U.S. Department of Labor

Office of Administrative Law Judges
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ISSUE DATE: 29 DECEMBER 2016

CASE NO.: 2007-SOX-00082

In the Matter of:

RANDALL PITTMAN
Complainant,

vs.

MANATT, PHELPS & PHILLIPS and
PAUL IRVING, its Managing Partner
Respondents, and

LITTLER MENDELSON, LLP, and
TONY SKOGAN, its Managing Partner,
Respondents. [1]

Order of Dismissal

Randall Pittman has filed many employment discrimination complaints over the years, which have been dismissed by the Secretary of Labor on the merits, or because Mr. Pittman gave notice that he chose to end the administrative proceeding, so he could file a complaint raising the same matters in U.S. District Court. The Sarbanes-Oxley Act allows a worker to begin a proceeding with a complaint filed in a district court if the Secretary of Labor has not issued a final order within a fixed number of days after an allegation of employment retaliation has been made to the Secretary (*i.e.,* first presented to OSHA).[2] The statute does not remove an ongoing administrative proceeding into district court. An aggrieved worker must initiate a new action, by filing and serving a complaint in the district court, which

[1] Mr. Pittman included several respondents which have not been added to this case. I have stricken them as parties from the caption.

[2] 18 U.S.C. § 1514A(b)(1)(B) (allowing an action to be filed for *de novo* review in district court, without regard to the amount in controversy); 29 C.F.R. § 1980.114.

will not be subject to dismissal for failure to exhaust administrative remedies. The statute effectively allows a complainant to abandon the administrative process—by dismissing the claim before the Secretary—yet preserve the claim by filing a new civil action. The movement of litigation into the district courts has come to be known as "kick-out." The dispositions of Mr. Pittman's other claims, whether by the Secretary of Labor, or by the U. S. District Courts, affect the motions before me now.

This is one of a long series of cases Mr. Pittman has filed. I will outline first the main rulings in this case. But it will be impossible to fully appreciate now how those ruling fit into this saga of repetitive litigation. The fit should become clearer later, when I go chronologically through the litany of the many cases Mr. Pittman has filed. Because later cases are attempts to resurrect earlier cases that did not succeed, this narrative unavoidably bounces forward and backward in time.

Mr. Pittman now has filed his third Motion to Lift Stay of Proceedings. I had stayed this case in 2008, because rulings in other proceedings Mr. Pittman brought were likely to control the outcome of this one. He also moves for the fourteenth time for leave to amend his complaint to consolidate practically all claims he ever has raised, to add additional respondents, and to expand his allegations of fact. I decline to expand this case as Mr. Pittman proposes. Those claims have been exhausted.

The Respondents Manatt, Phelps & Phillips, LLP, and Littler, Mendelson, P.C. filed here on December 8, 2016 a Supplemental Opposition to Complainant's Motion to Lift Stay of Proceedings ("Motion to Dismiss") alleging that this case should be dismissed for the reasons that the Statute of Limitations bars Pittman III (2007-SOX-00015), Laches bars Pittman IV (2007-SOX-00082), and Collateral Estopell bars Pittman IV (2007-SOX-00082.) The Complainant has failed to file any opposition to the Respondents' Motion to Dismiss.

Mr. Pittman has brought not one, two, or a few claims of employment discrimination to the Secretary of Labor; he has brought at least twenty-two of them, all of which will be detailed later.

In every one of the claims, he began by expressing his dissatisfaction with an employer to OSHA (the Occupational Safety and Health Administration), to whom the Secretary of Labor has assigned the investigation of employment discrimination complaints. Denied relief by OSHA, he asked for *de novo* review of OSHA's dispositions through a trial conducted and a written decision issued by an administrative law judge on behalf of the Secretary of Labor. More

than twenty-two times, Mr. Pittman has brought some variation of the same operative facts to the Secretary, seeking a remedy. All are related—at least tangentially—to the employment discrimination claim he raised in this case. All his administrative complaints, except this one, have concluded due to adverse rulings or dismissals of the claims. Enough is enough.

The stay in this case is lifted solely for the purposes of denying the current Motion to Add Parties. I also grant the motion to dismiss the employer filed after Mr. Pittman moved to lift the stay.

Procedural History

A. Motions to Lift Stay

I stayed this matter for the reasons given in my October 1, 2008 order. The stay was to remain in effect until a final judgment on the merits was entered by the U.S. District Court in the case captioned before the Secretary of Labor as 2007-SOX-00015 (Pittman III).The issues in Pittman III were related to other cases Mr. Pittman had filed, and lost. The interrelationship will be detailed later in the chronological discussion of Mr. Pittman's many filings.

Because no final judgment had been issued by the district court, I denied his first attempt to lift the stay on July 28, 2011.

I denied his second motion to lift the stay order on July 11, 2012, for no final judgment on the merits still had been entered by the district court in the Pittman III matter. Mr. Pittman sought review of this second denial at the Administrative Review Board. The Board denied review of that order on July 11, 2012. The current motion is his third attempt to lift the stay. It too fails.

B. The Employer's Motion to Dismiss this Claim.

The Respondents Manatt, Phelps & Phillips, LLP, and Littler, Mendelson, P.C. filed here on December 8, 2016 a Supplemental Opposition to Complainant's Motion to Lift Stay of Proceedings ("Motion to Dismiss") alleging that this case should be dismissed for the reasons that the Statute of Limitations bars Pittman III (2007-SOX-00015), Laches bars Pittman IV (2007-SOX-00082), and Collateral Estopell bars Pittman IV (2007-SOX-00082.) The Complainant has failed to file any opposition to the Respondents' Motion to Dismiss.

C. Repeated Motions to add Parties, Consolidate and/or Amend Complaints

In this matter Mr. Pittman has never been granted leave to amend his complaint to add additional parties, although repeatedly he has tried.

On April 11, 2011, he moved to amend the complaint. I denied this attempt on July 11, 2012. He unsuccessfully sought review of that order by the Administrative Review Board (ARB).

On May 13, 2011, Mr. Pittman moved to be given leave to amend his complaint. On July 28, 2012, I denied that motion.

On April 14, 2014, he moved to consolidate all his "related" cases (OALJ Case Nos. 2013-SOX-00029 through 2013-SOX-00040, of which more will be said later) with this case. He also requested to file an amended administrative complaint. In what would have been an omnibus complaint, he proposed to raise all the facts and theories he has asserted in the many other complaints he has brought to OSHA as administrative cases, or brought to the federal courts with complaints filed under Rule 8, F.R.Civ.P., or allegations he filed with any other governmental agency (including all state agencies or courts.)

On September 6, 2007, I issued an order in this case requiring Mr. Pittman to file a motion to join Siemens AG as a party (the reason Siemens should be added will become clear from the discussion of his earlier filings which follows shortly). In that order I informed him that any motion for joinder should identify why the claim against Siemens AG was (a) timely and (b) not precluded or affected by other claims he may have filed against Siemens AG, including the claim pending at the ARB. On June 5, 2008, I issued an order requiring further briefing on the issue of joining Siemens AG.

In Mr. Pittman's response to the June 5, 2008 order, he requested that all of his claims against Siemens AG be bifurcated and consolidated with OALJ case number 2006-SOX-00053 (Pittman II). I denied this motion.

In 2013, Mr. Pittman filed thirteen (13) claims (Pittman VIII through XX) with OSHA. He alleged in them that several entities including Siemens AG and Siemens Healthcare Diagnostics, Inc. had retaliated against him. The Findings that OSHA reached after investigating on behalf of the Secretary dismissed as untimely each of those 13 claims. His 2013 complaints included language that also attempted to "amend" eight (8) earlier complaints Mr. Pittman filed at OSHA. OSHA ruled that its procedures only permit amendment to a complaint while OSHA investigates it. OSHA denied the requested "amendment" because the earlier complaints either had been

dismissed or withdrawn years before the ones he filed in 2013. Mr. Pittman then sought *de novo* review of OSHA's dismissals. They were docketed here as 2013-SOX-00029 through 2013-SOX-00040, 2017-SOX-44 (Pittman VIII-XX).

Like OSHA, I denied his motions to amend in Pittman VIII. He sought review of my dismissal order before the ARB. On June 5, 2014, the ARB dismissed his request for review so he could proceed instead in the district court (*i.e.*, he utilized the "kick-out"). I dismissed the other 2013 cases on the merits as untimely, for issue preclusion based on orders in other cases, and as a sanction for his repeated failures to comply with my orders in those 2013 cases.

Because so many claims are involved, I set out below a summary of all the cases Mr. Pittman has brought to the Secretary.

2006-SOX-00023 (Pittman I)

Mr. Pittman filed his original claim with OSHA on October 4, 2005 against Diagnostic Products Corporation claiming he suffered employment retaliation when his employment was terminated in January 2005. OSHA investigated the claim and dismissed it as untimely. He requested a *de novo* hearing with this office, which was docketed as OALJ Case No. 2006-SOX-00023, *Pittman v. Diagnostic Products Corp.* He subsequently withdrew the request for hearing, stating that he would file separately against individual "agents" of his former employer rather than the employer itself. I granted his request and OALJ Case No. 2006-SOX-00023 was dismissed on January 25, 2006.

