U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 06 March 2013

CASE NO. 2012-SOX-00005

IN THE MATTER OF

JAMIE TULLEY CANDLER,
Complainant,

vs.

URS CORPORATION,
Respondent,

APPEARANCES:

WES BEARDEN,
Attorney for Complainant

BRITTA ERIN STANTON,
GAIL A. HAYWORTH,
Attorneys for Respondent

BEFORE:

PATRICK M. ROSENOW
Administrative Law Judge

DECISION AND ORDER

PROCEDURAL HISTORY

This matter involves a complaint under the whistleblower protection provisions of the Sarbanes-Oxley Act of 2002 (the Act)[1] and the regulations promulgated thereto,[2] brought by Complainant Jamie Candler against Respondent URS Corporation. Complainant filed a complaint with the Occupational Safety and Health Administration (OSHA), alleging that Respondent engaged in retaliation against her in violation of Section 806 of the Act. OSHA

[1] 18 U.S.C. § 1514A *et seq.*
[2] 29 C.F.R. Part 1980.

dismissed the complaint on 20 Oct 11 and Complainant filed a notice of appeal requesting a de novo hearing before an Administrative Law Judge (ALJ), pursuant to 29 C.F.R. § 1980.106.

Respondent submitted a Motion to Dismiss for Untimely Filing, arguing that Complainant did not file her objections and/or request for hearing within 30 days of receiving OSHA's findings. I denied the Motion because there was a genuine issue of material fact presented by the envelope containing Complainant's request for hearing, on which there were two postmarks: one which was within the 30-day time limit and one which was not. Respondent did not raise timeliness as an issue at hearing or in brief, and I decline to readdress it here *sua sponte*.

On 26 and 27 Jul 12, a hearing was held at which the parties were afforded a full opportunity to call and cross-examine witnesses, offer exhibits, make arguments, and submit post-hearing briefs.[3] At hearing, both parties were represented by counsel.

My decision is based upon the entire record, which consists of the following:[4]

Witness Testimony of:
Complainant
Dev Rastogi
Emily Taylor
Daphne Dieringer
Cliff Hall
Jonathan Dorsey
Vincent Provenza

Exhibits

Complainant's Exhibits 1-13, 20
Respondent's Exhibits 1-59

[3] At the hearing, a dispute arose about the admissibility of certain testimony—statements made by Complainant to audit investigators—which Respondent asserted were protected under attorney-client privilege. Complainant also sought the discovery of a PowerPoint report completed by the investigators. After lengthy discussion, Respondent withdrew its objection to Complainant's testimony about what she told its internal audit investigators and Complainant testified on that subject. Respondent maintained its objections to other witnesses and to the disclosure of the report. Post-hearing, the parties briefed the issues and I found that while Respondent waived its objections as to Complainant's communications with the investigators, it was protected under *Upjohn Co. v. U.S.*, 449 U.S. 383 (1981), from disclosing the content of communications between other employees and the investigators, and the report.

[4] I have reviewed and considered all testimony and exhibits admitted into the record. Reviewing authorities should not infer from my specific citations to some portions of witness testimony and items of evidence that I did not consider those things not specifically mentioned or cited. A detailed summary of the evidence can be found in Appendix 1.

FACTUAL BACKGROUND

Respondent is an engineering firm with offices all over the country. Complainant began working for Respondent as a clerical assistant in 1998. In 2000, she became a staff accountant and was later promoted to Office Financial Manager of the Dallas office. In 2007, the corporate headquarters began an initiative to increase the amount of public sector work the company was performing in Texas. To do so, it instructed its regional business manager for the gulf coast, Vincent Provenza, to find a company for acquisition that could help it execute more state and local work. Lopez Garcia Group (LGG) was at the top of the list as a private company that had acted as a subcontractor on some of Respondent's projects and with which Respondent was familiar.

At that time, Emily Taylor was the Dallas office manager. Complainant was responsible to Taylor as the office financial manager. Provenza asked Taylor to ask the owners of LGG if they were interested in being acquired by Respondent. Taylor approached Dev Rastogi, LGG's chief operating officer, and the acquisition was eventually finalized in August of 2008. However, the LGG office and Respondent's office, along with their respective accounting systems, remained separate until January 2009.

The conversion of LGG's accounting system to Respondent's did not go well. LGG's accounting system was called "Vision," and Respondent used Enterprise 1 (E1). LGG operated less formally than Respondent and conducted its revenue recognition on a monthly basis. Respondent did so on a weekly basis. LGG recognized revenue based on its percent completion of projects. Respondent accrued revenue based on a multiplier or rate tables. LGG organized its contracts differently than Respondent. Finally, there were many projects where both LGG and Respondent had been working for the same client, as the prime contractor or the subcontractor, further confusing the conversion and merging of one system into the other. Both LGG's and Respondent's staffs had to understand the details of and differences between the two accounting systems in order to integrate their projects.

The status of projects that had revenue in excess of contract (REC) was a topic at weekly managers' meetings in the Dallas office. A REC is a temporary instrument within the E1 system that allows the recognition of revenue in excess of contract. A job goes into REC status if Respondent has provided services to a client in excess of the contract value or without a contract. A risk code assigned to each REC reflects the risk to the company that the revenue will not be recovered. A risk code of 10 indicates that there is a high probability that the client will pay the excess amount, while a risk code of 60 indicates a high risk to Employer that the client will not pay. The dollar value of a REC and risk determine who must approve the REC. A REC can be renewed indefinitely.

If a REC is approved, it is shown on the books as if the company has earned it, for at least six months, whether or not the amount has actually been paid to the company. Since the REC is recognized as income, if it is not eventually collected from the client it has to be written off as a loss. If a REC is not approved, the default is for that amount to be written off. Sometimes revenue that has been written off is later recovered.

As LGG projects were consolidated into the E1 system in the first half of 2009, disagreements arose between former LGG staff and Dallas management about whether or not RECs on those projects should be approved. Complainant and Taylor thought some RECs were being submitted for approval that Respondent would be unlikely to recover from its clients.

As a result of the complexity of the LGG acquisition and external economic conditions, the Dallas office's performance suffered in 2008. In 2009, there were concerns about the reliability of the financial information coming out of the Dallas office. The Dallas office did not make its financial plan in either 2009 or 2010.

As office manager, Taylor was expected to successfully integrate the two offices and build a new team. Complainant was responsible for submitting the office performance forecasts to Provenza, who was unsatisfied with their quality and credibility. In February 2009, Provenza told Taylor the Dallas office needed to figure out a way to get invoices out and paid more quickly. In turn, Taylor told Complainant that it was up to her and her team to improve that year or the credibility of both would be lost. Taylor also emailed Provenza at the end of February and stated "I am committed to improving the Dallas DSO [days sales outstanding] problem. In particular, we will focus on the larger revenue projects for the unbilled and billed amounts. This is very, very disappointing for me."[5]

In April of 2009, Rastogi was acting as regional manager. Respondent had a contract worth 22 million dollars with the Denton County Transportation Authority (DCTA), that was about a half million under budget. Taylor told Rastogi that the DCTA was going to allow them to use that money to complete some additional work. However, Taylor then emailed Rastogi again and told her they had a serious problem. There had been a mistake and they were going to need the half million dollars to complete the original contract. Even worse, it would take another two million to do the extra work.

Rastogi organized a weekend meeting and asked Complainant to pull the financials for the project out of the E1 system, which she had some trouble doing. Rastogi began to suspect that Complainant did not fully know how to use the E1 system and that as the lead financial person, she did not fully understand the financials on her office's biggest project.

In the summer of 2009, Daphne Dieringer was the Austin OFM and was sent to the Dallas office to help streamline the LGG integration. Dieringer was originally supposed to stay only for a limited time, but ended up working in the Dallas office until February 2010. She reported to Taylor during that time.

[5] RX-39.

Rastogi sent a 2 Sep 09 email to Provenza that she had "no confidence" in the Dallas financial information.[6] On 17 Sep 09, Rastogi emailed Provenza and proposed terminating both Taylor and Complainant, volunteering to step in as Dallas office manager.[7] On 18 Sep 09, Taylor emailed Provenza and stated that she would be interviewing for a new office financial manager, because Complainant "just can not handle what I need done."[8]

In fall of 2009, Complainant was demoted from her position as office financial manager to a project administrator position, which included a pay cut. Dieringer assumed Complainant's former position as financial manager of the Dallas office. In November 2009, Dieringer completed a formal review of Complainant and gave her an overall rating of "needs improvement."[9] Mike McCloskey signed the review as the "Next Level Manager." During that time, Dieringer was frequently communicating to Taylor her opinion that Complainant had performance problems and Complainant was moved to the Fort Worth office.

On 12 Jan 10, Dieringer put Complainant on a 30-day performance plan that outlined specific objectives and set certain parameters for Complainant's work hours and duties.[10] Complainant accepted the performance plan.

Employer has a Code of Business Conduct and Ethics that encourages employees to make complaints about any suspected violations of its policies. On 5 Feb 10, Taylor called Employer's ethics hotline to report accounting fraud.[11]

On 18 Feb 10, Dieringer gave Complainant her final warning.[12] The final warning reiterated the areas in which Claimant needed to improve and stated that if there was no notable improvement by 12 Mar 10, she would be terminated.

On 19 Feb 10, Taylor emailed Provenza and requested that Dieringer return to the Austin office, which she did.[13] Taylor took over the role as Dallas Financial Administrator. On 23 Feb 10, Taylor emailed Soo Lee in HR, stated that the performance plans issued for Complainant and for Jeff Forester were null and void, and requested they be removed from the personnel files.[14]

In April 2010, Employer conducted an internal audit. Complainant assisted the auditors in the office and was interviewed in connection with the audit. In April 2010, Jonathan Dorsey was hired as the Dallas Office Financial Manager.

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[6] RX-11.
[7] RX-12.
[8] RX-13.
[9] RX-3.
[10] RX-5.
[11] RX-44.
[12] RX-7.
[13] RX-38.
[14] RX-43.

In October 2010, Taylor was terminated. In late fall 2010, Rastogi asked Dorsey to make a staffing matrix. He did so and ranked Complainant number one overall in her class of positions, which included Laci Rosas and Kathleen Smith.[15] On 7 Jan 11, Rastogi completed a staffing matrix, which ranked Complainant last in her class of positions, with Kathleen Smith ranking first.[16] Complainant was terminated on 14 Jan 11, along with Dorsey and eight other people.[17]

ISSUES & POSITIONS OF THE PARTIES

Did Complainant engage in protected activity?

Complainant alleges that her complaints about the RECs were protected communications because they were about conduct that she reasonably believed constituted a violation of SEC rules and laws related to fraud against shareholders. Complainant alleges that she engaged in that protected activity during three different time periods: (1) In early-to-mid 2009, after Respondent acquired LGG, when she made reports to Emily Taylor and other officers, directors, and employees of Respondent regarding legacy LGG projects with no written contracts, failures to process write-down requests in a timely manner, and unsupportable RECs; (2) In February 2010 when she made reports regarding unsupportable RECs to Taylor and other higher-ups after Daphne Dieringer was sent back to the Austin office; and (3) In the spring of 2010 when she reported violations to internal auditors and outside counsel during the internal audit. She argues that the substance of these alleged reports was that Respondent was violating laws related to fraud against its shareholders by perpetuating erroneous RECs, submitting RECs that "should not have been submitted…[b]ecause [Respondent was not] going to get the money,"[18] and generally misrepresenting its revenue to its shareholders.[19]

Respondent avers that Complainant did not engage in protected activity. It argues that she did not express a concern that the integration of LGG violated any law or regulation. Conceding that there were many well-known "issues" with the integration of the two companies, Respondent nonetheless maintains that neither Complainant's observations and statements about those problems nor any concerns Complainant voiced about alleged failures to quickly process write-downs rose to the level of protected activity. Respondent further argues that Complainant's statements about the recoverability of RECs made in managers' meetings, during an audit, or anywhere else were not protected activities, because she did not say anything that could have been interpreted as blowing the whistle, she did not subjectively believe Respondent's actions violated Section 1514A of the Act, and even if she did, her belief would have been objectively

[15] CX-2.
[16] RX-58.
[17] RX-47.
[18] Tr. at p. 191.
[19] Complainant notes that the Fifth Circuit has not explicitly ruled on whether or not materiality is required in order for her belief that Respondent was violating the law to be considered objectively reasonable. For her part, Complainant urges that there is no materiality requirement. *See* FN 35 for a more thorough discussion of this issue.

unreasonable.[20] Finally, Respondent argues that the REC approval process is an internal procedure and reporting non-compliance with company procedures is not protected.

