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 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"), through his undersigned counsel, respectfully submits this reply memorandum in further support of his Motion for a Ruling on the Pleadings (the "Motion"). The Declaration of Bari R. Nadworny ("Nadworny Decl.") is also submitted in further support of the Motion.

PRELIMINARY STATEMENT

The Division of Enforcement's (the "Division") Opposition[1] is a 24-page diatribe detailing facts that are detached from reality and law that cannot be found in the statutes it is empowered to enforce. The Opposition is a futile attempt to save a fatally flawed OIP and the legally deficient claims therein by distracting the Court with nefarious sounding and non-existent factual scenarios and mischaracterizations of the law and Respondent's legal arguments. More telling, however, is the Division's almost complete failure to meaningfully address the key legal issue surrounding the books and records charges in this proceeding—the meaning of the phrase "in reasonable detail" and the application of the objective "prudent officials" standard. Respondent is not aware of (and the Division has not cited to) any reported opinions that construe the meaning and application of these standards. Nor has the Division cited any standalone books and records cases that involved an alleged misstatement as microscopic as the one at issue here. The validity of the books and records charges in this OIP must be determined by applying the law and not what the Division wishes the law to be. The Division relies on unsubstantiated policy statements that are not derived from the statutes at issue and paints a fanciful picture of the purported parade of horribles to follow if this Court applies the law as

[1] Division of Enforcement's Memorandum in Opposition to Respondent's Motion for a Ruling on the Pleadings, *In the Matter of David Pruitt, CPA*, Admin. Proc. File No. 3-17950 (Dec. 21, 2018) ("Opposition" or "Opp.").

Congress intended. None of this alters the conclusion that at all times the books and records of L3 Technologies, Inc. ("L3") were maintained in reasonable detail, satisfactory to prudent officials in the conduct of their own affairs, requiring dismissal of the Section 13(b)(2)(A)[2] and Rule 13b2-1 charges. The Division also does nothing to save its defective internal controls charge which must also be dismissed.

Recognizing that the law does not support the unbounded interpretations set forth in the Opposition, the Division spends a significant portion of its brief distorting the facts and disparaging Mr. Pruitt. The Division asks the Court to draw several unreasonable and unsupportable inferences in its favor, but perhaps the most absurd is that Mr. Pruitt, a man who served his country honorably for 23 years without blemish, achieving the rank of Lieutenant Colonel, would compromise his integrity, his professional standing, and his good name all to receive a $62,100 bonus. The Division maintains this purported narrative despite sworn testimony that directly and unequivocally makes clear that it is false. The Division has a legal and ethical obligation to correct facts that can no longer be maintained in good faith and should not hide behind the OIP or ask the Court to defer to these facts.

ARGUMENT

I. THE ALLEGATIONS IN THE OIP AND THE DIVISION'S INFERENCES ARE NOT ENTITLED TO DEFERENCE

The Division's regurgitation of the facts alleged, many of which are simply not true, does nothing to cure the *legal* deficiencies of the books and records and internal controls charges it has leveled.[3] Broad proclamations of what a "gatekeeper" should be doing are found nowhere in

[2] References to Section 13 are to Section 13 of the Securities Exchange Act of 1934 (the "Exchange Act").

[3] Nothing could make more plain the OIP's serious deficiencies than a recent order from the Court directing the Division to provide a more definite statement on the fundamental allegations that attempt to support its fatally flawed charges—the specific internal control that was allegedly

the OIP or in the text of the statutes the Division contends were violated. These self-proclaimed standards of conduct have no basis in the law and are not entitled to any deference by the Court.[4]

Although Rule 250(a) permits the Court to draw *reasonable* inferences in favor of the non-movant, the Division is not entitled to request that the Court draw *unreasonable* and irrelevant inferences. *See, e.g.*, *Morrow v. Balaski*, 719 F.3d 160, 165 (3d Cir. 2013) (confirming on a motion to dismiss under Rule 12(b)(6) the court is "not compelled to accept unsupported conclusions and unwarranted inferences"); *Masterson v. Ihara*, 442 F. App'x 849, 850 (4th Cir. 2011) (noting that on a motion to dismiss pursuant Rule 12(b)(6) the court "need not accept as true unwarranted inferences, unreasonable conclusions or arguments"); *Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011) (explaining that "unwarranted inferences are insufficient to defeat a motion to dismiss"). The deferential standard is not without its limits and does not apply to allegations that are not supported by facts or that merely express bald conclusions. *See Bancroft v. City of Mount Vernon*, 672 F. Supp. 2d 391, 402–03 (S.D.N.Y. 2009); *see also Mass. Sch. of Law at Andover, Inc. v. Am. Bar Ass'n*, 142 F.3d 26, 40 (1st Cir. 1998); *Citibank, N.A. v. Tormar Assocs. LLC*, No. 15-CV-1932 (JPO), 2015 WL 7288652, at *3 (S.D.N.Y. Nov. 17, 2015). Deference by this Court should only be given to plausible allegations that are made in good faith and supported by the factual record. *See* Rule 153(b)(1)(ii).