2006-SOX-00053 (Pittman II)

Mr. Pittman then filed another claim at OSHA. He named his former employer, Diagnostic Products Corporation, and alleged "agents" of the former employer: Michael Ziering, Ira Ziering, Sid Aroesty, Seyfarth Shaw, LLP, and Deloitte & Touche. OSHA dismissed this complaint. He objected and requested a hearing. It was docketed here as OALJ Case No. 2001-SOX-00053, *Pittman v. Diagnostic Products Corp, et al.*

The case was assigned for hearing to Judge Karst who ordered Mr. Pittman to show cause why his claim should not be dismissed as untimely. Mr. Pittman conceded that a claim based on the termination of the employment would be untimely. He said this claim's focus was retaliation for a post-termination email he'd written to the Securities and Exchange Commission, complaining about his former employer. He argued that some of the acts retaliating for the post-termination email occurred within the 90-day limitations period prior to his filing

the current OSHA complaint. Judge Karst determined the alleged post-termination retaliatory acts were not legally sufficient adverse actions, and so dismissed the claim. Mr. Pittman petitioned for review, and the ARB vacated the dismissal and remanded to the OALJ. (ARB No. 06-079 -May 30, 2008).

On remand, the matter was assigned to Judge Berlin, who dismissed the case on October 14, 2010, when Mr. Pittman elected "kick-out" to pursue the matter in district court. Accordingly, any of Mr. Pittman's claims for his original termination would be untimely (as he himself conceded) and any retaliation for his post-termination acts could no longer be litigated here. He chose to proceed with those claims in the district court.

Mr. Pittman became disenchanted with his 2010 decision to proceed in the district court. So two years later, on July 18, 2012, he moved Judge Berlin to vacate the October 14, 2010 order of dismissal and "reinstate" his claim before the Secretary. Mr. Pittman argued that, although he remains entitled to litigate his claim in the district court, the OALJ had jurisdiction to vacate its order dismissing the action and allow him to reinstate the proceedings pursuant to Fed.R.Civ.P. 60(b)(6). He argued that there was good cause to allow him to reinstate his claim so he could consolidate all his claims.

Judge Berlin found that Mr. Pittman had presented no extraordinary circumstances to justify reopening Pittman II under Rule 60(b). Mr. Pittman offered no explanation for waiting nearly two years to change his mind.[3] That Mr. Pittman hadn't pursued the matter by filing a complaint in the district court was his choice. It is not unjust to require Mr. Pittman to accept whatever disposition might follow if he were to bring the neglected claims before the district court after so long a delay.

Judge Berlin determined the statutory regime is the opposite of what Mr. Pittman was seeking in Pittman II (and what he is now attempting again to do in this case). A person raising whistleblower claims under Sarbanes-Oxley must initiate the claim with the Secretary of Labor.[4] Only if the Secretary has not issued a final decision within 180 days may the complainant abandon the administrative proceeding and file a complaint in the district court.[5] Judge Berlin held (correctly in my view) that the statute offers nothing to a complainant who has filed with the Secretary, waited at least 180

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[3] Complainant signed his notice of intent to file in the district court on September 20, 2010. He filed his motion for relief on July 18, 2012.

[4] 18 U.S.C. § 1514A(b)(1)(A).

[5] 18 U.S.C.§ 1514A(b)(1)(B).

days, elected to dismiss in order to file a "kick-out" complaint in the district court, and then changes his mind and tries to move the litigation back to the Department of Labor.[6] To the extent that Mr. Pittman was correct when he observed that the matter should be litigated in one forum, not two, the forum must be the one he chose under the statutory regime: the district court.

Mr. Pittman argued that, because he never filed in the district court, his claim remains within the Secretary's jurisdiction. He glossed over the fact that Judge Berlin had dismissed his claims, at his request.

Mr. Pittman sought review at the Administrative Review Board of Judge Berlin's denial of the attempt to reinstate the claim before the Secretary. The Board denied review on September 2012. Pittman did not appeal the Board's decision to the U.S. Court of Appeals. Accordingly, Judge Berlin's August 9, 2012 order is the final order of the Secretary of Labor, and Mr. Pittman cannot attempt to attempt litigate that case at the OALJ for the third time.

I agree with Judge Berlin that Mr. Pittman cannot come back to the OALJ on any of his cases which have been dismissed here.

2007-SOX-00015 (Pittman III)

Mr. Pittman filed a third complaint with OSHA on August 7, 2006 against the same Respondents as this case. Once again, he claimed unlawful retaliation in January 2005, when he had been terminated from employment at Diagnostic Products Corp.

OSHA investigated on behalf of the Secretary of Labor and on July 26, 2007 dismissed Pittman III because Mr. Pittman failed to show any of the Respondents were subject to the SOX Act, and because his claims were time barred. He objected to OSHA's disposition, and his request for a hearing was docketed here as OALJ Case No. 2007-SOX-00015, *Pittman v. Siemens AG, Siemens Medical Solutions, Diagnostic Products Corp. Seyfarth Shaw et. al*. It was assigned to Judge Torkington. When she dismissed the complaint in Pittman III on July 26, 2007, she specifically addressed Mr. Pittman's termination by Manatt at page 6 of that order. The issue whether Siemens somehow

[6] Although not at all unique, Sarbanes-Oxley is unusual in that it essentially gives complainants two bites at the apple. For example, after OALJ No. 2007-SOX-00015 was adjudicated against Complainant and he sought review at the Administrative Review Board, Complainant took the option to start *de novo* in the district court, thereby circumventing this Office's adverse decision. Judge Berlin held that the Act does not contemplate a third bite by allowing a party to move from the Secretary to the district court and then return to the Secretary.

induced Manatt to terminate Mr. Pittman was litigated before Judge Torkington in Pittman III. She found against Pittman.

Mr. Pittman filed a petition for review before the ARB (Case No. 07-108). He then filed a Notice of Removal to District Court (a "kick-out" actually, not a removal). On April 21, 2010, the ARB granted his motion to withdraw the petition for review, so he could proceed in U.S. District Court.

Mr. Pittman now concedes that, in the ensuing six years, he never filed a complaint in the district court. Mr. Pittman has demonstrated that he has no intention to prosecute his claims in the U.S. District Courts, although he repeatedly claims he will file there. I have the right to control my docket and hereby find that his vexatious, unreasonable, and duplicitous statements are sufficient reason to dismiss this matter.

Mr. Pittman has made a number of unusual, and ultimately ineffective, attempts to avoid the problems he created for himself by not filing a complaint in Pittman III in district court. His many efforts are difficult to coherently explain.

Rather than filing a new lawsuit in the district court, as he told the ARB he would do in 2010 in Pittman III, he attempted to resurrect a different case that he had filed in 2007 in the U.S. District Court for the Central District of California styled as *Pittman v. Siemens,* et. al., CV 07-05225. He hoped to amend the complaint in that defunct litigation to raise the issues that constituted the discrimination he alleged before the Secretary in Pittman III. That 2007 case had been dismissed on November 20, 2007 by the district court.

Three years later, he moved in the Central District of California to vacate that court's November 20, 2007 dismissal order. The defendants argued that Mr. Pittman had already litigated and lost these claims in California Superior Court three times—both as an individual claim and as a class action—and that the California Court of Appeal dismissed the appeals from the final judgments of the California Superior Court on July 8, 2010. The Central District denied Pittman's motion to vacate its 2007 dismissal on May 26, 2011. He appealed the denial of his motion to vacate the dismissal to the U.S. Court of Appeals for the Ninth Circuit, which became Case No. 11-55967. The Ninth Circuit dismissed that appeal on January 6, 2012 at the request of Mr. Pittman.

More than 4 years after he dismissed his appeal in the Ninth Circuit in Case No. 11-55967, Mr. Pittman made a fruitless attempt to have the Ninth Circuit vacate its January 6,

2012 dismissal order. The Ninth Circuit denied that attempt on June 6, 2016.

Mr. Pittman now claims that the Ninth Circuit's refusal in 2016 to vacate his January 2012 dismissal of his appeal to that court in Ninth Circuit Case No. 11-55967 somehow should be considered in this case (i.e., Pittman IV). Were I to consider it at all, I would consider it to be adjudication on the merits, an adjudication that would be another basis to dismiss Pittman IV.

2007-SOX-00082 (Pittman IV)

We come at last to this case, Pittman IV. Mr. Pittman filed a fourth complaint with OSHA on September 26, 2006 against these Respondents. His allegations are convoluted. He alleged he was employed as a Helpdesk Analyst in the information technology group at the southern California law firm of Manatt, Phelps & Phillips (Manatt). He complained to OSHA that Manatt (and Paul Irving as its managing partner) had taken adverse employment actions against him in violation of § 806 of the Sarbanes-Oxley Act, 18 U.S.C. § 1514A (SOX). Mr. Pittman claimed Manatt fired him after he informed Manatt that he had filed a SOX complaint against Siemens AG, which was a client of the Manatt law firm. That SOX complaint was actually more than one complaint: they were Pittman I through Pittman III. He also alleged that, after Manatt retained the law firm of Littler Mendelson (Littler) to defend Manatt against Pittman's employment discrimination claim, Littler (and Tony Skogan its managing partner) became responsible for adverse employment actions Manatt took against him. In essence, Mr. Pitttman claimed it was a violation of the Sarbanes-Oxley Act for Manatt to defend itself against Pittman's claim. By defending Manatt, Mr. Pittman alleged Littler engaged in a conspiracy with Siemens AG to retaliate against him for his earlier complaints (Pittman I, II, and III) against Siemens.

