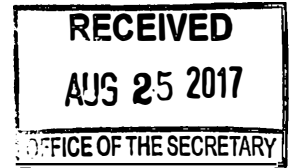


UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION



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 TO COMPEL THE DIVISION OF  
ENFORCEMENT TO COMPLY WITH THE COURT'S JUNE 23, 2017 ORDER**

Respondent David N. Pruitt (“Mr. Pruitt”), through his undersigned counsel, respectfully submits this reply memorandum in further support of his motion to compel (the “Motion”) the Division of Enforcement (the “Division”) to comply with the Court’s Order Granting in Part Motion for More Definite Statement on June 23, 2017.<sup>1</sup>

**ARGUMENT**

**I. • THE DIVISION SHOULD NOT BE PERMITTED TO REPEATEDLY SHIFT ITS POSITION**

The Division drafted an Order Instituting Proceedings (“OIP”) that specifically states: “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.*”<sup>2</sup> The explicit and plain meaning of this sentence is that the internal control violation would be premised on “the specific internal control” that required the delivery of an invoice prior to the recognition of revenue. However, the Division, either because it drafted an OIP that lacks precision or because it seeks to gain an improper strategic advantage, has taken this simple allegation and turned it on its head. Since Mr. Pruitt’s motion for a more definite statement, the Division has shifted its position repeatedly first asserting that despite paragraph 39 of the OIP stating otherwise, there were at least 3 controls “among others” that may have been circumvented.<sup>3</sup> That position shifted again when the Division, in purported compliance with the Court’s order, submitted 16 internal controls as “relevant to” the internal controls violation.<sup>4</sup> Most recently the Division contends that Mr. Pruitt circumvented an

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<sup>1</sup> Admin. Proc. Rulings Release No. 4888, *In the Matter of David Pruitt, CPA*, Admin Proc. File No. 3-17950 (June 23, 2017) (the “June 23, 2017 Order”).

<sup>2</sup> OIP ¶ 39 (emphasis added).

<sup>3</sup> See OIP ¶ 39; Division of Enforcement’s Opposition to Respondent’s Motion for a More Definite Statement, *In the Matter of David Pruitt, CPA*, Admin Proc. File No. 3-17950, at 6 (June 13, 2017).

<sup>4</sup> Letter from Paul G. Gizzi to John J. Carney pursuant to the June 23, 2017 Order dated June 30, 2017 (the “June 30, 2017 Letter”).

unspecified “system of internal accounting controls,” relying on the boilerplate recitation of the language of Section 13(b)(5).<sup>5</sup> The Court has previously noted that “it is reasonable to inform [Mr. Pruitt] which internal control forms the basis for the charge.”<sup>6</sup> Yet even after the Court’s June 23, 2017 Order, the Division still leaves open the possibility that it will shift its position once again as to the controls it believes were circumvented. Mr. Pruitt has a fundamental right to be sufficiently informed of the Section 13(b)(5) charge against him, particularly as he intends to engage experts to assist in his defense of the charge. After a three-year investigation with unfettered access to documents and witnesses, fairness dictates that the Division should be bound by what it drafted even if it is now unhappy with the facts it has alleged. Mr. Pruitt is legally entitled to fair notice of what he is alleged to have circumvented and the law does not grant the Division a carte blanche to pick and choose at its convenience what may support this charge as the facts develop at trial.<sup>7</sup> Claims of the prejudice the Division will suffer ring hollow and are outweighed by the real prejudice Mr. Pruitt will suffer.<sup>8</sup>

The Division’s Opposition, for the first time, concedes that its June 30, 2017 Letter should be incorporated into the OIP. The Division argues that Mr. Pruitt misread a footnote in the July 21, 2017 Opp. regarding whether the Court should consider the June 30, 2017 Letter as part of the OIP. However, the Division’s footnote was anything but clear to both Mr. Pruitt and

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<sup>5</sup> Memorandum of Law 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, at 17 (July 21, 2017) (the “July 21, 2017 Opp.”).

<sup>6</sup> June 23, 2017 Order at 4.

<sup>7</sup> Having clarity at this juncture is important for both sides. If the Division alleges additional internal controls as this matter moves closer to a hearing, Mr. Pruitt would be justified in seeking an adjournment, which would waste the Court’s time and unnecessarily delay these proceedings.

