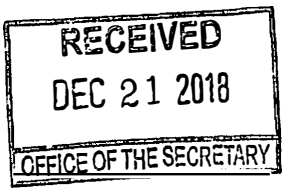
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
FILE NO. 3-17950

In the Matter of,

David Pruitt, CPA

Respondent.



MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF RESPONDENT DAVID PRUITT'S MOTION FOR A RULING ON THE PLEADINGS

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Pursuant to Rule 250(a) of the Securities and Exchange Commission's ("SEC" or the "Commission") Rules of Practice, Respondent David N. Pruitt ("Mr. Pruitt") submits this memorandum of points and authorities in support of his Motion for a Ruling on the Pleadings (the "Motion"). The Declaration of Bari R. Nadworny ("Nadworny Decl.") is submitted in support of the Motion.

PRELIMINARY STATEMENT

The Division of Enforcement (the "Division") has pleaded a case that unsuccessfully attempts to allege two violations. First, that an employee of an issuer can be held liable for books and records violations as small as $14/100^{th}$ of one percent of annual revenue; and second that the same employee can be held liable for circumventing an internal control that does not exist. Both allegations fail as a matter of law and require the dismissal of the Order Instituting Proceedings ("OIP") with prejudice.[1]

First, the Court should not accord the allegations of this OIP the deference typically provided to the non-movant on a motion for a ruling on the pleadings. The Division should not be afforded this deference because it has known for months that certain factual allegations are no longer true and cannot be maintained in good faith. The Division does not have a blank check to allege whatever it wants, nor is the Court required to accord deference to allegations that can no longer be factually supported. The Division has had multiple opportunities to amend the OIP and cure these deficiencies, but has instead chosen to ignore them. As such, the Court should not construe the false allegations as true for the purposes of this Motion and should dismiss this proceeding in its entirety.

[1] Proceedings in this matter that took place prior to the U.S. Supreme Court decision in *SEC v. Lucia* lack validity as the prior proceedings were unconstitutional. Respondent makes this Motion in the current proceeding with the benefit of new facts and evidence that the Court should consider when deciding this Motion.

Second, at a more basic level, even if the Court construes the false allegations as true, the OIP still fails as a matter of law to allege facts demonstrating that the books and records of L3 Technologies, Inc. ("L3") were not maintained in the "reasonable detail" required by law. While the Division wholly ignores the import of this standard, the law does not require that books and records be kept with perfect precision. The Division apparently never considered the legislative history and the Commission's own policy limiting the reach of the "books and records" provisions when bringing this proceeding. Nor does it apparently believe there are any practical limits concerning the accuracy of an issuer's books and records. Congress however, took a different approach. Recognizing that a standard which requires absolute precision would be unworkable and unreasonable, Congress deliberately only required an issuer to "make and keep books, records, and accounts, which, *in reasonable detail*, accurately and fairly reflect the transactions and dispositions of the assets of the issuer."[2] The alleged inaccuracy at issue in this proceeding is 14/100th of one percent ($17.9 million out of $12.62 billion) of L3's reported net revenue for the year ended December 31, 2013. This amount is *de minimis* as a matter of law, and accordingly the OIP fails to allege a violation of Section 13(b)(2)(A) and Rule 13b2-1 and should be dismissed as a matter of law.

Third, the Division fails to adequately plead a violation under Section 13(b)(5) of the Exchange Act for knowingly circumventing a system of internal controls. The Division's sole allegation regarding the internal controls violation concerns the circumvention of a control that purported to require the delivery of invoices to the customer. However, not one of the internal controls cited by the Division in its after-the-fact attempts to correct this glaring deficiency[3]

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[2] Securities Exchange Act of 1934 (the "Exchange Act") Section 13(b)(2)(A) (emphasis added).
[3] Respondent's Motion for a More Definite Statement is pending before the Court. As such, Respondent does not know with certainty what, if anything additional, the Court will permit the

requires the delivery of invoices before revenue can be recognized and most are irrelevant on their face. Moreover, having failed to correct its pleading deficiency, the Division should not be given yet another opportunity to salvage this charge. Because Mr. Pruitt cannot knowingly circumvent an internal control that did not exist, this charge must also be dismissed.

