, actual occupancy at the facilities rapidly declined from Q4 2008 until reaching a portfolio-wide low of 67% in June 2010 and then only slightly improved through December 2011.



ALC's occupancy problems were not limited to one or two underperforming properties. Indeed, at various times throughout Bebo's scheme, actual quarterly occupancy at each Ventas facility dropped below the 65% covenant threshold.

E. ALC's Process for Including Non-Residents in the Covenant Calculations

The process for including non-residents in the Ventas covenant calculations, all of which Bebo approved of or personally participated in to further her scheme, generally worked as follows. First, after the end of each month in a given quarter, ALC accounting personnel determined the amount by which ALC would fail any of the covenants based on actual occupancy. Then, ALC personnel reverse-engineered the number of non-residents necessary for the month to meet, or slightly exceed, the covenants. In doing so, ALC typically presumed that each non-resident would be included in the covenant calculations for every day of the month.

ALC then prepared monthly journal entries which recorded revenue associated with the non-residents' inclusion in the covenant calculations. These journal entries: (1) increased revenue for the individual Ventas facilities; and (2) decreased revenue in the same amount in a corporate revenue account. Either Buono or Bebo initialed the entry before it was recorded in ALC's books and records. After the revenue for the last month of a given quarter was recorded, ALC accounting personnel performed the covenant calculations, including the non-resident occupancy and revenue adjustments, to ensure that all the financial covenants had been met.

Following the end of each quarter, after ALC calculated the number of nonresidents to include in the covenant calculations, Bebo personally determined the identities of the non-residents that ALC would include in the calculations. Bebo typically provided a list of such individuals to Buono and ALC accounting personnel, who then provided the list to ALC's auditors.

Each quarter, beginning with Q4 2008, ALC prepared and sent to Ventas the quarterly covenant calculations which, unknown to Ventas, included the number of non-residents selected by Bebo and their attendant revenue, and thus showed ALC meeting or exceeding the covenants. ALC also sent to Ventas: (1) financial statements for the Ventas facilities, which incorporated the revenue associated with the non-residents; and (2) Buono's certification that the information provided was complete and accurate and that the financial statements complied with GAAP.

Bebo ordered that the quarterly materials ALC sent to Ventas exclude any reference to ALC's inclusion of non-residents in the covenant calculations (such as the list of names selected by Bebo). Indeed, Ventas remained unaware of ALC's inclusion of such non-residents in the covenant calculations. Ventas was also unaware that, without the inclusion of such individuals, ALC would have failed the financial covenants.

F. Bebo Actively Sought to Prevent Ventas from Learning of the Non-Residents in the Covenant Calculations.

Bebo's actions to conceal from Ventas the inclusion of employees in the covenant calculations demonstrate that she knew Ventas had never agreed to the practice, and that she knew what she was doing was wrong. In addition to directing that ALC not disclose to Ventas the inclusion of the non-residents in the covenant calculations, Bebo employed a variety of measures to hide the practice from Ventas. On a number of occasions, Bebo or Buono (at Bebo's direction) provided Ventas with fake explanations for quarterly changes in occupancy or coverage ratio rather than providing Ventas the truthful explanation: that ALC was adding or subtracting fake occupants from the covenant calculations.

Bebo also attempted to thwart Ventas's ability to determine actual occupancy during Ventas's periodic inspections of the facilities. To that end, Bebo restricted Ventas from visiting certain facilities at particular times, such as meal times when Ventas might be able to identify the actual number of occupants based on the number of people dining. Bebo additionally required that Buono or she personally accompany Ventas on the site visits, such that Ventas would not have unfettered access to employees working at the facilities (who were not aware of the scheme) and ask them questions about occupancy. Bebo went so far as to direct that resident name tags be removed from their doors during Ventas's inspections, such that Ventas could not manually count the number of occupied rooms.