Did Respondent know Complainant engaged in protected activity?

Complainant alleges Respondent had notice of her protected activities, because she made her communications directly to Taylor, Rastogi, Cliff Hall, and others. She argues that it was her activities that drove Taylor to call Respondent's ethics hotline and triggered the internal audit. Respondent vigorously argues that it had no knowledge of Complainant's protected activities.

Was Complainant's protected activity a factor in Respondent's decision to take adverse employment actions against her and if so, would Respondent have taken those same actions even in the absence of the protected activity?

Complainant maintains that her demotion from office financial manager to project accountant and her termination were consequences of her protected activities. She notes that she received consistently positive evaluations up to the point of her protected activities and alleges that Rastogi and Dieringer intentionally created a paper trail to justify her eventual termination. Complainant argues that her poor performance reviews were fabricated by Rastogi and Dieringer as retaliation for her protected activities and to provide a pretext for subsequent discipline. She submits they are not reflective of her actual performance or the opinions of those who actually worked with her regularly.

Respondent answers that the adverse actions were a consequence of Complainant not being skilled enough to perform her duties as OFM after the LGG acquisition and the subsequent merging of the offices. Respondent points to Rastogi's and Dieringer's dissatisfaction with Complainant's performance, along with evidence that Taylor was frustrated by Complainant's performance and thought her demotion was an appropriate response to Complainant's failures in her role as OFM.

When Complainant's job was in jeopardy, in February 2010, Taylor intervened and had Dieringer sent back to Austin. Respondent argues that had this not occurred, Complainant would have been terminated after her Final Warning. Respondent argues that the state of the Dallas office's financials necessitated layoffs, and Complainant was ranked last in her group according to her technical competency, work ethic, behavior, and dependability. Moreover, Complainant was laid off along with nine other employees, and in the year between June 2010 and 2011, almost 30 positions were cut in the Dallas office. Thus, Respondent argues that clear and convincing evidence establishes Complainant would have been demoted and terminated in the absence of her whistleblowing activities.

[20] Respondent also argues that because Complainant bases her allegations on fraud against the shareholders, she must show a reasonable belief in materiality, which she fails to do. *See* Respondent's Brief at p. 31, n. 3.

What damages did Complainant suffer?

Complainant alleges that as a result of her demotion and termination, she suffered financial hardship and physical manifestations of serious stress and anxiety. Respondent maintains that, as a matter of law, Complainant is not entitled to any damages for injury to her reputation, emotional and physical distress, consequential or punitive damages, and that she has failed to prove any other damages to which she is entitled.

LAW

Section 806 of the Act, codified at 18 U.S.C. § 1514A, creates a private cause of action for employees of publicly-traded companies who are retaliated against for engaging in certain protected activities. Section 1514A(a) states, in relevant part:

> No [publicly-traded company] . . . may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment because of any lawful act done by the employee—(1) to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders, when the information or assistance is provided to or the investigation is conducted by… a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct) . . . .[21]

Additionally, such action may not be taken against an employee because of a lawful act done by the employee –

> (2) to file, cause to be filed, testify, participate in, or otherwise assist in a proceeding filed or about to be filed (with any knowledge of the employer) relating to an alleged violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.[22]

Complaints filed under the Act are governed by the burdens of proof set out in the employee protection provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21).[23] To prevail, a complainant must prove by a preponderance that: (1) she engaged in protected activity or conduct; (2) the respondent knew of the protected activity;

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[21] 18 U.S.C. § 1514A(a)(1).
[22] 18 U.S.C. § 1514A(a)(2).
[23] 49 U.S.C. § 42121; 18 U.S.C. § 1514A(b)(2)(C).

(3) she suffered an unfavorable personnel action; and (4) the protected activity was a contributing factor in the unfavorable or adverse action.[24]

Even if a complainant establishes those four elements, the employer may avoid liability if it proves by clear and convincing evidence that it "would have taken the same unfavorable personnel action in the absence of that [protected] behavior."[25] If the employer cannot demonstrate that and the complainant has established that protected activity was a contributing factor to her unfavorable personnel action, then appropriate remedies must be awarded under the Act.[26]

Protected Activity

To show she engaged in protected activity under the Act, a complainant must demonstrate a reasonable belief that the employer's conduct violated "any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders."[27] That reasonable belief must be scrutinized under both a subjective and objective standard.[28] That is, did the complainant sincerely believe that the employer's conduct violated a law enumerated in Section 1514A, and would a reasonable person in the same position as the complainant, with the same knowledge available, have the same belief?[29] An employee's reasonable, albeit mistaken belief that an employer engaged in conduct that violates one of the enumerated categories is protected.[30]

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[24] *See, e.g. Allen v. Administrative Review Bd.*, 514 F.3d 468, 475-76 (5th Cir. 2008).
[25] 49 U.S.C. § 42121(b)(2)(B)(iv).
[26] *See Bechtel v. Competitive Technologies, Inc.*, ARB No. 06-010, ALJ No. 2005-SOX-33 (ARB Mar. 26, 2008).
[27] 18 U.S.C. § 1514A(a)(1); *Sylvester v. Parexel Int'l, LLC*, ARB No. 07-123; ALJ Nos. 2007-SOX-39 and 42, slip op. at 14 (ARB May 25, 2011). Federal courts have reached different conclusions on whether or not fraud against shareholders is a necessary element of any SOX complaint. The Fifth Circuit, whose precedent guides this decision, has not determined whether or not all of the six listed violations under Section 1514A must relate to shareholder fraud. In *Allen*, the court did not have to decide whether shareholder fraud is a requirement of all alleged violations. 514 F.3d 468. In *Hemphill v. Celanese Corp.*, the Northern District of Texas refused to impose a shareholder fraud requirement because it was not clear from the text of the statute. 2010 WL 2473845, ALJ No. 2008-SOX-31. In *Sylvester*, the ARB changed its course from the 2006 *Platone* decision, and held that a complaint of shareholder or investor fraud is not required to establish SOX protected activity.
[28] *Allen*, 514 F.3d at 477; *Melendez v. Exxon Chemicals Americas*, No. 1993-ERA-6 (ARB July 14, 2000).
[29] *Id*., *citing Welch v. Cardinal Bankshares Corp.*, ARB No. 05-081, ALJ No, 2003-SOX-15 (ARB May 31, 2007).
[30] *Id*., *citing Collins v. Beazer Homes USA, Inc.*, 334 F.Supp.2d 1365, 1376 (N.D. Ga. 2004); *Halloum v. Intel Corp.*, ARB No. 04-068 (Jan 31, 2006).

To qualify as a protected activity, a complainant must also communicate such belief that her employer is acting or has acted in violation of the enumerated categories of Section 1514A. A complainant's report must "definitively and specifically" relate to one of the violations listed in Section 1514A.[31] General concerns about business operations are insufficient.[32]

Materiality

There is some dispute about whether or not a materiality standard applies to a complainant's protected activity.[33] With respect to statements about a company's financial condition, "[t]o be protected under the SOX, the whistleblower must ordinarily complain about a material misstatement of fact (or omission)…on which an investor would reasonably rely."[34] That is, for information to be material, there must be "a substantial likelihood that a reasonable shareholder would consider [it] important to his decision to invest."[35] However, "a complainant need not allege the substantive elements of fraud, including materiality, to warrant Section 806 protection; the complainant need only have a reasonable belief that the activity alleged constitutes fraud."[36] Moreover, the ARB has held that an investigation of a whistleblower's claims, whether internal or external, is evidence that they are material.[37]

<u>Knowledge</u>

To establish the element of knowledge, the complainant must show that information was provided to a person with supervisory power over the complainant, not necessarily the same one who made the decision on an adverse personnel action.[38] The respondent may be constructively aware of the protected activity where a supervisor knows about it and "plant[s] the seeds for the Complainant's dismissal, being careful not to taint any other person among the group[.]"[39]

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[31] *Allen* 514 F.3d at 475-76 (*adopting Platone v. FLYi, Inc.*, ARB No. 04-154, ALJ No. 2003-SOX-27 at 17 (ARB Sept. 29, 2006 (*modified by Sylvester*, ARB No. 07-123, slip op. at 14). Although in *Sylvester* the Board stated that the *Platone* "definitively and specifically" requirement "is often applied too strictly," the Fifth Circuit adopted that standard in *Allen.*

[32] *See Gale v. World Financial Group*, ARB No. 06-083, ALJ No. 2006-SOX-43 (ARB May 29, 2008).

[33] The First Circuit in *Day v. Staples, Inc.* found that the complainant's belief was objectively unreasonable because he did not show the respondent's actions were material to shareholders. 555 F.3d 42 (1st Cir. 2009). The court wrote the "materiality requirement means the complainant must believe there is a likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the total mix of information made available." *Id*. at 57, internal citations omitted. The Fourth Circuit has found that nothing in Section 1514A indicates an independent materiality requirement. *See Welch v. Chao*, 536 F.3d 269 (4th Cir. 2008). The Fifth Circuit has not spoken on the issue, but the ARB has recently determined that no materiality threshold exists. *See Sylvester*, ARB No. 07-123; *Menendez v. Halliburton*, ARB Nos. 09-002, -003, ALJ No. 2007-SOX-5 (ARB Sept. 13, 2011).

[34] *Giurovici v. Equinix, Inc.*, ARB No. 07-027, 2008 WL 4462991 at *4 (Sept. 30, 2008).

[35] *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976).

[36] *Menendez v. Halliburton*, ARB Nos. 09-002, -003 (Sept. 13, 2011).

[37] *Id*. (holding also that the fact that the Complainant's protected activities led to one external and two internal investigations was evidence of materiality).

[38] 18 U.S.C. § 1514A(a)(1)(c); *Kester v. Carolina Power & Light Co.*, ARB No. 02-007, slip op. at 9 (ARB Sept. 30, 2003).

[39] *Platone v. Atlantic Coast Airlines*, 2003-SOX-27, slip op. at 26 (ALJ Apr. 30, 2004).

Causation/Nexus

Finally, to prevail on a claim under the whistleblower protections of the Act, the complainant must establish that her protected activity was a contributing factor to the adverse personnel actions experienced. A contributing factor is any one which alone or in combination with other factors, affects in any way the outcome of a decision.[40] Evidence of temporal proximity, pretext, and retaliatory animus may support a finding that protected activity was a contributing factor in a complainant's discharge.[41] A whistleblower does not need to prove her protected activity was a significant, motivating, substantial, or predominant factor in the adverse personnel action taken against her, just a contributing one.[42]

Even if a complainant demonstrates the four prongs of her SOX whistleblower claim, the respondent may prevail by demonstrating with clear and convincing evidence that it would have taken the same unfavorable personnel actions in the absence of the protected activities.[43] Much of the same evidence reviewed with respect to the "contributing factor" element is relevant to the "clear and convincing evidence" element of the SOX whistleblower analysis.[44]

ANALYSIS

The evidentiary record leaves little doubt that the entire concept of RECs presents questions of accounting judgment and reasonable minds could differ as to whether, when, and how such revenue should be recognized. Similarly, the record also shows that the integration of LGG projects into Respondent's accounting system added another dimension of difficulty to that issue. Not every expression of disagreement with an accounting practice qualifies as a protected communication under the Act. A complainant must first show not only that she disagreed with the accounting practice, but also believed it constituted misconduct covered by the Act. However, even if that is the case, she must communicate that belief. She must show that her words and/or actions caused or should have caused the respondent to understand that she was doing more than simply disagreeing or advocating an alternative, but sharing her concern that its actions were within one or more of the categories addressed by the Act.

