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 MOTION TO REVISE PRIOR DECISIONS PURSUANT TO THE COURT'S DECEMBER 11, 2017 ORDER**

Pursuant to the Court's December 11, 2017 Order,[1] Respondent David N. Pruitt ("Mr. Pruitt"), through his undersigned counsel, respectfully moves this Court to revise prior decisions. A Memorandum of Points and Authorities in Support of Respondent David Pruitt's Motion to Revise Prior Decisions Pursuant to the Court's December 11, 2017 Order and the Affidavit of Bari R. Nadworny, dated January 5, 2018, are attached hereto.

Dated: January 5, 2018
New York, New York

By: _____

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[1] Order, Admin. Proc. Rulings Release No. 5362, *In the Matter of David Pruitt, CPA*, Admin. Proc. File No. 3-17950 (Dec. 11, 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.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF RESPONDENT DAVID PRUITT'S MOTION TO REVISE PRIOR DECISIONS PURSUANT TO THE COURT'S DECEMBER 11, 2017 ORDER

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Respondent David N. Pruitt ("Mr. Pruitt") submits this memorandum of points and authorities in support of his Motion to Revise Prior Decisions Pursuant to the Court's December 11, 2017 Order (the "Motion"). The Affidavit of Bari R. Nadworny ("Nadworny Aff.") is also submitted in support of the Motion.

PROCEDURAL HISTORY AND RATIFICATION PROCESS

This Motion comes before the Court as a result of the Securities and Exchange Commission's ("SEC" or the "Commission") November 30, 2017 order ratifying the Commission's prior appointment of its administrative law judges ("ALJ") ("ratification order").[1] As part of the ratification order, the Commission directed the ALJs to allow parties in administrative proceedings to submit new evidence, and to reconsider the entire record to revise or ratify prior actions.[2] On December 11, 2017, the Court issued an order directing the parties to review the Commission's ratification order and granted the parties until January 5, 2018 to "submit a brief addressing whether I should 'ratify or revise in any respect' any action that I have taken in this proceeding."[3] This brief is submitted in response to this order.

To support ratification or revision, the Court relies upon the ratification order and *Wilkes-Barre Hosp. Co. v. NLRB*, 857 F.3d 364, 371-72 (D.C. Cir. 2017). *Wilkes-Barre* involved review of the actions of certain NLRB Board members after the U.S. Supreme Court invalidated their appointments.[4] The court found that "ratification can remedy a defect arising from the decision of an improperly appointed official . . . when . . . a properly appointed official has the

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[1] Order, *In re: Pending Administrative Proceedings*, Exchange Act Release No. 82178, 2017 SEC LEXIS 3724 (Nov. 30, 2017).
[2] *Id.* at *2.
[3] Order, Admin. Proc. Rulings Release No. 5362, *In the Matter of David Pruitt, CPA*, Admin. Proc. File No. 3-17950, at 1 (Dec. 11, 2017).
[4] 857 F.3d at 370.

power to conduct an independent evaluation of the merits and does so."[5] Reliance on *Wilkes-Barre* is not proper because the official must be "properly appointed" at the time of ratification.

Mr. Pruitt believes that ratification is unavailable here because the ratification order did not "properly appoint[]" the ALJs in conformity with the Appointments Clause. The Commission, through the Solicitor General, admitted that its appointment process violated the U.S. Constitution. The ratification order does not cure the serious constitutional violations that infect these proceedings and the appointment of the Court, nor does it address or remedy the continuing unconstitutionality of the procedures governing the Court's removal. Mr. Pruitt intends to challenge the constitutionality of these proceedings in a separate motion and reserves all rights. The submission of this brief in no way waives any rights to raise those constitutional arguments.

STATEMENT OF FACTS

Put simply, the Division has charged a case that does not exist and is not supported by the factual record, including the allegations in the Order Instituting Proceedings ("OIP").[6] The Division paints Mr. Pruitt as someone who generated sham invoices with the intent to conceal improperly recognized revenue. In fact, nothing could be further from the truth and the Court

[5] *Id.* at 371 (internal quotation marks omitted).

