


ORIGINAL

UNITED STATES BANKRUPTCY COURT DISTRICT OF DELAWARE		PROOF OF CLAIM	
Name of Debtor: <i>ALC Holdings, LLC</i>		Case Number: <i>11-13853</i>	
NOTE: See reverse and attached for List of Debtors/Case Numbers/important details. Other than claims under 11 U.S.C. § 503(b)(9), this form should not be used to make a claim for Administrative Expenses arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503(a).			
Name of Creditor (the person or other entity to whom the debtor owes money or property): <i>Amy Jenneve fka Amy VanderPutten</i>			
Name and address where notices should be sent: <i>Brian A. Sullivan, Esq Werb + Sullivan 300 Delaware Ave, 13th Fl Wilmington, DE 19801 Phone (302) 652-1100</i> <i>AND</i> <i>Frank Pray Employee Rights Attorney 5160 Campus Drive Newport Beach, CA 92660 Phone (949) 251-1000</i>			
Creditor Telephone Number ()		email:	
Name and address where payment should be sent (if different from above):		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.	<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim. Court Claim Number (if known): Filed on: _____
Payment Telephone Number ()		email:	
1. AMOUNT OF CLAIM AS OF DATE CASE FILED \$ <i>unliquidated</i>			
If all or part of your claim is secured, complete item 4. If all or part of your claim is entitled to priority, complete item 5.			
<input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.			
2. BASIS FOR CLAIM: <i>Employee Wrongful Termination and Other Claims per Attached Summary</i> (See instruction #2)			
3. LAST FOUR DIGITS OF ANY NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR:		3a. Debtor may have scheduled account as: _____ (See instruction #3a)	3b. Uniform Claim Identifier (optional): _____ (See instruction #3b)
4. SECURED CLAIM: (See instruction #4) Check the appropriate box if your claim is secured by a lien on property or a right of set off, attach required redacted documents, and provide the requested information. Nature of property or right of setoff: Describe: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Property: \$ _____ Annual Interest Rate: _____ % <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed) Amount of arrearage and other charges, as of time case filed, included in secured claim, if any: \$ _____ Basis for Perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____			
5. Amount of Claim Entitled to Administrative Expense status under 11 U.S.C. § 503(b)(9) or Priority under 11 U.S.C. § 507(a). If any part of the claim falls into one of the following categories, check the box specifying the administrative expense or priority and state the amount. Amount entitled to priority: \$ _____ Amount entitled to administrative expense under 11 U.S.C. § 503(b)(9): \$ _____ You MUST specify the priority of the claim: <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a) (_____). <input type="checkbox"/> Value of goods received by the debtor within 20 days before the date of the bankruptcy filing - 11 U.S.C. § 503(b)(9).			
* Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.			ALC Holdings  00106
6. CREDITS: The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)			

RECEIVED

FEB 03 2012

BMC GROUP

If you have already filed a proof of claim with the Bankruptcy Court or BMC, you do not need to file again.

THIS SPACE IS FOR COURT USE ONLY

7. DOCUMENTS: Attached are redacted copies of documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. (See instruction #7, and definition of "redacted").
DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.
 If the documents are not available, please explain:

DATE-STAMPED COPY To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

The original of this completed proof of claim form must be sent by mail or hand delivered (FAXES NOT ACCEPTED).

BY MAIL TO:
 BMC Group, Inc.
 Attn: ALC Holdings, LLC Claims Processing
 PO Box 3020
 Chanhassen, MN 55317-3020

BY MESSENGER OR OVERNIGHT DELIVERY TO:
 BMC Group, Inc.
 Attn: ALC Holdings, LLC Claims Processing
 18675 Lake Drive East
 Chanhassen, MN 55317


8. SIGNATURE: (See instruction #8)

Check the appropriate box.

