UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17950

In the Matter of,

David Pruitt, CPA

Respondent.

RESPONDENT DAVID PRUITT'S OPPOSITION TO DIVISION OF ENFORCEMENT'S MOTION TO AMEND THE ORDER INSTITUTING PROCEEDINGS

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More than two years after the commencement of these proceedings, the Division continues to struggle to find an internal control circumvention that fits the facts alleged in the OIP. The current, and fifth, iteration of the internal controls charge adds 24 controls that have nothing to do with the alleged conduct at issue. Indeed, after the luxury of an almost three-year unfettered investigation, the Division filed the original OIP alleging only a single internal controls violation. In the accompanying press release the Division stated specifically that "Pruitt . . . circumvented internal accounting controls . . . by creating invoices that were not actually delivered at the same time that the revenue was recorded."[1] The problem with both the OIP and the press release was that L3 had no internal control requiring simultaneous delivery of an invoice. This critical mistake has resulted in the Division trying, but failing, to fit a square peg in a round hole by alleging dozens of other internal controls wholly inapplicable to the facts in the OIP. This Court should reject the Division's attempt to amend the OIP to save this ill-conceived and improperly pleaded charge.[2]

First, the Division's proposed amendments are not within the scope of the original OIP and are thus not properly before the Court or permitted by Rule of Practice 200(d)(2). The 24 new controls allegations bear no relation to the original charge and are new claims that can only be heard by the Commission itself. Respondent should not be prejudiced for challenging the inadequacy of the current OIP by having to defend against controls that were never alleged in the OIP, were not explored during the Division's investigation, and likely never crossed the minds of the Division's counsel when the OIP was originally drafted.

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[1] *Executives Charged in Connection with Accounting Failures at Government Contractor*, Press Release No. 2017-86 (Apr. 28, 2017).

[2] The declaration of Bari R. Nadworny ("Nadworny Decl.") is submitted in support of Respondent's opposition to the Division's motion.

Second, Respondent has been prejudiced by the Division's continued refusal to pin down the specifics of this charge *more than 5 years* after the events at issue took place. Since the original OIP was filed, the internal controls list has gone from one to 16, shrunk to 15, grown to 40, and now stands, at least for the moment, at 25. The Division has not provided any explanation to Respondent or the Court for the wildly scattershot approach to bringing this charge. Making matters worse, the Division has introduced entirely new allegations in support of the expansion of this violation not drawn from the investigative record. Respondent will be forced yet again to alter his discovery and trial strategy to defend against a charge that should never have been brought in the first place.

Third, the Division should not be permitted to selectively amend paragraph 21[3] of the OIP concerning Timothy Keenan's approval of the issuance of invoices. The Division knows the allegation, even with the proposed amendment, is pure fiction and is directly contradicted by Mr. Keenan's sworn statements in this litigation. The continued presence in the OIP of this false allegation is intended to impugn Mr. Pruitt's reputation and further a completely discredited narrative. Paragraph 21 should be amended to reflect the reality that Mr. Pruitt sought and received Mr. Keenan's approval to issue the invoices and recognize the revenue. In the alternative, it should be stricken in its entirety.

Finally, most, if not all, of the new purported internal controls violations occurred outside the five-year statute of limitations applicable to civil penalties. This time-barred conduct cannot form the basis for the imposition of a penalty. The Division's motion to amend the OIP should be denied.