Moreover, in summer 2011, ALC was exploring a sale of the company, and was preparing due diligence materials to be reviewed by potential buyers, one of which was Ventas. Bebo directed ALC's investment bankers not to provide Ventas with actual occupancy figures at the Ventas facilities but permitted the investment bankers to provide such information to other interested buyers. Later in the sale process, after ALC's board became aware that large numbers of employees were being included in the covenant calculations, Bebo tried to dissuade the board from disclosing the practice to Ventas and the remaining potential bidders for ALC.

G. ALC Personnel Were Uncomfortable with the Inclusion of Non-Residents in the Covenant Calculations.

From the start, ALC personnel were uncomfortable with the inclusion of employees and non-residents in the covenant calculations. When Buono first learned that Bebo intended to include such individuals in the covenant calculations, he warned her that the practice had to be legitimate. By the third quarter of 2009, when ALC began including large numbers of employees in the calculations, Buono told Bebo that Ventas had not agreed to allow so many employees to be included in the calculations. Buono would continue to voice this concern to Bebo throughout the scheme. Buono also warned Bebo that Ventas could sue him for falsely certifying the covenant information that ALC provided to Ventas on a quarterly basis.

Moreover, on certain occasions, Buono alerted Bebo that some of the non-residents selected by Bebo could not be appropriately included in the covenant calculations, and that the practice could be *criminal.* Specifically, on multiple occasions, Buono warned Bebo that they could go to jail, and told her: "I don't look good in stripes."

Buono's subordinates who were involved in the covenant calculations were also uncomfortable with the process. Anthony Ferreri, ALC's assistant treasurer who posted journal entries associated with the employees included in the covenant calculations, had never before seen the recording of "negative revenue" in 25 years in the accounting profession. Because of his discomfort, Ferreri requested that Bebo or Buono personally sign off on the journal entries. Robin Herbner and Sean Schelfout – the first two accounting personnel responsible for performing the covenant calculations – both quit ALC at the earliest opportunity as a result of their discomfort with including employees in the calculations. Dan

Growchowski, the next accounting staff member to assume responsibilities for the calculations, believed the practice to be a "sham" and confronted Bebo so that he could be relieved of his obligations vis-à-vis the covenant calculations. When she met with Growchowski, Bebo informed him that he no longer was required to be involved with the covenant calculations, and thereafter Buono assumed Growchowski's duties and personally performed the calculations.

H. ALC's False and Misleading Disclosures in its Commission Filings

ALC's Forms 10-K for 2009, 2010 and 2011, and its Forms 10-Q for the first three quarters of those years, falsely represented that ALC was "in compliance" with the financial covenants in the Ventas lease. Moreover, ALC's 2011 Form 10-K and its Forms 10-Q for the second and third quarter of that year contained the following additional false and misleading representation: "ALC does not believe that there is a reasonably likely degree of risk of breach of the [Ventas financial] covenants." ALC's Commission filings further represented that a default of the financial covenants could have a "material adverse impact" on ALC's operations.

Bebo signed each of ALC's Forms 10-K. Moreover in connection with each of the Forms 10-K and 10-Q, Bebo signed certifications which certified that: (1) ALC's filings did not contain any material misstatements or omissions; (2) ALC's filings fairly presented in all material respects ALC's financial condition, results of operation and cash flows; and (3) she had designed or caused to be designed such internal controls to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with GAAP.

I. The Scheme Unravels

By early March 2012, in the course of performing due diligence on a potential purchase of ALC, one of the potential bidders noticed a $2 million revenue account, which ALC used to record the "negative revenue" associated with the inclusion of employees in the covenant calculations.

Buono brought this to the board's attention, and for the first time the board learned that ALC had been using large numbers of employees in order to meet the Ventas covenants. Prior to this time, certain board members had (at best) been made aware that the limited number of employees who actually stayed at the Ventas facilities were being included in the covenant calculations for the limited periods when they actually stayed there. When the board confronted Bebo, she failed to come clean about many details of her scheme, including the fact that ALC was including in the covenant calculations non-employees, family members of employees, employees who weren't actually staying at the properties, and employees at multiple properties during the same time period. Indeed, Bebo would never disclose this information to the board.