In this case, the initial question is whether or not, within the context of applying accounting judgment to REC approval during an accounting system migration, Complainant reasonably believed that the REC approvals were within the range of misconduct covered by the Act. The next question is whether or not her communications were such that they did cause or should have caused the recipient to understand the nature of her belief or concern.

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[40] *Allen* at 476, *citing Klopfenstein v. PCC Flow Techs. Holdings, Inc.*, ARB No. 04-149 (May 31, 2006).
[41] *See Kalkunte v. DVI Financial Services, Inc.*, ARB Nos. 05-139, -140, ALJ No. 2004-SOX-56 (ARB Feb. 27, 2009).
[42] *Marano v. Dep't. of Justice*, 2 F.3d 1137, 1140 (Fed. Cir. 1993).
[43] *See Galinsky v. Bank of America Corp.*, ARB No. 11-057, ALJ No. 2011-SOX-10 (ARB Oct. 31, 2012).
[44] *Kalkunte*, ARB Nos. 05-139, -140 (ARB Feb. 27, 2009).

Period 1: 2009 after LGG Acquisition[45]

Protected Activity

The record clearly shows that there was a great deal of turbulence in the office following Respondent's acquisition of LGG. Complainant was preoccupied with the logistics of the LGG acquisition and was overwhelmed at times by the lack of written contracts and the need to address LGG RECs and write-offs in the context of Respondent's accounting policies and system.

Complainant testified that she was on a phone call in which Dave Dimick admitted he had not done due diligence on the LGG acquisition. In early 2009, as the LGG projects were coming into their system, there were a lot of problems: "a lot of overruns, a lot of revenue over contract value."[46] She talked to Taylor, Rastogi, and Dimick about the RECs, and was told to take the next six months to study and find out "what the real situation is with them."[47] She also testified that LGG project managers were frustrated to see projects on which they'd requested write-offs transferred over to E1 without the write-offs being taken. "So they converted over to E1 that revenue and then [wrote] down and then accepted into RECs, the revenue taken again."[48]

During this period, Complainant was expressing her concerns with the write-offs to Taylor, her immediate supervisor. Taylor in turn brought some of these concerns to Vincent Provenza, who told her that Rastogi was the expert on the LGG contracts, and they should defer to her opinions on recoverability. Provenza also testified that he looked into the particular projects on which Taylor expressed concern and was not convinced there were any problems. He noted that the conversion problems included many projects on which LGG and Respondent were both working for the same client, that the staffs from both companies were not as diligent or skilled as he hoped they would be, and that there was an "us versus them" mentality that hampered resolution of the problems.

When Dieringer was sent to help with the situation in the summer of 2009, Complainant told her about the problems. The conflict began when Complainant tried to start taking write-offs on contracts on which it appeared to her that no revenue would be recovered, but Rastogi believed they could get the money. Complainant testified that she reached her opinion on recoverability by talking to several project managers, who told her they would not be able to recover. She testified that after Rastogi told her to approve the RECs, she did, documenting that per Rastogi, they would recover the money. Dieringer explained the apparent inconsistency between Rastogi and the project managers with her testimony that while the project managers were hesitant to go back and ask clients for more money, Rastogi was "relentless."[49] Complainant described her disagreements with Rastogi over the RECs and her disbelief that the money Rastogi said was recoverable actually was. She testified that was the point at which she realized Respondent was fraudulently misrepresenting its revenue by bringing contracts over from LGG's system to E1, approving RECs on them, and then having to write off that revenue later.

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[45] In her brief, Complainant divided her alleged protected communications into three periods.
[46] Tr. at 156.
[47] *Id*. at 158.
[48] *Id*. at 159.
[49] Tr. at 622.

On the other hand, she did not testify that she thought Provenza's directives to defer to Rastogi suggested fraud. Complainant testified that she had conversations with Dieringer about the RECs in the summer of 2009, as part of their mission to review the Dallas financials and get them organized and accurate, but did not report improper actions or fraud to Dieringer. Taylor characterized the conversion as "a great mess," rather than anything resembling shareholder fraud and testified that in early 2009, rather than using the word "fraud," Complainant's position was that "it doesn't add up, this doesn't make sense, and I'm bringing it to your attention."[50]

While Respondent may have understood that Complainant disagreed with recognizing revenue on certain projects, she was consistently characterized as having one of several possible opinions and understandings of the actual risk to Respondent. Her actions did not belie a subjective belief that Provenza or Rastogi's intent was to deceive or defraud. Complainant herself acted as the first or second line of approval for many of the RECs in question.

It is certainly possible for Complainant to have harbored concerns about possible fraud without voicing them as such, and Complainant testified that she did not make any complaints until Dieringer left because she was "too scared." On the other hand, her actions and statements are circumstantial evidence of her state of mind.

Complainant, along with the other witnesses I observed, appeared to be testifying as candidly and honestly as possible, relating the facts as she best recalled them. Testimony must be weighed in the context of being made in hindsight and through the prism of the issues in this hearing. Thus, I give significant weight to the circumstantial evidence of what Complainant believed at the time.

I do not find that Complainant was able to establish by a preponderance of the evidence that during the period from January 2009 to February 2010, she believed or was concerned that the REC approvals constituted fraud or were otherwise within the misconduct covered by the Act. The weight of the evidence shows that she was immersed in the LGG acquisition, the subsequent systemic problems the office was experiencing in merging with LGG, and disagreed with how the RECs were being handled.

Moreover, even if Complainant did have the requisite state of mind, the preponderance of the evidence is that she did not engage in any communications that did or should have led Respondent to understand the level of her concerns.

Provenza, Rastogi, and Dieringer testified credibly that they never thought Complainant was blowing the whistle to them about the RECs or anything else during this period. Dimick stated in an affidavit that Complainant never communicated to him that Respondent was fraudulently misstating revenue.[51]

While it is not necessary for Complainant to use the specific term fraud or cite the Act, she needed to do enough for someone to understand she was "blowing a whistle." The preponderance of the evidence is that the acquisition did not go smoothly. Because the two different companies recognized revenue differently and LGG did not have a REC process for its projects, the task was much more complex and difficult than anyone anticipated. Complainant

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[50] Tr. at 453.
[51] RX-46.

struggled with her role during this time and expressed her concerns about revenue recognition discrepancies, but never communicated that she thought Respondent was committing fraud against its shareholders. Moreover, Complainant was one of several people expressing dissatisfaction with the way the acquisition had gone. Her complaints were not distinctive enough from the others' to suggest that she was blowing the whistle on anything.

Nexus

If, however, I had found Complainant's communications about the RECs constituted protected activity, I would still have to determine whether or not they were a factor in the adverse actions (demotion, performance plan, and final warning) taken against her during this time frame.

The clear weight of evidence shows that her demotion, performance plan, and final warning were a result of her general job performance rather than specifically a result of any REC-related issues. However, her general job performance included working on RECs. Consequently, the record does establish that discussion about RECs would have played a role, however minimal, in the adverse actions.

That raises the question of whether or not the record shows by clear and convincing evidence that Respondent would have still taken the same adverse actions even in the absence of the RECs. I find that it does.

The evidence reflects a widely-held belief that Complainant's skill set was not up to the task of the OFM role, given the complexities of the acquisition and the concomitant sudden increase in personnel, projects, and responsibilities.[52]

In February 2009, emails from Taylor reflect the deteriorating quality of work coming out of the Dallas office, and "the issues…getting invoices corrected and accruing revenue properly for the LGG projects."[53] Taylor apologized to Provenza profusely for "process issues" in Dallas, warned Complainant that the Dallas office's "terrible DSO" threatened their credibility, and told her "I am putting this on you and your team's shoulders to improve this year."[54]

In April 2009, miscalculations on the DCTA project led to it being overrun by two million dollars, a mistake in which Complainant was implicated as OFM. Rastogi testified that in the aftermath of this error, it became clear to her that Complainant did not have a firm grasp of the E1 system and was unable to produce the correct financials. She also testified that instead of working within E1 and using its data to make sure the numbers were correct, Complainant and her team were working off a spreadsheet that contained mathematical errors. Rastogi also stated that in her 30-year career, she had never had to tell a client about a mistake of that magnitude.

[52] Complainant argued that since her previous evaluations were all positive, the dispute over the RECs must account for the change in evaluations. However, I find the weight of the evidence shows it is much more likely due to the increased level of demands placed upon her and the new working environment.
[53] RX-24.
[54] *Id*.

Dave Dimick testified that he was "baffled" at Complainant's promotion to OFM, because she did not seem to understand even very fundamental things about Respondent's financial processes.

Complainant herself testified that she was not surprised she was demoted, that she occasionally missed deadlines, and was late on monthly reports. She also testified that she thought things improved after her demotion and her move to the Fort Worth office, once she and Dieringer interacted less often.

Dieringer's November 2009 review of Complainant was similarly rooted in Complainant's sub-par performance as OFM during the acquisition process. Though there were some indications the performance review was not undertaken according to standard internal protocol—Dieringer had only been overseeing Complainant for two months, Mike McCloskey signed the reviews instead of Taylor—the evidence provides alternative explanations for the discrepancies.

For example, Complainant characterized the review as the last piece of paperwork for her demotion. Dieringer testified that she had not wanted to complete the performance reviews for the Dallas office, but that Taylor asked her to do it. She also showed Taylor her assessments, and Taylor told her they were fine. McCloskey signed the reviews instead of Taylor, Dieringer explained, because he was her supervisor in Austin and she had not officially transferred to the Dallas office.

Dieringer testified that she put Complainant on a performance plan in January 2010 because even after her demotion, Complainant was not meeting the basic functions of her PA job. Dieringer had expected her to come up to speed very quickly after the demotion, because Complainant should have already known how to do the job. The DSO for the Dallas office was still too high, Complainant was not getting invoices out on time, and her work schedule was not consistent. Merridyth Falgout corroborated Dieringer's testimony on Complainant's performance after her demotion, saying that she did not have the required attention to detail to get the jobs set up properly in the system.

There was an inconsistency in Dieringer and Taylor's testimony about whether or not Taylor was informed that Dieringer was putting Complainant on a performance plan and Complainant seemed to have been genuinely shocked at that turn of events. That does not suggest a pretextual motive for the adverse action, however. Rather, the evidence shows that Dieringer's working relationship with Taylor was dysfunctional at the time, and not because Complainant had blown a whistle.

Instead of constituting adverse actions in response to protected activity, the performance plan and subsequent final warning seem to have been the catalysts for Complainant's hardening position against Respondent, and Taylor's intervention to stop Dieringer's influence in the Dallas office. There is little doubt that Dieringer's final warning to Complainant galvanized Taylor to regain more control of the Dallas office personnel matters. The day after Dieringer issued the final warning, Taylor emailed Provenza and Dieringer was told to return to the Austin office.[55]

[55] RX-37.

Complainant was taken off the performance plan and for the first time in months she and Taylor began to work closely together again.

<u>Protected Activity in Period 2 and 3: February through April 2010 and During Internal Audit</u>[56]

Protected Activity

Complainant's alleged second period of protected activity took place after Dieringer was sent back to Austin at Taylor's behest and Complainant was taken off the performance plan Dieringer had put in place. The third period comprises the internal audit.

