UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17950

In the Matter of,
David Pruitt, CPA
Respondent.

REPLY MEMORANDUM IN FURTHER SUPPORT OF RESPONDENT DAVID PRUITT'S MOTION FOR A MORE DEFINITE STATEMENT

Pursuant to Rule 220(d) of the Securities and Exchange Commission's ("SEC" or the "Commission") Rules of Practice, Respondent David N. Pruitt ("Mr. Pruitt") submits this reply memorandum in further support of his Motion for a More Definite Statement (the "Motion") as to certain allegations in the Order Instituting Proceedings ("OIP").

PRELIMINARY STATEMENT

The OIP, as drafted, is deficient under Rule of Practice 200(b). The Division of Enforcement's (the "Division") apparent disdain for the pleading requirements, and the requirements of the Rules of Practice in general, is made clear by the constantly shifting allegations set forth in the opposition to this Motion. This ever-evolving narrative is the precise reason why the Court should grant this Motion. Today, the Division premises its case on the specious theory that Respondent, as a "principal accounting officer," was a "gatekeeper" who "must be held accountable for wrongdoing" because he has "violate[d] the trust the securities laws . . . place[d]" in him.[1] Of course this theory is found nowhere in the allegations of the OIP (or within the text of the statutes or rules Mr. Pruitt is alleged to have violated). Moreover, it differs from previous narratives the Division has put forth and prevents Respondent from crafting a defense to allegations that are legitimately at issue and can be maintained in good faith.

Neither the amount of time this proceeding has been pending, nor Respondent's access to the investigative file, relieves the Division of its obligation to file an OIP that complies with the Rules of Practice. Mr. Pruitt is entitled to be informed once and for all what the allegations against him are and the Division should not be permitted to change course whenever it wants. The Division must identify the books and records that it claims were made inaccurate, the specific

[1] Division of Enforcement's Memorandum in Opposition to Respondent's Motion for a More Definite Statement, *In the Matter of David Pruitt, CPA*, Admin. Proc. File No. 3-17950, at 12 (Dec. 7, 2018) ("Opp.").

internal control that was allegedly circumvented, and the specific conduct that supports these purported violations.

ARGUMENT

I. RESPONDENT DOES NOT SEEK THE DIVISION'S EVIDENCE IN ADVANCE OF THE HEARING

The Division once again confuses the request for proper notice with an attempt to obtain the Division's evidence and tries, once more, to hide behind this claim so that it does not have to provide the requisite detail called for by the Rules of Practice. Notably, Mr. Pruitt is not asking for witness testimony, documents, or other forms of evidence that the Division intends to use in its case, but instead just a few paragraphs in the OIP identifying the actual books and records that are allegedly inaccurate, the specific internal control that was allegedly circumvented, and the specific acts or omissions, in light of the new evidence put forth by Respondent, that the Division now believes support the purported violations of the Exchange Act. Incorporating by reference filings from the prior unconstitutional proceeding does not remedy the serious shortcomings of this OIP nor does it permit the Division to pursue allegations that are false. The Court should consider this Motion anew in light of the new facts elicited from the sworn testimony of Timothy Keenan, Roderick Hynes, and Alex Cummins. These new facts found nowhere in the OIP not only undermine the Division's existing allegations but also mandate that a more definite statement be provided.

II. THE OIP CONTAINS VAGUE, AMBIGUOUS, AND GENERALIZED STATEMENTS ABOUT PURPORTED BOOKS AND RECORDS AND INTERNAL CONTROLS

An OIP must "set forth the factual and legal basis alleged therefor in such detail as will permit a specific response thereto." 17 C.F.R. 201.200(b)(3); *see David F. Bandimere*, Admin. Proc. File No. 3-15124, 2013 SEC LEXIS 452, at *3, Order (ALJ Feb. 11, 2013)

("*Bandimere*"). The OIP, as filed, only makes reference to a "specific internal control of L3"[2] that was violated without identifying it and employs casual, catch-all references to books and records that were inaccurate. These are precisely the type of "vague, ambiguous and generalized" allegations that do not suffice.

Absent specificity in the OIP, the Division's overbroad interpretation of what constitutes a book and record under Section 13(b)(2)(A) would deny Mr. Pruitt a meaningful opportunity to confront and challenge these facts since he will never know with certainty what the Division will assert is inaccurate. Such an outcome is prohibited by the Rules of Practice and basic notions of fairness and due process. See 17 C.F.R. 201.200(b)(3); *Bandimere*, 2013 SEC LEXIS 452, at *3; *see also Jaffee & Co. v. SEC*, 446 F.2d 387, 394 (2d Cir. 1971); *Brock v. Dow Chem. USA*, 801 F.2d 926, 930 (7th Cir. 1986).

Furthermore, in the OIP, the Division completely sidesteps the statutory requirement that books and records need only be kept in "reasonable detail." Exchange Act § 13(b)(2)(A). The Division cannot deny or explain away the entirely miniscule and admittedly immaterial nature of the revenue it alleges was improper. No matter how the Division once again tries to spin the facts and theory of its case, it cannot escape the mathematical certainty that the wrongful conduct originally alleged in the OIP amounted to 14/100th of one percent of the revenue that was disclosed on L3 Technologies, Inc.'s ("L3") books for the year. The latest theory of liability advanced by the Division goes far beyond the scope of the current OIP, underscoring not only its deficiency but also the need for a more definite statement.