- I am the creditor. I am the creditor's authorized agent. (Attach copy of power of attorney, if any.) I am the trustee, or the debtor, or their authorized agent. (See Bankruptcy Rule 3004.) I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: Brian A. Sullivan
 Title: Attorney
 Company: Werb + Sullivan


 (Signature)

2/1/12
 (Date)

Address and telephone number (if different from notice address above):

Telephone number: _____ email: _____

302-652-1100

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

LIST OF DEBTORS:

Debtor Name	Case Number	Debtor Name	Case Number	Debtor Name	Case Number
ALC Holdings, LLC	11-13853	ALC of Iowa LLC	11-13864	ALC of Pennsylvania LLC	11-13875
American Laser Centers LLC	11-13854	ALC of Kansas LLC	11-13865	ALC of Tennessee LLC	11-13876
ALC HC, Inc.	11-13855	ALC of Louisiana LLC	11-13866	ALC of Texas LLC	11-13877
ALC of Alabama LLC	11-13856	ALC of Massachusetts LLC	11-13867	ALC of Utah LLC	11-13878
ALC of Arizona LLC	11-13857	ALC of Michigan LLC	11-13868	ALC of Virginia LLC	11-13879
ALC of Colorado LLC	11-13858	ALC of Minnesota LLC	11-13869	ALC of Washington LLC	11-13880
ALC of Connecticut LLC	11-13859	ALC of Missouri LLC	11-13870	ALC of Wisconsin LLC	11-13881
ALC of Georgia LLC	11-13860	ALC of Nevada LLC	11-13871	ALC Products, LLC	11-13882
ALC of Florida	11-13861	ALC of New York LLC	11-13872	American Laser Centers of California LLC	11-13883
ALC of Indiana LLC	11-13862	ALC of North Carolina LLC	11-13873	American Laser Centers of Puerto Rico LLC	11-13884
ALC of Illinois LLC	11-13863	ALC of South Carolina LLC	11-13874	ALC Licensor, LLC	11-13885

1/23/2012

Subject to FRE 408
Settlement Discussions
Inadmissible evidence
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DRAFT SUMMARY OF CLAIM

AMY JENNEVE

In Re: ALC Holdings LLC, et al [Debtors] Chapter 11

Case No. 11-23853 (MFW) United States Bankruptcy Court, District of Delaware

Creditor: Amy VanderPutten, a California resident.

Wrongful Termination Attorney for Creditor/Claimant:

Frank Pray, Employment Law Office of Frank Pray, 5160 Campus Drive, Newport Beach CA 92660

LL: 949-251-1006; Mobile: 949-637-360; e/m: fpray@employee-rights-atty.com
jobattorney.net

Date: January 18, 2012

SUMMARY OF FACTS [ESSENTIAL ALLEGATIONS] AND APPLICABLE LAW

IN SUPPORT OF CLAIMANT'S PETITION FOR APPROPRIATE RELIEF FROM THE BANKRUPTCY COURT

I. Statement of the Overarching Theory of the Debtor's Wrongful Termination Case: "Wrongful Termination in Violation of Public Policy."

The facts which follow are designated as various causes of action generally known by the common law of wrongful termination in California, and most of the States of the United States as "wrongful termination in violation of public policy." [hereinafter "WTVPP"]. The legal elements of a WTVPP in California requires proof of a) an employer-employee relationship; b) termination or other adverse employment action; and c) that the termination was a violation of public policy, i.e., that the employee

was engaged in a “protected activity” and that the termination was motivated by retaliation for the “protected activity”; d) that the termination was the legal cause of the employee’s damages; and e) the nature and extent of the employee’s resulting losses. See *Holmes v. General Dynamics Corp* (1993) 17 Cal. App.4th 1418, 1426. See also *Yanowitz v. L’Oreal USA, Inc.* 36 Cal.4th 1028, 32 Cal.Rptr.3d 436 (Aug. 11, 2005).

"In the absence of an express or implied agreement to the contrary, an employment relationship without a fixed term is presumed to be validly terminable at the will of either party, employer or employee, at any time. [Citations.]" (*Turner v. Anheuser-Busch, Inc.* (1994) 7 Cal.4th 1238, 1251-1252.)

The “at-will” employment doctrine does not extend to “terminations in violation of public policy.” “Accordingly, while an at-will employee may be terminated for no reason, or for an arbitrary or irrational reason, there can be no right to terminate for an unlawful reason or a purpose that contravenes fundamental public policy.” (*Gantt v. Sentry Insurance* (1992) 1 Cal.4th 1083, 1094 [*Gantt*].) The California Supreme Court first recognized this public policy exception to the doctrine of at-will employment in *Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167 (*Tameny*), disapproved on another point in *Foley v. Interactive Data Corp.* (1988) 47 Cal.3d 654, 687 (*Foley*). “What is vindicated through the [*Tameny*] cause of action is not the terms or promises arising out of the particular employment relationship involved, but rather the public interest in not permitting employers to impose as a condition of employment a requirement that an employee act in a manner contrary to fundamental public policy.” (*Foley, supra*, 47 Cal.3d at p. 667, fn. 7.) “[E]mployees discharged in violation of fundamental public policy may bring an action against their employers sounding in tort.” (*Gantt, supra*, 1 Cal.4th at p. 1098.) For this reason, *Tameny* causes of action are not preempted by the exclusive remedy provisions of workers’ compensation law. (*Ibid.*)