ARGUMENT

I. THE OIP AS DRAFTED SHOULD NOT BE ENTITLED TO DEFERENCE

Mr. Pruitt moves for a ruling on the pleadings pursuant to Rule 250(a) of the Commission's Rules of Practice. Pursuant to Rule 250(a), a "party may move for a ruling on the pleadings on one or more claims or defenses, asserting that, even accepting all of the non-movant's factual allegations as true and drawing all reasonable inferences in the non-movant's favor, the movant is entitled to a ruling as a matter of law."[4] However, this directive does not require the Court to extend deference to allegations that the Division knows no longer have any basis in fact and that do not comply with the good faith requirements of Rule 153(b)(1)(ii); *see also* Fed. R. Civ. P. 11(b)(3). Indeed, the Model Rules of Professional Conduct dictate that a lawyer shall not knowingly fail to correct a false statement of material fact or offer evidence that the lawyer knows to be false. *See* MODEL RULES OF PROF'L CONDUCT r. 3.3. Federal courts interpreting the level of deference afforded to allegations in the context of a Federal Rule of Civil Procedure 12(b)(6) motion to dismiss and Rule 12(c) motion for judgment on the pleadings make clear that a court is not required to blindly defer to allegations that are not supported by facts or

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Division to allege in support of this legally deficient charge. For the purposes of this Motion, Respondent relies on the Division's statement made in its opposition to the Motion for a More Definite Statement where it asks the Court to incorporate by reference an additional filing it was ordered to make in the prior proceeding. *See* Letter from Paul G. Gizzi to John J. Carney (June 30, 2017). In the event the Court denies the Division's request to incorporate this submission by reference (as it should) then this Motion should be decided based on the single control the Division contends requires delivery of an invoice – IR 4.

[4] 17 C.F.R. § 201.250(a).

merely express bald conclusions. *See Mass. Sch. of Law at Andover, Inc. v. Am. Bar Ass'n*, 142 F.3d 26, 40 (1st Cir. 1998) ("Notwithstanding the generous contours of [the Rule 12(b)(6)] standard, a reviewing court need not swallow plaintiff's invective hook, line, and sinker; bald assertions unsupportable conclusions, periphrastic circumlocutions, and the like need not be credited." (internal quotation marks omitted)); *see also Citibank, N.A. v. Tormar Assocs. LLC*, No. 15-CV-1932 (JPO), 2015 WL 7288652, at *3 (S.D.N.Y. Nov. 17, 2015) (noting the standard for granting a Rule 12(c) motion is identical to that of a Rule 12(b)(6) motion and the court need not accord a presumption of truthfulness to legal conclusions, deductions, or opinions couched as factual allegations). The allegations in the OIP must have some basis in fact in order for them to be maintained and for the Court to accord them deference. *See Bancroft v. City of Mount Vernon*, 672 F. Supp. 2d 391, 402–03 (S.D.N.Y. 2009) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 679, 129 S. Ct. 1937, 1950 (2009)) ("[N]o less an authority than the United States Supreme Court has made it abundantly clear that plaintiffs are not allowed to file complaints to 'find out the truth;' rather, they have to have some basis in fact for alleging that the 'truth' is what they believe it to be."). The same standards applied by federal courts should be applicable to this proceeding and this OIP. Similar to the Federal Rules of Civil Procedure, Rule 200(b)(3) and Rule 153(b)(1)(ii) in particular require allegations to be made in good faith and to be "well grounded in fact." The Court should not defer to, or deem to be true, allegations that no longer reflect reality.

The Court is now well aware that, at a minimum, the following factual allegations in the OIP are false: (a) Mr. Pruitt acted on his own and not at the direction and with the consent of his accounting supervisor when the invoices were issued and the revenue was recognized[5]; (b) the

[5] *See* OIP ¶ 21.