On July 25, 2007, OSHA issued an order on behalf of the Secretary of Labor that dismissed all claims in Pittman IV for several reasons, including that he failed to show any of the Respondents (the Manatt law firm, its partners, the Littler law firm, or its partners) were subject to the SOX. He objected and his request for a hearing was docketed here as OALJ Case No. 2007-SOX-00082, *Pittman v. Mannatt, Phelps & Phillips et. al.* It was assigned to me.

On September 6, 2007, I issued an order requiring Mr. Pittman to file a motion to join Siemens AG as a party. The employment at Siemens was the root of all his claims. In that order I informed him that any motion for joinder should identify why the claim against Siemens AG was (a) timely and (b) not precluded or affected by other

claims he may have filed against Siemens AG, including the claim pending at the ARB. On June 5, 2008, I issued an order requiring further briefing on the issue of joining Siemens AG.

In the his response to the June 5 order, Mr. Pittman requested that all of his claims against Siemens AG be bifurcated and consolidated with OALJ case number 2006-SOX-00053 (Pittman II). That was the claim originally assigned to Judge Karst. The ARB had remanded it to the OALJ on May 30, 2008, and it was then assigned to Judge Berlin. Mr. Pittman still had another case, OALJ case number 2007-SOX-00015 (Pittman III), on review before the ARB.

As I explained already, the issue of whether Siemens somehow induced Manatt to terminate the Complainant was litigated before Judge Torkington in Pittman III. Judge Torkington specifically addressed Mr. Pittman's termination by Manatt at page 6 of her order dismissing the complaint in Pittman III on July 26, 2007. The determinations Judge Torkington made were pending on review at the ARB at the time I stayed this case on October 1, 2008 (the stay order).

On April 11, 2012, Mr. Pittman again moved to lift the stay. It was denied. The stay was to remain in effect until a final judgment on the merits is entered by the district court in the Pittman III matter. The current motion is Mr. Pittman's third attempt to vacate the stay and add parties to the complaint. As in the past, Mr. Pittman has added names to the caption that have not been added by any order I have issued. Nor have I allowed him to add claims. There are no more parties to this case than those named in the caption. I will, however, now lift the stay because Mr. Pittman has abused the process by never filing a complaint in district court that raised the allegation he made before the Secretary in Pittman III. The disposition on the merits in Pittman III found Manatt was not guilty of employment discrimination when it fired him.

2011-SOX-00029 (Pittman V)

Mr. Pittman filed his claim against TEG Staffing and its lawyers with OSHA on February 17, 2010. He claimed he suffered employment retaliation when TEG and its lawyer filed a motion in a state court matter that alleged Mr. Pittman was a vexatious litigant under California law. OSHA denied relief after it investigated. Pittman sought *de novo* review of OSHA's finding, which became Pittman V. Judge Berlin set that case for trial. In a Pre-Trial Order issued on May 2, 2011, he required the parties to file with this Office and serve on all other parties a Pre-Trial Statement at least 21 days before the scheduled trial date. These statements were due on or before July 26, 2011. The Pre-Trial Order expressly warned the parties that a "failure

to comply with all aspects of this Order subjects the offending party to the exclusion of evidence at the final trial, the preclusion of issues, and other appropriate sanctions, including potentially the striking of pleadings," citing 29 C.F.R. §§ 18.6(d)(2), 18.29.

TEG Staffing and its lawyer filed the required Pre-Trial Statement. Mr. Pittman did not. That failure indicated Mr. Pittman had no intention of proceeding to a hearing here at the OALJ. Judge Berlin conducted the conference on August 3, 2011, twelve days before trial was to begin. When asked why he did not file a Pre-Trial Statement, Mr. Pittman stated that he had filed an action in the federal district court against the Respondents in Pittman V. In August of 2011, the Sarbanes-Oxley Act's implementing regulations required:

> Fifteen days in advance of filing a complaint in federal court, a complainant must file with the administrative law judge . . . a notice of his or her intention to file such a complaint. The notice must be served upon all parties to the proceeding.

29 C.F.R. § 1980.114(b).

Mr. Pittman conceded in that telephone prehearing conference on August 3, 2011 that he failed to notify Judge Berlin or any of the respondents at least fifteen days—or at all—before initiating the district court action. That failure caused the Respondents in Pittman V to prepare a Pretrial Statement; select, photocopy, and produce copies of all trial exhibits; and otherwise prepare for a trial when Mr. Pittman knew he had not made the necessary preparations for a trial. By receiving service copies of Respondents' Pretrial filings, Pittman essentially benefitted from "free" discovery of Respondents' plans for the trial of the issues in Pittman V.

Judge Berlin found that when Mr. Pittman failed to file a Pretrial Statement in Pittman V, Mr. Pittman acted in a manner consistent with a decision not to prosecute this case in this forum, but to prosecute instead in U.S. District Court. On that basis, Judge Berlin dismissed the complaint in Pittman V. *See* Fed.R.Civ.P. 41(a)(2).[7] Judge Berlin left it to the district court to determine whether to charge Mr. Pittman with the fees and costs the Respondents incurred at the Office of Administrative Law Judges as a result of Mr. Pittman's

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[7] Unless the Sarbanes-Oxley implementing regulations specifically address a procedural rule, the procedural rules for cases at OALJ are the general procedural rules of OALJ codified at 29 C.F.R. Part 18, subpart A. *See* 29 C.F.R. § 1980.107(b). Where the OALJ procedural rules are silent about a particular situation, the OALJ rules themselves use the Federal Rules of Civil Procedure. 29 C.F.R. § 18.1(a). The OALJ general rules said nothing about voluntary dismissals of actions; so Judge Berlin looked to Rule 41, Fed.R.Civ.P.

failure either to prepare and go forward with the trial before the Office of Administrative Law Judges or to notify the Office and Respondents in a timely way of his decision to pursue the matter in the district court.

At the Pretrial conference in Pittman V, Mr. Pittman moved to dismiss the case, because he intended to file in the district court. The case at the Office of Administrative Law Judges was dismissed on August 4, 2011. Mr. Pittman now concedes he never filed a case in the district court, despite what he said in the conference call with Judge Berlin.

2011-SOX-00034 (Pittman VI)

Mr. Pittman initially named some twenty-seven (27) parties as Respondents at OSHA in the claim that became Pittman VI. The parties included those named as Respondents in Pittman IV (*i.e.*, the Respondents in this action). On March 11, 2011, OSHA issued Findings after investigating on behalf of the Secretary in Pittman VI that found no reasonable cause to believe those 27 Respondents violated the Act. Mr. Pittman filed objections to the OSHA findings, so the matter was docketed for a *de novo* hearing at the Office of Administrative Law Judges on March 24, 2011; the case was assigned to Judge Berlin on March 29, 2011. On May 3, 2011, Judge Berlin noticed a hearing to begin in Los Angeles on August 17, 2011. On May 16, 2011, Mr. Pittman filed notice that he had elected to pursue the matter in the federal district court. As a result, Pittman VI was dismissed on June 21, 2011 by Judge Berlin.

Mr. Pittman has never filed his claims against the 27 named Respondents in Pittman VI in the U.S. District Court.

2012-SOX-00006 (Pittman VII)

Mr. Pittman filed at OSHA a claim of employment discrimination against a number of parties, alleging that they had a "business relationship" with the Respondents he had named in Pittman IV. He also alleged Dell Computer had terminated his employment at Dell because Pittman had filed his employment discrimination claim against Siemens. OSHA's findings found none of those Respondents were guilty of employment discrimination. Mr. Pittman filed objections to the OSHA findings, so the matter was docketed for *de novo* hearing at the Office of Administrative Law Judges. Pittman VII was assigned to Judge Pulver, who issued an order of dismissal on April 3, 2012. Mr. Pittman sought review of that dismissal at the ARB. His request for review was dismissed by the ARB on August 16, 2012 for Mr. Pittman's failure to comply with the briefing schedule the ARB had set.

2013-SOX-00029 (Pittman VIII)

Mr. Pittman branched out and filed claims not only seeking redress for employment discrimination he said he suffered; he made complaints on behalf of other individuals. In the complaints he made to OSHA on March 8, 2013, Mr. Pittman named as Respondents Siemens AG, Siemens Healthcare Diagnostics, Inc., and others. Mr. Pittman alleged that he and the other individuals he named as complainants had been terminated from jobs in 2004–2005. Allegations so old have little chance of success under the Sarbanes-Oxley statute.

The complaints for actions so far in the past are unlikely to be timely, itself grounds for dismissal. An employee who claims to be the victim of retaliation prohibited by the statute must file a complaint with OSHA within 180 days of the date of the retaliation.[8] In SOX whistleblower cases, the statute of limitations begins to run from the date an employee receives "final, definitive, and unequivocal notice" of an adverse employment decision. *See, e.g., Rollins, v. American Airlines,* ARB No. 04-140, ALJ No. 2004-AIR-009, slip op. at 2 (ARB Apr. 3, 2007 (re-issued)).

OSHA nonetheless investigated. In Findings it issued on behalf of the Secretary on April 4, 2013, OSHA dismissed as untimely each of the complaints Mr. Pittman had filed on behalf of himself and others, an outcome that was hardly surprising.

Mr. Pittman filed Objections to Secretary's Findings and Request for Hearing, challenging the finding the claims were untimely. These claims became Pittman VIII. He also asserted he could consolidate all his old claims, through the application of Federal Rule of Civil Procedure 60(b).