[3] Paragraph references are to the original OIP unless otherwise noted.e

ARGUMENT

I. THE DIVISION'S PROPOSED AMENDMENTS ARE BEYOND THE SCOPE OF THE OIP AND SHOULD BE MADE BEFORE THE COMMISSION

The Division attempts to pass off a wholesale rewrite of the internal controls charge ine the OIP as a new matter of fact or law within the scope of the original OIP. By doing so, the Division apparently claims that merely reciting the statutory language of Section 13(b)(5)[4] and including one vague reference to a single internal control (without ever identifying the control in the original OIP)[5] served as a placeholder until the Division could fashion a charge that might stick. The Rules of Practice however, do not permit such a frolic or give the Division license—after almost three years of investigation and two years of litigation—to invent what amounts to a completely new claim. This claim, and the new conclusory facts that the Division alleges in support, were never considered by the Commission when it authorized this action and cannot now fall within the scope of the original OIP. The motion to amend should be directed to the Commission pursuant to Rule 200(d)(1). Furthermore, the Division's internal controls amendments go far beyond the proposed amendments Respondent sought before the Commission and are not limited to purported factual disputes.[6] As such, these amendments are not properly before the Court.

The Division cites to Chief Judge Murray who wrote that "additions are within the scope of the original OIP, and Respondent is aware that these matters were of concern to the Commission staff during the investigation."[7] The Division's reference, however, highlights the

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[4] *See* OIP ¶ 44.
[5] *Id.* ¶ 39.
[6] *See* Order Denying Motion to Amend the Order Instituting Proceedings, *In the Matter of David Pruitt, CPA*, Admin. Proc. File No. 3-17950, Exchange Act Release No. 85171 (Feb. 21, 2019).
[7] Division of Enforcement's Memorandum in Support of Motion to Amend the Order Instituting Proceedings, *In the Matter of David Pruitt, CPA*, Admin. Proc. File No. 3-17950, at 7 (Apr. 8, e

precise problem with its proposed amendments. Respondent was not, and could not, have been aware during the investigation that these internal controls were of concern to the Staff. After almost two full days of testimony preceded by a full-day proffer session, Respondent was never shown L3's internal controls matrix and questioned about specific controls, no less the 25 that are now a part of the proposed amendments. In fact, the investigative file is virtually devoid of any documents, testimony, or statements that would support the amended allegations the Division now seeks to make. Unlike Respondent's motion to amend the OIP[8]—where he sought to conform the pleadings to the record based on newly discovered matters of fact—the Division's motion attempts to expand its allegations beyond anything contained in the record. To properly evaluate the merits of the Division's motion, Respondent requests that the Court require the Division to confirm that the 24 new internal controls circumventions were actually considered and presented to the Commission at the time the OIP was first filed.

II. THE PROPOSED AMENDMENTS DO NOT MEET THE RULE 200 STANDARD

Even if the Division's motion is properly before the Court, the wholesale revision of the internal controls charge is not the type of amendment contemplated or permitted under Rule 200(d)(2). The Commission has made clear that amendment should be freely granted "[w]here the purpose is merely to correct an error in pleading, to conform the pleadings to the proof, or to take into account subsequent developments which should be considered in disposing of the proceeding." *See Carl L. Shipley*, Admin. Proc. File No. 3-3836, 1974 WL 161761, at *4 (June 21, 1974). The proposed amendments do not fall into any of these categories. The Division does

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2019) ("Opposition" or "Opp.") (citing *David M. Tamman, Esq.*, Admin. Proc. File No. 3-14207, Release No. 670, 2011 WL 9158332, at *2 (ALJ Apr. 8, 2011)).

[8] Respondent David Pruitt's Motion to the Commission to Amend the Order Instituting Proceedings Based Upon Newly Discovered Matters of Fact and to Stay This Proceeding Pending the Commission's Decision, *In the Matter of David Pruitt, CPA*, Admin. Proc. File No. 3-17950 (June 11, 2018).e

not argue and cannot credibly claim that it is seeking to correct an error. The amendments are not an attempt to conform the pleadings to the proof since there have been no subsequent developments requiring amendment, as the conduct at issue took place more than five years ago. The Division has no newly discovered matters of fact and instead relies on tactics designed to penalize Respondent for having the temerity to litigate this case and challenge the threadbare allegations made against him. As the Commission recognized in *Shipley*, granting an amendment at this time could give rise to the implication that, since Respondent successfully attacked the adequacy of the allegations in the original OIP, the Division is "looking around for an alternative." *Id.* at *5. Respondent's successful challenge cannot form the basis for amendment under Rule 200.