Once Dieringer was out of the office, Complainant's concerns about the RECs from LGG projects escalated. While she had reluctantly accepted the directive to defer to Rastogi, her experiences under Dieringer elevated her mistrust of the decisions to approve some of the LGG legacy project RECs. Complainant was reporting again to Taylor and the two of them were grappling with write-downs they thought should have been taken in 2009.

Complainant began reviewing RECs again and reported that the project managers were frustrated because those things being treated as revenue adjustments were clearly write-offs, but had been pushed through while Dieringer was acting as OFM. Complainant told Taylor that some RECs were improperly pushed through after she was demoted. Complainant testified that she brought up the improper RECs during managers' meetings at this time, explaining why it was important, "[b]ecause it was false revenue. [They were] not going to get it back – I mean, we're not going to get paid on it."[57] She testified that while Rastogi was not a regular attendee at these meetings, she was at several in which she raised her concerns about the propriety of some of the RECs. However, Complainant conceded that she did not blow the whistle to Rastogi.

She credibly testified as to her subjective belief, which was bolstered by Taylor's shared opinion about the improperly-approved RECs on City of Dallas projects. Moreover, if Complainant was less adept at analyzing the financial data, as Respondent seems to suggest in explaining the adverse actions, she may have been more likely to suspect impropriety than someone with more expertise.

Substantial evidence was presented to show that reasonable accounting minds could vary on whether or not the RECs were proper. Taylor appears to have shared Complainant's belief that certain RECs were fraudulent. Jonathan Dorsey testified that he thought Rastogi was wrong on the City of Dallas pump station project and that her decision to approve the REC was outside the lines where reasonable minds could differ, but he did not think it rose to financial wrongdoing. Dieringer relied on the fact that Rastogi was "relentless" in trying to recover money from clients and was reluctant to accept write-downs. That the Dallas office did have to take significant write-downs in 2010 gives some weight to the reasonableness of Complainant's concerns.

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[56] Though Complainant separated these two periods in her brief, they overlapped and will be analyzed in a continuous time frame.

[57] Tr. at 192-93.

Respondent argues that the write-downs it was forced to take were immaterial, but the Board has virtually eliminated materiality as an element and in any event has ruled that the fact that the internal audit was conducted in response to the protected communication establishes materiality.[58]

Consequently, I find Complainant was able to carry her burden and show her concern that the approval of some RECs constituted fraud against Respondent's shareholders was both honestly held and subjectively reasonable. That raises the question of whether or not she communicated them.

While Taylor's call to the ethics hotline was not a protected communication by Complainant, the record shows that people in the Dallas office, including her superiors, understood that both Complainant and Taylor were alleging financial improprieties. Cliff Hall testified that he understood that the audit was triggered by allegations from both Complainant and Taylor, and that the entire office was aware that those two would be involved in "anything that was financially-related." Merridyth Falgout testified that she was confused by Taylor and Complainant alleging improprieties on RECs they had participated in reviewing and approving.

After Taylor called the ethics hotline and precipitated the internal audit, Complainant testified that she made more protected communications to Respondent's attorneys and auditors. She stated that she explained her concerns that revenue had been improperly recognized after the acquisition and that she provided assistance to the auditors throughout the audit by providing them data on the Dallas office's financials.

Notwithstanding some testimony that some senior managers did not know Complainant had communicated any concerns about potential fraud in the approval of RECs, the weight of the evidence is that Respondent was or should have been aware of her protected activity.

The evidence supports Complainant's position that she made protected communications to her superiors about improperly submitted and approved RECs during these periods. The question then becomes whether or not Complainant's termination was related to those communications.

Nexus

In light of Respondent's position that Complainant's termination was based on a matrix that included her general job performance, and that REC approvals were part of her job, there can be little question that her complaints about RECs were at least a part of the information upon which her termination was based. Therefore, the ultimate question is whether or not the record establishes by clear and convincing evidence that Respondent would have terminated her even in the absence of her statements about RECs.

Complainant was terminated in January 2011, on the same day as Dorsey and eight other employees. Respondent contends—and Rastogi and Provenza testified credibly—that Complainant was included in the reduction in force as a result of financial difficulties in the Dallas office and her ranking in comparison to her peers. Complainant contends, however, that the matrix-based ranking was unfairly skewed against her because of her protected activity and

[58] *See Menendez*, ARB Nos. 09-002, -003 (Sept. 13, 2011).

that she was really terminated because Rastogi hated her and because of the RECs. Indeed, there are some inconsistencies in the record regarding the creation of the matrix and Complainant's inclusion in the RIF. The evidence that most suggests a pretext to Complainant's termination are the competing matrices created by Dorsey and Rastogi.[59] While Dorsey ranked Complainant first in her class (which included Rosas and Smith), Rastogi ranked Complainant last. Because of the subjective nature of the reviewing process, some variance would be expected. However, Rastogi's matrix was identical to Dorsey's in other respects, down to the decimal points. Rastogi testified that she did not consult Dorsey's matrix when making her own, because she already knew he was going to be included in the RIF, which is a credible explanation. Comparing the two matrices, however, suggests she did consult his for the categories in which she was not planning any RIFs. In any case, it does not make a significant difference whether Rastogi came up with her scores independently or did in fact simply revise Dorsey's matrix to make sure Complainant ranked last. The pertinent question is why Rastogi ranked Complainant last and if clear and convincing evidence shows she would have made the same rankings in the absence of Complainant's protected communications.

Complainant testified that Rastogi hated her and the record shows that there was a great deal of discord in the office between the LGG and Respondent "camps." Provenza's testimony was particularly credible as a senior manager who didn't a have a bias toward one camp or the other, but just expected the staff to work together and get the job done properly. He testified that he sent Dieringer in to help clean up the accounting mess, but had to move her back out when no one could get along with each other. He expressed frustration that the staffs never were able to work together, noted the poor performance of the office, and observed that the RIF was a normal consequence of the performance. There is no real disagreement that performance and morale suffered after the LGG acquisition. The Dallas office failed to make its plan in 2009 or 2010.

Complainant was one of ten employees let go. About thirty people in Dallas lost their jobs between then and June 2011.[60] Cliff Hall testified that part of the reason for this was that there was not enough work for the people who were there and that some personnel needed to be cut. Of course, even if the reason for the RIF was legitimate, for Respondent to escape liability, the record must still show by clear and convincing evidence that she would have been included in the RIF, even without her protected communications.

Rastogi testified about Complainant's problems in general and the DCTA specifically, saying she was appalled that the lead financial person did not understand the financials on the biggest project they had in the office. Rastogi's testimony must be weighed in light of other evidence that indicates she was part of the fractured office environment and may have had a bias against Complainant (for reasons that may or may not have been related to any protected communications).

On the other hand, Dieringer, along with Provenza, was placed by Hall in the neutral camp of people just trying to get along and make the acquisition work. I found her testimony and statements to be highly probative. Dieringer discovered Complainant had been relying on other people to run routine reports, but it would never be the right report. She conceded that the system was difficult, but noted that even though Complainant had been using it for many years and

[59] CX-2, 3; RX-58.
[60] RX-40, 47.

should have gotten it by then, there were basic things that Complainant just didn't have a handle on. She gave examples of missed insurance requirements that Complainant should have thought were a big deal and incorrect charging of overhead expenses to the credit card. She said did not find Complainant to be organized when she was the office financial manager or to even understand the PA's role.

Dieringer described talking to Taylor about her concerns with Complainant and both of them going to Rastogi to come up with a plan. She testified that in early September, 2009, she recommended letting Complainant go, but both Taylor and Rastogi were trying to figure out a way to make it work without firing Complainant. Dieringer said that she felt that if after all those years, Complainant didn't know how to do it, she probably wasn't going to.

Dorsey had positive things to say about Complainant. He noted that the conversion of the LGG projects to Respondent's system was horribly mismanaged and led to the Dallas office having to take a number of write-offs. He said he was probably perceived to be in the "Taylor camp" and was let go for a combination of financial and personal reasons. While both Hall and Dorsey testified that they would not have included Complainant in the January 2011 RIF, neither of them specifically indicated they thought Complainant's protected activity contributed to the decision.

Dimick said Complainant's work performance was terrible and she didn't seem to understand even very fundamental things about their processes. He admitted that it generally takes even the brightest people some time to come up to speed, but still found the fact that Complainant was promoted to OFM to be very odd and was continually baffled at her lack of understanding of even the most basic aspects of their processes. He assumed she had been working with them for a very long time and said he was shocked that she seemed to be so "inadequately, woefully, hopelessly flummoxed, confused… and dysfunctional" as it pertained to her role in the process.[61]

Falgout observed that although Complainant is a very nice person, she lacks the ability to supervise people. Falgout's experience was that Complainant's work was not up to par and she would turn things in late, incomplete, and of poor quality. She said she processed Complainant's revenue adjustments every month and they would be rife with errors or simply missing.

Also highly probative is the 18 Sep 09 email from Taylor to Provenza in which she apologizes for the quality of a chart she sent and said she was looking for a new office financial administrator, since Complainant just could not handle what she needed done. Evidence was offered that Taylor was misled about the project managers' opinions of Complainant's work. Even if it were true, however, it would not seem to be relevant in this instance in light of the numerous other examples of Complainant's subpar performance.

Considering the entire record, I find that clear and convincing evidence shows Complainant would have been rated low on the matrix and terminated in the RIF, even if she had never made her protected communication. Her matrix score may or may not have been accurate. Her treatment may or may not have been a consequence of being in the "wrong camp" at the wrong time. It may or may not have been fundamentally fair. But I find that the record shows by

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[61] RX-59 at p. 9.

clear and convincing evidence that it would have happened, even if she had never mentioned to anyone that the RECs could constitute accounting misconduct under the Act.

For the reasons stated in this Opinion, the complaint is **DENIED.**

Digitally signed by PATRICK ROSENOW
DN: CN=PATRICK ROSENOW, OU=ADMINISTRATIVE LAW JUDGE, O=Office of Administrative Law Judges, L=Covington, S=LA, C=US
Location: Covington LA

PATRICK M. ROSENOW
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within ten (10) business days of the date of the administrative law judge's decision. *See* 29 C.F.R. § 1980.110(a). The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington, DC 20210. In addition to filing your Petition for Review with the Board at the foregoing address, an electronic copy of the Petition may be filed by e-mail with the Board, to the attention of the Clerk of the Board, at the following e-mail address: ARB-Correspondence@dol.gov.

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-mail communication; 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(c). Your Petition must specifically identify the findings, conclusions or orders to which you object. Generally, you waive any objections you do not raise specifically. *See* 29 C.F.R. § 1980.110(a).

At the time 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. The Petition must also be served on the Assistant Secretary, Occupational Safety and Health Administration and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

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: (1) an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and (2) 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.

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: (1) 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 (2) 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, unless the responding party expressly stipulates in writing to the adequacy of the appendix submitted by the petitioning party.

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 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(c). Even if you do file a Petition, 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 after the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. §§ 1980.109(c) and 1980.110(a) and (b).

APPENDIX 1: EVIDENTIARY SUMMARY

***Complainant testified at hearing in pertinent part*:**[62]

Respondent is a publicly-traded engineering and architectural firm and she began working for it in October 1998 as a receptionist. She quickly started doing other duties and left the receptionist desk in 1999 or 2000. She was promoted to be what would become the office financial manager (OFM), a position formally created in 2002. The OFM assists the office manager in running the office finances, monitoring projects and staff, and assists in forecasting and budgeting for the office. She had done some of those duties prior to being promoted.

Part of her job included revenue reporting. A REC is "revenue in excess of contract." It would be used if a project went over budget via expansion, or used different levels of employees than were originally budgeted. If something happened that required someone with greater expertise, more revenue would be earned. The client does not always agree and if the work has already been started, they take a revenue loss. If the work hasn't been started and they are still within the budget, then it's no loss.