[6] In fact, several of the allegations in the OIP are demonstrably incorrect. Some examples are set forth below. The OIP repeatedly references 69 invoices generating $17.9 million in allegedly improper revenue. The Division of Enforcement (the "Division") now well knows this allegation is wrong as there are only 14 invoices at issue (and perhaps only 13) that generated $16.45 million in revenue. Moreover, the OIP wrongly attributes an income impact of $15.45 million when the impact is at most $8.6 million. *See* Expert Report of John Riley ("Riley Report") ¶¶ 58-59, p. 10 & n.37. In addition, the Division wrongly alleges that the revenue from the invoices allowed ASD to make its performance plan entitling Mr. Pruitt to a bonus. To the extent it was not aware of these facts before it commenced this action, the Division is now well aware that the revenue from the invoices did *not* get the Army Sustainment Division ("ASD") to the threshold necessary for the payment of a bonus. Respondent requests that the Division reaffirm its good faith basis for these and any other allegations in the OIP the Division knows are no longer or were never accurate.

should revise its prior decision, grant Respondent's Motion for a Ruling on the Pleadings (the "Pleading Motion"), and dismiss this baseless action in its entirety. The theory that Mr. Pruitt improperly generated revenue and concealed his actions from the U.S. Army and his employer, L3 Technologies, Inc. ("L3"), are simply not supported by reality. The U.S. Army requested that L3 deliver invoices and Mr. Pruitt directed his subordinate to ensure that the invoices were delivered to the customer. Notwithstanding these undeniable facts, the Division alleges "alternate" facts to support these charges.

There is no dispute that L3 performed the services in question pursuant to a valid contract.[7] The Division's repeated claims that the disputed invoices were a "sham" or "false" are themselves false as the Division cannot in good faith deny that L3 fully provided the requested goods and services to the U.S. Army prior to generation of the invoices and recognition of the revenue.

The Division has built its case on the premise that the invoices at issue were deliberately concealed from the U.S. Army and L3's auditor so that the recognized revenue would go unnoticed.[8] This narrative is belied by the fact that the invoices themselves were generated in the same manner as other L3 invoices. They were generated from L3's SAP accounting system and available to L3's auditor, PricewaterhouseCoopers ("PwC"), and any other L3 corporate officer or employee with access to the accounting system. Mr. Pruitt did not have access to the SAP system and it was other L3 accounting personnel including the C-12 Business Manager who input and generated the invoices.[9] Because the invoices resided exactly where they should have

[7] *See* OIP ¶¶ 10-11.
[8] *See id.* ¶¶ 23-26, 31-32.
[9] *See id.* ¶¶ 22-23.

been, L3's external auditor selected twelve of them during its year-end testing.[10] The response to PwC's audit request, drafted in consultation with the ASD Controller and the General Counsels of ASD and Logistics Solutions, set forth the exact process the U.S. Army had requested for handling the invoices.[11] There was no attempt by Mr. Pruitt or others at ASD to conceal these invoices or the revenue generated from their issuance.

Moreover, prior to the annual closing of L3's books for 2013 (which occurred in late-January 2014) and the filing of its Form 10-K for 2013, Mr. Pruitt directed the C-12 Business Manager to *deliver* the physical invoices to the U.S. Army. This explicit direction is documented in an email drafted by the C-12 Business Manager on January 11, 2014.[12] The email confirms Mr. Pruitt's directive and states that Mr. Pruitt asked the C-12 Business Manager if he had "gotten those other revenue recovery invoices out yet."[13] The C-12 Business Manager replied: "I told him that i [sic] had not, but I would get to it right away."[14] Contrary to assurances he provided to Mr. Pruitt, the C-12 Business Manager did not deliver the invoices to the U.S. Army as he promised. The invoices were never delivered because neither the General Counsel of ASD nor the C-12 Business Manager, the L3 employees responsible for providing them to the customer, delivered them and not because of any direction or intent by Mr. Pruitt to conceal them.[15]

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[10] *See id.* ¶ 31.
[11] *Id.*
[12] Nadworny Aff. Ex. A. Inexplicably, the Division never confronted Mr. Pruitt with this document during his day and a half long investigative testimony or during the proffers it participated in with the U.S. Attorney's Office. One can reasonably conclude that the Division failed to show Mr. Pruitt this document because it gravely undermines the allegations that Mr. Pruitt attempted to conceal the invoices.
[13] *Id.*
[14] *Id.*
[15] *But see* OIP ¶ 39.