Pittman VIII was dismissed on March 24, 2014 with prejudice (*i.e.,* on the merits) for several distinct reasons: the claims it encompassed were too old; Mr. Pittman repeatedly failed to comply with my prehearing orders in Pittman VIII; and the claims he raised were precluded by the doctrines of *res judicata* or collateral estoppel as a matter of law due to prior litigation at the Office of Administrative Law Judges and

[8] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (July 21, 2010), and implementing regulations published at 76 Fed. Reg. 68084-97 (Nov. 3, 2011).

elsewhere.[9] The doctrines of collateral estoppel and issue preclusion "relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication."[10]These legal doctrines apply to administrative actions where "an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate."[11] A trial court has great discretion in the application of the doctrine.[12]

Mr. Pittman asked the ARB to review that dismissal. The ARB dismissed his request for review on June 5, 2014. My dismissal order thereby became the final adjudication on the merits of his claims raised in Pittman VIII.

2013-SOX-00030 (Pittman IX)

On June 11, 2013, OSHA dismissed the complaint Mr. Pittman filed with OSHA on June 3, 2013 because the claims were untimely. The Respondents he named in Pittman IX were law firms and lawyers who were alleged to have acted as agents for Mr. Pittman's former employers. He allegedly suffered retaliation in the form of termination or other adverse employment actions for engaging in protected activity at Siemens AG. These allegations are a re-hash of the complainants in past cases.

On July 24, 2013, I ordered Mr. Pittman to file a pre-trial statement that would disclose each specific adverse action each Respondent took. That order specifically warned that I would consider dismissing his claims if he failed to file the pre-trial statement.

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[9] A partial list of the litany of litigation Mr. Pittman has filed is found on pages 13–25 of the First Amended Complaint Pittman attempted to file in 2013 before OSHA, in footnotes 1 and 2 of Judge Berlin's order dated August 9, 2012 denying Mr. Pittman's attempt to resurrect the claim discussed below as Pittman II. A more exhaustive list of his litigation can be found at pages 2–4 of the Opposition Respondents filed to the Complainant's Motion to Disqualify Judge William Dorsey, and in the Declaration of Christian Rowely that accompanied the Opposition.

[10] *Allen v. McCurry*, 449 U.S. 90 (1980).

[11] *United States v. Utah Constr. & Mining Co.*, 384 U.S. 394, 421-22 (1966); *see also Miller v. County of Santa Cruz*, 39 F.3d 1030 (9th Cir. 1994); *Muino v. Fla. Power & Light Co.*, ARB Nos. 06-092, 06-143, 2008 WL 1925639 at *5 (ARB Apr. 2, 2008).

[12] *Disimone v. Browner*, 121 F.3d 1262, 1267 (9th Cir. 1997) (citing *McClain v. Apodaca*, 793 F.2d 1031, 1032-34 and n. 2 (9th Cir.1986)).

No pre-trial statements were filed. On January 24, 2014, I issued a second order entitled "Order to Show Cause Why This Matter Should Not Be Dismissed." It allowed him one last extension to file the pretrial statement, and warned that I would consider dismissing the claims if he failed to file the required pre-trial statement.

Despite these warnings, no motion to extend was filed, nor did he file the required pre-trial statement. These claims were dismissed with prejudice on April 3, 2014. Mr. Pittman failed to appeal the dismissal to the ARB. The dismissal became the final order of the Secretary, and has *res judicata* effect for all his claims against Siemens, the law firm of Seyfarth Shaw, and the law firm of Littler Mendelson.

2013-SOX-00031 (Pittman X)

These claims purportedly arise under the Sarbanes-Oxley Act. OSHA's Findings on behalf of the Secretary, dated April 4, 2013, dismissed the complaints because they were untimely. The Respondents were law firms and lawyers who Mr. Pittman alleged acted as agents for the Complainants' former employers. The Complainants allegedly suffered retaliation in the form of termination or other adverse employment actions for engaging in protected activity at Siemens AG.

On July 24, 2013, I ordered each named Complainant to file a pre-trial statement that would disclose each specific adverse action each Respondent took. That order specifically warned that I would consider dismissing the claims of a Complainant who failed to file the pre-trial statement.

No pre-trial statements were filed. On January 24, 2014, I issued to each Complainant a second order entitled "Order to Show Cause Why This Matter Should Not Be Dismissed." It allowed each Complainant one last extension to file the pretrial statement, and warned that I would consider dismissing the claims of any Complainant who failed to file the required pre-trial statements.

Despite these warnings to each Complainant, no motions to extend time have been filed, nor has any Complainant filed the required pre-trial statements. These claims were dismissed with prejudice on April 3, 2014. Mr. Pittman failed to appeal my order to the ARB, which made my order the final order of the Secretary and *res judicata* to all claims against the Siemens, Seyfarth Shaw, and Littler Mendelson, who had been respondents in Pittman IV.

2013-SOX-00032 (Pittman XI)

The Secretary's Findings of April 4, 2013 dismissed the complaints he filed with OSHA on March 8, 2013 because they were untimely. The Respondents were law firms and lawyers who were alleged to have acted as agents for Mr. Pittman's former employers. He allegedly suffered retaliation in the form of termination or other adverse employment actions for engaging in protected activity at Siemens AG.

On July 24, 2013, I ordered Mr. Pittman to file a pre-trial statement that would disclose each specific adverse action each Respondent took. That order specifically warned that I would consider dismissing the claims of a Complainant who failed to file the pre-trial statement.

No pre-trial statements were filed. On January 24, 2014, I issued to each Complainant a second order entitled "Order to Show Cause Why This Matter Should Not Be Dismissed." It allowed each Complainant one last extension to file the pretrial statement, and warned that I would consider dismissing the claims of any Complainant who failed to file the required pre-trial statements.

Despite these warnings to each Complainant, no motions to extend time have been filed, nor has any Complainant filed the required pre-trial statements. These claims were dismissed with prejudice on April 3, 2014. Mr. Pittman failed to seek review of my order at the ARB. This made my order the final order of the Secretary and *res judicata* to all claims against the Siemens, Seyfarth Shaw, and Littler Mendelson, who had been respondents in Pittman IV.

2013-SOX-00033 (Pittman XII)

The Secretary's Findings of April 4, 2013, dismissed the complaint Mr. Pittman filed with OSHA on March 8, 2013. The claims were dismissed because the Respondents he named were not publically traded entities the Act covered. Mr. Pittman also failed to show any adverse acts within the time the Sarbanes-Oxley gives employees to complain to the Secretary of Labor about employment discrimination.

Mr. Pittman alleged he was hired by Yoh Services (a subsidiary of the Day & Zimmerman Group) in November 2006, and was terminated in December 2006. The Respondent Morgan Lewis & Bockius were attorneys for Yoh and the Day & Zimmerman Group. Mr. Pittman's objections to the OSHA dismissal also included language indicating that he wanted to "amend" eight (8) earlier complaints Mr.

Pittman had filed at OSHA. OSHA held that its procedures permit amendment to a complaint only while OSHA is investigating it. OSHA denied "amendment" because the earlier complaints either had been dismissed or withdrawn years before these were filed in 2013.

Mr. Pittman then objected to Findings OSHA entered on behalf of the Secretary and requested a de novo for hearing at the Office of Administrative Law Judges. He argued his claims were timely, and he objected to the OSHA ruling that each complaint could not, through the application of Federal Rule of Civil Procedure 60(b), be consolidated with earlier complaints he had filed.

Pittman XII was dismissed with prejudice for two distinct reasons: Mr. Pittman repeatedly failed to comply with my prehearing orders, and the claims he raised already had been precluded by prior litigation.

On July 25, 2013, I ordered Mr. Pittman to file a pre-trial statement that disclosed the specific adverse action(s) he believed each Respondent had taken, and whether he had raised those claims in prior litigation. The order specifically warned that I would consider dismissing the claims if he failed to file the pre-trial statement.

No pre-trial statement was filed. On January 24, 2014, I issued a second order entitled "Order to Show Cause Why This Matter Should Not Be Dismissed." It allowed Mr. Pittman more time to file the pretrial statement, and again warned that I would consider dismissing his claims if the required pre-trial statement was not filed.

Despite these warnings Mr. Pittman made no motion to extend time to file, nor did he file the required pre-trial statements. Accordingly, the claims were dismissed with prejudice for failure to comply with my orders to file a pre-trial statement.

In addition, I have reviewed Pitman XII and compared its allegations with the two lawsuits Mr. Pittman filed against the Respondents in the U.S. District Court, Central District of California: *Pittman v. Day & Zimmer Group* Case No. 07-07021[13] and *Pittman v. Yoh Services, LLC.*, Case No. 08-1278. The comparison demonstrates that the claims Mr. Pittman raised in Pittman XII involve matters that already have been litigated in federal court. The litany of those claims litigated are set forth in U.S. District Judge Klausner's order of April 14, 2009 that denied Mr. Pittman's Motion to Set Aside Dismissal and Settlement Agreement, and in District Judge Gutierrez's order of May 13, 2009 that denied Mr. Pittman's Motion to set aside Judgment,

[13] Mr. Pittman's appeal to the 9th Court of Appeals (09-55667) was also dismissed on June 21, 2008.

including the numerous actions he had filed in state courts regarding the same issues which were removed to the federal court.[14]

2013-SOX-00034 (Pittman XIII)

The Secretary's Findings of April 4, 2013 dismissed as untimely each of the complaints these Complainants filed with OSHA on March 8, 2013. Mr. Pittman alleged that Respondents terminated or otherwise retaliated against him for engaging in protected activity. The complaint included language that also attempted to "amend" eight (8) earlier complaints Mr. Pittman filed at OSHA. OSHA held that its procedures permit amendment to a complaint only while OSHA is investigating it. OSHA denied "amendment" because the earlier complaints either had been dismissed or withdrawn years before these were filed in 2013. Mr. Pittman filed Objections to Secretary's Findings and Request for Hearing. He objected to the findings that the claims were untimely, and that he could not, through the application of Federal Rule of Civil Procedure 60(b), have these claims consolidated with earlier complaints Pittman had filed.