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circumvented and the allegedly falsified books and records. Order Granting in Part Motion for More Definite Statement, Admin. Proc. Rulings Release No. 6421, *In the Matter of David Pruitt, CPA*, Admin. Proc. File No. 3-17950 (Dec. 20, 2018). The Division had the opportunity to amend its OIP at the start of these proceedings following the decision in *Lucia v. SEC* as it knew from the Court's orders in the prior proceedings that the OIP was inadequate.

[4] Memorandum of Points and Authorities 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, at 3-6 (Dec. 14. 2018).

The Division asks the Court to draw inferences that are extraneous to the legal question of whether L3's books and records were maintained in reasonable detail or any of the other *legal* issues before the Court on this Motion.[5] For example, the Division claims that Mr. Pruitt "knew there was no agreement with the Army to pay the invoices he created."[6] As an initial matter, a customer does not have to agree to pay a particular invoice or invoices before revenue can be recognized under U.S. GAAP.[7] Public companies could not operate if they had to contact a customer before each invoice was sent in order to get a verbal or written commitment from the customer that it intended to pay, particularly in the case where there is an existing contractual relationship. Neither the law nor GAAP require such a ridiculous procedure. Nonetheless, the Division asks this Court to draw this unreasonable inference and ignore the overwhelming evidence within the OIP itself that makes clear the Army requested invoices on several separate occasions for work that had been previously performed but not billed.[8]

The first email quoted in the OIP from the Army states that "*the first step is to invoice the Government*, then a claim will follow if the invoice is denied."[9] In the second email referenced in the same paragraph of the OIP, the Army states: "As discussed, *recommend L3 submit invoices*/billing/justification of payment thru [sic] the appropriate channels."[10] To the extent these emails did not make clear to the Division that the Army actually requested invoices, the

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[5] Respondent challenges each of the inferences the Division asks the Court to draw and finds they have no relevance to the *legal* issues at hand. To the extent Respondent highlights below the absurdity of several of the inferences, he does not concede that any of them are warranted or should be drawn by the Court.

[6] Opp. at 9.

[7] *See* Staff Accounting Bulletin No. 104, 17 C.F.R. Part 211 (Dec. 17, 2003).

[8] *See* OIP ¶ 30.

[9] *Id.* (emphasis added).

[10] *See* Exhibit B to the Declaration of Bari R. Nadworny in support of Respondent's Motion for a More Definite Statement, at Attachment A (Nov. 30, 2018) (emphasis added).

sworn testimony of retired Lieutenant Colonel Roderick M. Hynes, Senior Program Manager for the C-12 Contract, confirmed that at a meeting on December 18, 2013, *before the invoices were generated*, the Army stated that if L3 believed it was owed compensation for services not previously billed, it should submit invoices and supporting documentation to the Army for review.[11] Moreover, whether Mr. Pruitt provided contemporaneous justifications for why the invoices should not go through WAWF has no bearing or relevance to whether the Army did indeed request invoices with the expectation that it would pay them, which it ultimately did.[12]

The Division also asks the Court to draw the inference that Mr. Pruitt could have corrected the improper revenue recognition before L3 issued its public filings. The only reasonable and plausible inference to be drawn here is that Mr. Pruitt reasonably and correctly believed that the recognition of revenue was entirely proper and that no corrections were required. Mr. Pruitt was directed to generate the invoices by his accounting supervisor, the Army had requested the invoices, the work was performed by L3 for the U.S. Army pursuant to a valid contract, L3 was owed money for the services, and L3 was ultimately paid for a substantial portion of the work. Under those circumstances, Mr. Pruitt would have absolutely no reason to correct purported "improper revenue recognition" that he had every reason to believe was proper at the time. In its continued effort to disparage Mr. Pruitt, the Division also asks the Court to infer that Mr. Pruitt was fired because of his "misconduct" in generating the invoices and

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[11] *Id.* ¶¶ 12-13. Mr. Hynes stated in his affidavit that "[o]n or about December 18, 2013, [he] participated in a meeting that included the program management of both the U.S. Army and L3 for the C-12 Contract. At this Program Management Review (PMR), the Army stated that if L3 believed it was owed compensation for services not previously billed, then L3 should submit invoices and supporting documentation to the Army for review." *Id.* ¶ 12.