U.S. Army did not want or request L3 to provide invoices for the revenue recovery items[6]; (c) the invoices were "fictitious"; and (d) Mr. Pruitt was motivated to generate the invoices so he could receive a bonus.[7] The true and correct facts, shared with the Division almost eight months ago, are set forth in sworn testimony from multiple witnesses. The Division's attempt to explain away these critical facts by labeling them "factual disputes" does not change the conclusion that the Court should decline to treat the false allegations in the OIP as true for the purposes of this Motion.[8]

The Division has recognized that some of the newly discovered evidence, particularly the affidavit of a key senior management witness, "will significantly impact the preparation for and conduct of the hearing . . . and may impact whether a hearing is even necessary"[9] and the new facts "dramatically alter[] the factual record."[10] Indeed, in a filing to the Commission, the Division went so far as to concede that a "slight amendment" to the OIP was appropriate.[11] Yet, despite this concession, the Division has decided to proceed on an OIP that does not reflect the actual factual and legal basis for the allegations in this proceeding. Having made that choice, the

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[6] *See* OIP ¶¶ 30, 36.
[7] *See* OIP ¶ 27.
[8] The Division also claims that these sworn statements only tell one side of the story, implying that there is more to come. In reality, these statements tell the parts of the story that the Division refuses to acknowledge and would have the Court ignore. It was the Division that conducted an almost three-year investigation and had an unfettered opportunity to discover the facts set forth in these sworn statements. More importantly, there can be no factual dispute when the underlying allegations in the OIP are false.
[9] Memorandum in Support of Joint Motion for a Limited Stay of Discovery, *In the Matter of David Pruitt, CPA*, Admin. Proc. File No. 3-17950, at 1 (Apr. 3, 2018).
[10] *Id.*
[11] 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 7-8 (June 18, 2018).

Court should not accept as true false allegations or accord them any deference when deciding this Motion and should dismiss this proceeding.

II. THE DIVISION'S SECTION 13(b)(2)(A) AND RULE 13b2-1 CLAIMS FAIL AS A MATTER OF LAW BECAUSE AT ALL TIMES L3'S BOOKS WERE MAINTAINED IN "REASONABLE DETAIL"

The OIP is facially and fatally invalid as a matter law because the Division does not—and cannot—allege that L3's books and records were not maintained in the "reasonable detail" required by law and as such Mr. Pruitt could not have caused any violation. Nothing in the Exchange Act requires a company's books and records to be perfect. Even assuming the *de minimis* discrepancies alleged in the OIP exist, L3's books and records during the relevant period were objectively accurate in reasonable detail and satisfactory to prudent officials in the conduct of their own affairs under Sections 13(b)(2)(A) and (b)(7) of the Exchange Act. Prudent officials in the conduct of their own affairs simply would not deem books and records that contain an alleged early recognition of 14/100th of one percent of revenue ($17.9 million/$12.62 billion) to be inaccurate or not kept in reasonable detail. There being no primary violation by L3, the state of mind of L3's employee is irrelevant—Mr. Pruitt can have no liability for allegedly intending to cause something that objectively never happened.

Congress added the "prudent officials" standard in 1988 to allay concerns over enforcement overreach acknowledged by both Chairman Williams and his immediate successor, Chairman Shad, as early as 1981. Disregarding the objective statutory standard and permitting an inquiry into subjective intent would make each and every misstatement in an issuer's books and records, no matter how miniscule, actionable. Indeed, if the mental state of an employee in booking insignificant financial items determined a company's liability, then every inflated expense voucher, fake sick day, and petty cash theft would result in liability for both the employee and the company, because its records would be plainly and intentionally wrong, but to

an absurdly *de minimis* degree. No prudent officials would alter how they conduct their personal affairs because of such trifles—including the possible early recognition of 14/100th of one percent of revenue. The books and records charges must be dismissed with prejudice. A contrary outcome ignores the mandates of Congress and the Commission and expands the books and records provisions far beyond their intended reach.