This matter was dismissed with prejudice for two distinct reasons: the failure to comply with my prehearing orders and that they are precluded due to prior litigation.

On July 24, 2013,[15] I ordered Mr. Pittman to file a pre-trial statement which would disclose the specific adverse action alleged by each Respondent, and whether he had been engaged in any prior litigation regarding those claims. That order specifically warned that I would consider dismissing the claims if Mr. Pittman failed to file the pre-trial statement.

No pre-trial statements were filed. On August 27, 2013, I gave Mr. Pittman a second opportunity to comply with the order. No motion to extend time was filed, nor did he file the required pre-trial statement.

On January 24, 2014, I issued a third order entitled "Order to Show Cause Why This Matter Should Not Be Dismissed." It allowed Mr. Pittman one last extension to file the

[14] Also see Defendants' Opposition to Plaintiff's Motion to Set Aside Order Granting Defendants' Motion for Judgment on the Pleadings in CV-08-128 document 40, filed 05/04/09.

[15] An order issued on July 30, 2014 corrected a typographical error in the July 24, 2013 order.

pretrial statement, and warned that I would consider dismissing the claims if he failed to file the required pre-trial statements.

Despite three warnings, Mr. Pittman has not filed the required pre-trial statements. Accordingly, these claims were dismissed with prejudice for failure to comply with my orders to file a pre-trial statement.

These cases were dismissed with prejudice on the grounds that prior litigation of the same issues before this and other tribunals preclude these claims.[16]

An employee who claims to be the victim of retaliation prohibited by SOX must file a complaint with OSHA within 180 days of the date of the retaliation.[17] In SOX whistleblower cases, the statute of limitations begins to run from the date an employee receives "final, definitive, and unequivocal notice" of an adverse employment decision. *See, e.g., Rollins, v. American Airlines,* ARB No. 04-140, ALJ No. 2004-AIR-009, slip op. at 2 (ARB Apr. 3, 2007 (re-issued)).

I have reviewed the numerous cases Mr. Pittman filed here and *Pittman v. TEG et al*. OALJ Case no. 2011-SOX-00029 (Pittman V). They demonstrate that the claims filed with OSHA in March 2013 should be dismissed not only as untimely but also because they already have been litigated. This litigation was precluded by the doctrines of *res judicata*, issue preclusion and/or collateral estoppel. In Pittman V, Mr. Pittman alleged he was a former employee of Siemens AG. He also alleged TEG refused to hire him in 2006 due to his protected activities while employed by Siemens AG. He attempted to file suit in California state court against TEG, where its counsel filed a successful motion to have him declared a vexatious litigant under California law. Mr. Pittman refiled the claims as OSHA Case No. 9-3290-10-0028. After OSHA dismissed that complaint in 2011, he filed objections and a request for hearing that led to the

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[16] A partial list of the litany of litigation Mr. Pittman has filed is found on pages 3 and 4 of the Respondents' Pretrial Statement in *Pittman v. TEG* OALJ Case No. 2011-SOX-00029, which was dismissed by Judge Berlin's order dated August 4, 2011. A more exhaustive list of his litigation can be found at pages 2–4 of the Opposition Respondents filed to the Complainant's Motion to Disqualify Judge William Dorsey, and in the Declaration of Christian Rowely that accompanied the Opposition in *Pittman v. Siemens AG* OALJ Case No. 2013-SOX-00029.

[17] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (July 21, 2010), and implementing regulations published at 76 Fed. Reg. 68084-97 (Nov. 3, 2011).

matter being docketed here as *Pittman v. TEG et al*. OALJ Case No. 2011-SOX-00029 (Pittman V).

On the eve of a hearing, Mr. Pittman advised Judge Berlin that he had filed a kick-out complaint that shifted his claim to U.S. District Court. Judge Berlin dismissed Pittman V by order dated August 4, 2011. Judge Berlin's order left it to the U.S. District Judge to determine whether to charge Mr. Pittman with the fees and costs the Respondents incurred because Mr. Pittman failed to either prepare and go forward with the administrative hearing, or notify Judge Berlin or the Respondents in a timely manner of his decision to pursue the matter in the district court. [18]

It is obvious that Mr. Pittman had decided to refile Pittman V again rather than proceed in district court. Mr. Pittman must litigate his claim in one forum, not two. That forum must be the one he chose in Pittman V under the statutory scheme: U.S. District Court.

The doctrine of collateral estoppel, or issue preclusion, is designed to "relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication."[19] The doctrine applies to administrative actions where "an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate."[20] A trial court has great discretion in the application of the doctrine.[21]

I agreed with OSHA's determination that it could not consolidate current case with the prior cases or to add parties to the previously dismissed or withdrawn complaints. Likewise, he could not consolidate this case with previously dismissed cases.

Accordingly, those claims were dismissed with prejudice. Mr. Pittman failed to appeal my order to the ARB, which made my order the final order of the Secretary and *res judicata* to all

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[18] It does not appear that Mr. Pittman had actually filed a complaint in district court, despite what he told Judge Berlin during the pre-hearing conference call held in 2011 in TEG I.

[19] *Allen v. McCurry*, 449 U.S. 90 (1980).

[20] *United States v. Utah Constr. & Mining Co.*, 384 U.S. 394, 421-22 (1966); *see also Miller v. County of Santa Cruz*, 39 F.3d 1030 (9th Cir. 1994); *Muino v. Fla. Power & Light Co.*, ARB Nos. 06-092, 06-143, 2008 WL 1925639 at *5 (ARB Apr. 2, 2008).

[21] *Disimone v. Browner*, 121 F.3d 1262, 1267 (9th Cir. 1997) (citing *McClain v. Apodaca*, 793 F.2d 1031, 1032-34 and n. 2 (9th Cir.1986)).

claims against the Siemens, Seyfarth Shaw, and Littler Mendelson, respondents in Pittman IV.

2013-SOX-00035 (Pittman XIV)

OSHA's Findings of April 4, 2013 dismissed as untimely the complaint Mr. Pittman filed against Bank of America, N.A. or other entities Mr. Pittman had filed on March 8, 2013. Mr. Pittman's complaint at OSHA had included language that also attempted to "amend" eight (8) earlier complaints Mr. Pittman filed at OSHA. OSHA held that its procedures permit amendment to a complaint only while OSHA is investigating it. OSHA denied "amendment" because the earlier complaints either had been dismissed or withdrawn years before these were filed in 2013. He filed Objections to Secretary's Findings and Request for Hearing on the basis his complaint was timely and, through the application of Federal Rule of Civil Procedure 60(b), all of his prior complaints should be consolidated.

This matter was dismissed with prejudice for two distinct reasons: the failure to comply with my prehearing orders and that the claim is precluded by earlier litigation

On July 24, 2013[22] I ordered each named Complainant to file a pre-trial statement that would disclose the specific adverse action(s) each Respondent had taken, and whether the Complainant had engaged in any earlier litigation about those claims. The order specifically warned that I would consider dismissing the claims of a Complainant who failed to file the pre-trial statement.

No pre-trial statements were filed. On August 27, 2013, I gave the Mr. Pittman second opportunity to comply with the order, and also allowed any Complainant who wanted to extend the time to comply with the Pre-Trial Order Timeliness/Prior Adjudications to file a motion for an extension of time to comply. No motion to extend time was filed, nor did any Complainant file the required pre-trial statement.

On January 24, 2014, I issued a third order entitled "Order to Show Cause Why This Matter Should Not Be Dismissed." It allowed Mr. Pittman one last extension to file a pretrial statement, and warned that I would consider dismissing the claims of any Complainant who failed to file the required pre-trial statements.

[22] An order issued on July 30, 2014 corrected a typographical error in the July 24, 2013 order.

Despite three warnings, no motion to extend time was filed, nor did he file the required pre-trial statements. Accordingly, these claims were dismissed with prejudice as to each his for their failure to comply with my orders to file a pre-trial statement.

These cases are also dismissed with prejudice on the grounds that prior litigation of the same issues before this and other tribunals preclude these claims.

This case should be called Bank of America IV because the issues Mr. Pittman raised in this complaint are same issues he raised in *Pittman v. Bank of America, Corp.*, OALJ Case No. 2011-SOX-00034, OSHA Case No. 9-3290-058, dismissed June 21, 2011 (Bank of America I), *Pittman v. Bank of America,* U.S. District Court, Central District of California, Case No. CV 11-7107, dismissed March 12, 2012 (Bank of America II) and *Pittman v. Bank of America,* U.S. District Court, Central District of California, Case No. CV 11-5628, terminated August 4, 2011 (Bank of America III). This litigation was precluded based upon the doctrines of *res judicata*, issue preclusion and/or collateral estoppel.