[12] Exhibit C to the Declaration of Bari R. Nadworny in support of Respondent's Motion for a More Definite Statement (Nov. 30, 2018).

misleading L3 and its auditors.[13] Again, why Mr. Pruitt was fired or the reasons his former employer made that decision have absolutely no relevance to the *legal* question at hand which is whether the books and records of L3 were maintained in reasonable detail.

Finally, the Division asks the Court to draw the inference that Mr. Pruitt stood to gain personally from the generation of the invoices and resorted to "extreme measures" to accomplish this end.[14] Of course, as the Division well knows, this false narrative is directly contradicted by the factual record and sworn testimony, and the Court should not defer to the Division's requested inaccurate and unreasonable inference. The sworn testimony of Timothy Keenan, which the Division should not be permitted to ignore, expressly debunks the bonus motive as Mr. Pruitt could not have known what, if any, adjustments would be made to help the Army Sustainment Division ("ASD") reach its plan and trigger bonuses for management.[15] Without these adjustments over which Mr. Pruitt had no control, no bonuses would have been paid. The Division asks the Court to take an unreasonable leap to infer that Mr. Pruitt, a man who served his country honorably for 23 years achieving the rank of Lieutenant Colonel, would compromise his integrity to receive a deferred $62,100 bonus. Moreover, this inference, even if drawn by the Court, does not cure the legal defects of the OIP.

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[13] *See* Opp. at 10.
[14] *Id.* at 10-11.
[15] Exhibit A to the Declaration of Bari R. Nadworny in support of Respondent's Motion for a More Definite Statement ¶¶ 14-16 (Nov. 30, 2018). The Division also asks the Court to infer that this witness was telling the truth only when he provided statements under threat of a potential Commission enforcement action and/or criminal prosecution, and now, several years later, the only time Mr. Keenan was actually placed under oath and subject to penalties of perjury, decided to change his story. *See* Opp. at 14. The more "plausible inference" that the Court should draw is that Mr. Keenan's recollection is more reliable because it was given under oath.

II. L3'S BOOKS AND RECORDS WERE MAINTAINED IN THE REASONABLE DETAIL REQUIRED BY LAW

A. L3's Books and Records Were Maintained in Reasonable Detail, Satisfactory to Prudent Officials in the Conduct of Their Own Affairs

The Division's argument regarding the books and records charges virtually ignores the plain language of the relevant statutes and instead focuses on self-proclaimed policy statements and inapposite case law to deflect attention from the operative standard—L3's books and records were required to be, and were in fact, maintained in reasonable detail, satisfactory to prudent officials in the conduct of their own affairs.[16] Other than conclusory statements devoid of legal support, the Division would have the Court render the "in reasonable detail" language and "prudent officials" standard meaningless and expand the books and records far beyond the limits Congress intended. Such an approach violates basic principles of statutory interpretation which requires "courts . . . [to] give effect to all of a statute's provisions so that no part will be inoperative or superfluous, void or insignificant." *Panjiva, Inc. v. U.S. Customs & Border Prot.*, No. 17-CV-8269 (JPO), 2018 WL 4572251, at *6 (S.D.N.Y. Sept. 24, 2018) (internal quotation marks omitted) (quoting *United States v. Harris*, 838 F.3d 98, 106 (2d Cir. 2016); *Corley v. United States*, 556 U.S. 303, 314 (2009)).

The Division would have the Court hold that a misstatement that would have been fraud had it been material should automatically be sufficient to constitute a books and records violation. Congress never intended for the books and records provisions to be interpreted this

[16] Sections 13(b)(2)(A), (b)(7). Whether the books and records of L3 were maintained in reasonable detail is a question of law, appropriate for a motion for a ruling on the pleadings. The Division selectively quoted *SEC v. Lucent Technologies, Inc.*, 363 F. Supp. 2d 708, 719 (D.N.J. 2005), which actually states that "whether the money was recognized as revenue in accordance with GAAP is a question of fact, and not appropriate to consider on a motion to dismiss." Respondent's arguments in support of this Motion do not sound in GAAP or the revenue recognition principles, but instead concern the legal question of whether the books and records of L3 were maintained in reasonable detail under Section 13 of the Exchange Act.