The accounting system used by Respondent is called Enterprise 1 (E1). They converted to it in 2002. E1 runs revenue daily. The RECs are run through the system every weekend, on Friday or Saturday. If a project has gone over budget, that revenue is automatically written down over the weekend. On Sundays, she would go in and run the weekly reports, including the REC report, and could see what revenue had been written down. That report was distributed to the project financial assistants/project accountants (PAs), and they would work with the project managers to see what was recoverable. If there was documentation, they would go into E1 and pull up the electronic REC form, complete it, and assign how much revenue they wanted. Just because they went over $10,000 doesn't mean they would get all $10,000. The client might say it would give only $8,000, so that is what the forms and documentation would reflect.

Then they would assign a risk code, type up a brief explanation, attach electronic documentation to support the REC, and submit it for her signature or electronic approval. Based on a risk code or a dollar amount, the form might go up to different levels for approval, but they always went to a regional controller for a final approval. The next level would be to the regional manager and then up to the regional business unit (RBU) manager. Sometimes it would simultaneously go to several people. Some of them went all the way to Marty Lehey, who was the divisional controller's supervisor.

The project accountant works with the project manager directly. Project managers interact with the clients. The risk codes are 10 through 60, with 10 being the least risky, and 60 being the most risky. An accounting directive gave the situations in which to assign a code. The least risky code would be when they had a signed contract, when it's basically just in the system for updating in E1, ready for a work authorization form. 60 is when there is nothing in writing yet, and it's a client they don't have a good relationship with yet, maybe a new client. There's no history yet. Whether a risk code is a 10 or a 60, the system still recognizes the same amount, not just a portion. A REC should not be submitted where they want to claim the revenue but a client says

[62] Tr. 135-298; 743-751; RX-30.

it’s not going to pay. If a client says it’s not going to pay, then they shouldn’t recognize the revenue.

She worked for three different office managers in her role as OFM. The first was Dave Kasten, then Roxanne Pillard, then Emily Taylor. She began working with Taylor officially as office manager in 2002. From 2002 to the beginning of 2009, she reported to Taylor. Taylor reported to Bill Corbett, Vincent Provenza, and then Dev Rastogi. Taylor did her yearly performance evaluations during that time. From the beginning of her employment to 2008, all of her performance reviews were positive—either meeting or exceeding expectations.

The manager who is giving the review has an opportunity to get input from people the employee works with on a daily basis. In 2005, she got a mid-year review from Taylor, which she had never had before. It said basically, “hey, we’re having these issues; these are the things I need you to work on.” It went over a plan on how to do that and how she or the regional controller could help her improve. She has never had a mid-year review beyond that.

In her 2005 mid-year review, there were some issues that Taylor brought to her attention. She heard about issues with her routine or schedule at the workplace throughout her employment with Respondent. She recalls that Taylor told her she needed to work on her reporting structure, and on being more strict with her staff about expectations, dress code, and schedules. She recalls that Taylor told her she wanted her to provide more information in her reports and format them differently.

It surprises her that the review was in her personnel file, because in 2005 she had gone down to Louisiana to help after Hurricane Katrina. When she came back she had received her 2005 year review and it was really good. So she went in and asked to see if her mid-year review was in her file and it was not. But now it is. Respondent’s Exhibit 27, the 2005 mid-year review, looks like it has a lot of typos and extra notes, mark-ups. It looks like a rough draft. On the other reviews in her personnel file, there are rarely any handwritten comments. Her follow-up 2005 review was positive. Her 2006-2008 reviews were good.

In 2007, Respondent began talks of integrating LGG into its operation. She was part of the small group of people at Respondent that was aware of it and sat in some meetings about it. She hadn’t seen financials from LGG during the acquisition time. It was an issue for her and Taylor as far as financial planning and they were not given information about its numbers. She didn’t really start seeing their numbers until they came into their system in January 2009.

There was an acquisition team at Respondent, and during one of the conference calls, it was asked if due diligence of LGG had been done. Dave Dimick admitted he had not done detailed due diligence and she believes it was Martin Tanzer on the phone who was upset. Vincent Provenza’s response was they didn’t need to worry about it; they had contracts that were bigger than the sale.

She was not a part of the formal acquisition team for the merger with LGG. She does not know what type of due diligence was actually completed nor did she actually see the acquisition documents.

The acquisition finalized in August 2008. In the beginning, Respondent's office and LGG's office were in different locations and there was a lot of bouncing back and forth between the two. She split her time between the offices, training people and sitting in meetings about the organization, figuring out who was going to go where, and setting up E1 accounts for people. LGG used Vision, and she never had any access to that. In January 2009, they started entering all new projects into E1. RECs came into the electronic system in February. LGG personnel started submitting RECs on those projects immediately.

The office was much larger in 2009 than it had been prior to the acquisition of LGG; it about doubled in size. The reporting structure didn't change after the merger. Taylor reported to Rastogi. Rastogi reported to Provenza and she thinks he reported directly to the president. In January 2009, they were on E1 but the conversion was not complete. They did not have a lot of contracts in place in the system. There were a lot of overruns, a lot of revenue over contract value. There were some project problems. A lot of the MEP projects had some serious issues that needed to be corrected and were going to cost money. The multipliers weren't correct and had to be fixed.

Going into the acquisition, everyone was excited and wanted to make it work. Some people may have had the perception that she was in Taylor's camp, but she really wanted to work with everyone. She thinks Rastogi disliked her because she didn't do everything she asked her to, like she was used to. Rastogi managed by intimidation.

Doing a huge conversion like this, there will be some human error, but she thinks there were definitely some issues with the revenue in the Vision system coming over to the E1 system. She talked to Taylor about this. She raised some concerns with Rastogi about some of the RECs and she talked to Dimick about the RECs a lot. She and Dimick talked extensively about the LGG RECs because they came onto the system early and URS had not been given their financial information, so they didn't know what to do with them and didn't know the projects. All they saw were a bunch of missing contract values and overruns. They discussed stuff in managers' meetings. Dimick told her in the beginning when the RECs came through just to push them—get them in the system and take the next six months while they're in there to study them, learn them, and find out what the real situation is with them.

She was working with her PAs and several project managers to figure out what the story was with the RECs. Several LGG project managers were frustrated because they had requested those write-offs be taken in the Vision system for a long time, and they weren't. So they converted that revenue over to E1 and then wrote it down, then accepted it into RECs, and the revenue was taken again. There were several contract issues with developers who had gone under, so they were not only not going to get a contract, they were not going to get any revenue. Several just didn't want to sign a contract because that wasn't how they'd done business with LGG. A good percentage of these contracts looked like no revenue was going to be recognized from them, so she tried to start taking write-offs during that time. She submitted them to Taylor. Rastogi was also looking at them because they were LGG revenue adjustments and they had been told by Provenza that she was the decision-maker on the LGG projects.

One problem with a REC would come up if there were zero dollars in contract value for a project. That was because the systems were different. There were occasions when the URS computer system would show that a sub-project or task had no budget when it was actually just in the wrong area. She saw that sometimes for LGG projects. Some of the LGG projects did not have written contracts. Those needed to be dealt with on a case-by-case basis. The REC process went live before they anticipated it, too. LGG was run less formally than URS.

Rastogi told them they could get the money, but she did not think they could, because she had actually talked to several project managers who told her otherwise. She is talking about hundreds of thousands of dollars. She knows several of the projects that had RECs she didn't agree with were for DFW Airport. There was an issue with the City of Dallas pump station, one with Temecula Fort Sill hospital project, several little ones, a lot of the historical projects, and then almost all of the Richard Carson projects. Temecula Fort Sill was a Carson project. He simply overran projects, and he wasn't big on going back to a client.

Ballard was a TCQ project. Robert Melton was the PM on the Ballard project. He told her in September 2009 that the subs got the backup documentation late and the invoice wouldn't post until the next week. She can't say if TCQ was complaining about not being invoiced timely on that project in particular. TCQ does not look at the backup of subs to give preapproval. They approve the dollar amount and what was coming in, but they had no way of approving based on documentation. She cannot control the fact that the subcontractor sent his documentation to Melton late. It was part of her job to put pressure on the project managers to make sure they got information to her in time.

There were a lot of meetings to determine the scope for DCTA. They weren't just going to call and say they needed two million dollars. They needed documentation to support that. It didn't reach a regional manager very often, mainly project managers and an office manager would get involved in asking clients for more money for projects. At times a regional manager would be interested in getting the additional funds.

Roger Bingham was a project manager who told her they weren't going to get paid on the DFW Airport project. Rastogi said they would get money on that. When those RECs were submitted, she can't say if she did or didn't push them through. Some of them she probably did because she was told Rastogi was the expert with the knowledge. But she always put notes in there because she knew there was a level of approval after her. She would state that per Rastogi, she is claiming they would get the money back, and then attach whatever documentation she had.

Taylor was involved in these discussions with Rastogi, and they were discussed in managers' meetings. Senior management was the department heads—Cliff Hall, Lisa Pyles, Geraldo Del Lapina, and the facilities guy, whose name she can't remember.

Taylor told her to keep looking through things and that she would start working on it and discussing it with others above her. She believes Taylor talked to Rastogi about some issues. She talked to Rastogi a little bit about the RECs she didn't feel comfortable approving. She believes there were a few she flatly refused to approve.

There was a conference call between Taylor and Provenza she sat in on. At the time Provenza was the regional business unit (RBU) manager. Taylor told him they had some serious issues with the LGG project, she was very concerned, and they were going to have a lot of write-downs they needed to figure out. His response was that Rastogi was the expert on those projects, they needed to rely on her, and Taylor's career rode on the acquisition being successful.

Rastogi monitored the reports and could see what was not getting approved. Rastogi put the heat on her and was very involved. Every week, they collected comments on the status of each REC. She would say, "this PM is stating there is no money. They have talked to the client. There is no money, this is a write-off." Rastogi got those reports and would see her comments. Rastogi would say she didn't think those were write-offs and they had to do a REC, and that's what she (Complainant) thought was wrong and what she communicated to Taylor.

At the time, Taylor was her immediate supervisor. Her understanding was that her ethical concerns should be reported to her immediate supervisor and she told Taylor there were some revenue recognition issues with the LGG projects: conversion issues of revenue that should not have been brought over into E1 that they were going to have to write down. It was misrepresentation or fraud of revenue. It was taking revenue in one system and converting it to another as a write-off. It's illegal. She recognized that none of it was going to be realized.

She complained about irregularities related to past LGG projects in the REC forms. She complained about REC forms making things appear more profitable. She approved RECs up until her demotion, sometime in September. She was responsible for processing REC forms for Taylor until at least June of 2009. She would not push some RECs through. Since she was not the final approver, she may have put through some knowing she wouldn't be the final approver. She would not approve RECs she believed were improper or had the wrong risk code. She can give clients whose RECs she thinks were inappropriately approved, but can't give specific RECs. She cannot say that there was money collected from the City of Dallas in revenue in excess of contract that the city actually paid. Nor does she have knowledge of the collections with respect to the Temecula project.

During the time she was office financial manager, she was not the only first line of approval. When Dieringer was there, she had dual approval and was able to do REC approvals.

Daphne Dieringer was the Austin counterpart for many years, the Austin finance manager. She was told Dieringer was coming to assist her in setting up processes since they were now a large office. She was also told that when Dieringer took over the Austin office, there were a lot of procedural issues and it took two years to really get everything lined up and flowing well, so why should they have it take that long when they had someone who could come assist her and speed it up?

Dieringer came over in mid-July, 2009. They had traveled to El Paso together to work on a project before and worked fairly well together. Dieringer arrived and very quickly started being very critical of what she was doing in her position as the finance manager. Their relationship deteriorated within weeks. During that time, she was still reporting the REC issues to Taylor and the above-mentioned people.