Moreover, the Division introduces factual allegations for the first time in the proposed amendments, creating what amounts to new charges. The original OIP alleged the circumvention of a single unidentified control requiring the delivery of an invoice. The proposed Amended OIP describes the circumvention of controls that have nothing to do with the delivery of an invoice. *See, e.g.*, Amended OIP ¶ 48 (a)(ii – iv), (b)(ii, iv) (alleging for the first time that the invoices at issue were "Revenue Arrangements"); ¶ 48(b)(iii – iv) (alleging for the first time "conditions precedent" to the recognition of revenue); ¶ 48(b)(vi – vii) (alleging for the first time that the invoices documented "unpriced change orders"); ¶ 48(c)(ii – vi) (alleging for the first time that Respondent was required to record a "forward loss provision" on the C-12 Contract); ¶ 48(d)(ii – iii) (alleging for the first time that Respondent signed "management certifications"). This list is not exhaustive but makes clear that the internal controls allegations bear no resemblance to the original OIP with new facts that cannot be found in the investigative record or within the Division's prior disclosures to Respondent. The most dramatic factual expansion is

the Division's latest contention in the proposed amendments that Mr. Pruitt may have been responsible for $69 million of adjustments related to the C-12 Contract. Of course, the investigative record is silent on this allegation and neither Mr. Pruitt nor any other witness was ever confronted with this specious claim. Rule 200 does not permit the Division to create facts and then hope to fill in the blanks during the litigation.

The cases the Division cites are inapposite as they do not deal with the type of substantive revision contemplated here. In *Tagliaferri*, the Division requested an amendment to the OIP to add allegations regarding the respondent's criminal conviction for violating the securities laws and to remove the OIP's directives to determine whether certain penalties would be appropriate in the public interest. *See* Order Granting Motion to Amend Order Instituting Proceedings, *James S. Tagliaferri*, Admin. Proc. File No. 3-15215, Exchange Act Release No. 75820 (Sept. 2, 2015). The amendment did not seek to make substantive changes or drastically alter the underlying violations. Similarly, in *Siming Yang*, the Division sought to make amendments to the OIP in a follow-on proceeding to address the respondent's employment status and negate the need for a hearing, and the request was unopposed. *See* Order Granting Motion to Amend Order Instituting Proceedings, *Siming Yang*, Admin. Proc. File No. 3-15928, Exchange Act Release No. 73637 (Nov. 19, 2014).

Respondent should not be penalized because the Division failed to properly plead its case in the first instance, pursued a flawed OIP during two years of litigation, and then overreached in the various attempts to fix this deficiency. The Court should not allow the Division's proposed amendments.

III. RESPONDENT IS PREJUDICED BY THE DIVISION'S PROPOSED AMENDMENTS

Respondent will be prejudiced by these amendments as he is once again required to alter his defense at this late date in the litigation to respond to the set of newly thought up controls the Division now believes Respondent has circumvented. In addition to seeking additional document discovery to determine what, if anything, supports the new violations, Respondent's expert witness must start over again to address the latest iteration of the Division's internal controls charge. The Division's prior disclosures during the course of this proceeding did not provide any sort of notice to Respondent as the Division haphazardly added or removed controls without rhyme, reason, or factual support. Respondent will essentially start his defense of the internal controls charge from scratch in order to address the greatly expanded allegations. This places an unfair burden on Respondent to complete the preparation of his defense in the limited time that remains for discovery under the prehearing schedule particularly where the cause of this burden lies solely with the Division's deliberate failure to articulate the basis for the charge and timely cure its deficient OIP.