Mr. Pittman refiled Bank of America I again rather than follow through with filing a complaint in U.S. District Court. Judge Berlin of this Office had dismissed Bank of America I at Mr. Pittman's request, so he could proceed under the statute's "kick out" provision in U.S. District Court. Mr. Pittman is required to litigate his claim in one forum, not two. That forum must be the one he chose under the statutory scheme for his filings that became Bank of America II and III: U.S. District Court.

Mr. Pittman also contended before OSHA that he should have been allowed to file a First Amended Complaint consolidating earlier complaints that had been dismissed or that he had withdrawn years before his 2013 filing. The Complainants alleged in their Objections to the findings of OSHA in this case that Federal Rule 60(b) allows for such litigation. I agreed with OSHA's determination that it could not consolidate the current case with the prior cases or to add parties to the previously dismissed or withdrawn complaints. Likewise, he could not consolidate this case with previously dismissed cases.

2013-SOX-00036 (Pittman XV)

The Secretary's Findings of June 11, 2013, dismissed Mr. Pittman's complaint he filed with OSHA on June 3, 2013 because it was untimely. The Respondents were law firms and lawyers who were alleged to have acted as agents for business entities that have, at some time, employed Mr. Pittman. He alleged he was terminated, and these Respondents somehow retaliated against them for engaging in protected activity when they were employed by Siemens AG or other employers. The complaint also included language that also attempted to "amend" eight (8) earlier complaints Mr. Pittman filed at OSHA.

On July 24, 2013, I ordered Mr. Pittman to file a pre-trial statement that would disclose the specific adverse action(s) each of these Respondent lawyers or law firms allegedly committed. That order specifically warned that I would consider dismissing his claims if he failed to file the pre-trial statement.

No pre-trial statements were filed. On January 24, 2014, I issued a second order entitled "Order to Show Cause Why This Matter Should Not Be Dismissed." It allowed him one last extension to file the pretrial statement, and warned that I would consider dismissing his claims if he failed to file the required pre-trial statements.

Despite these warnings given to him, no motion to extend time was filed, nor did file the required pre-trial statement. Accordingly, his claims were dismissed with prejudice. Mr. Pittman also contended before OSHA that he should have been allowed to file a First Amended Complaint consolidating earlier complaints that had been dismissed or that he had withdrawn years before his 2013 filing. The Complainants alleged in their Objections to the findings of OSHA in this case that Federal Rule 60(b) allows for such litigation. I agreed with OSHA's determination that it could not consolidate the current case with the prior cases or to add parties to the previously dismissed or withdrawn complaints. Likewise, he could not consolidate this case with previously dismissed cases.

Mr. Pittman failed to appeal my order to the ARB, which made my order the final order of the Secretary and *res judicata* to all claims against Siemens AG, a respondent in Pittman IV.

2013-SOX-00037 (Pittman XVI)

The Secretary's Findings of April 4, 2013 dismissed the complaint Mr. Pittman filed with OSHA on March 8, 2013 because Mr. Pittman was making essentially the same claims as

were made in a prior filing, OSHA Case No. 9-3290-11-055, which was dismissed by OSHA in November 2011. The complaints included language that also attempted to "amend" eight (8) earlier complaints Mr. Pittman filed at OSHA. OSHA held that its procedures permit amendment to a complaint only while OSHA is investigating it. He filed Objections to Secretary's Findings and a Request for Hearing. Each objected to the findings that their claims were untimely, and that each complaint could not, through the application of Federal Rule of Civil Procedure 60(b), be consolidated with earlier complaints Pittman had filed.

This matter was dismissed with prejudice for two distinct reasons: the failure to comply with my prehearing orders and that they are precluded due to prior litigation.

On July 25, 2013,[23] I ordered Mr. Pittman to file a pre-trial statement which would disclose the specific adverse action alleged by each Respondent, and whether each Complainant had been engaged in any prior litigation regarding those claims. That order specifically warned that I would consider dismissing this claim if he failed to file the pre-trial statement.

No pre-trial statement was filed. On January 24, 2014, I issued a second order entitled "Order to Show Cause Why This Matter Should Not Be Dismissed." It allowed him one last extension to file the pretrial statement, and warned that I would consider dismissing his claims if he failed to file the required pre-trial statements.

Despite these warnings, no motion to extend time was filed, nor did he file the required pre-trial statements. Accordingly, these claims were dismissed with prejudice as to each Complainant for their failure to comply with my orders to file a pre-trial statement.

These cases were also dismissed with prejudice on the grounds that prior litigation of the same issues before this and other tribunals preclude these claims.

I reviewed this case and the one dismissed by Judge Pulver in 2012. They demonstrate that the claims filed with OSHA in March 2013 should be dismissed not only as untimely but also because they already have been litigated.

Mr. Pittman filed his original claim with OSHA on April 15, 2011 against the Respondents. OSHA investigated the claim

[23] An order issued on July 30, 2014 corrected a typographical error in the July 25, 2013 order.

and dismissed it for untimeliness. He requested a hearing with this office. It was docketed as OALJ Case No. 2012-SOX-0006, *Pittman v. Dell, Inc. et al.* On April 3, 2013, Judge Pulver dismissed the claim as untimely. Mr. Pittman then sought review at the Administrative Review Board, which became ARB Case No. 12-065.

He also filed here a Motion to Vacate the April 3, 2012 dismissal order pursuant to FRCP, Rule 60(b). On June 27, 2012, Judge Pulver denied that motion. He filed another petition for review before the Administrative Review Board, which became ARB Case No. 12-065. That request for review was dismissed on August 16, 2012 for his failure to comply with the briefing schedule. The Administrative Review Board specifically found in its dismissal order of August 12, 2012, that Judge Pulver's April 3, 2012 Order Dismissing Complaint became the Secretary of Labor's final decision in that matter.

2013-SOX-00038 (Pittman XVII)

The Secretary's Findings of June 11, 2013, dismissed the complaints as untimely. One of the Respondents is KForce, Inc., an entity that at one time had employed Mr. McHenry, but I only know this because of a filing by KForce, Inc.[24] The other Respondents are law firms and lawyers. I infer that at one time they represented KForce, Inc., but that is far from clear. According to the Secretary's Findings, any adverse action took place so long ago that the complaint made to OSHA for whistleblower protection on March 8, 2013 under the Sarbanes-Oxley Act was untimely.

Nothing indicates that either Complainant was employed by these lawyers or law firms. The rather brief allegation of the complaint made to OSHA was that the Respondents "aided and abetted Siemens AG and Bank of America and/or other entities in retaliating against Complainants for engaging in alleged protected activities."[25] I could not understand what KForce, Inc. or these law firms have to do with Siemens AG or Bank of America.

To make some sense of all this, on July 24, 2013, I ordered Mr. Pittman to file a pre-trial statement which would disclose

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[24] See Response of KForce, Inc. and Nixon Peabody to Complainants' Reply to Order Regarding Non-Attorney Representation, filed Aug. 19, 2013, and the Declaration it incorporates.

[25] See the Case Activity Work Sheet appended to the Secretary's Findings.

the specific adverse action alleged by each Respondent. That order specifically warned that I would consider dismissing his claims if he failed to file the pre-trial statement.

No pre-trial statement was filed. On January 24, 2014, I issued a second order entitled "Order to Show Cause Why This Matter Should Not Be Dismissed." It gave Mr. Pittman one last extension to file the pretrial statement, and warned that I would consider dismissing the claims if he failed to file the required pre-trial statements.

Despite these warnings, no motions to extend time have been filed, nor did he file the required pre-trial statements. Accordingly, these claims were dismissed with prejudice.

2013-SOX-00039 (Pittman XVIII)

On June 11, 2013, OSHA dismissed the complaint Mr. Pittman filed with OSHA on June 3, 2013 because it was untimely and Mr. Pittman failed to provide any evidence he was blacklisted from employment at Citi Bank, N.A. The Respondents were Citi Bank, N.A., a potential employer, and law firms and lawyers who were alleged to have acted as agents for the Citi Bank, N.A.

On July 24, 2013, I ordered Mr. Pittman to file a pre-trial statement that would disclose the specific adverse action(s) he alleged each Respondent took. That order specifically warned that I would consider dismissing the claims should Mr. Pittman fail to file the pre-trial statement. No pre-trial statements were filed. On January 24, 2014, I issued a second order entitled "Order to Show Cause Why This Matter Should Not Be Dismissed." It allowed Mr. Pittman one last extension to file the pretrial statement, and warned that I would consider dismissing the claims if he failed to file the required pre-trial statement.

Despite these warnings, no motion to extend time was filed, nor did Mr. Pittman file the required pre-trial statement. Accordingly, these claims were dismissed with prejudice for Mr. Pittman's failure to comply with my orders to file a pre-trial statement.

2013-SOX-00040 (Pittman XIX)

In these cases, Mr. Pittman alleged that the U.S. Equal Employment Opportunity Commission (EEOC) and its employees aided and abetted Siemens AG in retaliating against him. The Secretary's Findings of April 4, 2013 dismissed Mr. Pittman's complainants filed with OSHA on March 8, 2013 because the EEOC is not a publically traded entity covered under SOX. Mr. Pittman also attempted to

"amend" eight (8) earlier complaints Mr. Pittman filed at OSHA. OSHA held that its procedures permit amendment to a complaint only while OSHA is investigating it.