way or to serve as a "catch-all" provision for items not actionable as fraud. As written, the books and records provisions created objective limits for determining the level of accuracy expected of an issuer's records. The mere fact that a misstatement was intentional does not render the issuer's books and records inaccurate.[17] The only inquiry is whether L3's books and records were maintained in reasonable detail, satisfactory to prudent officials in the conduct of their affairs. The early recognition of 14/100th of one percent of annual revenue does not render L3's books and records inaccurate under Section 13(b)(7). Situations such as the one at bar are neither fraud nor actionable as a books and records violation because the standard for maintaining books and records is not and was never intended to be one of perfection or absolute exactitude.[18]

The Division does not cite to a single case that analyzes the relevant statutory language necessary for determining whether L3's books and records were maintained in reasonable detail. Nor is there any attempt to credibly argue what the "prudent officials" standard means and how it applies. The Division also does not dispute that Congress created an *objective* standard for determining whether an issuer's books and records are kept in reasonable detail.

The Division places great reliance on *SEC v. World-Wide Coin Investments, Ltd.*, 567 F. Supp. 724 (N.D. Ga. 1983), despite the fact that the *World-Wide Coin* court did not attempt to discern the meaning of "reasonable detail" and the opinion was written five years before

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[17] The Division claims that Respondent does not address the allegations in the OIP that he violated Section 13(b)(5) by knowingly falsifying L3's books, records, and accounts, which is distinct from the alleged internal controls violation. *See* Opp. at 15-16. This charge fails alongside the other books and records charges because if the books and records of L3 were maintained in reasonable detail, which they were, then Mr. Pruitt could not have knowingly falsified them.

[18] *See* H.R. REP. NO. 95-831, at 10 (1977) (Conf. Rep.); *see also* Section 13(b)(7).

Congress amended Section 13(b) to add the prudent officials standard.[19] *World-Wide Coin* provides no meaningful guidance to this Court regarding the legal issues that must be decided in this proceeding. The *World-Wide Coin* court explicitly stated that "the FCPA provides no guidance, and this court cannot issue any kind of advisory opinion" regarding the meaning of "in reasonable detail." *Id.* at 749. The court did not review the full legislative history of the statute or otherwise attempt to discern Congressional intent or consider Chairman Williams' policy statement regarding the application of the books and records provisions.[20] This case also features an unbound definition of books and records which includes "virtually any tangible embodiment of information made or kept by an issuer." *See id.* at 748-49. This broad pronouncement of what is included in the term "records" goes far beyond what Congress intended.

The other cases cited by the Division miss the mark because the definition of reasonable detail and the application of the prudent officials standard was not at issue. All of these cases also involved allegations of fraud. In *SEC v. e-Smart Technologies, Inc.*, 82 F. Supp. 3d 97 (D.D.C. 2015), the primary charge involved fraud and was the basis for the court's determination that the books and records were inaccurate. *Id.* at 108. Other than reciting the text of Section 13(b)(2)(A) and citing to *World-Wide Coin*, the court did not address the meaning of reasonable detail because the underlying fraud sufficiently set forth a books and records violation. *See id.* The court in *SEC v. DiMaria*, 207 F. Supp. 3d 343 (S.D.N.Y. 2016), focuses much of the opinion on the allegations and charges of fraud and offers no analysis of the reasonable detail language or prudent officials standard at issue in this Motion. *See id.* at 360. The other cases cited by the

[19] *See* H.R. REP. No. 100-576, at 917 (1988) (Conf. Rep.).
[20] SEC Release No. 34-17500, 46 Fed. Reg. 11544 (Feb. 9, 1981), 17 C.F.R. Part 241.

Division—*SEC v. RPM International, Inc.*, 282 F. Supp. 3d 1, 32-33 (D.D.C. 2017) and *SEC v. Espuelas*, 579 F. Supp. 2d 461, 484 (S.D.N.Y. 2008)[21]—also do not address the standards in Sections 13(b)(2)(A) and (b)(7).