In the meantime, state healthcare regulators had revoked operating licenses at three of the Ventas facilities – relating to healthcare issues, not occupancy issues – which resulted in Ventas issuing notices of default to ALC. On April 26, 2012 Ventas filed a lawsuit against ALC alleging that ALC had defaulted on the lease by virtue of the license revocations. At the time it filed the lawsuit, Ventas was still unaware that ALC had been including employees in the covenant calculations.

On May 2, 2012, ALC's board of directors received a whistleblower letter which described the list of employees included in the Ventas covenant calculations as a "sham." The whistleblower letter further stated that the list of employees was used to "inflate" the occupancy and revenue figures reported to Ventas. ALC's board quickly retained the Milbank law firm to conduct an internal investigation into the whistleblower's allegations. On May 4, ALC filed an 8-K which disclosed that ALC had retained counsel to "investigate possible irregularities in connection with the [Ventas] lease." Bebo's own expert witness, David Smith, concedes that this disclosure resulted in ALC's stock declining 12.36%, which Smith describes as a "statistically significant abnormal decline."

Meanwhile, in connection with ALC's negotiations to settle the Ventas lawsuit, Bebo tried to convince ALC's board not to disclose to Ventas ALC's inclusion of employees in the covenant calculations, because she knew Ventas never approved the practice. To that end, Bebo actively lobbied against a director's demand that ALC include in any settlement proposal a specific release of claims arising from ALC's inclusion of employees in the covenant calculations. Bebo's efforts were unsuccessful, and ALC sought a release from Ventas expressly relating to the inclusion of employees in the covenant calculations and the quarterly certifications ALC sent to Ventas.

This was the first time Ventas learned that ALC was including employees in the covenant calculations. On May 9, 2012, after receiving ALC's request for the release, Ventas sent ALC a letter alleging that ALC fraudulently included "units leased to employees" in the covenant calculations, and that ALC's conduct constituted an Event of Default under the lease.[5]

In June 2012, ALC and Ventas settled the lawsuit, which included a release of all claims related to the Ventas lease. As part of the settlement, ALC purchased the Ventas facilities and four other facilities from Ventas for an amount far greater than the appraised value of the facilities. ALC paid approximately $100 million to settle the litigation and purchase the facilities, even though independent third party appraisals only valued the purchased facilities at $62.8 million. Thus, in its financial statements for the second quarter of 2012, ALC included as an expense $37.2 million for "lease termination and settlement" and also wrote off the entirety of the remaining lease intangible assets associated with the Ventas facilities, which were approximately $8.96 million.

[5] Rather than referencing the May 9 letter alleging fraud against ALC, paragraph 53 of the OIP incorrectly alleges that, after receiving ALC's request for the release, Ventas moved to amend its complaint against ALC to include allegations of fraud relating to ALC's inclusion of employees in the covenant calculations. The Division apologizes for this mistake.

J. Bebo's Story is Refuted by All of the Relevant Witnesses.

The heart of Bebo's defense is her self-serving claim that Ventas agreed to the inclusion of employees in the covenant calculations, and that she fully disclosed the practice to various attorneys, auditors, and ALC's board. Notably, there is no documentary evidence to support Bebo. And more importantly, each of the percipient witnesses will testify that Bebo is not telling the truth.

Solari and Buono both participated on the January 20, 2009 phone call on which Bebo claims Ventas approved the inclusion of employees in the covenant calculations. Both witnesses will deny that Ventas ever agreed to the practice, on that phone call or otherwise.

Bebo also claims that ALC's directors and various attorneys approved nearly every aspect of her conduct in connection with the inclusion of employees in the covenant calculations. At the hearing, two former ALC in-house counsel and multiple attorneys from Quarles & Brady will testify that they never approved, or were made aware of, the inclusion of employees in the covenant calculations. In fact, Bebo utterly disregarded the legal advice from the one attorney she consulted on the issue – Fonstad – who expressly advised her to disclose to Ventas her proposal to include employees in the covenant calculations and to obtain Ventas' signed approval. Similarly, six members of ALC's board of directors, as well as other ALC personnel who attended board meetings, refute Bebo's story that the board approved, and were provided the details regarding the scope and extent of, Bebo's fraudulent scheme.