Moreover, the Division's claim that the OIP contains "sufficient information" regarding the internal controls and books and records at issue is belied by the OIP, which

[2] *See* OIP ¶ 39.

merely recites the statutory language along with the conclusory statement that each provision was violated. The Division's June 30, 2017 letter, which was not incorporated into the OIP when the Division elected post-*Lucia* to proceed on the OIP as initially filed, only underscores the Division's failings to provide proper notice to Respondent. Similarly, the Division repeatedly cites pre-*Lucia* filings in this action to support its argument that Respondent has proper notice. Those filings are no longer part of the operative record and therefore the Division may not rely on them to fulfil its obligation to provide Respondent with adequate notice. Ultimately, it is the Division's responsibility in this proceeding to set forth sufficient facts so that Mr. Pruitt is on notice of the allegations against him. The Division's approach would turn this requirement on its head, requiring Respondent to comb through the investigative file in an attempt to decipher what exactly the Division alleges he did wrong. Additionally, despite taking limited prehearing document discovery and not having taken a single deposition, the Division unilaterally concludes that Mr. Pruitt has completed preparing his defense.[3] Unfortunately for the Division, it does not get to make that call and the Rules of Practice require proper notice and a more definite statement.

III. THE EXISTENCE OF A MOTION PENDING BEFORE THE COMMISSION DOES NOT RELIEVE THE DIVISION OF ITS OBLIGATION TO PROCEED ON ALLEGATIONS THAT HAVE A LEGAL AND FACTUAL BASIS

The Division is not relieved of its legal and ethical obligations simply because Respondent has a motion to amend pending before the Commission. *See* SEC Rule of Practice 153(b)(1)(ii). Nor can the Division avoid the uncomfortable reality that the OIP no longer reflects the case articulated by the Division and authorized by the Commission.

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[3] Opp at 5.

Regardless of how the Commission ultimately rules on Respondent's pending motion to amend the OIP, the Division's own filings before the Commission and in opposition to this Motion spell out the precise reason why a more definite statement is warranted. The OIP, as currently drafted, alleges that Mr. Pruitt, acting on his own, instructed a subordinate to manufacture fictitious invoices related to services provided to the U.S. Army and withhold delivery of those invoices in order to obtain a year-end bonus.[4] Yet, the Division's new narrative, as outlined in filings before the Commission and found nowhere in the OIP, alleges that Mr. Pruitt was a principal accounting officer for the Army Sustainment Division of L3 ("ASD") with final authority to determine accounting treatment.[5] He allegedly deceived his accounting supervisor, Timothy Keenan, to authorize the generation of the invoices and the recognition of revenue at issue.[6] In the alternative, according to the Division, Mr. Pruitt should have ignored his supervisor's direction to issue the invoices.[7] Mr. Pruitt did all of this to obtain a bonus, even though he knew at the time the revenue was recognized that ASD would be millions of dollars short of the bonus target.[8]

Even the most generous reading of the OIP does not contain this fanciful narrative because it is a drastic departure from the original allegations and is exactly why a more definite statement is now needed. As Mr. Keenan made clear in his various sworn statements, statements that the Court should not disregard, Mr. Pruitt did not have the authority to determine the accounting treatment at issue, acted at the direction of his accounting supervisor in generating the invoices,

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[4] OIP ¶¶ 2, 27.
[5] Division of Enforcement's Memorandum in Opposition to Respondent's Motion to the Commission to Amend the Order Instituting Proceedings, *In the Matter of David Pruitt, CPA*, Admin. Proc. File No. 3-17950, at 2 (June 18, 2018) ("Opp. to Mot. to Amend").
[6] *Id.* at 6.
[7] *See* Opp. at 12.
[8] Opp. to Mot. to Amend at 10-11.

and could not have been motivated to receive a bonus.[9] While the Division is free to pursue this scenario if it can be maintained in good faith, the Division must also provide sufficient notice and appropriate detail in the OIP of the allegations that support it.

The Division's purported "correction of tense"[10] amounts to nothing more than a concession that key allegations are no longer viable. Mr. Pruitt is entitled to be informed once and for all of the precise allegations against him that support the purported violations of the Exchange Act. It should begin with a more definite statement concerning what books and records are purportedly inaccurate, the single internal control that was allegedly circumvented, and any other allegations not found in the OIP that the Division now believes support these charges.

CONCLUSION

For the reasons set forth herein, the Court should grant Mr. Pruitt's Motion and order the Division to provide a more definite statement.

Dated: December 12, 2018
New York, New York

By: 

Jonathan R. Barr
John J. Carney
Jimmy Fokas
Brian F. Allen
Bari R. Nadworny
BAKER & HOSTETLER LLP
45 Rockefeller Plaza
New York, New York 10111
Telephone: 212.589.4200
Facsimile: 212.589.4201

Attorneys for Respondent David Pruitt

[9] Exhibit A to the Declaration of Bari R. Nadworny in support of Respondent David Pruitt's Motion for a Ruling on the Pleadings, *In the Matter of David Pruitt, CPA*, Admin. Proc. File No. 3-17950 (Nov. 30, 2018).
[10] Opp. at 7.