IV. THE DIVISION'S PROPOSED AMENDMENT TO PARAGRAPH 21 IS IMPROPER

The Division seeks leave to selectively amend paragraph 21 of the OIP despite knowinge that the allegations therein are demonstrably false and can no longer be maintained in good faith. The original OIP alleged that Respondent generated the invoices without the approval of his accounting supervisor, Senior Vice President of Finance and the CFO of the Aerospace Systems segment, Timothy Keenan. Since the filing of the OIP, Mr. Keenan has testified twice—once by affidavit and once during a deposition taken by the Division—and has unequivocally stated that he directed "Mr. Pruitt to invoice most of the revenue recovery items and accrue for two

others."[9] This critical fact completely undercuts the Division's original position that Mr. Pruitt was a rogue employee acting on his own. No matter how the Division tries to spin these sworn statements, the fact remains that Mr. Pruitt acted at the direction of his superior, the CFO of Aerospace Systems, and the Division can no longer manufacture claims of a "factual dispute" since there are no other sworn or transcribed statements to the contrary.

The Division already had the opportunity to examine and cross-examine Mr. Keenan under oath during his deposition where he confirmed the veracity of the statements in his affidavit. Merely changing the tense of two words in paragraph 21 allows the Division to put forth an allegation it knows to be false and perpetuates the fiction that Mr. Pruitt acted on his own without the approval of his accounting supervisor and allegedly lied about it. This violates the good faith standards of Rule 153, is unfairly prejudicial to Respondent, and serves to impugn his reputation on false facts. Rule 153 makes clear that all filings must be "well grounded in fact" and "not made for any improper purpose." The proposed amendment would flout these requirements and further a false narrative to gain a litigation advantage.

If the Court is inclined to allow the amendment, the Division should be required to include the facts from Mr. Keenan's sworn statements that make clear he authorized the invoices and approved the accounting treatment. In the alternative, the allegation should be stricken in its entirety if not amended to include the truth.

V.e THE DIVISION CANNOT SEEK CIVIL PENALTIES FOR THE SECTIONe 13(b)(5) VIOLATION AS IT IS TIME-BARREDe

The Court should limit the Division's proposed Amended OIP ifat it is inclined to grant thee motion, because most, if not all, of the purported internal control violations the Division seeks to add occurred more than five years ago and cannot form the basis to seek civil penalties for a

[9] Nadworny Decl. Ex. A ¶ 10.

violation of Section 13(b)(5). Almost all of the newly added internal controls in the proposed Amended OIP relate to conduct that allegedly occurred before April 2014 and well beyond the applicable limitations period.

Civil penalties are governed by 28 U.S.C. § 2462, which provides a five-year statute of limitations from the date the alleged Section 13(b)(5) claim accrued. *See Johnson v. SEC*, 87 F.3d 484 (D.C. Cir. 1996). In this action, the alleged claims accrued when there was a completee and present cause of action, or more specifically, on the date when the internal controls were allegedly circumvented, not when the purported wrongdoing was discovered. *See Gabelli v. SEC*, 568 U.S. 442, 448 (2013). Since most, if not all, of the alleged internal controls circumvented by Respondent occurred more than five years ago, they cannot now be added to the OIP as a basis to seek civil penalties for violations of Section 13(b)(5).

Unlike the Federal Rules of Civil Procedure, the SEC Rules of Practice do not allow for amended pleadings to relate back to the date of the original pleading, and Respondent has found no case in which a court has applied Federal Rule of Civil Procedure 15(c) to an SEC administrative proceeding. *See* Fed. R. Civ. P. 15(c)(1)(B). *See generally* Order on Motion to Amend, *Oppenheimer & Co., Inc*, Admin. Proc. File Nos. 3-5244, 3-5245, 3-5246, 3-5247, 3-5248, Release No. 207, 1978 WL 207543 (ALJ Oct. 19, 1978) (denying motion to amend OIP under Fed. R. Civ. P. 15(b)).