Finally, the U.S. Army itself directed L3 to submit invoices for the revenue recovery items. Again, this directly contradicts the allegations in the OIP that falsely state that the customer did not authorize or request them. The U.S. Army specifically sought to avoid use of the formal dispute resolution mechanisms under the C-12 Contract and relevant federal contracting regulations in order to resolve the revenue recovery items collaboratively and as quickly as possible.[16] In an email following an early December 2013 meeting with the U.S. Army, the C-12 Contract Manager noted that the "intent is to resolve every one of the disputes outside of the REA/Claim process. [The Army Contracting Officer] stated that the government was offended by our use of the term 'REA' . . . ."[17] On December 30, 2013, the U.S. Army confirmed to the C-12 Program Manager that it did not see the revenue recovery items as "disputes," and that "[a]s discussed, recommend L3 submit ***invoices***/billing/justification of payment thru [sic] the appropriate channels."[18] The U.S. Army again directed ASD to send invoices to the government and to not file a formal claim because "the first step is to invoice the Government, then a claim will follow if the invoice is denied."[19] On January 17, 2014, the Army Contracting Officer confirmed the process that had been agreed to: invoices would be submitted directly to her, with supporting documentation, instead of being submitted through the electronic system for submitting invoices to the government.[20] The Division has also conveniently omitted

[16] An "REA" is simply a catch-all term referring to settlement proposals and other assertions of right to additional compensation that do not satisfy the criteria of a "claim." REAs require certification and while not as formal as a claim, still follow a formal process and specific set of guidelines.
[17] OIP ¶ 19; Nadworny Aff. Ex. B. Complete copies of certain emails referenced in the OIP are attached hereto as Exhibits B-D.
[18] OIP ¶ 30 (emphasis added); Nadworny Aff. Ex. C.
[19] OIP ¶ 30; Nadworny Aff. Ex. D.
[20] OIP ¶¶ 33-34.

the fact that L3 ultimately received and publicly disclosed significant collections from the U.S. Army related to the revenue recognition invoices at issue, further confirming their legitimacy.[21]

The Division's allegations do not square with reality and do not establish violations of the books and records and internal controls provisions.

ARGUMENT

I. THE COURT SHOULD REVISE ITS DECISION DENYING RESPONDENT'S MOTION FOR A RULING ON THE PLEADINGS

Mr. Pruitt moves this Court to revise and not ratify its decision denying his Pleading Motion for the following reasons:

First, 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, satisfactory to prudent officials in the conduct of their own affairs, under Sections 13(b)(2)(A) and (b)(7) of the Securities Exchange Act of 1934 (the "Exchange Act").[22] 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. The plain language of the accounting provisions of the Exchange Act, legislative history, and binding pronouncements of the Commission and not one, but two of its Chairmen—Harold Williams and John Shad—clearly support this conclusion.

Second, Mr. Pruitt did not knowingly circumvent internal controls under Section 13(b)(5) because no such control applied to the conduct alleged in the OIP and the Division has failed to plead that his actions circumvented the only control set forth therein.

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[21] Riley Report ¶ 64.

[22] References to sections or rules refer to the specified section of or rule under the Exchange Act, and "the accounting provisions of the Exchange Act" means Sections 13(b)(2)(A) and (b)(7) and Rule 13b2-1.

A. L3's Books Were Accurate in Reasonable Detail and Mr. Pruitt Could Not Have Caused a Violation Under Section 13(b)(2)(A) or Rule 13b2-1 Thereunder

Even if the Court were to accept the Division's allegations as true that revenue of $17.9 million was recognized prematurely, L3's books and records would still be 99.86% accurate. As a matter of law, L3's books and records were accurate "in reasonable detail" as required by Section 13(b)(2)(A) and Rule 13b2-1. Nothing in the Exchange Act requires a company's books and records to be perfect. They must simply be accurate "in reasonable detail," that "would satisfy prudent officials in the conduct of their own affairs."[23] This is an objective test in which there is no room to search the subjective state of mind of any officer of the issuer. Respondent respectfully submits that by ruling that an intentional misstatement, no matter how trivial, would violate this test, the Court disregarded the plain meaning of the Exchange Act and the clear intent of Congress and the Commission.[24] Prudent officials in the conduct of their own affairs simply would not deem books and records that contain an alleged early revenue recognition of 14/100th of one percent of revenue ($17.9 million/$12.62 billion) to be inaccurate or not kept in reasonable detail.