A. Legislative History and Commission Policy

Legislative history of the books and records provisions and Commission policy confirms that *de minimis* misstatements do not fall within the ambit of the statute. The accounting provisions were added to the Exchange Act as part of the Foreign Corrupt Practices Act ("FCPA") and were not included in the original drafts of the FCPA.[12] 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 and dispositions of the assets of the issuer." In its committee reports on this provision, Congress stressed that "the term 'accurately' does not mean exact precision as measured by some abstract principle" and that "prohibiting the falsification of corporate books and records" is "not intended to make unlawful conduct which is merely negligent."[13] Congress added the "'in reasonable detail' qualification to the accurate and fair [books and records] requirement in light of the concern that such a standard, if unqualified, might connote a degree of exactitude and precision which is unrealistic."[14]

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[12] *See* A Guide to the New Section 13(b)(2) Accounting Requirements of the Securities Exchange Act of 1934 (Section 102 of the Foreign Corrupt Practices Act of 1977), A Report by the American Bar Association Committee on Corporate Law and Accounting, 34 Bus. Law. 307, 309 (1978) ("Congress moved hastily on the accounting provisions of the 1977 Act; technical problems of day-to-day accounting were pale stuff compared to the red-hot moral-political issues of bribery that commanded the attention of the Congress. The House version of the bill did not contain the accounting provisions at all, and they were never debated on the House floor or in a House committee.").

[13] S. REP. NO. 95-114, at 8-9 (1977).

[14] H.R. REP. NO. 95-831, at 10 (1977) (Conf. Rep.).

In 1981, Chairman Williams addressed the proper interpretation of the accounting provisions of the Exchange Act in a speech reflecting formal Commission policy.[15] He made clear that the "reasonable detail" qualification "[i]n essence . . . does provide a *de minimus* [sic] exemption, though not in absolute, quantitative terms."[16] The "appropriate test" for the exemption is "reasonableness," which "allows flexibility in responding to particular facts and circumstances" and tolerates "deviations from the absolute."[17]

Later in 1981, Chairman Williams's successor, John Shad, introduced to Congress proposed amendments to the Exchange Act's accounting provisions that included a "prudent man" standard which ultimately evolved into the "prudent officials" test currently set forth in Section 13(b)(7). He explained that the Commission believed that the "prudent man" test would "introduce a materiality standard threshold" and "eliminate[] issuers' concerns over *de minimus* [sic] inaccuracies."[18] The language of the proposed "materiality" standard, which was intended but did not become Section 13(b)(7), provided that "a matter is 'material' to the extent that a prudent man would be likely to consider the matter important in the management of his own property."[19]

In 1988, Congress finally enacted the current version of Section 13(b)(7), which provides that "the terms 'reasonable assurances' and 'reasonable detail' mean such level of detail and degree of assurance as would satisfy prudent officials in the conduct of their own affairs." The conference committee reported that the "prudent man qualification" was adopted to "clarify that the current standard does not connote an unrealistic degree of exactitude or precision. The

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[15] SEC Release No. 34-17500, 46 Fed. Reg. 11544 (Feb. 9, 1981), 17 C.F.R. Part 241.
[16] 46 Fed. Reg. at 11546.
[17] *Id.*
[18] S. Hrg. 97-18, at 278, 284-85 (1981) (statement of Chairman John Shad).
[19] *Id.* at 304.

concept of reasonableness of necessity contemplates the weighing of a number of relevant factors, including the costs of compliance."[20] Thus, when grafting Section 13(b)(7) onto Section 13(b)(2)(A) in 1988, Congress merged flexible "reasonableness" with economically efficient "materiality," to create an objective standard for determining whether the issuer's books and records are maintained in reasonable detail. The Commission, through Chairman Shad, described this objective standard simply as what prudent people would be likely to consider important in managing their own property.[21]