<sup>8</sup> Division of Enforcement’s Opposition to Respondent’s Motion to Compel the Division to Comply with the Court’s June 23, 2017 Order, *In the Matter of David Pruitt, CPA*, Admin Proc. File No. 3-17950, at 6 (August 18, 2017) (the “Opposition”).

the Court.<sup>9</sup> Mr. Pruitt did not submit to the Court an independent list of internal controls that he allegedly circumvented, as doing so would be absurd and it is not Respondent's burden to prove the Division's charges. Instead, Mr. Pruitt provided the Court with excerpts of the internal controls *identified by the Division* in its June 30, 2017 Letter, as they were drafted by L3, to highlight the inapplicability of the controls the Division initially asserted were circumvented.<sup>10</sup> This exhibit did not constitute a new or separate list of internal controls. By arguing that the Court should not deem the "internal controls submitted by Respondent" to be incorporated by reference in the OIP or Answer, the Division argued that the list of internal controls it set forth in its June 30, 2017 Letter should also not be incorporated by reference.<sup>11</sup> Apparently cognizant of the absurdity of this premise and the unfairness that would result to Mr. Pruitt, the Division has again altered its position to conform with the Court's recent statement that the OIP incorporates the June 30, 2017 Letter and its list of internal controls.<sup>12</sup> The Court should require the Division to set forth once and for all in clear and unambiguous terms the controls it alleges were circumvented and be bound by its position.

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<sup>9</sup> See 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 (August 1, 2017) (the "August 1, 2017 Order") (citing July 21, 2017 Opp. at 16 n.7) ("As the Division sees it, I should not consider its letter specifying the relevant controls.").

<sup>10</sup> See Affidavit of Margaret E. Hirce Ex. A. The exhibit includes the 16 controls identified by the Division in its June 30, 2017 Letter. Because the exhibit is a series of excerpts from the complete list of L3's Internal Controls Over Financial Reporting, it also contains numerous other controls that were a part of the original document and appeared on the same pages as the 16 controls identified by the Division. These additional controls are not mentioned in the Division's letter and are not relevant to this proceeding. The Division's contention that Mr. Pruitt was attempting to introduce 45 *additional* controls that he may have circumvented defies logic as the exhibit was never intended to constitute a new or separate list of internal controls. *Cf.* July 21, 2017 Opp. at 16 (mentioning a list of "61 controls submitted to the Court by Respondent").

<sup>11</sup> See July 21, 2017 Opp. at 16 n.7.

<sup>12</sup> See August 1, 2017 Order at 5.


The Division also confuses factual allegations with statutory language when it argues that the OIP adequately alleges that Mr. Pruitt circumvented “a system of internal accounting controls.” This language appears only in paragraph 44 of the OIP, which simply lists one of the three violations with which Mr. Pruitt was charged and recites the language of Section 13(b)(5). There is no other reference to a system of internal controls in the OIP and the OIP is devoid of a single factual allegation setting forth what this “system” is, the controls that form a part of this “system,” and whether there is more than one “system” at issue. Again, it is not for Mr. Pruitt to discern what the Division might some day decide supports the serious charges it has haphazardly leveled against him.

The Division’s final argument that Mr. Pruitt is trying to prevent the Court from hearing certain evidence is nonsensical. As Mr. Pruitt made clear in his opening memorandum, he does not seek additional or new information, but only that the Division definitively state which internal control or controls it alleges were circumvented—information that should be easy to identify. The Division is unfairly preventing Mr. Pruitt from being able to mount a proper defense, including engaging appropriate expert witnesses, by repeatedly shifting its position. After a three-year investigation, the Division should be able to identify the internal controls it alleges were circumvented and not resort to tactical gamesmanship in order to gain an unfair advantage. In seeking authorization for this proceeding, the Division unquestionably identified for the Commission the internal controls it believes were circumvented. The Division should afford the Court and Mr. Pruitt the same courtesy.

**CONCLUSION**

For the reasons set forth herein, the Court should grant Mr. Pruitt's Motion and order the Division to comply with the Court's June 23, 2017 Order.

Dated: August 23, 2017  
New York, New York

By:   
\_\_\_\_\_  
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*Attorneys for Respondent David Pruitt*

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

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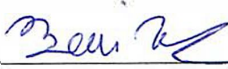
**Respondent.**

**CERTIFICATE OF SERVICE**

I, Bari R. Nadworny, an associate of the law firm of Baker & Hostetler LLP located at 45 Rockefeller Plaza, New York, New York 10111, hereby certify that on the 23<sup>rd</sup> day of August, 2017, I caused to be served a true copy of Reply Memorandum in Further Support of Respondent David Pruitt's Motion to Compel the Division of Enforcement to Comply with the Court's June 23, 2017 Order via electronic mail upon the following parties and other persons entitled to notice:

Honorable James E. Grimes  
Administrative Law Judge  
Email: [alj@sec.gov](mailto:alj@sec.gov)  
Securities and Exchange Commission  
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Washington, DC 20459

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August 23, 2017

### VIA FEDEX

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 the original and three hard copies of Reply Memorandum in Further Support of Respondent David Pruitt's Motion to Compel the Division of Enforcement to Comply with the Court's June 23, 2017 Order in the above-referenced matter.

Respectfully Submitted,

Ramon C. Cabrera  
Paralegal

Enclosures

cc: Via Email

Honorable James E. Grimes  
Email: [alj@sec.gov](mailto:alj@sec.gov)

Paul G. Gizzi, Esq.  
Email: [gizzip@sec.gov](mailto:gizzip@sec.gov)

August 23, 2017

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