The Court's contrary holding nullifies the "prudent official" standard Congress added in 1988 to allay concerns over enforcement overreach acknowledged by both Chairman Williams and his immediate successor, Chairman Shad, as early as 1981. By disregarding the objective statutory standard and looking to subjective intent, the Court renders actionable each and every misstatement in an issuer's books and records, no matter how miniscule. Indeed, if the mental state of an employee in booking insignificant financial items determined a company's liability,

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[23] Sections 13(b)(2)(A), (b)(7).

[24] *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 3-4 (Aug. 1, 2017) (the "August 1, 2017 Order").

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. A contrary holding ignores the mandate of Congress and the Commission.

1. Legislative History and Commission Policy

Congressional committee reports on the original accounting provisions of the Exchange Act 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."[25] 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."[26]

In 1981, Chairman Williams addressed the proper interpretation of the accounting provisions of the Exchange Act in a speech reflecting formal Commission policy.[27] He explained that the "reasonable detail" qualification "[i]n essence…does provide a *de minimis* exemption, though not in absolute, quantitative terms."[28] The "appropriate test" for the exemption is "reasonableness," which "allows flexibility in responding to particular facts and circumstances" and tolerates "deviations from the absolute."[29]

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[25] S. REP. NO. 95-114, at 8-9 (1977).
[26] H.R. REP. NO. 95-831, at 10 (1977) (Conf. Rep.).
[27] SEC Release No. 34-17500, 46 Fed. Reg. 11544 (Feb. 9, 1981), 17 C.F.R. Part 241; *see also* Mr. Pruitt's Memorandum in support of the Pleading Motion, filed July 14, 2017.
[28] 46 Fed. Reg. at 11546.
[29] *Id.*

The Chairman acknowledged cases in which "intentional circumventions" of internal controls would not be considered violations of the Exchange Act by the issuer.[30] 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."[31]

2. The Development of the "Prudent Officials" Standard

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 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."[32] 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."[33]

The proposed new Section 13(b)(7) developed in ways that reflected rising concerns for compliance costs, but retained the core "prudent person" concept. In 1983 the proposed "reasonable detail" standard provided for a level of detail that "would satisfy prudent individuals in the conduct of their own affairs, having in mind a comparison between benefits to be obtained

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[30] *Id.* at 11547.
[31] *Id.*
[32] S. Hrg. 97-18, at 278, 284-85 (1981) (statement of Chairman John Shad).
[33] *Id.* at 304.

and costs to be incurred in obtaining such benefits."[34] The language remained unchanged and the Commission's cost-benefit concerns persisted during Congressional hearings in 1986.[35]

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 "make clear that the current standard does not connote an unrealistic degree of exactitude or precision. The concept of reasonableness of necessity contemplates the weighing of a number of relevant factors, including the costs of compliance."[36] Thus, when grafting Section 13(b)(7) onto Section 13(b)(2)(A) in 1988, Congress merged flexible "reasonableness" with economically efficient "materiality," which the Commission through Chairman Shad described simply as what prudent people would be likely to consider important in managing their own property.

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 that section 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.[37]

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[34] *See* S. Hrg. 98-33, at 18 (1983).
[35] *See* S. Hrg. 99-766, at 59 (1986).
[36] H.R. REP. NO. 100-576, at 917 (1988).
[37] 46 Fed. Reg. at 11547.

Throughout the relevant period of time, even assuming the existence of the *de minimis* discrepancies alleged in the OIP, 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. This Court denied the Pleading Motion because the Division alleged "that Pruitt intended to do what he did."[38] He 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 0.14% of more than $12.6 billion in L3's consolidated revenues. This alleged discrepancy is *de minimis* under any theory of "reasonableness" or "materiality." As discussed above, Mr. Pruitt's subjective state of mind is entirely irrelevant here, the books and records of L3 were accurate in reasonable detail, and the alleged discrepancies were insignificant under Section 13(b)(2)(A). The prudent official 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. Accordingly, this Court should revise and not ratify its decision denying the Pleading Motion.