Mr. Pittman filed Objections to Secretary's Findings and Request for Hearing. He objected to the findings that their claims were untimely, and that he could not, through the application of Federal Rule of Civil Procedure 60(b), be consolidated with earlier complaints Pittman had filed.

This matter was dismissed with prejudice for two distinct reasons: the failure to comply with my prehearing orders and that I find that the Respondents are not covered under SOX.

Mr. Pittman also contended before OSHA that he should have been allowed to file a First Amended Complaint consolidating earlier complaints that had been dismissed or that he had withdrawn years before his 2013 filing.

He also alleged in the Objections to the findings of OSHA in this case that Federal Rule 60(b) allows for such litigation. I agree with OSHA's determination that it could not consolidate the current case with the prior cases or add parties to the previously dismissed or withdrawn complaints. Likewise, he could not consolidate this case with previously dismissed cases.

2013-SOX-00044 (Pittman XX)

Mr. Pittman alleged that Sanyo NA failed to hire him in 2010. He waited until 2013 to file his complaint with OSHA. The Secretary's Findings of June 11, 2013, dismissed the complaints he filed with OSHA on June 3, 2013 because they were untimely.

On August 2, 2013, I ordered the Mr. Pittman to file a pre-trial statement that would disclose the specific adverse action each of them alleged against each Respondent. That order specifically warned that I would consider dismissing his claim if failed to file the pre-trial statement.

No pre-trial statements were filed. On January 24, 2014, I issued a second order entitled "Order to Show Cause Why This Matter Should Not Be Dismissed." It allowed him one last extension to file the pretrial statement, and warned that I would consider dismissing the claims if he failed to file the required pre-trial statements.

Despite these warnings to each Complainant, no motion to extend time was filed, nor did he file the required pre-trial statements. Accordingly, these claims were dismissed with prejudice.

2015-SOX-00011 (Pitman XXI)

The Secretary's Findings of March 31, 2015 dismissed the complaint Mr. Pittman filed with OSHA on December 26, 2014 because Mr. Pittman was making essentially the same claims as were made in a prior filing. He claimed that Bank America and forty-three (43) attorneys, mediators and law firms he named as Respondents and co-conspirators, were engaged in an elaborate racketeering scheme that defrauded employees, shareholders, the State of California, and the IRS of millions of dollars. He filed Objections to the Secretary's Findings and a Request for Hearing. He objected to the findings that his claims were untimely, in that he had not been an employee of Bank America in the 180 days before he made his complaint. Mr. Pittman added similar allegations on behalf of other individuals he included as co-complainants.

On October 30, 2015, I ordered Mr. Pittman to file a pre-trial statement that would disclose the specific adverse action he and each of the co-complainants alleged against each of the long list of Respondents. That order specifically warned that I would consider dismissing these claims if no pre-trial statement were filed.

In that pre-trial order, I also reminded Mr. Pittman that, on April 3, 2014, I issued a cease and desist order in OALJ Case No. 2013-SOX-00035, when I dismissed Mr. Pittman's complaint against Bank of America, wherein I found his claims to be frivolous and brought in bad faith, in violation of 29 C.F.R. § 1980.109. These facts required me to exercise my authority to sanction him so that this abusive behavior will not be repeated. Accordingly, Randall Pittman was directed to cease and desist from filing any more complaints against the Respondents that claim or rely on any adverse action Mr. Pittman included in the complaints filed at OSHA and brought here (*i.e.*, Bank of America IV), or in the cases I have referred to as Bank of America I, II and III. I warned him that any further complaints based on those matters are malicious and frivolous.

I also warned him that, in the event he violated the cease and desist order, he would be referred to the U.S. District Court for the Central District of California for sanctions, which may subject him to referral to the U.S. Attorney for felony prosecution for violation of 18 U.S.C. § 1505(b) and/or 18 U.S.C. § 1621(2) (paragraph 2 related to corruption of administrative proceeding, as defined by 18 USC § 1515(b)) and subject him to additional sanctions allowed under SOX.

On October 30, 2015, I ordered Mr. Pittman to file a response here by December 1, 2015 why I should not refer Mr. Pittman to the U.S. District Court for the Central District of California for sanctions, which may subject him to referral to the U.S. Attorney for felony prosecution for violation of 18 U.S.C. § 1505(b) and/or 18 U.S.C. 1621(2) (paragraph 2 related to corruption of administrative proceeding, as defined by 18 USC § 1515(b)), and why he should not be subject to monetary sanctions allowed under SOX. I believe that an award is available to each named respondent separately.[26]

On November 30, 2015, one day before I was going to refer him to the district court for prosecution, Mr. Pittman filed by facsimile to this office his notice of removal of claims against all Respondents to district court, so he could intervene in a pending district court case.

This matter was dismissed on November 30, 2015.

2016-SOX-00020 (Pitman XXII)

The Secretary's Findings of December 24, 2015 dismissed the complaint Mr. Pittman filed with OSHA on December 10, 2015 because Mr. Pittman was making essentially the same claims as were made in a prior filing. He claimed that Ditech Financial, a mortgage servicing company and four law firms were taking bribes from in an elaborate scheme to bribe the attorneys and to defraud the State of California and the IRS. He filed Objections to Secretary's Findings and a Request for Hearing.

On February 16, 2016, I ordered the Mr. Pittman to file a pre-trial statement that would disclose the specific adverse action each of them alleged against each Respondent and an Oder to Show Cause why he should not be referred to the U.S. District Court for the Central District of California for sanctions, which may subject him to referral to the U.S. Attorney for felony prosecution for violation of 18 U.S.C. § 1505(b) and/or 18 U.S.C. § 1621(2) (paragraph 2 related to corruption of administrative proceeding, as defined by 18 USC §1515(b)), and why he should not be subject to additional sanctions allowed under SOX.

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[26] When a respondent prevails, the implementing regulation allows an administrative law judge to "award to the *respondent* a reasonable attorney's fee, not exceeding $1,000" on the request "of the *respondent*." 29 C.F.R. § 1982.109(d)(2) (emphasis added). The regulation thus appears to interpret the statutory provision to include all respondents regardless of whether they are employers. I conclude that, if any respondent makes the required showing that the complaint was frivolous or filed in bad faith, that each respondent may receive an award of reasonable fees not to exceed $1,000. 6 U.S.C. § 1142 (c)(3)(D); 29 C.F.R. § 1982.109(d)(2).

On March 25, 2016, Mr. Pittman filed his notice of removal of claims against all Respondents to district court so he could intervene in a pending district court case. This matter was dismissed on March 29, 2016.

Motions to Add Parties and Consolidate Cases

One of Mr. Pittman's current motions is to add parties and facts to the complaint filed more than a decade after he filed his original complaint at OSHA, and to consolidate his previously dismissed claims with this case. This is merely an attempt to vacate Judge Berlin's August 9, 2012 order in Pittman II that he could not come back to the OALJ once a case has been dismissed here. Judge Berlin's order became the final order of the Secretary and binding on Mr. Pittman and this tribunal when Mr. Pittman failed to appeal the ARB Notice of Denial of Review it issued in September 2012. Mr. Pittman could have, but failed to, appeal that Notice to the U.S. Court of Appeals.

It is also an attempt to circumvent my orders of July 28, 2011; July 12, 2012 (ARB refused his Petition for Review); and my order of April 14, 2014.

Mr. Pittman cannot attempt to litigate the issues he raised in Pittman II here at the OALJ nor can he add any parties he named in Pittman II or any other cases to this case. If Mr. Pittman believes that he can add parties and claims, he must do it in his complaint he should and needs to file in the district court. Mr. Pittman cannot come back to the OALJ on any of his cases which have been dismissed here. The Motion to Add Parties and Consolidate is again denied for the fourth time.

Dismissal of this Claim

Mr. Pittman has sought relief here at the Department of Labor for his termination at Diagnostic Products Corporation and the counsel named as Respondents in this case on at least 5 occasions. He has raised this issue in more than nine cases. He is not entitled to do so a tenth time.

Mr. Pittman claims he wants to proceed with all of his claims "expeditiously as possible." A review of the dozens of cases he has filed here reveal that Mr. Pittman has failed to proceed "expeditiously" with any of these cases. To the contrary, he has repeatedly failed to comply with any of my orders which were issued requiring him to file pretrial statements so these matters could proceed expeditiously. He has demonstrated that he has no intention of proceeding to a hearing on

this or any case at this tribunal or the district court. The closest he came to a trial in at the OALJ was in Pittman VI, when only a few weeks before a final hearing was scheduled to proceed, he filed a motion to opt out to proceed in the district court.

The reason why this and all the other claims he has filed have never been litigated is that Mr. Pittman, and not the hundreds of Respondents he has frivolously named in cases since he filed his first complaint with OSHA in 2005, is the reason for the delay.

More specifically, Mr. Pittman has failed in the last six years to file his claim he filed here as Pittman III in the district court as he promised that he would back in April 2010. It is his dilatory tactics that have delayed this case and clogged the OALJ dockets with his dozens of cases in the last decade. He cannot blame anyone for his inactions and misstatements to this tribunal and the ARB that he intended to proceed with all of his cases in the district court.

Mr. Pittman continues to refuse to follow my orders in this case that he must litigate Pittman III in the district court. His refusal to heed my three orders is a sufficient basis alone to dismiss this case. Mr. Pittman has not alleged nor could he show that he will be prejudiced by the dismissal of this case.