B. Mr. Pruitt's State of Mind Is Irrelevant

Nothing in the language of Section 13(b)(2)(A), or the relevant legislative history or expressions of Commission policy, authorizes inquiry into the state of mind of an employee making an entry into an issuer's books and records when they remain accurate in the detail and degree that prudent officials would be likely to consider important in managing their own property. To paraphrase Chairman Williams, there is no articulable federal interest under Section 13(b)(2)(A) that reaches even intentional circumventions of internal controls or falsifications of books and records, so long as they remain accurate and fair to the reasonable satisfaction of prudent officials.[22] The Court is not permitted, nor is it relevant to the analysis of the accuracy of L3's books and records, to examine Mr. Pruitt's state of mind because the books and records were maintained in reasonable detail.

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[20] H.R. REP. NO. 100-576, at 917 (1988) (Conf. Rep.).
[21] *See* S. Hrg. 97-18, at 304 (1981) (statement of Chairman John Shad).
[22] 46 Fed. Reg. at 11547. The Chairman acknowledged cases in which "intentional circumventions" of internal controls would not be considered violations of the Exchange Act by the issuer. *Id.* at 11547. Although "a bookkeeper may still erroneously post entries, an overzealous agent may make unauthorized payments, or an unscrupulous employee may falsify records for his own purposes," Chairman Williams observed that these abuses were not the "kind of problem that Congress sought to remedy in passing the Act. No rational federal interest in punishing insignificant mistakes has been articulated." *Id.*

According to the Division, Mr. Pruitt caused ASD to record revenue on work performed by L3 but not yet billed to the U.S. Army, which amounted to $17.9 million or 14/100th of one percent of more than $12.62 billion in L3's consolidated revenues. This alleged discrepancy is *de minimis* under any theory of "reasonableness" or "materiality." L3's books and records accurately and fairly reflected its transactions and dispositions of assets in reasonable detail, as Congress and the Commission have understood and intended that language. Mr. Pruitt's subjective state of mind is entirely irrelevant. The prudent officials standard does not contemplate whether Mr. Pruitt acted as a prudent official, but rather whether an objective prudent official in the conduct of his own affairs would be satisfied with the level of detail in which the books and records at L3 were maintained. A misstatement of 14/100th of one percent of annual revenue, the maximum amount at issue here, would not cause an objective prudent official to believe that L3's books and records were not kept in reasonable detail. That ends the inquiry and the Division is not permitted to delve into Mr. Pruitt's state of mind in order to support a violation.

C. The Alleged Improper Revenue Falls Within the *De Minimis* Exemption

The conference committee report further added that the "reasonable detail qualification" clarifies that issuer "records should reflect transactions in conformity with accepted methods of recording economic events."[23] This Court previously quoted this language when it restated the *de minimis* exemption in a prior order during the prior proceedings, stating that it "provides a safe harbor for an issuer that 'records . . . transactions in conformity with accepted methods of recording economic events.'"[24] First, the conference report states that records "should"—not

[23] H.R. REP. NO. 95-831, at 10 (1977) (Conf. Rep.).
[24] Order Denying Motion for Ruling on Pleadings, Admin. Proc. Rulings Release No. 4937, *In the Matter of David Pruitt, CPA*, Admin. Proc. File No. 3-17950, at 4 (Aug. 1, 2017).

"must"—"reflect transactions in conformity with accepted methods of recording economic events." But more significantly, this Court's prior formulation of the *de minimis* exemption limits the exemption to transactions the issuer has recorded in conformity with accepted methods of recording economic events. This formulation yields the opposite of what is intended by the statutory "reasonable detail qualification" added by Congress. The *de minimis* safe harbor this language confirms, when read together with the objective prudent officials standard, is intended to accommodate transactions that have in fact *not* been recorded on the issuer's books in such a manner, in order to prevent miniscule misstatements from violating Section 13(b)(2)(A). Congress simply did not intend for a misstatement of 14/100th of one percent of the issuer's revenue to trigger a violation of the books and records provisions regardless of the underlying intent of the misstatements. A contrary outcome replaces the objective standard with a subjective one and renders the *de minimis* exemption meaningless. Here, even if the recorded revenue was improper, it amounted to 14/100th of one percent ($17.9 million/$12.62 billion) and could not be considered anything other than *de minimis* to this issuer, rendering the books and records of L3 accurate in reasonable detail and requiring dismissal of these charges.