Grant Thornton personnel will likewise refute Bebo's contention that she fully disclosed key details regarding the identity of the individuals being included in the covenant calculations. Namely, the Grant Thornton witnesses will deny knowing that ALC was including in the covenant calculations persons who did not travel to or stay at the Ventas facilities for legitimate ALC business purposes.

III. LEGAL ANALYSIS

The Division will establish, by a preponderance of the evidence, that Bebo violated, and caused violations of, the federal securities laws as alleged in the OIP. *See In re Flannery and Hopkins,* AP File No. 3-14081, 2014 SEC LEXIS 4981, *65 n.102 (Dec. 15, 2014) (*citing Steadman v. SEC*, 450 U.S. 91, 102 (1981)).

To prove that a respondent caused a violation pursuant to Exchange Act Section 21C, the Division must establish that: "(1) a primary violation occurred, (2) there was an act or omission by the respondent that was a cause of the violation, and (3) the respondent knew, or should have known, that his conduct would contribute to the violation." *Robert M. Fuller,* 56 S.E.C. 976, 984 (Aug. 25, 2003). Negligence is sufficient to establish causing liability if scienter is not a requirement of the primary violation. *See KPMG Peat Marwick LLP,* 54 S.E.C. 1135, 1175-76 (Jan. 19, 2001).

A. Violations of the Exchange Act's Antifraud Provisions

Section 10(b) of the Exchange Act and Rule 10b-5 thereunder prohibit in connection with the purchase or sale of securities: (1) employing any device, scheme or artifice to defraud; (2) making material misstatements of fact or statements that omit material facts; or (3) engaging in any act, practice or course of business which operates or would operate as a fraud or deceit. A misstatement or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988). As the Commission recognizes, Section 10(b) and Rule 10b-5 are violated by both fraudulent misstatements, "the falsification of financial records to misstate a company's performance, [and] the orchestration of sham transactions designed to give the false appearance of business operations." *Flannery and Hopkins*, 2014 SEC LEXIS 4981, *40-42 (citations omitted).

To establish a violation of Section 10(b) and Rule 10b-5, the Division must prove that the defendant acted with scienter. *Aaron v. SEC*, 446 U.S. 680, 691 (1980). Scienter is a "mental state embracing intent to deceive, manipulate or defraud." *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976). The Division can establish scienter through either knowing intent or reckless disregard for the truth. *Flannery and Hopkins*, 2014 SEC LEXIS 4981, *30 and n.24; *SEC v. Jakubowski*, 150 F.3d 675, 681 (7th Cir. 1998).

Bebo violated the antifraud provisions. Bebo signed and/or certified ALC's annual and quarterly reports which she knew contained misstatements and omissions regarding ALC's compliance with the Ventas covenants. Specifically, all of ALC's Forms 10-K and 10-Q at issue contained the false representation that ALC was in compliance with the financial covenants in the Ventas lease. ALC's 2011 Form 10-K and Forms 10-Q for the second and third quarter of that year also falsely represented that "ALC does not believe that there is a reasonably likely degree of risk of breach of the [Ventas financial] covenants." Each of these filings also omitted the critical fact that the sole basis for ALC's so-called compliance with the covenants was its improper inclusion of large numbers of employees and other non-residents. *See, e.g., Omnicare, Inc. v. Laborers' Dist. Council Constr. Indus. Pension Fund*, __ S. Ct. __, 2015 U.S. LEXIS 2120, at *23 (Mar. 24, 2015) ("if a registration statement omits material facts about the issuer's inquiry into or knowledge concerning a statement of opinion, and if those facts conflict with what a reasonable investor would take from the statement itself, then [the Securities Act of 1933's] §11's omissions clause creates liability).[6]

[6] The Supreme Court's recent *Omnicare* decision addressed the circumstances in which statements of opinion could be considered untrue statements of fact that create liability under the federal securities laws. As *Omnicare* makes clear, ALC's statements that was "in compliance" with the Ventas covenants – as opposed to statements that ALC "believed" or "thought" it was in compliance – were statements of fact as opposed to statements of opinion. 2015 U.S. LEXIS 2120, *13-14. Even if this Court were to consider ALC's statements regarding its compliance with the covenants to be opinions, *Omnicare* confirms that ALC's filings omitted the material fact that ALC was only meeting the covenants by virtue of the improper inclusion of employees.