II. Listing of the “wrongful termination in violation of public policy” charges [causes of action] by the Creditor against her former employer [with corresponding “public policy” sources]:

1. Non-payment of overtime, and falsification of time records to conceal non-payment, followed by Creditor’s complaints of same, and retaliatory firing;
2. Lack of Training to Perform Medical Procedures followed by Creditor’s complaints of same, and retaliatory firing;
3. Lack of supervision by a licensed, qualified physician or other designated licensed person;
4. False Advertising of a Medical Service and Results;
5. Forgeries, multiple times, to a) credit card transactions and b) medical/business records. In the latter instance, forgery of the creditor’s signature in particular.
6. Failure to maintain adequate medical records of treatment and potential unlicensed practice of medicine by persons untrained and unsupervised to provide that treatment.
7. Defamation of Character per se (harm to occupation).

III. Essential Factual Allegations Applicable to All Causes of Action.

- A. Internal Resistance and Complaint by Creditor/Employee to Perceived Illegal Conduct.
- B. Concerning a matter of conduct implicating a fundamental, important, and established "public policy."
- C. With Reasonable Belief by Employee that her internal was in fact meritorious and concerning a significant law which, while not specifically known to the lay employee, was generally understood by her to be of public importance.
- D. Delivered/Communicated by Creditor/Employee to Employer/Management with sufficient clarity.
- E. The subject Employer misconduct was in fact connected to violation of a law having public policy significance.
- D. Management acted to adversely affect the employee's employment because of her resistance or complaint about illegal activity.
- E. With resulting economic and emotional injuries.

IV. Facts (allegations) Generally satisfying the essential elements of proof for "wrongful termination in violation of public policy.

A. Overtime and Fabrication of Time Records.

Amy VanderPutten was employed by American Laser Skincare between 2007 and her termination on October 31, 2011. She held the position of "Head RN." Her particular spa location and place of employment was in the City of Santa Barbara, in Santa Barbara County, State of California. Basically, her employer provided medical procedures to enhance women's (and sometimes men's) physical appearances through "injectables" [such as for Botox] and laser skin treatments. The business is a high volume business and the employer has numerous clinic locations throughout California, and other states.

This case is perhaps distinguished by the range and scope of the illegal conduct, and that the creditor/employee communicated resistance to management concerning all these illegal behaviors. [See listed six (6) areas of activity/complaint listed above, in addition to the defamation case].

The general conduct is described as follows: Employee/Creditor worked overtime occasionally, with the knowledge of her supervisor, Jennifer Wright Shank. [hereinafter "Shank"]. Shank required the overtime to falsely reported as worked on a different day or week to avoid payment overtime. She also required employees to clock out and back in for lunchtime even when those employees worked during their lunch breaks. Creditor/Employee complained of this practice to legal, regional managers, and the payroll department.

Creditor/employee complained about 6 to 8 times directly to Shank, and sent two emails to “corporate” just before her termination. Shank continued the practice and responded that persons who didn’t like the practice would have their hours cut.

B. Lack of Training and Supervision of Medical Staff AND Lack of Supervision by Trained Medical Professional

Commencing about 12/2010, one Dr. Reef became in title the “Medical Director” for the Santa Barbara spa and several other such clinics. However, the Creditor/Employee, when communicating with Dr. Reef, and with Shank, concluded neither actually knew who the Director/responsible physician was, and Reef was surprised to hear that was him. In effect, Reef, as far as Creditor/Employee could determine, was mostly just “lending his license” to the five company clinics in question. Dr. Reef never reviewed charts when occasionally at the clinic, he never checked the licensure/qualifications of the nursing staff, he never provided training for the treatments performed in the clinic, and he did not even know his own official title with the company.

Creditor/Employee complained to Shank that the clinics lacked a functioning medical director as required by law. Shank could not confirm that there was a medical director even assigned, and later communicated to Creditor/Employee that Dr. Reef was that Director.