Finally, 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."[39] This Court quoted precisely this language when it restated the *de minimis* exemption, stating that it "provides a safe harbor for an issuer that 'records . . . transactions in conformity with accepted methods of recording economic events.'"[40] The conference report states that records "should"—not "must"—"reflect transactions in conformity with accepted methods of recording economic events." But more

[38] August 1, 2017 Order at 4.
[39] H.R. REP. NO. 95-831, at 10 (1977) (Conf. Rep.).
[40] August 1, 2017 Order at 4.

significantly, this Court's formulation of the *de minimis* exemption puts the proverbial rabbit in the hat by limiting it to transactions the issuer has recorded in conformity with accepted methods of recording economic events. This formulation yields the opposite of what is intended from the statutory "reasonable detail qualification" added by Congress. The *de minimis* safe harbor this language confirms is intended to accommodate transactions that have in fact *not* been recorded on the issuer's books in such a manner, preventing miniscule misstatements from violating Section 13(b)(2)(A). 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.

B. Mr. Pruitt Did Not Knowingly Circumvent an Internal Control Requiring Delivery of Invoices

The Court should not ratify but revise its prior holding on the Pleading Motion regarding the Section 13(b)(5) charge in the OIP. Mr. Pruitt is entitled to a ruling as a matter of law on the alleged Section 13(b)(5) violation because the Division failed to plead that he circumvented the only internal control identified in the OIP.

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."[41] The Court should revise its ruling and solely consider the woefully deficient allegation in the OIP that L3 had an internal control that required the delivery of an invoice. The Division's after-the-fact submissions[42] went far

[41] OIP ¶ 39.

[42] Letter from Paul G. Gizzi to John J. Carney pursuant to the June 23, 2017 order dated June 30, 2017; Division of Enforcement's Memorandum in Response to the Court's Order Following Prehearing Conference dated September 20, 2017.

beyond the scope of the OIP, were not properly made in the context of a motion to amend the OIP, and should not have been considered by the Court when it ruled on the Pleading Motion.[43]

The Division has 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 information listed above in Control No. (3)). Alternatively, batch processing of invoices may be utilized.[44]

IR 4 is a posting control, designed to assure that all billings are captured as revenue in L3's books of account.[45] 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 does not apply where the control on its face does not support the allegation and deference would defy logic.

Respondent's expert, a former Chief Accountant for the Commission, has opined that IR 4 does not state that revenue only can be recognized upon the preparation and delivery of an invoice to a customer.[46] There is also no evidence that the invoices were not posted to the

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[43] To the extent the Court viewed the Division's list of internal controls as essentially incorporated in the OIP, *see* August 1, 2017 Order at 5, Respondent respectfully requests the Court to revise this determination as well for reasons discussed in Part II below.
[44] *See* Exhibit A to the Affidavit of Margaret E. Hirce in connection with the Pleading Motion dated July 14, 2017 at L3-DOJ-SEC-0000478755.
[45] *See* Riley Report ¶ 129.
[46] *Id.*

appropriate subsidiary ledger or general ledger as required by this control or that the lack of delivery to the customer prevented these invoices from being recorded on the appropriate ledgers.[47] Finding "knowing" circumvention of an internal control in such circumstances is unfair to Respondent who could not have circumvented something *knowingly* when the control is vague or silent in any event and does not state what the Division wishes it did. The Court should revise its decision and hold that IR 4 is not a control that requires the delivery of an invoice. Even if the Court were to continue to read IR 4 in the light most favorable to the Division and conclude that it does require delivery, Mr. Pruitt directed a subordinate to ensure that the invoices would be delivered to the U.S. Army.[48] Mr. Pruitt cannot and should not be held accountable for that individual's failure to do as he was asked, especially when that individual said he would "get to it right away."[49]

The Court's analysis of the sufficiency of the OIP and whether Respondent is entitled to a ruling on the pleadings should have gone 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. The Court should not have considered the 16 internal controls arbitrarily deemed "relevant" by the Division and should revise its decision and dismiss the Section 13(b)(5) allegation as a matter of law because none of L3's internal controls required delivery of invoices to a customer.