Numerous courts have held that an issuer's false statements that it is in compliance with contractual covenants violate Section 10(b) and Rule 10b-5. Indeed, one such decision was issued in a securities fraud class action against Bebo arising from these very same facts. Contrary to Bebo's claim that the statements in ALC's Commission filings are not actionable, the court in the class action expressly held the plaintiff had "pled facts sufficient to establish that ALC and Bebo provided false statements when they stated that ALC was in compliance with its Lease with Ventas." *Pension Trust Fund for Operating Eng'rs v. Assisted Living Concepts, Inc.* 2013 U.S. Dist. LEXIS 87568, at *27, *45-46 (E.D. Wis. June 21, 2013).[7]

Likewise, other courts routinely hold that a company's statement of compliance with contractual covenants can support a securities fraud charge. *See, e.g., DVI, Inc. Sec. Litig.*, 2010 U.S. Dist. LEXIS 92768, at *16-17 (E.D. Pa. Sept. 13, 2010) (denying motion to dismiss allegations that "Defendant signed DVI's Form 10-Ks...which allegedly contained material misrepresentations relating to 'DVI's...compliance with its loan covenants.'"); *Williams Sec. Litig.*, 339 F. Supp. 2d 1206, 1229 (N.D. Okla. 2003) ("The Complaint also sufficiently alleges that ... Defendants falsely stated that WCG ... was fully able [to] meet all debt covenants..."); *Aviva Ptnrs. LLC v. Exide Techs.*, 2007 U.S. Dist. LEXIS 17347, at *6-7,*56-57 (D.N.J. Mar. 13, 2007) (allowing securities fraud claim premised on statement that company "believed it would comply with the financial covenants contained in its Senior Credit Agreement 'for the foreseeable future.'"); *In re Suprema Specialists, Inc. Sec. Litig.*, 334 F. Supp. 2d. 637, 646-47 (D.N.J. 2004) (allowing fraud claim based on misrepresentation regarding compliance with loan covenants); *SEC v. Falstaff Brewing Corp.*, 1977 U.S. Dist. LEXIS 14678 (D.D.C. Aug. 1, 1977) ("The failure to disclose the serious financial straits of Falstaff, including the

[7] Bebo and ALC settled that lawsuit, with the plaintiff investors receiving $12 million. *Pension Trust Fund for Operating Eng'rs*, Case No. 12-C-884-JPS, Docket No. 70-1 (E.D. Wis. Sept. 6, 2013).

facts that there had been a continuing state of default on the covenants of the loan agreements....was a material omission.").

As in the above cases, Bebo's false statements that ALC was complying with the Ventas covenants were material. First, Bebo admitted in ALC's Commission filings, which she certified, that breach of the covenants "could have a material adverse impact on [ALC's] operations." The Division's expert, John Barron, will opine that, at all relevant times, compliance with the Ventas covenants was material to ALC's financial statements, by significant margins. Barron's conclusion is confirmed by the fact that after Ventas sued ALC for violating the lease, and ALC disclosed to Ventas that it was including employees in the covenant calculations, ALC settled Ventas's lawsuit by purchasing the Ventas facilities for more than $30 million in excess of their appraised value. Additionally, the Division will present testimonial and documentary evidence establishing that ALC investors and potential investors considered ALC's compliance with the Ventas covenants to be important.

Bebo further violated the antifraud provisions by orchestrating the scheme to hide ALC's breach of the Ventas covenants from ALC's board and attorneys, Ventas, and Grant Thornton, by including employees and other non-residents in the covenant calculations. Bebo's scheme involved the falsification of the financial information ALC sent to Ventas on quarterly basis and concealed from investors that ALC was breaching the Ventas covenants.