The week before being fired, the Creditor/Employee raised these concerns (complaints) directly with Dr. Reef. At that time, she also mentioned that the corporate website emphasized in its advertising that the staff received extensive training and supervision, and that she believed those assertions to be false. She also sent emails to the Corporate Head Nurse stating her belief that Dr. Reef was required by law to conduct medical histories re health status “face to face” as opposed to his actual occasional practice of conducting that history by telephone.

In about March through June 2011, Shank began scheduling “Polly E-Matrix” treatments without training provided by Corporate. Creditor/Employee complained to Shank that these treatments were administered by staff without adequate training. Creditor/Employee complained that two days training for another nurse to provide laser treatments was not sufficient treatment, both in her opinion, and in the voiced opinion of the nurse receiving the training. Shank stated that was all the training that would be provided, period.

C. False Advertising of a Medical Service and Results.

On 10/24/11 Creditor/Employee complained to “Medical Director” Reef, M.D. that the company was falsely advertising on its website that it provided training and supervision of its clinical employees administering treatments. Creditor/Employee stated to Reef that the staff was working under his medical license, and that the scope of his responsibilities for such matters as training/supervision was likely greater than he realized. She informed Dr. Reef that she had obtained research through the help of the “Board of Registered Nursing” and that it was illegal for Dr. Reef to “lend your license” to the company.

D. Forgeries.

Creditor/Employee saw patient files that purported to have her signature to medical records when she knew she had not signed those records or authorized the use of her signature. She noted that the Juvederm inventory chart and the Botox inventory chart were forged by Shank. She saw that her signature was being used on dates she was not on the work site, for example. These forgeries occurred in May 2011. In May and June, 2011 Creditor/Employee confronted Shank, and also went to the Pismo Beach manager and assistant manager to state her concerns. In a letter dated 10/17/11 to the company's main corporate office [Specifically, a legal officer and HR Official] Creditor/Employee raised these specific forgery concerns.

Creditor/Employees also observed Shank forging signatures to patient credit card transactions to complete payment to the clinic, and complained to corporate of this infraction at about the same time. [by email dated 10/17/2011 to Corporate legal and HR officials.]

E. Failure to maintain adequate medical records of treatment and potential unlicensed practice of medicine by persons untrained and unsupervised to provide that treatment

Charts, as noted, were not audited and reviewed at all by Dr. Reef. Entries were made into charts and signed as if made by Creditor/Employee, and Creditor/Employee clearly objected to this practice and demanded it not recur. As noted, persons not adequately trained or supervised conducted injections and laser treatments, and failed to enter adequate or timely records in the file stating the nature of the procedures. Creditor/Employee also complained of this employer practice at the time she complained of the "forgeries" and "lack of training and supervision" matters outlined above.

F. Defamation. Persons learning of Creditor/Employee's termination of employment infer logically from that event that she committed some violation of company policy, or that she was negligent and incompetent in the performance of her duties. She must somehow repeat and explain her termination of employment to third party prospective employers or colleagues in the "tight" Santa Barbara medical community, with the result that she "self-defames" when forced to state why she left "American Laser Skincare." Compelled and foreseeable repetition by the employee herself of the false reasons for her termination can be the basis for "self-defamation" damages against the employer. See *McKinney v. County of Santa Clara* (1980) 110 Cal.App.3d 787, 796-797.

III. Damages Recoverable—and Case Valuation.

The "wrongful termination in violation of public policy" causes of action outlined above yield the traditional common law measure of tort damages: economic losses reasonably foreseeable by the misconduct, including past and prospective wage/benefit loss; and non-economic losses represented as emotional distress/harm proximately caused by the retaliation. California Civil Code Section 3294 likewise allows recovery of punitive damages if evident by "clear and convincing" evidence that executive level management participated in the termination, in this case, correctly indicate by the involvement of legally trained H.R. officials who reviewed and participated in the termination.

The Creditor/Employee was earning \$42.00 per hour. While she works part time at a local Hospital, her re-entry into the cosmetic surgery industry seems to be impeded by her termination from this Debtor's clinic. She is losing wages of about \$672.00 to \$1,344 per week, and related benefits. More significantly, she has experienced increased symptoms of stress and depression at her unjust termination: sleeplessness, acid reflux, irritable bowel syndrome, atrial heart fibrillations, obsessive thinking about the "why" of her wrongful termination, and shame and humiliation each time she encounters a colleague, former patient, or family member to whom she must explain her loss of employment. She is concerned that her current financial commitments cannot be fulfilled, including her plans to pay for her childrens' college education.