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[47] *Id.*
[48] Nadworny Aff. Ex. A.
[49] *Id.*

II. THE COURT SHOULD REVISE ITS DECISION PERMITTING THE DIVISION TO LIST ALL INTERNAL CONTROLS RELEVANT TO THE SECTION 13(b)(5) VIOLATION

Should the Court ratify its prior decision that the Division has stated a claim for an internal controls violation, then the Division should be limited to pleading and proving only what it has specifically alleged in the OIP—that Respondent violated an internal control (IR 4) that required delivery of an invoice. Respondent respectfully requests that the Court revise its Order Granting in Part Motion for More Definite Statement, which ordered the Division to submit "[a] list of the internal control or controls that it asserts are relevant to the alleged violation of Exchange Act Section 13(b)(5)," and instead order the Division to identify the internal control that requires delivery of an invoice as alleged in the OIP.[50]

Respondent's Motion for a More Definite Statement requested that the Division identify the specific internal control of L3 that the Division alleges was violated.[51] By making this motion, Respondent's intent was for the Division to identify the specific internal control alleged in paragraph 39 of the OIP. Instead, in order to save its deficient pleading, the Division used the opportunity to unfairly and improperly expand its internal controls allegations by including controls that have little or no relevance to the allegations in the OIP.

While Respondent has reluctantly accepted that the Division is currently limited to a list of 16—later reduced to 15—internal controls, the Division should not have been permitted to allege controls beyond the scope of the OIP. The Division took advantage of an ambiguity of its own making in the OIP and the broadest possible reading of the Court's order to expand its case and salvage its poorly pleaded internal controls charge. If the Division wanted to allege the

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[50] Admin. Proc. Rulings Release No. 4888, *In the Matter of David Pruitt, CPA*, Admin Proc. File No. 3-17950, at 5 (June 23, 2017).

[51] Respondent David Pruitt's Motion for a More Definite Statement, *In the Matter of David Pruitt, CPA*, Admin Proc. File No. 3-17950 (June 6, 2017).

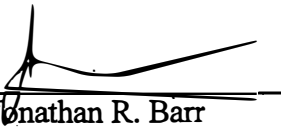
circumvention of 15 internal controls, it should have done so initially, or properly moved for an amendment to the OIP in accordance with Rule 200 of the Commission's Rules of Practice.[52] Treating the Division's after-the-fact submission as an amendment has denied Respondent the opportunity to be heard on the issue and for the Court to determine whether the proposed amendment complies with Rule 200.

The Division should be limited to clarifying the one specific internal control at issue—the purported control that requires delivery of an invoice to the customer and not the other unrelated and inapplicable controls. Respondent respectfully asks the Court to revise its decision and order the Division to identify the one internal control it actually alleged.

CONCLUSION

For the reasons set forth herein, the Court should grant Mr. Pruitt's Motion to Revise Prior Decisions.

Dated: January 5, 2018
New York, New York

By: 

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[52] 17 C.F.R. § 201.200(d)(2).

UNITED STATES OF AMERICA
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SECURITIES AND EXCHANGE COMMISSION

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File No. 3-17950

In the Matter of, **David Pruitt, CPA** **Respondent.**	**AFFIDAVIT OF BARI R. NADWORNY**

STATE OF NEW YORK)
ss:
COUNTY OF NEW YORK)

Bari R. Nadworny, being duly sworn, deposes and says:

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 affidavit, based upon my own personal knowledge, in support of Respondent Pruitt's Motion to Revise Prior Decisions Pursuant to the Court's December 11, 2017 Order.

2. Attached as Exhibit A is a true and correct copy of an email from the C-12 Business Manager to the C-12 Contract Manager, dated January 11, 2014.

3. Attached as Exhibit B is a true and correct copy an email from the C-12 Contract Manager to Gordon Walsh and Mark Wentlent, dated December 5, 2013.

4. Attached as Exhibit C is a true and correct copy of an email from the C-12 Contract Manager to Respondent, dated January 10, 2014.

5. Attached as Exhibit D is a true and correct copy of an email from the C-12 Contract Manager to Respondent, dated January 10, 2014.

Bari R. Nadworny

Subscribed and sworn to before me
on this 5th day of January, 2018.

Notary Public

My commission expires on 11/13/18

RAMON CABRERA
Notary Public, State of New York
No. 01CA6155386, Qualified in Bronx County
Certificate Filed in New York County
Commission Expires 11/13/2018