B. Section 13 Creates an Objective Standard for Determining the Accuracy of an Issuer's Books and Records

Unable to address the merits of Respondent's actual argument that he is entitled to a ruling on the pleadings as a matter of law because the purported early recognition of 14/100th of one percent of annual revenue does not render L3's books and records inaccurate under Section 13(b)(7), the Division resorts to the desperate tactic of mischaracterizing Respondent's argument into the "strawman" that Respondent is arguing for dismissal based upon a lack of materiality.[22] The Division's "strawman" argument is a telling and tacit admission of the merits of Respondent's Motion and highlights the Division's fundamental misunderstanding of the law and deliberate distortion of Respondent's arguments. Respondent has never argued for a materiality standard or read one into Section 13. Instead, Respondent merely requests that the Court apply the clear text of the statute in deciding this case, which far from requiring perfection in the company's books and records, contemplates only that the books and records need to be accurate in "reasonable detail." By definition, this means that some level of error will not amount to a violation of the books and records provisions.

The Division, on the other hand, advocates for an approach that would create unbounded liability for any level of error and would render the "reasonable detail" language meaningless. The Division is well aware that during the financial reporting process, public companies routinely and without sanction identify, accumulate, and waive correcting a variety of errors,

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[21] In fact, the court in *Espuelas* did not even include the "in reasonable detail" language when it quoted Section 13(b)(2)(A). *See Espuelas*, 579 F. Supp. 2d at 484.
[22] Opp. at 16-17.

accounting estimates, and mistakes found in their books and records that are considered to be immaterial or *de minimis*, both individually and in the aggregate. Yet, the Division asks this Court to ignore this reality and to adopt a statutory construction that would impose an impossible standard and make the books and records of every public company inaccurate in violation of the books and records provisions. It is the Division's strained statutory construction that would turn financial reporting on its head.

The Division also disregards the fact that "in reasonable detail" was added to Section 13(b)(2)(A) to make clear that issuers are not required to maintain books and records with absolute precision and that *de minimis* errors or misstatements, regardless of their cause (intentional or innocent), do not violate the statute. The only relevant test is whether the books and records were maintained in "such level of detail and degree of assurance as would satisfy prudent officials in the conduct of their own affairs."[23] This objective test inquires only whether objectively prudent officials in the conduct of their own affairs would be satisfied with the level of detail in which the books and records were maintained, even where the records include a purported "intentional" misstatement that amounts to 14/100th of one percent of revenue. It does not permit an analysis of Mr. Pruitt's state of mind nor is the appropriate inquiry whether $17.9 million in revenue was recognized (properly or improperly) as the Division would have this Court believe.[24] The Division's lofty statements of what is expected of accounting employees at public companies flies in the face of what Congress intended—to exclude *de minimis* misstatements from the ambit of the statute.

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[23] Exchange Act Section 13(b)(7).

[24] *See* Opp. at 21.

While the Division attempts to distract the Court with its imaginative claims that financial reporting would be turned on its head should the Court apply the statute as intended, this simply ignores the fact that Congress never intended to make actionable every single misstatement no matter how small. Even the Division does not believe in the unbounded interpretation it would have this Court adopt. In a prehearing conference during the prior proceedings, the Court questioned the Division about this precise issue:

> JUDGE GRIMES: What if it was only $5, and it was that $5 that allowed Mr. Pruitt to get over some threshold for receiving a bonus? Would $5 be – is there a dollar value that I need to worry about?
>
> MR. BAKER: Your Honor, we would need to look at the entire facts and circumstances of that. I submit that we probably would not be sitting here today if it were $5.[25]

The Division, by its own admission, recognizes that there is a threshold under which it would be absurd for a company to revise its financial statements. This is an implicit acknowledgement that the statute sets an objective standard for determining the accuracy of the books and records so that *de minimis* items do not trigger violations. Though the Division feels $17 million is significant or "large,"[26] this amount must be considered in the context of a large public company with an annual revenue of $12.62 billion. Companies have other safeguards in place to ensure the accuracy of their books and records and an independent obligation to ensure that their financial statements do not contain material misstatements. The fact that L3 chose to revise its financial statements is of no import as it was not required by law to do so since its records were kept in reasonable detail even if the revenue from the invoices was improper.

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[25] Nadworny Decl. Ex. A at 78:11-18.
[26] *See* Opp. at 21.

Finally, the Division deliberately, and somewhat absurdly, misconstrues Respondent's argument regarding what "objectively never happened."[27] To be clear, what "objectively never happened" was any inaccuracy to L3's books and records from the generation of the invoices. Mr. Pruitt's state of mind, which the evidence will most assuredly demonstrate was pure, is entirely irrelevant to this fact. The Division either misunderstands or refuses to believe that the law does not prohibit even purportedly intentional misstatements from violating the statute. Even with the generation of the invoices at issue and the associated revenue, L3's books and records were maintained in the reasonable detail required by law. The objective test is not concerned with whether Mr. Pruitt generated invoices or revenue, but rather whether those invoices caused the books and records to be inaccurate, which they did not. Because the books and records were maintained as required by the statute, and because 14/100th of one percent ($17.9 million out of $12.62 billion) cannot be described as anything other than *de minimis*, these charges fail as a matter of law and the Court should provide Mr. Pruitt with the relief of dismissal.