In any event, Federal Rule of Civil Procedure 15 could not be validly applied to these proceedings. The proposed internal controls amendments represent a striking departure from the scope of the original OIP as well as a brand-new theory of liability not found in the original OIP. *See United States v. Hicks*, 283 F.3d 380, 388 (D.C. Cir. 2002) (noting attempts to introduce a new legal theory based on facts different from those underlying the timely claims do not relate

back); *see also Mayle v. Felix*, 545 U.S. 644, 650 (2005) (finding relation back improper when amendment asserts new grounds for relief supported by facts that differ in both time and type from those in the original pleading). In its original pleading, the Division gave little thought to the internal controls that formed the basis for its Section 13(b)(5) charge. The Division's entire charge rested on the faulty premise that Mr. Pruitt circumvented a control that required delivery of an invoice. As a result, the original OIP failed to adequately notify Respondent of the basis of liability that would be advanced by the Division to support the 24 additional controls the Division now seeks to add. The proposed amendments go far afield to allege circumventions of controls concerning "unpriced change orders,"[10] "forward loss provisions,"[11] "Revenuee Arrangements,"[12] so-called "conditions precedent,"[13] and "revenue recognition evaluations,"[14] among others. These controls were never mentioned in the original OIP, nor are many of the new factual allegations that the Division now claims support them.

For over two years, the Division has made several attempts to paper over this deficiency by expanding the single control alleged in the original pleading, to 16 internal control violations (then decreased to 15), then up to a staggering 40 controls, and now 25. As is made clear by these ever-shifting theories, the original OIP never "adequately notified the defendant[] of the basis for liability" now advanced in the proposed Amended OIP, thus Rule 15 would not apply and the new allegations are time-barred for the purposes of seeking a civil penalty. *See Meijer, Inc. v. Biovail Corp.*, 533 F.3d 857, 866 (D.C. Cir. 2008) (noting underlying question for Rule 15 amendments is whether the original complaint adequately notified the defendants of the basis for

[10] Amended OIP ¶ 48(b)(vi – vii).e
[11] *Id.* ¶ 48(c)(ii – vi).
[12] *Id.* ¶ 48(a)(ii – iv), (b)(ii, iv).e
[13] *Id.* ¶ 48(b)(iii – iv).e
[14] *Id.* ¶ 48(b)(iv – v).

liability the plaintiffs would later advance in the amended complaint). Simply alleging that there were internal controls violations in the original OIP is not sufficient to meet the Rule 15 standard for relation back.

Since they are time-barred, the purported internal controls violations that the Division seeks to add may not properly be used to assert a claim for civil penalties against Respondent.[15] The Division should be ordered to identify the date of each alleged circumvention so it is clear that these allegations, even if proven at trial, will not form the basis for a civil penalty. This will allow the parties to streamline discovery and preparation for the hearing with the focus on conduct that is not time-barred.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Division's motion be denied.

Dated: April 15, 2019
New York, New York

By: _____

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[15] While acts outside the statute of limitations may be considered for other purposes, they cannot form the basis for a penalty. *See, e.g.*, *Sharon M. Graham*, Admin. Proc. File No. 3-8511, Exchange Act Release No. 40727, at n.47 (Nov. 30, 1998); *Terry T. Steen*, Admin. Proc. File No. 3-8798, Exchange Act Release No. 40055 (June 2, 1998); *Warwick Capital Management Inc.*, Admin. Proc. File No. 3-12357, Release No. 327, 2007 WL 505772, at *2 (ALJ Feb. 15, 2007) (noting limited uses for acts outside the statute of limitations); *Alfred M. Bauer*, Admin. Proc. File No. 3-9034, Release No. 134, 1999 WL 4904, at *2 (ALJ Jan. 7, 1999) (same).

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

In the Matter of,

David Pruitt, CPA

Respondent.

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 Opposition to Division of Enforcement's Motion to Amend the Order Instituting Proceedings.