Moreover, the books and records provisions were not intended to be a "catch-all" provision for misstatements or factual situations where the anti-fraud provisions of the securities laws do not apply. The amount of revenue at issue in this matter without question does not meet the materiality standard required for proving fraud and it also does not render the books inaccurate under the prudent officials standard required to set forth a violation under Sections 13(b)(2)(A) and 13(b)(7). These charges must be dismissed.

D. The Accounting Provisions of the Exchange Act Were Not Meant to Prosecute *De Minimis* Accounting Issues for Work Actually Performed Pursuant to a Valid Contract

In addition to improperly construing the objective prudent officials standard in Sections 13(b)(2)(A) and (b)(7) to include an inquiry into Mr. Pruitt's state of mind, the Division also seeks to stretch these provisions to cover not only *de minimis* transactions, something not contemplated by Congress or the Commission, but situations where it is factually undisputed that the underlying transactions at issue were bona fide and legitimate.

The Division's own allegations in the OIP confirm the legitimate nature of the services underlying the invoices that generated the revenue at issue. There was a signed arm's-length contract between L3 and the U.S. Army subject to a myriad of federal regulations applicable to government contracts.[25] The services were performed under the contract, but L3 had not yet billed or collected the money it was owed.[26] There were at times daily or weekly meetings internally at L3 and updates provided to the U.S. Army during the relevant time period regarding the outstanding amount to be paid to L3 and the best way to bill and collect those funds.[27]

The OIP does not and cannot allege that the work underlying the invoices was not performed or was in any way concealed from the customer. In contrast, the OIP makes clear that the C-12 Contract Manager "identified approximately $50.6 million *in work performed by ASD* under the contract that was not billed to the Army."[28] Nor can the Division allege that the invoices were fictitious since the services described therein were performed as described. In fact, the activity described in the invoices undeniably occurred and was accurately reflected

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[25] OIP ¶ 1; *see, e.g.*, Federal Acquisition Regulation, C.F.R. Title 48; Department of Defense FAR Supplement.
[26] OIP ¶ 10.
[27] OIP ¶¶ 9, 12, 13, 15, 18, 19.
[28] OIP ¶ 10 (emphasis added).

therein. As the Division knows, the U.S. Army later paid for a substantial portion of the revenue recovery items. The facts of this case do not involve the concealment or the creation of sham transactions intended to be prevented by the drafters of the accounting and books and records provisions. The OIP fails to allege a violation of Sections 13(b)(2)(A) and Rule 13b2-1 and should be dismissed as a matter of law.

III. THE DIVISION'S ALLEGED INTERNAL CONTROLS VIOLATION FAILS AS A MATTER OF LAW

In response to Mr. Pruitt's Motion for a More Definite Statement, the Division has once again submitted a laundry list of irrelevant internal controls[29] in an attempt to save this fatally flawed charge. Merely reciting the statutory language of Section 13(b)(5) does not entitle the Division to pick and choose what it wants to allege well after the OIP has been filed. The OIP makes a single allegation about the internal control that Respondent allegedly violated: "The invoices had not been delivered to the U.S. Army, in violation of a specific internal control of L3 that required delivery of invoices."[30] The Court should not go beyond what is specifically alleged in the OIP.