Prior to the move into the same office, her relationship with Rastogi was fine. After they moved in, things did not go as well. In the summer of 2009, Rastogi's attitude toward her changed. She believes it was because she was reporting all of those issues. She talked to Rastogi about some of the DFW contracts and the RECs and Rastogi told her she needed to push them through and that she would take care of it.

When Dieringer arrived in the summer of 2009 before she was demoted, she had conversations with her about the RECs. She showed her some of it because part of what they were doing was reviewing the Dallas financials on how to set up processes. For example, she showed her that one REC report had serious issues. One of them had to be totally reworked at Respondent's expense.

In mid-September, she was demoted to a project accountant, but it wasn't official until October 17. Dieringer told her she failed as a manager as far as defining roles and responsibilities and setting goals for her staff. She was not too surprised she was demoted. Dieringer was starting meetings with her staff behind her back, talking to project managers without including her, and pretty much took over her job very quickly, doing things her way and meeting with Rastogi. On the day of the demotion, Taylor called her in and told her there was a lot of stress because of the way she was being treated by Rastogi and Dieringer, and that she thought it would be better to take a demotion. At the time, she agreed to the demotion, because she was so beaten down and exhausted. Every day was a new beating, mainly by Dieringer. She could not do anything right. She was being constantly criticized for everything she had known and done successfully for so many years, which was all of the sudden wrong. The demotion was just a means to an end. It was okay, fine, whatever. She wanted to continue working for Respondent. She likes the company. If that was where she was going to be utilized, then that's what she needed to do if she didn't want to lose her job.

Her pay was cut from $80,000 to $78,000, she thinks; not much. She thought things got better and they were working well together. She had been moved to Fort Worth and would come over to Dallas once a week. Dieringer had thought moving to Fort Worth would help her save face. She and Dieringer didn't interact much. There were times when she was in Dallas when she wouldn't see her. They didn't interact much over phone or email, because there wasn't any reason to.

During the time that she was demoted and Dieringer was OFM, she saw a number of contracts had been pushed through. They were mostly legacy LGG contracts. Some of the RECs were from Respondent. She knows the pump station was owned by Respondent; it was their main project. But LGG had a subcontract on it and had overrun their portion of it prior to coming over. So there were some big issues with that project after the integration. But at the time it was LGG she was concerned about.

A few months later, at the middle or end of November, Dieringer gave her a performance review. The review was very quick. They didn't discuss a lot because she explained that everything on the review was up to the demotion and she had started fresh since then. There was no need to discuss anything because it was already beaten into her head that she was a horrible finance manager according to them. The review was the final piece of paperwork for her demotion and she wanted to move on. When a review is done, she signs and her supervisor signs. Then, based on the rating, it can go up to an office manager. The review was very negative. Taylor did not sign it, Mike McCloskey did. She does not know why he signed it; he is the Austin office manager. She has never worked with him and does not recall meeting him. She later requested a mid-year review because she wanted to get an update on her performance. She pulled her 2009 review out of the system and that's when she saw McCloskey had signed it.

Some of the comments on the 2009 review are actually her own. She probably did it in September or October. She disagreed with Dieringer's comment that she had not spent the necessary time to learn E1. She believed Dieringer didn't like the way she reported in E1. She was involved in the DCTA research and occasionally missed some deadlines because she was pulled in several directions. She occasionally missed some deadlines for the regional controller, Dimick, and was occasionally late on monthly reports. She had just been demoted when she wrote "I failed as a manager as far as defining roles, responsibilities, and setting goals. I lost touch with the procurement staff. And I did not get myself involved enough in their operations."

She believes she had a rough draft of a calendar for her PAs on an Excel spreadsheet. It was not as detailed as Dieringer's, but there was one available to them through the E1 team. She disagrees with the criticism that she was not providing information to the divisional folks and project managers. She was probably not the best manager.

She agrees that Dieringer believed the LGG people did not know the E1 system well enough. They had just gone on it six months prior and they weren't in the same office. It was hard to do training and she did the best she could on the few days she had with them each week. She believed Dieringer didn't think she knew how procurement worked. She managed the procurement manager. She didn't know the step-by-step details of the procurement manager's job. If Dorian, the procurement manager, didn't know an answer, she would contact someone in Austin who had more procurement experience. She didn't think she needed to know the ins and outs of procurement. Dieringer didn't agree, and Dieringer told her she didn't want everything to be a fire drill. There were a lot of fire drills, but not all of them were her fault.

Dieringer felt she left too many things to the last minute. From Mid-July through September 2009, Rastogi was also criticizing her. She felt her hands were tied because there were project managers not giving her information and PAs who were slow getting invoices through the system.

She agrees that assigning a rank to an employee is a subjective process. She agrees that Rosas had a lot of E1 experience. They had different sides of E1 experience. She felt Rosas did not have as much operational experience, but felt she could have learned it. There was tension in the Dallas office. She has heard the characterization that there were two camps—the Rastogi camp and the Taylor camp—in the office. At some point, those two did not personally like each other. She thought Rosas hated her and Rastogi didn't like her. She thought Rastogi was not kind to her about things.

Darryl Robinson is corporate HR out of San Francisco. He had come to the office for a big meeting and she pulled him aside to explain her demotion, her performance plan, everything. She explained she noticed the "needs improvement" scoring was signed by an office manager who was not hers and that it seemed it should have been signed by her office manager (Taylor), since she was the one she worked with. He asked her to type an email with all of this documentation because she was asking to have the review be amended with the right signatures.

She thinks McCloskey signed off on the review so Taylor couldn't find it and try to make an action claim to find out why her review was like that. Taylor was her supervisor up until September. In January she received a calendar meeting invitation from Dieringer in Dallas. The invitation was odd—there was no subject line and she did not always meet with Dieringer when she was in Dallas, so when she ran into her in the hallway, she asked what she needed to bring to prepare for the meeting. Dieringer told her not to worry about it. When she went in, Dieringer was there with Soo Lee, an HR representative, and she handed her a performance plan and said she had discussed these things with her and there had been no improvement. She immediately disagreed with Dieringer and said they had no discussion of any performance. Dieringer mentioned the performance review in November and she replied that was performance for her demotion and that Dieringer had actually said she had been doing a good job since she was demoted.

She told Dieringer that historically, when she was a manager, there were several steps that had to be taken to actually put someone on a performance plan. There had to be oral warnings, a lot of documentation, and some written warnings before a performance plan, and none of that had been done. She doesn't know if Taylor had any input into it and couldn't confirm if any manager above Dieringer had any input.

After her demotion, she wasn't looking at or approving RECs other than those she had to submit on behalf of her project managers. She was not aware of which RECs were being submitted on which projects. Dieringer was in charge of doing what she had been doing with respect to RECs when she got demoted.

She did not agree with the performance improvement plan. Some of the things mentioned in the performance plan were not true and she had documentation to prove it. She requested another meeting with Dieringer and Lee to give that documentation over. That's when she was told it didn't matter if she signed it, it was still in effect. What she agreed with or didn't agree with didn't count. A week later, she signed off on it. During the 30 days of the performance plan, she didn't hear from Dieringer much. Part of the plan was that they were supposed to meet weekly so she could always know how she was doing. They did not meet once regarding her performance plan.

Part of the plan was that she had to email Dieringer when she arrived at eight and when she left at five. She sent those emails return receipt, but her emails weren't even opened or acknowledged until the end of the plan. She figured no news was good news and that she had made whatever improvements she needed. She was called again to meet, this time in Lee's office, for her final warning. She was shocked. It was a week past when the plan had expired. She again didn't agree with it and was very upset. It was clear she was going to lose her job. She was told that if she didn't sign it, she would be terminated. She doesn't know if Taylor had any input.

As part of the initial review, Dieringer had gotten complaints from her project managers that her performance was not good. She had asked Dieringer to contact the ones she worked with on a daily basis in Fort Worth and get feedback so Dieringer could see those were the ones she was doing a good job for. Those were Brent Tyler, Dustin Ogle, Paulette Van derKamp, Lisa Pyles, Doug Quinn, and Tex Schmidt. She was told Dieringer did that, but she knows she didn't. They told her Dieringer never called them after she got her final warning.

After she got the final warning, she was in tears. She went and talked to Taylor. She had not talked to Taylor a lot about what was going on because she knew Taylor had to work with Dieringer as a team. She knew she was going to lose her job. Taylor was very surprised by the final warning; she did not know it was coming. As office manager, she should have been informed of it. Taylor told her she would contact her project managers, the same ones she had given to Dieringer, and get feedback. Taylor did contact them, and was shocked to learn there was a completely different story from the project managers than what Dieringer had portrayed to her.

Taylor sent an email to Provenza and J.P. Kirksie, the regional HR rep. Dieringer was asked to leave the Dallas office and she was no longer on final warning. Taylor became the office financial manager; Provenza gave her that position. Taylor asked her and Laci Rosas, her counterpart as a PA team lead, to assist her. She increased her days at Dallas, because she had only been over there one day a week. The intent was not that Taylor would be the office financial manager from there on out. They were going to hire someone new, from outside, with fresh eyes and SOX and auditing experience. The person they found, Jonathan Dorsey, started in April. Taylor was office manager for maybe six weeks.

She did not make any complaints until Dieringer left; she was too scared. After Dieringer was sent back to Austin, Taylor and she begin reviewing the financials during that time period and found some RECs that should not have been done and a lot of revenue adjustments that had been submitted to Dieringer, but had not been forwarded on for processing and approval. She complained to Taylor about that.

Before Dorsey was hired, several people from the management team, including her, interviewed him. Once he was hired, she reported to him. She thought he was very good and she worked well with him. He was there when the internal audit started, so he had been given the background of what initiated it.

They started reviewing RECs. One of the main problems was revenue adjustments. Part of the job Dieringer had her doing was compiling revenue adjustments from the office, from the other PAs, reviewing them, making sure the comments were appropriate, and submitting them to her for processing. They were being told, especially by the PAs, that they were not being processed. The same revenue adjustments keep showing up; they weren't being taken care of. So the project managers were getting frustrated because it was clearly a write-off. It was clearly a revenue adjustment, but it was not being taken. They looked like they were occurring while Dieringer was office financial manager. She reported her concern to Taylor.

Getting RECs approved was discussed at managers' meetings every month. She was never the final approver. She was the first line approval and if it didn't get through her, it wouldn't go through anyone else. If she approved a REC without written documentation, she would assign it a higher risk code. She would ask for written documentation from record conversation. There is some room for judgment in determining whether or not a REC should be approved, and in deciding what risk code should be applied, based on the accounting interpretation or directive. At some point, Taylor and Dorsey started being more conservative as far as the RECs they would approve.

There were some RECs that occurred off her watch as office financial manager that she knew should not have been submitted, because they weren't going to see the money. She knew that because she had talked to project managers when she was the finance manager. These were RECs that were attempted to be submitted during her time, but then were submitted during Dieringer's time and were signed off on. If they had gone over a certain threshold, Rastogi would have had to sign off on them.

She reported to Taylor that those RECs were pushed through since she had been gone. She believed Taylor talked to Provenza again, but she wasn't there for that. They had managers' meetings where she discussed the RECs and pointed out that she didn't understand why they were in the system. She explained why it was important, because it was false revenue and they weren't going to get paid on it.

Taylor had been trying to go up the chain of command and working with Provenza on the REC issue. Clearly nothing was changing; the same thing kept happening. So Taylor went to the ethics hotline. That is a supposedly confidential number that any employee can call with any ethical issues based on Respondent's Code of Business Ethics Conduct. She thinks there is an attorney on the other end who takes the information, researches it, and creates a plan of action. She thinks Taylor told her after the fact that she had called. After that, they were notified there was going to be an internal audit. Taylor notified them in the managers' meeting. The audit entailed looking at several ongoing projects, how they were doing financially, and what the plan was with them. There were three or four auditors in the Dallas office who were there for several days. She helped in the audit and sat in most of the project meetings.