2. Attached as Exhibit A is a true and correct copy of the Affidavit of Timothy Keenan, dated February 2, 2018.

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

Executed: April 15, 2019
New York, NY

Bari R. Nadworny

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

In the Matter of, **David Pruitt, CPA** **Respondent.**	**AFFIDAVIT OF TIMOTHY KEENAN**

STATE OF TEXAS)
ss:
COUNTY OF DALLAS)

Timothy Keenan, being duly sworn, deposes and says:

1.s I served as the Senior VP of Finance and CFO of the Aerospace Systems segments ("Aerospace Systems") of L3 Technologies, Inc. (formerly known as L-3 Communications Holdings, Inc.) ("L3") from approximately 2011 until July 2014. I am submitting this affidavit based upon my own personal knowledge.

2.s L3 is a contractor for various foreign and U.S. government agencies, including thes U.S. Department of Defense. Aerospace Systems is one of four business segments of L3. Each of L3's business segments is comprised of multiple business sectors, and each business sector is comprised of multiple divisions. The Logistics Solutions sector under Aerospace Systems provides logistics support and aircraft maintenance services to its military customers. The Army Sustainment Division ("ASD"), a subsidiary of Logistics Solutions, was created in 2013 to provide support for U.S. Army aircraft at bases through the United States and around the world.

3.s At all relevant times in 2013, ASD was responsible for the C-12 Contract, whichs was a fixed-price aircraft maintenance contract between ASD and the U.S. Army. The contract

had a five-year term with the partial initial year referred to as a "base year" and each subsequent twelve-month period referred to as an "option year."

4.o I joined L3 in 2000 as an accounting manager in the Link Simulation and Trainingo division. I was promoted to Assistant Controller, then Controller, and finally VP of Finance. In 2011, I moved to Integrated Systems Group, later renamed Aerospace Systems, and took the title of Senior VP of Finance and CFO. I reported to John McNellis, the President of Aerospace Systems.

5. As Senior VP of Finance and CFO of Aerospace Systems, I acted as a liaisono between the corporate level of L3 and nine of its divisions, including ASD, and would provide advice on financial matters. ASD and its employees were multiple levels below L3 Corporate, which has its offices in New York. My role was to provide support to the various divisions and interact with L3 Corporate on their behalf. Although finance personnel at ASD were not forbidden from contacting L3 Corporate to ask questions about accounting treatment or provide information to L3 Corporate accounting personnel directly, the strong preference from L3 Corporate and myself was that ASD personnel communicate to me questions about accounting treatment or other matters which they wished to present to L3 Corporate accounting personnel. I functioned as a liaison between ASD and L3 Corporate with regard to accounting issues. I would also identify any financial issues, analyze pricing and strategies, oversee financial reviews, and coordinate with other members of the finance department. I had responsibility for Shared Services, which was a group at L3 that had certain accounting and IT functions.o

REVENUE RECOVERY INITIATIVE

6.e ASD was created in part to improve the C-12 Contract's performance, to providee more dedicated resources to the U.S. Army, and to seek additional business from the Army. There were many issues with the C-12 Contract, including that ASD program management had allowed work to be performed under the contract that had not been billed to the U.S. Army. Senior management within Aerospace Systems believed L3 was entitled to payment for these services and in 2013, directed ASD, including Mr. Pruitt and members of the C-12 Contract team, to identify and recover these amounts from the U.S. Army as part of an effort that became known as the Revenue Recovery Initiative.

7.e In my role, I participated in certain updates and briefings regarding the Revenuee Recovery Initiative. The goals of the Revenue Recovery Initiative were to recognize in 2013 the unbilled revenue for work previously and fully performed under the C-12 Contract that L3 believed it was owed, and to generate a positive profit impact by year-end 2013 for ASD. Gordon Walsh, President of Logistics Solutions, in particular wanted the U.S. Army to be billed for as much of the revenue recovery items in 2013 as possible and appropriate. This was known and understood by other senior managers at L3 including Mr. McNellis.