The Division has previously identified IR 4 as the internal control that purports to require delivery of an invoice referenced in paragraph 39 of the OIP. This control simply does not "require delivery of invoices" as alleged. IR 4 states:

> The Finance Department posts each invoicing transaction upon its preparation and distribution to the customer to a separate subsidiary ledger or general ledger account for each type of billing method used by the Financial Reporting Location, which records information about the invoice (for example, the relevant

[29] Respondent respectfully requests the right to submit to the Court a supplemental brief in support of this Motion should the Court order the Division to provide a more definite statement or if the list of controls the Division attempts to incorporate by reference differs in any way from the prior list the Division submitted.

[30] OIP ¶ 39.

> information listed above in Control No. (3)). Alternatively, batch processing of invoices may be utilized.[31]

IR 4 is a posting control, designed to assure that all billings are captured as revenue in L3's books. IR 4 does not state that the delivery of an invoice to the customer is a pre-requisite for the revenue associated with the invoice to be posted to the appropriate subsidiary ledger. This language does not appear in the control simply because this control does not and was never intended to require delivery of an invoice to the customer. While allegations in the OIP are to be taken as true, deference should not apply where the control on its face does not support the allegation and deferring to an alternate interpretation would defy its plain meaning.

Mr. Pruitt as a matter of law cannot be charged with knowingly circumventing a control that lacks clarity and does not clearly require the delivery of an invoice. Section 13(b)(5) of the Exchange Act requires that a respondent "knowingly" circumvent an internal control to commit a violation. Implicit in the knowledge requirement is that there exist an internal control that is clear as to its requirements. This Court has previously stated that IR 4 is not clear as to its requirements and may require expert testimony to explain its meaning.[32] Finding a "knowing" circumvention of an internal control on these allegations is unfair to Mr. Pruitt who could not have circumvented something *knowingly* when the control is vague or silent, does not state what the Division wishes it did, and may actually require an expert witness to determine what exactly it means.

The Court's analysis of whether Respondent is entitled to a ruling on the pleadings should go no further than exploring the allegation relating to delivery of invoices, the only allegation in the OIP that purports to identify the internal control at issue. If the Division wished

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[31] Nadworny Decl. Ex. A.

[32] Order Denying Motion for Ruling on Pleadings, Admin. Proc. Rulings Release No. 4937, *In the Matter of David Pruitt, CPA*, Admin. Proc. File No. 3-17950, at 6 (Aug. 1, 2017).

to expand the allegations supporting this charge, it could have properly done so by amending the OIP. The Court should not consider internal controls arbitrarily deemed "relevant" after the fact by the Division. No matter how many internal controls the Division throws together in a futile attempt to justify this charge, there was simply no control that required the delivery of invoices. Having premised the entire violation on a non-existent control, the charge must be dismissed as Mr. Pruitt could not circumvent, no less knowingly circumvent, a control that did not exist and does not require what the Division alleges it requires. The OIP fails to set forth a violation of Section 13(b)(5).

CONCLUSION

For the foregoing reasons, Mr. Pruitt respectfully requests that the Court grant the motion for a ruling on the pleadings and dismiss the OIP with prejudice.[33]

Dated: December 14, 2018
New York, New York

By: _____

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[33] In the alternative, if the Court does not grant this Motion, it should order the Division to amend the OIP to remove the false allegations.

UNITED STATES OF AMERICA
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ADMINISTRATIVE PROCEEDING
File No. 3-17950

In the Matter of,

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Respondent.

RESPONDENT DAVID PRUITT'S MOTION FOR A RULING ON THE PLEADINGS

Pursuant to Rule 250(a) of the Securities and Exchange Commission's ("SEC" or the "Commission") Rules of Practice, Respondent David N. Pruitt ("Mr. Pruitt"), through his undersigned counsel, respectfully moves this Court to dismiss the Order Instituting Proceedings ("OIP") dated April 28, 2017. A Memorandum of Points and Authorities and the Declaration of Bari R. Nadworny are also submitted in support of the motion.

Dated: December 14, 2018
New York, New York

By: _____
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DECLARATION OF BARI R. NADWORNY

I, Bari R. Nadworny, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am an attorney admitted to practice in New York. I am a member of the law firm of Baker & Hostetler, LLP, counsel for Respondent David Pruitt in this action. I am submitting this declaration, based upon my own personal knowledge, in support of Respondent David Pruitt's Motion for a Ruling on the Pleadings.