She and Taylor sat down with the auditors and showed them a lot of the projects where the revenue was overstated in Vision and then converted over to E1 overstated, and showed them the RECs that had been done. They went through a lot of financial reports on each project, talked to project managers, and a lot of them talked about how they said they couldn't get that money but then a REC appeared. She was with the auditors for a couple of hours. She did not feel like those lawyers were her lawyers.

At one point, Howie, whom she believed was the head of the audit team, was very panicked and got on his cell phone and started making calls. It seemed they were concerned.

She received an email from Dennis England inviting her to the Jones Day offices to be interviewed. There were internal auditors, one of whom was Eugene. She thinks Howie was there, too, but she is not positive. There were also two Jones Day attorneys. Present in the audit were Dennis England, Eugene Carminoff, and Roy Atwood. She felt awkward because she was on one side of the table and they were all on the other. During the meeting, she did not feel like they were her lawyers or were representing her. The auditors were confused about the timeline during which she was finance manager, Dieringer was finance manager, and then she was not technically finance manager but was very involved in the audit in providing them data. They asked her to go into more detail of why she was demoted. She explained that Dieringer came in after she reported misrepresentation of revenue.

They discussed RECs. A lot of the projects involved in the audit were also the ones discussed in early 2009. She explained to them her concerns that revenue had been taken when it shouldn't have been and also revenue adjustments. It was a pretty short and condensed conversation. Then they started questioning her about Taylor, her relationship with Taylor, if they were friends, how she thought Taylor was as a manager and how the office felt about Taylor as a manager, Taylor's relationship with Rastogi, and her opinion of Rastogi as a manager. They asked about office politics, it wasn't about the audit. That was the majority of the conversation. She was in there for probably an hour, hour and a half.

After she left the Jones Day offices, she had contact with Respondent's attorneys. She believes it was the same attorney who emailed her and CC'd Eugene and Dimick, asking for email documentation in regard to revenue adjustments. She provided that information. Part of what she had brought up was that she had personally submitted revenue adjustments to Dieringer month after month and they were not being taken. They asked for those emails that she had sent to Dieringer with the revenue adjustments.

A lot of people knew she was participating in the audit. Taylor knew; any project manager who had a project being audited knew; the auditors knew; Dimick, who was acting as the regional controller at the time, knew.

She doesn't believe that Rastogi did not know she was involved in the audit. Rastogi is regional manager. If the regional controller knew about it, Rastogi knew about it. It was going on in her office; they were taking up conference rooms. Within the office, it was a much known fact they were being audited.

She and Dimick had several discussions, especially throughout the audit and after it about the REC misstatements.

The audit was in April or May. Taylor was terminated in October, and she was terminated in January. Rastogi would avoid and ignore her in the office at all cost. She seemed mad at her. She thought Rastogi didn't want to have any interaction with her. There wasn't really any need for interaction once Dorsey became office financial manager, because he was a layer of management between them, but Rastogi was not friendly with her during that time.

She found out about Taylor's termination when she received a phone call that Taylor had been escorted out of the Dallas building. She was in Fort Worth at the time. She knew Taylor filed a lawsuit shortly thereafter. She continued working as a PA under Dorsey until she was terminated on 14 Jan 11. It was a Friday. Her receptionist was at a funeral so she had offered to watch the phones for her. She was sitting up front working and all of the sudden her email system stopped working. She couldn't get into the server and was completely shut out of anything company-related. Since she had been in management before, she knew what was happening. There were layoffs in Dallas, so IT had cut her off the server.

Soo Lee, the HR manager called, and explained she was coming over. At that point, Dorsey called her to tell her he had been let go. Rastogi fired him and her. Rastogi was conferenced in and said that she appreciated her service with Respondent, that she had done a good job, and that the layoff was purely for financial reasons. She does not believe that.

There were other people included in the January 2011 RIF, including Dorsey and one of her PMs in Fort Worth, Dustin Ogle. Some of the people included in the RIF did not have anything to do with blowing the whistle on accounting issues, to her knowledge. Ogle was involved in the audit meetings and the audit.

Complainant’s Exhibit Four is a labor multiplier from E1. It shows each employee’s raw cost—their straight hourly rate times their hours worked. Then the total loaded cost shows raw cost time their effective multiplier, whatever they’re earning on the projects they’re working. It shows how much money an employee is making for the company. She was in a category, PA, called “team leaders,” with Laci Rosas and Kathleen Smith. She made almost double the amount of revenue compared with Smith and Rosas. They were not laid off.

Complainant’s Exhibit Five is an analysis of “sold time,” by employee. Sold time is the percent of your 40 hours charged to a client as billable time. If you look at month to date for December, she was quite a bit higher than Smith and Rosas. Year to date, she was a little lower than Smith, but any time that she dedicated to training took a lot out of her billable time. That year, she was asked to help train Dorsey. Smith’s sold time was inflated because she worked on the DFW airport job and a good portion of her job is not actually billable to the client, so it would get written off. Generally, in sold time, she was higher than both of the people in her class.

She thinks Rastogi fired her because since July, when Dieringer was brought in, it was clear she wanted her out of the office. A reduction in force was her way of doing it. It didn’t work trying to do it for cause, for performance. She told Mark Gattons she thought she was fired because Rastogi and Rosas hated her. She thinks it had to do with the write-offs being taken and the RECs being pushed through.

She did not report improper actions or alleged fraud to Dieringer. She had discussed the things she found with Dorsey prior to him becoming her supervisor and they had looked at reports. She had discussions about her concerns with Rastogi, but did not blow the whistle to her. She did not call the ethics hotline or contact compliance. She believes the retaliation against her began in the summer of 2009 when Dieringer came to Dallas.

Dimick, the regional controller, and Falgout, the regional accountant, received her monthly reports and she regularly interacted with them. Dimick was aware of the issues during the internal audit. They discussed the internal audit in meetings together. Falgout was made aware of some of the issues, also. She directly blew the whistle to Taylor and other people knew she was involved, like Dimick through the internal audit. They discussed many RECs at that time. She did not make a communication to him that could have been interpreted as her blowing the whistle. Respondent told her to tell her immediate supervisor if she had an actual problem, which was Taylor. Taylor was the highest person in the Dallas office to whom she reported. Taylor was a vice president and an officer of the company. Dimick was in Austin, Provenza was in Metairie.

She heard Rastogi’s testimony about seeking the advice of Dimick, Falgout, Dieringer, and Holecek in making a determination about terminating her. Dieringer’s office was in Austin. She didn’t have much interaction with Dimick once Dorsey came on board. Dimick was the acting regional controller and divisional controller out of Austin and she was not working for or with him during that time. Falgout is a regional accountant and works directly for Dimick or whomever the controller is. She was in Houston. The only thing she did with her was submitting work authorization forms that went to Austin for entry into E1 and then Falgout would look at them through E1 to approve them. She worked with her briefly during those six weeks with Taylor, but once Dorsey came on board, he worked with her on a daily basis.

She worked for Ken Holecek for several years when he was their regional controller. He was based in the Austin office. She stopped working with him in 2006 or 2007. He gave her a favorable review about revenue recognition in her employee personnel file in 2004. She had not worked with or talked to him in years. At that point, he was regional controller of another region, not even in hers. He was coming into her region as of January, when she was fired. None of those people were in Dallas or Fort Worth. None of them were her project managers or direct supervisors.

She does not think it was proper for Rastogi to consult Holecek on whether or not to keep her on board because she had not worked for him for several years. He would have had no current input on her performance. She actually communicated with him the week she was let go, because he was going to be the new regional controller and they communicated that they were excited to have the opportunity to work together again. She does not know of having any negative reviews by Holecek.

After she was fired, she immediately started looking for a job. She had an offer with American Airlines at nine dollars and 53 cents per hour. She has applied to several large companies and several positions with Alcon Laboratories. She has not been employed since she was terminated. She has suffered extreme financial hardships because of what happened. She was the bread winner of the family. They lost all the equity in their home and had to work with the bank so they did not get foreclosed. They had to voluntarily re-possess a car. They'll have to pay about $15,000 to get it back. They had to take extensive personal loans from their in-laws, close to $40,000. It was probably $20,000 to $30,000 in lost equity to refinance the house. Her in-laws have paid bills, too.

Not long after she was let go, she found a job posted on the career section of Respondent's external website. It was for a PA, the job she had been doing for many years. It was basically the same description as her job. It looked like the hiring manager was Rosas. It struck her as odd that they would put out an ad for someone in a position similar to hers if they laid her off for financial reasons.

The posting was created 3 Mar 11 and the salary range was, at the maximum, $800 less than what she was making. Nobody ever offered her the position, but she thinks they should have. It was a known policy within the office that if there were any layoffs, you were not to create any positions within that department for six months without offering it to the people who had just been laid off. That policy had been in effect for many years amongst all of them in management.

She did not apply for the job posting put up by Respondent after she was fired. At the time she did not want a job with Respondent. In February 2010, she told Taylor she did not want her office financial manager job back because she knew she wouldn't get it.

She worked hard at Respondent and had grown up there. She started as a receptionist and earned her degree while she was there. She was part of growing the office from a handful of people to 200 people. To have all of that gone within a matter of months was very hard. To be told she was not good enough to be there and she wasn't worthy was very stressful.

She had trouble with sweating, sleeping, and she had a miscarriage. She no longer has health insurance. She has incurred between $5,000 and $7,000 of medical bills. She thinks the stress and its physical manifestations are a result of her being terminated.

Dev Rastogi testified at hearing and in affidavit in pertinent part:[63]

She is the office manager at the Dallas office of URS. She started working for Wendy Lopez and Associates in 1993 and her role was to grow an environmental practice for that firm. In 1998, Wendy asked her to take over more of a senior leadership role in the growing company, so she became chief operating officer. In 2002, they merged with Garcia & Associates and became Lopez Garcia Group with 150 employees.

There are not that many women engineers and she met Emily Taylor when she came to the Dallas area. In 2007, Taylor talked to her at a Dallas Chamber function and asked if Lopez Garcia Group would be interested in being acquired by URS. She said she would take it to the other shareholders, Wendy Lopez and Rudy Garcia. They thought they should pursue it. Eventually Lopez Garcia Group was acquired by URS. She was identified as the regional manager responsible for the Texas/Oklahoma area. This was in August 2008.

The acquisition was finalized in August 2008. She moved to the same office as Complainant in July of 2009. In January 2009, they had all started using E1. She does not instruct people to submit RECs; that is up to the office manager and their financial team. She could assist with obtaining approval from a client or asking a project manager to go back and talk to that client and to negotiate with them to get additional work or additional money for the services performed. She stepped in to help the office perform whenever she could. She was more familiar with the LGG projects than Wendy, Taylor, or Complainant. When they came to her and asked if she thought they could get more money on something, that's when she responded. She would work with them to negotiate what they would talk to their client about. Then if they had appropriate documentation or needed to get it to submit a REC, they would do so. Dieringer was called in after April 2009.

Vincent Provenza was above her, as the regional unit business manager (RBU). Her region consisted of three offices: Dallas, Austin, and Houston. Dallas and Austin both had a couple of branches associated with them. In Dallas, Emily Taylor was the office manager and was her direct report. There was a Fort Worth branch office, as well as branch offices in Oklahoma, but the core office was in Dallas. Three office managers, including Emily Taylor, reported to her as the regional manager. She believes she met Complainant before they merged with URS, but generally she got to know her once they became part of URS.

As office manager, she was responsible for strategy and growing the business. She was primarily responsible for the profit and loss of the office. They develop annual business plans to identify what the goals are for each of the offices.