8.e All of the work that was identified as part of the Revenue Recovery Initiativee were services that I and others had been told, and in good faith believed, had actually been performed for the U.S. Army by L3 pursuant to the C-12 Contract. This work spanned multiple option years of the contract including option years 1, 2, and 3, with option year 3 being the current option year for 2013.

9.e During December 2013, as Mr. Pruitt's supervisor on accounting issues and thee Senior VP of Finance and CFO of Aerospace Systems, I was a part of several discussions with

Mr. Pruitt regarding the accounting treatment to be applied to the revenue recovery items. Mr. Pruitt did not have authority to determine the accounting treatment to be applied to these items on his own and he consulted superiors in the finance groups and legal counsel regarding the proper treatment to be applied.

10.e I have a general recollection of speaking with Mr. Pruitt regarding the revenuee recovery items in late December. I recall during one telephone call directing Mr. Pruitt to invoice most of the revenue recovery items and accrue for two others. I believed at the time that it was appropriate to invoice for the revenue recovery items.

11.e I did not believe at the time that issuing invoices and recognizing revenue wase improper. Nor do I believe Mr. Pruitt withheld any information about the generation of the invoices from me. It was not until January 2014 after communications with L3 Corporate that I learned ASD could only invoice for work performed during option year 3. It is probable that I did not make it as clear as I should have to Mr. Pruitt that he should reverse the invoices generated in late December for work performed during the prior option years.

12.e Kenneth Lassus, the General Counsel of ASD, was the primary point of contacte between L3 and the U.S. Army and was going to lead the discussions with the U.S. Army regarding the Revenue Recovery Initiative. Mr. Lassus had built a relationship with individuals representing the U.S. Army because of his role at L3 and past connections with the Project Management Office at Army Contracting Command–Redstone, which was the Army Commande with oversight of the C-12 Contract.e

13.e My understanding was that, pursuant to discussions with U.S. Army contractinge personnel, the invoices generated as part of the Revenue Recovery Initiative along with supporting documentation would be presented directly to the U.S. Army by Mr. Lassus, and the

invoices would not be submitted through the Wide Area Work Flow electronic system. I did not believe there was anything improper about delivering the invoices directly rather than submitting them into the Wide Area Work Flow electronic system. I did not believe that Mr. Pruitt, himself would be delivering the invoices and supporting documentation to the U.S. Army, as Mr. Lassus was the main contact with the Army for the revenue recovery items.

ASD'S MANAGEMENT INCENTIVE BONUS

14.e In order for ASD management to be eligible for a performance bonus ASDe needed to reach a minimum of 75% of its Annual Operating Plan. In early January 2014, it became clear that ASD would not meet 75% of its Annual Operating Plan and its management, including Mr. Pruitt, would not be eligible for a bonus despite having worked very hard the prior year.

15.e In order to recognize the hard work ASD had put in the prior year, severale adjustments were made after the close of the year that shifted certain costs and expenses (due to the split of Vertex Aerospace, LLC into two new divisions ASD and Systems Field Support) for the purpose of calculating the management incentive bonus. I discussed some of these adjustments with Mr. McNellis and Mr. Walsh who ultimately approved them. These adjustments were made to allow ASD to reach the 75% bonus threshold. Mr. Pruitt was not involved in these discussions, nor could he have known in advance what, if any, adjustments would be made to ASD's financial results.

16. If these adjustments were not made then ASD management, including Mr. Pruitt, would not have received a bonus. It is not accurate for anyone to say that in December 2013, the issuance of invoices by Mr. Pruitt solely caused ASD to reach the 75% bonus threshold, because that threshold was only reached when Mr. McNellis and Mr. Walsh agreed to make the aforementioned adjustments.

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

Timothy Keenan

Subscribed and sworn to before me
on this 2 day of February, 2018.

Notary Public

KACEY SCHNEIDER

My commission expires on 9/14/2020