Bebo also demonstrated a high level of scienter as she engaged in numerous deceptive acts designed to conceal her scheme, as described in detail in Sections II(F) and(I) above. She ordered that ALC not inform Ventas of the inclusion of employees in ALC's covenant calculations. She gave false answers to Ventas about the reasons for changes in ALC's reported occupancy. And she took measures to prevent Ventas from determining the number of actual occupants in the course of its site visits. Bebo's scienter is further demonstrated by her refusal to heed the numerous warnings from Buono and other ALC accounting personnel. And Bebo's scienter is confirmed by the fact that she continues to falsely claim, to this day, that she fully disclosed her scheme to, and received approval from, Ventas, attorneys, the board, and Grant Thornton.

B. Violations of the Exchange Act's Reporting Provisions

Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder require that issuers like ALC file annual and quarterly reports with the Commission. Rule 12b-20 requires that an issuer's annual and quarterly reports contain all material information necessary to make the required statements in the reports not misleading. An issuer violates these provisions by filing materially false or misleading reports or omitting material information necessary to render statements in the reports not misleading. *See SEC v. Koenig*, 469 F.2d 198, 200 (2d Cir. 1972); *SEC v. Wills*, 472 F. Supp. 1250, 1268 (D.D.C. 1978). No showing of scienter is necessary to establish a violation of Section 13(a) or the rules thereunder. *See SEC v. McNulty*, 137 F.3d 732, 740-41 (2d Cir. 1998).

ALC violated these reporting provisions by filing false and misleading annual and quarterly reports as described above. Bebo caused ALC's violations by: (1) signing and/or certifying ALC's false and misleading Commission reports; and (2) directing the above-referenced fraudulent scheme.

C. Violations of the Exchange Act's Books and Records and Internal Controls Provisions

Exchange Act Section 13(b)(2)(A) requires issuers to "make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect the transactions ... of the issuer." Section 13(b)(2)(B) requires issuers to devise and maintain a system of internal accounting controls sufficient reasonably to assure that transactions are recorded as necessary to permit the preparation of financial statements in conformity with GAAP. No showing of scienter is required to establish a violation of Section 13(b)(2)(A) or 13(b)(2)(B). *SEC v. World-Wide Coin Inv., Ltd.*, 567 F. Supp. 724, 749-752 (N.D. Ga. 1983).

Exchange Act Section 13(b)(5) prohibits any person from knowingly: (1) circumventing or failing to implement a system of internal accounting controls; or (2) falsifying any book, record or account required to be kept by an issuer under Section 13(b)(2) of the Exchange Act. Exchange Act Rule 13b2-1 also prohibits any person from directly or indirectly falsifying any book, record or account. A showing of knowledge is required to prove a violation of Section 13(b)(5), but scienter is not necessary to prove liability under Rule 13b2-1. *SEC v. Kelly*, 765 F. Supp. 2d 301, 322-23 (S.D.N.Y. 2011).

As detailed above, during the course of Bebo's fraudulent scheme, ALC's books and records reflecting the occupancy and revenue of the Ventas facilities were not merely inaccurate, they were intentionally falsified. For instance, ALC's journal entries improperly recorded revenue associated with the fake occupants in the accounts of the Ventas facilities. Similarly, the financial information ALC provided to Ventas on a quarterly basis – which purported to comply with GAAP – included both the fake occupants and the revenues associated with their phantom stays at the Ventas facilities. These falsified records were created at the specific direction of Bebo. Bebo also failed to establish sufficient internal controls such that the falsified transactions could be recorded in ALC's general ledger. Accordingly, Bebo caused ALC's violations of Exchange Act Sections 13(b)(2)(A) and 13(b)(2)(B) and violated Section 13(b)(5) and Rule 13b2-1.