The value of this unliquidated claim is, if measured by like cases, based on California verdicts, could be as high as \$3,500,000.00.

Dated: January 23, 2012

Frank Pray

Frank Pray, Employee Rights Attorney
California Counsel to Amy VanderPutten

WERB & SULLIVAN

ATTORNEYS AT LAW
A PARTNERSHIP OF PROFESSIONAL ASSOCIATIONS

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COURIER DELIVERY:
300 DELAWARE AVENUE
THIRTEENTH FLOOR
WILMINGTON, DELAWARE 19801

Brian A. Sullivan, P.A.

February 2, 2012

VIA FEDERAL EXPRESS

BMC Group, Inc.
Attn: ALC Holdings, LLC Claims Processing
18675 Lake Drive East
Chanhassen, MN 55317

**RE: Amy Jenneve / ALC Holdings, LLC / American Laser Centers of CA, LLC /
Proofs of Claims**


Dear Sir or Madam:

Attached please find the following **3 Proofs of Claims** (one (1) original Proof of Claim and two (2) extra copies for each, to be clocked-in):

1. **ALC Holdings, LLC / Case No. 11-13853**
2. **American Laser Centers of California, LLC / Case No. 11-13883;**
3. **American Laser Centers of California, LLC d/b/a ALC- Santa Barbra, LLC (location #45) / Case No. 11-13883;**

Kindly return the two (2) extra copies for each Proof of Claim (6 copies total) to our office in the enclosed envelope after they have been clocked-in. If you have any questions or concerns in this regard, please do not hesitate to contact me. Thank you for your assistance in this matter.

Very truly yours,



Brian A. Sullivan

Enclosures

FedEx® US Airbill
Express

8652 3583 8108

0200

Form 10 No.

FedEx Retrieval Copy

1 From 2-212 **Sender's FedEx Account Number** 3337707312

Date 2-21-12 **Sender's Name** W. J. and S. Wilson **Phone** 651-663-1100

Sender's Name W. J. and S. Wilson **Company** EGG RELAYWARE ANONYMOUS

Address Wilmington **RECEIVED** **ZIP** 17351 **Dept./Floor/Suite/Room**

2 Your Internal Billing Reference FEF 03 2012

3 To **Recipient Name** Chairs Accessory Dept **Company** BMC GROUP **Address** 1675 LAKEVIEW EAST **City** MINNAPOLIS **State** MINN **ZIP** 55417 **Dept./Floor/Suite/Room**

Recipients Address 1675 LAKEVIEW EAST **City** MINNAPOLIS **State** MINN **ZIP** 55417

3 To **Recipient Name** Chairs Accessory Dept **Company** BMC GROUP **Address** 1675 LAKEVIEW EAST **City** MINNAPOLIS **State** MINN **ZIP** 55417 **Dept./Floor/Suite/Room**



8652 3583 8108

4a Express Package Service

1 FedEx Priority Overnight **5** FedEx Standard Overnight **6** FedEx First Overnight

2 FedEx 2Day **20** FedEx Express Saver **83** FedEx 3Day Freight

3 FedEx 2Day **20** FedEx Express Saver **83** FedEx 3Day Freight

4b Express Freight Service

5 Packaging **2** FedEx Pak* **3** FedEx BOX **4** FedEx Tube **1** Other Envelope*

6 Special Handling **1** HOLD Weekend at FedEx location **31** HOLD Saturday at FedEx location

7 FedEx 1Day Freight* **8** FedEx 2Day Freight **83** FedEx 3Day Freight

8 FedEx 1Day Freight* **8** FedEx 2Day Freight **83** FedEx 3Day Freight

9 Payment Bill to: **1** Sender **2** Recipient **3** Third Party **4** Credit Card **5** Cash/Check **6** Obtain Recip. Acct. No. **7** Cash/Check

8 Residential Delivery Signature Options

No Signature **10** Direct Signature **34** Indirect Signature

Recipient Signature **10** Direct Signature **34** Indirect Signature

Recipient Signature **10** Direct Signature **34** Indirect Signature

Total Packages 2 **Total Weight** 2.576