III. MR. PRUITT COULD NOT KNOWINGLY CIRCUMVENT AN INTERNAL CONTROL THAT DID NOT EXIST

The Division claims that Respondent's conduct violated the internal controls provisions of the securities laws and is not limited to the circumvention of only one control.[28] In support of this point, it cites to paragraph 44 of the OIP, which simply restates the language of Section 13(b)(5) and provides no factual substance to support any such violation.

[27] *See id.* at 20-21.
[28] *See id.* at 22-23.

The Division also cites to several supplemental filings, not operative in this proceeding,[29] where it identified additional controls Mr. Pruitt allegedly circumvented. Mr. Pruitt should not be forced to hunt through various iterations of the Division's shifting and evolving attempts to support the flawed internal controls charge to figure out which controls are at issue. As of the date of this brief, the OIP only identifies one internal control in paragraph 39 and that is the only control the Court should consider. The Division implies in a footnote that because Mr. Pruitt had familiarity with L3's controls he should already be on notice of what he allegedly circumvented.[30] L3 had hundreds of controls that were operative during the relevant time period and it is not Mr. Pruitt's responsibility to determine which of those controls support the charges against him. Nor should his purported knowledge serve as a substitute for a properly pleaded OIP.

L3 simply did not have an internal control that required delivery of invoices to a customer nor did it have a control that required delivery of invoices to a customer before revenue could be recognized. A knowing circumvention under Section 13(b)(5) requires deliberate action designed to evade an internal control. *See United States v. Reyes*, 577 F.3d 1069, 1081 (9th Cir. 2009) (quoting H.R. REP. NO. 100-576, at 917 (1988) (Conf. Rep.)) ("This would include the deliberate falsification of books and records and other conduct calculated to evade the internal accounting controls requirement."). A knowing violation can only occur where the person is "aware that he is committing the act which is false." *See id.* (quoting S. REP. NO. 95-114, at 9 (1977)). Applying these principles here, Mr. Pruitt cannot be charged with

[29] *See* Order Granting in Part Motion for More Definite Statement, Admin. Proc. Rulings Release No. 6421, *In the Matter of David Pruitt, CPA*, Admin. Proc. File No. 3-17950, at 6 (Dec. 20, 2018).
[30] *See* Opp. at 23 n.11.

circumventing a control that did not require the delivery of invoices because he could not have taken a knowing and deliberate action to circumvent that control or know that he was committing an act that would cause the control to be circumvented. There cannot be a "knowing" violation under these circumstances. Moreover, this Court's previous statement that IR 4 is not clear as to its requirements and may require expert testimony to decipher its meaning[31] further highlights why Mr. Pruitt could not have knowingly circumvented this control. The Division's Opposition does nothing to alter this conclusion and the charge must be dismissed.

CONCLUSION

For the reasons set forth herein, the Court should grant Mr. Pruitt's Motion and dismiss the OIP with prejudice. Mr. Pruitt should not be forced to a hearing on allegations and charges that fail as a matter of law.

Dated: December 27, 2018
New York, New York

By: _____

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[31] 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).

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17950

In the Matter of

David Pruitt, CPA

Respondent.

CERTIFICATE OF SERVICE

I, Bari R. Nadworny, associate at the law firm of Baker & Hostetler LLP located at 45 Rockefeller Plaza, New York, New York 10111, hereby certify that on the 27th day of December, 2018, I caused to be served a true copy of: (1) Reply Memorandum in Further Support of Respondent David Pruitt's Motion for a Ruling on the Pleadings, and (2) Declaration of Bari R. Nadworny via electronic mail upon the following parties and other persons entitled to notice:

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December 27, 2018

VIA US MAIL

Honorable Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: *In the Matter of David Pruitt:*
Admin. Proc. File No. 3-17950

Dear Mr. Fields:

Enclosed please find, in the above-referenced matter, the original and three hard copies of: (1) Reply Memorandum in Further Support of Respondent David Pruitt's Motion for a Ruling on the Pleadings, and (2) Declaration of Bari R. Nadworny.

Respectfully Submitted,

Ramon C. Cabrera, Jr.
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Enclosures

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