D. Violations of the Lying to Auditors Provision of the Exchange Act

Exchange Act Rule 13b2-2 prohibits an officer or director of an issuer from, among other things, making or causing to be made a materially false or misleading statement, or omitting to state information necessary to render statements not misleading, to an accountant in connection with any required audit of the issuer's financial statements or the preparation of a report required to be filed with the Commission. No showing of scienter is required to establish a violation of Rule 13b2-2. *SEC v. Das*, 723 F.3d 943, 954 (8th Cir. 2013).

In connection with the audits and quarterly reviews of ALC's 2009, 2010, and 2011 financial statements, Bebo signed a representation letter addressed to Grant Thornton, in which she falsely represented that ALC had "complied with all aspects of contractual agreements that would have a material effect on the financial statements in the event of a noncompliance." Given the inclusion of employees and other non-residents in the Ventas covenant calculations, Bebo either knew, or should have known, that this representation to Grant Thornton was false, misleading, and omitted material information.

In connection with the same audits and reviews, ALC, at Bebo's direction, provided the auditors with fictitious lists of employees or other non-residents, and their associated length of stays at the facilities. Bebo admits that she was the one who selected the names of employees to be provided to Grant Thornton. Bebo also lied to Grant Thornton when she told its personnel that Ventas had agreed to the inclusion of employees in the covenant calculations.

Moreover, in connection with the audit of ALC's 2011 financial statements, Bebo signed a representation letter addressed to Grant Thornton that represented that Bebo had no knowledge of any allegations of fraud or suspected fraud by any ALC employee. Bebo either knew, or should have known, that such statement was false and misleading, given that in approximately November 2011, Growchowski had confronted Bebo with concerns that the inclusion of employees in the Ventas covenant calculations was inappropriate.

By virtue of the false representation letters that she signed, the false statements she made, and the false list of occupants she created for Grant Thornton, Bebo made false representations, and omitted to state material information, to ALC's auditors regarding the covenant calculations. Accordingly, she violated Rule 13b2-2.

E. Violations of the Certification Provision of the Exchange Act

Exchange Act Rule 13a-14 requires an issuer's CEO to sign certifications which are included as exhibits to the issuer's periodic reports. The certifications must state that the signing officer has reviewed the report and based on the officer's knowledge: (1) the report does not contain any material misstatements or omissions; (2) the financial statements fairly present, in all material respects, the financial results of operations; and (3) she has designed or caused to be designed such internal controls to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with GAAP.

Bebo created, directed and managed the fraudulent scheme as described above. She also signed the annual and quarterly certifications attached as exhibits to ALC's Forms 10-K and 10-Q which she knew, or was reckless in not knowing, contained material misstatements and omissions regarding the Ventas covenants. Accordingly, Bebo violated Rule 13a-14.

IV. THE COURT SHOULD IMPOSE SANCTIONS IN THE PUBLIC INTEREST.

The public interest would be served by sanctioning Bebo. In determining whether sanctions should be imposed in the public interest, the Court may consider the following elements: the egregiousness of the actions; the isolated or recurrent nature of the infractions; the degree of scienter involved; the sincerity of respondent's assurances against future violations; a respondent's recognition of the wrongful nature of her conduct; and the likelihood that a respondent's occupation will present opportunities for future violations. *See Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981); *Flannery and Hopkins*, 2014 SEC LEXIS 4981, *138. The Commission stresses flexibility in analyzing these factors, such that "no one factor is dispositive." *Flannery* at *138. The Court also may consider the extent to which a sanction will have a deterrent effect. *See Schield Management Co.*, Exchange Act Rel. No. 53201 (Jan. 31, 2006), 2006 WL 23162, at *8; *Flannery* at *151.

Bebo's misconduct was egregious, involved scienter, and occurred from early 2009 through 2012. She has offered no assurances against future violations or acknowledged the wrongful nature of her conduct. She is relatively young, and absent an appropriate sanction, will have opportunities to commit future violations.