He still has the only option available to him, i.e., to file a complaint in the forum he has selected. If he prevails in the district court, he will have recovered, and this action then would only be duplicitous. If he fails in the district court, this case would be dismissed on the basis of *res judicata* or collateral estoppel. The dismissal of this case will not prejudice Mr. Pittman.

He also has delayed this case and clogged this tribunal docket by filing receptive and frivolous claims that he is entitled to consolidate all of his prior filings that have been dismissed. He refuses to accept the law that he cannot return to this forum once he has opted to proceed in the district court. That he has requested to do so in this case belies his understanding of the law or is an intentional affront to the binding decisions issued by this tribunal.

Mr. Pittman's third Motion to Lift Stay of the Proceedings is nothing more than a thinly disguised attempt to vacate all of the final orders issued in all of his cases except this one. He has had dozens of bites at the apple. It is now time to also dismiss this matter.

As I stated several times in the past, the issue of whether Siemens somehow induced Manatt to fire Mr. Pittman from employment at Manatt was litigated before Judge Torkington in *Pittman v. Siemens Medical Solutions*, OALJ Case No. 2007-SOX-00015 (Pittman III). Judge Torkinton's final order in Pittman III was issued on behalf of the Secretary of Labor dismissing Mr. Pittman's

claims for several reasons, including that he failed to show any of the Respondents were subject to the SOX, and his claims were time barred. He filed a petition for review before the Administrative Review Board. He then filed a Notice of Removal to District Court. On April 21, 2010, the Board granted his motion to withdraw the petition for review, so he could proceed in U.S. District Court.

The doctrine of collateral estoppel, or issue preclusion, is designed to "relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication."[27]

The doctrine applies to administrative actions where "an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate."[28] A trial court has great discretion in the application of the doctrine.[29] I will now exercise my discretion and dismiss this action for Mr. Pittman's willful failure to file Pittman III in the district court and clogging my calendar with his frivolous motions to amend and consolidate his claims.

Respondents also argue they are entitled to dismissal under the doctrine of laches where the complainant acted with undue delay and the respondent suffered prejudice. *Couveau v. Am. Airlines*, 218 F. 3d 1078, 1083 (9th Cir. 2000). Here, Mr. Pittman cannot provide any justification for the decade long delay in prosecuting Pittman III (2007-SOX-00082). Since October 1, 2008, Pittman III has been stayed pending the appeal of Pittman II, including the finding in Pittman II that Manatt did not terminate Pittman for an unlawful reason. Despite this order, Pittman failed to proceed in a timely manner to litigate Pittman II, waiting two and a half years following the stay order before finally moving to set aside the District Court dismissal of Pittman II. By waiting so long to attack the dismissal order in Pittman II, and end the stay in Pittman III, Pittman has prejudiced Respondents. Respondents may now no longer be able to locate witnesses and documents relevant to their defenses because the incidents from which Pittman's claims arise occurred approximately 10 years ago. Even if Respondents are able to locate witnesses, the witnesses are unlikely to

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[27] *Allen v. McCurry*, 449 U.S. 90 (1980).

[28] *United States v. Utah Constr. & Mining Co.*, 384 U.S. 394, 421-22 (1966); *see also Miller v. County of Santa Cruz*, 39 F.3d 1030 (9th Cir. 1994); *Muino v. Fla. Power & Light Co.*, ARB Nos. 06-092, 06-143, 2008 WL 1925639 at *5 (ARB Apr. 2, 2008).

[29] *Disimone v. Browner*, 121 F.3d 1262, 1267 (9th Cir. 1997) (citing *McClain v. Apodaca*, 793 F.2d 1031, 1032-34 and n. 2 (9th Cir.1986)).

have much recollection of the relevant events. Accordingly, Mr. Pittman's claims should be dismissed under the doctrine of laches. I agree with the Respondents.

This case is very similar to *Saportito v. Nextra Energy*, OALJ Case No. 2011-ERA-00007. The *pro se* Complainant in *Saporito* had filed two earlier complaints against an employer, alleging the employer had fired him, blacklisted him, and refused to hire him in retaliation for protected activities prior to his termination. The ALJ finally issued an order sanctioning Saporito after he filed his third complaint regarding the same issues. Although *Saporito* involved whistleblower claims brought under the Energy Reorganization Act, I believe I have the same authority to issue sanctions for cases filed under SOX.

Here, Mr. Pittman has filed dozens of complaints regarding the same issues. I have the authority to impose sanctions in this case, as the ALJ did in *Saporito.* I find the Mr. Pittman's actions to be in bad faith, frivolous, and an abuse of legal and judicial process.

The Administrative Procedure Act (APA) at 5 U.S.C. § 556(d) permits the imposition of a sanction. The APA defines a sanction at 5 U.S.C. §551(10) to include "the whole or part of an agency – (A) prohibition, requirement, limitation, or other condition affecting the freedom of a person; (B) withholding of relief; (C) imposition of a penalty or fine; (D) destruction, taking, seizure, or withholding of property; (E) assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees; (F) requirement, revocation, or suspension of a license; or (G) taking other compulsory or restrictive action."

Proceedings in SOX cases before the Office of Administrative Law Judges must be conducted in accordance with the rules of practice and procedure before the Office of Administrative Law Judges, codified at part 18 of title 29 of the Code of Federal Regulations, and the program regulations published at 29 C.F.R. § 24.107.

The authority and general power of administrative law judges are rooted in the APA. Under the Secretary's regulations at 29 C.F.R. § 18.12(b), an administrative law judge has all powers necessary to conduct fair and impartial hearings, including the power bestowed by § 18.12(b)(10) to, "[w]here applicable[,] take any appropriate action authorized by the FRCP," *i.e*, the Rules of Civil Procedure for the United States District Courts.

I also have an inherent authority to impose sanctions. The Administrative Review Board held that ALJs in ERA

whistleblower cases have some inherent authority to control the cases before them.[30]

The Administrative Review Board has declared that the "right of access to the courts is neither absolute nor unconditional and conditions and restrictions on each person's access are necessary to preserve judicial resources for all other persons."[31] "Conditions and restrictions on each person's access are necessary to preserve the judicial resource for all other persons. Frivolous and vexatious law suits threaten the availability of a well-functioning judiciary to all litigants."[32]

Other courts and judges have found Mr. Pittman to be a vexatious litigant who should be sanctioned for his repetitive filings. Mr. Pittman has been declared to be a vexatious litigant pursuant to California Code of Civil Procedure Section 391(b) and his name appears on the most current Vexatious Litigant List prepared and maintained by the Administrative Office of the Courts, State of California.[33] His actions here require that he be declared a vexatious litigant at the OALJ, and that he be sanctioned for his repeated duplicative filings.

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[30] *See Saporito v. Florida Power & Light Co.*, ARB Nos. 09-009, 010; ALJ No. 2008-ERA-014, slip op. at 2 (Feb. 28, 2011). S*ee also Blodgett v. Tennessee Dep't of Env't & Conservation*, ARB No. 03-138, ALJ No. 2003-CAA-015 (ARB Mar. 22, 2004) (recognizing inherent authority in administrative adjudications); *Secretary of Labor v. Daanen & Janssen, Inc.*, 19 F.M.S.H.R.C. 665 (1997) (same).

[3131] *Saporito v. FP&L Co.*, ARB Case Nos. 09-072, 128 ,129 141, 2009 ERA 1, 6, 9 12 (ARB Apr. 29, 2011) citing *Cofield v. Ala. Pub. Serv. Comm'n,* 936 F.2d 512, 516 (11th Cir.1991) (quoting *In re Green,* 669 F.2d 779, 785 (D.C. Cir. 1981)).

[32] *Miller v. Donald*, 541 F.3d 1091, 1096 (11th Cir. 2008).

[33] Although Mr. Pittman claimed that the orders declaring Randall Pittman a vexatious litigant issued by California Superior Court Judge Solner on May 28, 2010 in Case No. BC 410261 and California Superior Court Judge Shook on May 20, 2010 in Case No. BC43560 were vacated, he never provided any proof that they were vacated. Mr. Pittman's name still appears on the current Vexatious Litigant List prepared and maintained by the Administrative Office of the Courts of California. (http://www.courts.ca.gov/documents/vexlit.pdf)

For the reasons stated above, Mr. Pittman's motions are denied and this matter is dismissed with prejudice.

So Ordered.

Digitally signed by William Dorsey
DN: CN=William Dorsey,
OU=Administrative Law Judge, O=US
DOL Office of Administrative Law
Judges, L=San Francisco, S=CA, C=US
Location: San Francisco CA

William Dorsey
ADMINISTRATIVE LAW JUDGE

San Francisco, California

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within fourteen (14) days of the date of issuance of the administrative law judge's decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: https://dol-appeals.entellitrak.com. If you have any questions or comments, please contact: Boards-EFSR-Help@dol.gov

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-filing; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1980.110(a). Your Petition should identify the legal conclusions or orders to which you object. You may be found to have waived any objections you do not raise specifically. *See* 29 C.F.R. § 1980.110(a).

When you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor. *See* 29 C.F.R. § 1980.110(a).

If filing paper copies, you must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and you may file an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review. If you e-File your petition and opening brief, only one copy need be uploaded.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and may include an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies. If you e-File your responsive brief, only one copy need be uploaded.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies),

not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board. If you e-File your reply brief, only one copy need be uploaded.

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. §§ 1980.109(e) and 1980.110(b). Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. § 1980.110(b).