2. Attached as Exhibit A is a true and correct copy of excerpts of the L3 Technologies, Inc. (formerly known as L-3 Communications Holdings, Inc.) Internal Controls Over Financial Reporting All Processes, dated September 19, 2013.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: December 14, 2018
New York, NY

Bari R. Nadworny

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Internal Controls Over Financial Reporting
All Processes - September 19, 2013

*** = Key Control**
HR = High Risk Control Requiring Reperformance

Control ID #	Control Activity as Drafted by L-3 Corporate
IR 3	In order to comply with the contractual billing and payment terms of each Revenue Arrangement and to internally monitor/track the status of invoices, the Invoicing Department uses pre-numbered invoices that includes, but is not limited to, the following information for each type of billing method: a. Invoice number b. Date of invoice c. Job Number or Sales Order Number for the related revenue arrangement d. Invoice amount e. Payment terms f. Description of the Billing (for example, for a delivery invoice, the products (codes, quantities, etc.) shipped/delivered to the customer) g. Customer's contract or Purchase Order Number h. Customer's address *Note: Most invoices for U.S. Government customers are prepared using standard U.S. Government invoicing and payment forms.*
IR 3A	The Invoicing Department (1) prepares the customer invoice using the pre-number form in IR 3 above, based on the contractual billing and payment terms in IR 1 above and (2) agrees the contractually allowable costs invoiced to the job cost system and/or other supporting worksheets or documentation accumulated in IR 2 above. *Note: This control maybe performed automatically by integrated ERP systems that prepare invoices based on the initial contract terms setup reviewed in IR 1 for standard terms arrangements. However, for manually prepared and/or manually adjusted system generated customer invoices and contracts with non-standard terms, the preparer must ensure the invoiced amounts reconcile to the following, as applicable:* *a. total contractually allowable direct labor hours for each specified labor category in the revenue arrangement plus actual costs of materials and other non-labor direct costs, plus allowable and allocable indirect costs,* *b. stated contract value or sales price specified in the revenue arrangement for product delivered and evidence of delivery, including shipping documentation and customer customer acceptance,* *c. stated contract value or sales price specified in the revenue arrangement for performance milestones, award, and/or incentive fees and documentation that conditions for billing these items have been satisfied,* *d. stated contract value or sales price specified in the revenue arrangement for advance payments and progress payments, and conditions for billing these items have been satisfied,* *e. remaining stated contract value or sales price of the revenue arrangement for retension/retainage/holdbacks and conditions for the billing of these amounts have been satisfied.*
IR 4	The Finance Department posts each Invoicing transaction upon its preparation and distribution to the customer to a separate subsidiary ledger or general ledger account for each type of billing method used by the Financial Reporting Location, which records information about the invoice (for example, the relevant information listed above in Control No. (3)). Alternatively, batch processing of invoices may be utilized.
IR * 5	An individual in the Finance Department at a supervisory level, reviews each invoice for the invoice information listed above in Control No. (3), and the items listed below, as applicable, and approves the customer invoice prior to its submission to the customer: a. Liquidation rates (progress payments) b. Advance payments received c. Loss ratios d. Unallowable costs e. Unresolved billing disputes f. Unit price and quantity match the purchase order, sales order (i.e., revenue arrangement) and shipping document, or service performed document g. Mathematical accuracy
IR * 6	The Finance Department ensures that every invoice is posted/recorded by any of the following methods: I) accounting for the numerical sequence of all pre-numbered invoices processed and sent during the period by reconciling to the numerical sequence of invoices listed in the receivables subsidiary ledgers ii) comparing a listing of active jobs to be invoiced (maintained by Contracts) to the invoices processed as per the invoice register iii) some other method. Note-Performance of the control activity should be evidenced by initialing and dating the Invoice register as approved.