A. The Court Should Enter a Cease-and-Desist Order.

Section 21C of the Exchange Act authorizes the Commission to issue a cease-and-desist order against any person who "has violated" the statute or rules thereunder, and Bebo's violations raise a sufficient risk of future violations to support the entry of such an order. In making this determination, the Commission may appropriately issue a cease-and-desist order upon a showing "significantly less than that required for an injunction." *KPMG Peat Marwick LLP*, 54 S.E.C. 1135, 1191 (Jan. 19, 2001). Moreover, "[e]vidence of a past violation ordinarily suffices to establish a risk of future violations" sufficient to support a cease-and-desist order. *Flannery,* 2014 SEC LEXIS 4981, at *145.

B. The Court Should Order Disgorgement and Prejudgment Interest.

Section 21C(e) of the Exchange Act authorizes the Court to order disgorgement, plus reasonable interest. For each year from 2009 through 2011, Bebo received base salaries ranging from $424,000 to $520,000, and discretionary bonuses ranging from $340,185 to $399,740.[8] Had ALC's board of directors known the truth about her fraudulent scheme, she would have been terminated and not awarded a discretionary bonus. If Bebo is found liable, her salary and bonuses should serve as a basis for calculating a disgorgement award.

[8] Bebo additionally received $228,700 in salary for the less than six months she was employed by ALC in 2012.

C. The Court Should Impose Civil Penalties.

The public interest supports requiring Bebo to pay significant civil penalties for her misconduct. In considering whether to impose civil penalties, the factors to consider include: (1) whether the violations involved fraud, deceit, manipulation or reckless disregard of a regulatory requirement; (2) the harm caused to others; (3) the extent to which any person was unjustly enriched; (4) prior violations by the respondent; (5) the need for deterrence; and (6) such other matters as justice may require. Exchange Act Section 21B(a)(2).

Here, third-tier penalties against Bebo are warranted for each violation.[9] *See* Exchange Act Section 21B(b)(2). Her misconduct involved fraud, deceit, manipulation and the deliberate disregard of regulatory requirements and her responsibilities as CEO of a public company. *Id.* Her conduct both created the risk of substantial risk of loss to ALC and its investors and, in fact, caused ALC to suffer substantial losses. *Id.* In particular, after Ventas learned of ALC's inclusion of employees in the covenant calculations, ALC settled Ventas's lawsuit by purchasing the Ventas facilities for more than $30 million in excess of their appraised value. For these reasons, the amount of any civil penalty assessed against Bebo should be sufficient to deter her and others from engaging in the type of conduct at issue in this proceeding.

D. The Court Should Bar Bebo From Serving as an Officer or Director of a Public Company.

Exchange Act Section 21C(f) authorizes the Commission to prohibit a person who has violated Section 10(b) and Rule 10b-5 from acting as an officer and director of a public company if that person's conduct demonstrates unfitness to serve as an officer or director. Courts have outlined six factors, which are neither exclusive nor mandatory, to consider in assessing unfitness: (1) the egregiousness of

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[9] Should the Court determine that third-tier penalties are not warranted, the Division requests the imposition of second or first tier penalties.

the underlying securities law violations; (2) the defendant's repeat offender status; (3) the defendant's role or position when she engaged in the fraud; (4) the defendant's degree of scienter; (5) the defendant's economic stake in the violation; and (6) the likelihood that the misconduct will recur. *SEC v. Bankosky*, 716 F.3d 45, 48-49 (2d Cir. 2013). Again, Bebo's conduct was egregious and involved scienter, and she orchestrated her scheme from the highest-possible corporate position. As a result of Bebo's misconduct, she should no longer be afforded the privilege of serving as an officer or director of a public company.

V. CONCLUSION

The Division of Enforcement respectfully requests that the Court accept the documentary and testimonial evidence presented at the hearing, find that Respondent Bebo engaged in the violations described in the Order Instituting Proceedings, and impose appropriate sanctions.

Dated: April 3, 2015

Respectfully submitted,

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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 SERVICE**

Benjamin J. Hanauer, an attorney, certifies that on April 3, 2015, he caused a true and correct copy of the foregoing The Division of Enforcement's Prehearing Brief to be served on the following by overnight delivery and email:

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