She has been a supervisor and OFM in the Dallas office. The OFM is the right hand of the office manager. They are responsible for helping create the business plan and understanding what is in the accounting system and what's going on with the projects.

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[63]Tr. 46-134; RX-40 (as cited).

At the beginning of 2009, she thought she had a very strong relationship with Taylor. She was excited at the opportunity to work and grow the business with her. Things changed toward the end of 2009 when she conducted Taylor's performance review. There were changes along the way as she took over her role as regional manager. She does not believe Taylor did a good job of integrating the office at that time. She thought once she conducted her performance review and gave Taylor the assessment of her performance, Taylor became very unhappy and two camps were created.

When she first came on board with URS, she needed to keep her role in managing the Lopez Garcia Group profits and losses. It wasn't until January 2009 that she really took over as regional manager. The financials of the offices were combined and accounting was on a calendar year. They went live with the accounting system, using URS time sheets and reporting all of the information into the E1 system. It was Emily's job to integrate the two offices and build her team within the organization.

LGG's revenue recognition was on a monthly basis, not a weekly basis like URS's. LGG did not have a REC process. Once they were within the E1 system, they were recognizing revenue based on the URS system. It was important that the project managers knew how that process worked and it was important to get them trained. All the financial data came from the project accountant, Complainant's team of project accountants, or Complainant herself.

DCTA was a 22 million dollar contract. It was significant for the Dallas office and the Austin office. The Dallas office was the one that actually held the contract. Generally, project managers are responsible for managing their projects. But office managers are responsible for managing the portfolio of projects under their purview. She would say the office manager, with the contractor's help, is ultimately responsible. So for the DCTA contract, that would have been Taylor.

She told Taylor in early February that she wanted to do a review of that particular project. The client had reached out to Provenza with concerns about how things were going. They had a firm deadline and had not seen invoices that reflected more work product being created. She thinks that happened in the fall of 2008, so Taylor said she was going to take an active interest in that particular project and get personally involved. When she asked Taylor about it in February, Taylor told her she didn't need to spend her time on it, that it was going extremely well, and that she should focus on other offices. So she took Taylor at her word. In April, she went out of town and Taylor sent her an email[64] saying that the DCTA was going to allow them to use about a half a million dollar budget for some additional scope that they needed, which was really good because not only were they going to get to use up that contract capacity, the client wouldn't have to request any type of modification to the overall contract value of 22 million. That is, the project was about a half million under budget.

The next email came on 27 Apr 09 and stated that there was actually a serious issue. Not only were they not going to be able to do that $460,000 worth of work, but they needed another two million dollars. She was shocked that there could be such a swing in a matter of days, particularly since the financials are reviewed at the mid-month meeting. They organized a

[64] RX-36.

meeting. During this period of time, Complainant was the office financial manager and she was part of the meeting, which took place on a weekend.

The contract involved URS and a number of sub-consultants. They are selected as prime consultants, and then they have sub-consultants that work under them. It was important to understand what the budget was, how much the subs had in their budgets, how much they had expended, and by how much it was overrun. Through the entire weekend, they were not able to understand what the subs had and they should have been able to print out a committed cost report in a matter of minutes. It was Complainant's job to pull out the financials and make sure they understood them. The spreadsheet being used seemed to have mathematical errors in it and it was the crux of what the team had been using to manage the financials on the project, as opposed to going to E1 and using its data and making sure the information in E1 was correct.

Subordinates are welcome to have a spreadsheet, but basically whatever is in the accounting system is what is accurate, what needs to be accurate, and what needs to be updated if there is an error. She heard from people that it was not uncommon to use spreadsheets and the PAs used them. But she was concerned, because if they did have to take a two million dollar write-off, that was significant and would certainly raise a lot of attention within the entire organization. Because of that and because they couldn't easily pull the financials, she was concerned. Because of the way it was being managed off the spreadsheets, they didn't have accurate information in the E1 system. She observed Complainant during the weekend meeting, when she was pretty frustrated they couldn't get clear information out of the system to tell us where they really were and how they'd believed they had so much money left. She began to suspect that Complainant did not understand how to fully use E1. What was critical to that understanding was how much money was committed to the subs, because if they had used some of their money or if they had money left over, it was going to be materially important in their negotiations with DCTA. They didn't have a minute to lose and needed to get in front of them quickly. The fact that the lead financial person did not understand the financials on the biggest project they had in the office was pretty appalling to her.

She contacted Dave Dimick to let him know about the issue. He was the regional controller. They discussed that many of the LGG project managers had expressed that they didn't understand how the financials were coming out on their project, and they didn't feel like they were getting good information from the project accountant. She asked Dave whom they could bring in as a resource to help evaluate that because it was important to understanding how the business was going.

A two-million dollar write-off would represent about half of the profitability for the year to the Dallas office. In her almost 30-year career, she has never had to do anything like telling a client they could do half a million dollars' worth of work within the existing budget, then tell them they are actually two million over. She would have expected Taylor to rely on the financial information she had at the time, which came from the project managers and the financial team, which reported to Complainant. She was concerned with their limited ability to provide financial information when they had the weekend meeting.

Complainant was not the person ultimately responsible for the DCTA project. Complainant was involved in trying to help them assess the situation, but she was responsible for managing the project assistants or project accountants on all the projects. Her view would have been every single project in the office. If there were financial difficulties on any project, Complainant should have been aware of them.

Dave Dimick recommended Daphne Dieringer come to Dallas. He felt she was very experienced, had been part of the organization for a long time, and had actually been part of the E1 development. She had gotten to know Dieringer and felt comfortable with her. She felt Austin had some strong business processes in place, so she thought it would be a good idea. Dieringer came to the office and provided both her and Taylor with her recommendation in September 2009. Dieringer first recommended that Complainant be fired. Taylor was clearly pretty shocked. She knew that Taylor and Complainant were good friends. It was well-known in the office that they were close and did a lot together. Taylor made a case for why Complainant should stay.

Ultimately they all decided that Complainant was not the right person to be in that office financial manager role, based on Dieringer's assessment. They demoted her to project administrator. As the office manager, Taylor had to communicate that change to Complainant. She did not have supervisory responsibility over Complainant, it was Taylor's call. She doesn't remember exactly which date they made the change with Complainant. It could have been 2 Sep 09, or it may have been later in September. In mid-September, she proposed taking over Taylor's role. During that period of time, Complainant was put on a performance plan and given a final warning.

There had been moving expenses from the July move, but they did not come through until late in the year, after they thought they'd saved a lot of money. She was concerned because typically even if you don't have the actual bill, they were on an accrual basis. If you know of the invoice, you accrue or plan for it, because you know it's going to come eventually. She expressed her frustration to Provenza because it came in at such a late date. It made her have even less confidence in the Dallas financial information.

A chart 11 is the profit and loss plan for the year. In the fall of every year, they develop a plan for the following year. They are judged by their ability to make a business plan that is based on the financial and business results that are accomplished. The chart 11 is the foundation of that. You need someone who provides you with accurate information.

Another of the important metrics they look at in a strong business is if they are getting paid and getting their invoices out timely. TCQ was a client who was frustrated that they were not getting their invoices in timely. It was an important commitment to meet and it wasn't getting done. She had a commitment from Complainant that it would be done.

Another example was a project called Forum Crossland, with the city of Grand Prairie. Complainant was the project assistant on it. The information on the contract value and the way things were set up and changed on it were a mess. It wasn't an isolated incident and there were numerous project managers who complained. She relied on the complete information she had to determine who the team she needed would be going forward.

Laci Rosas was in an equivalent role to Complainant's; she was a team lead and also expressed frustration to her about the knowledge Complainant had in fulfilling her role. She felt like Complainant often asked her questions or dumped things on her to get done.

Apparently, Complainant's employment was going to be terminated because she wasn't following through with the performance plan and Taylor contacted Provenza to ask him to give her a chance to turn things around. She wasn't part of that conversation, but that's what he told her. Provenza made the decision to send Dieringer back to Austin. She did not make the decision that Taylor should appoint herself office financial manager.

Complainant never reported any fraud or accounting misconduct to her in 2009 or any other time. Prior to Complainant lodging her complaint with the Department of Labor, she did not know Complainant had made allegations of fraud or accounting misconduct. She did not ever hear that Complainant had made any allegations to anyone in URS. She was frustrated because they had monthly financial accounting meetings where they talked about revenue, billing, and all those things, not only with the office manager but with the controllers. She does not recall a single instance in those meetings where Complainant reported that revenue or other things were done inappropriately.

The Dallas office suffered tremendously in 2009 and 2010, in part because of the recession and in part because of significant losses incurred on several projects managed by the Dallas office. As a result, and in an effort to reduce the operating expenses of the Dallas office, Respondent decided to reevaluate staffing levels and eliminate positions.

In January 2011, she was not only the regional manager, but the Dallas office manager. The first round of layoffs was in January 2011. In order to meet their business plan objectives for 2011, they had to cut costs and staff. In November 2010, she had asked all the managers to conduct an assessment of staff to get a handle on that and on what kind of team they wanted. She reached out to Dimick, Falgout, Holocek, and Dieringer. She was also going through the same process with the team of individuals who were then her direct reports. One of those was Jonathan Dorsey, then the office financial manager. Respondent's Exhibit 47 is a list of people included in the reduction in force. Complainant and Dorsey are on there. She asked the managers to make matrices in late October with the anticipation of staff reductions. The staffing matrix she made has the same form as the URS staffing analysis matrix. The higher the number assigned to someone, the better their ranking. She tried to be as fair as possible in all of those areas. She believes she also looked at Dieringer's review of Complainant from 2009. The decision to eliminate Complainant's position was made in concert with senior management.

Based on the feedback she got, she prepared her own staff matrix on 7 Jan 11 to determine who might be included in the list.[65] This was prior to including Complainant in the RIF. The first category is technical competency. She ranked Kathleen Smith the highest, Laci Rosas the second highest, and Complainant last, by a substantial amount, in the technical competency field. She relied very heavily on the individuals she mentioned who helped her make the assessment of the team. The same went for the categories of flexibility, work ethics, behavior and dependability.

She thinks Complainant is a friendly person and ranked her accordingly. There were plenty of examples of lack of dependability. Another time, when they all needed to be at the office at a certain day to get the chart 11's done, neither Complainant nor Taylor were there.

[65] CX-2; RX-58.

She ranked Complainant higher for "flexibility," because she had observed some times where she would be willing to work late and had asked for other assignments. Work ethic was a really huge issue. From the time she got to know Complainant, she was never really a timely employee. Often she wouldn't show up in the office until ten. She was assigned to Fort Worth in an attempt to lower her commute time so she could show up to work on time. There were many people who complained that she wasn't there, that notes were left on her door.

The input was not only from those within the office who observed her work on a daily basis, but from others who had to interact with her, like Dieringer and Dimick. Dieringer evaluated Complainant in November 2009, and Claimant was demoted in September, so Dieringer had been her supervisor for two months, but she had observed her performance over a longer period of time, maybe a month or two before that. She looked at Dieringer's review of Complainant. She did not look at the reviews prior to that.

She made the decision to RIF Dorsey after asking Dimick and Falgout for an assessment of his knowledge of URS systems and ability to perform. Complainant was reporting to Dorsey at the time. He was Complainant's supervisor from April through January. She did not rely on Dorsey's assessment of Complainant in determining whether or not to RIF her. She did not talk to Dorsey about Complainant, because she had already decided to let him go. Her decision did not count Dorsey's evaluation of Complainant, because once she made the determination that he was not going to be part of the team, she needed to think about who was and who she would have going forward. They had determined they could not sustain the office with the level of staff they had.

She does not recall looking at Dorsey's matrix and changing the numbers so she could lay off Complainant and Jeff Forester. There had been several complaints about favoritism with Dorsey and once she determined he wasn't the right person for the position, it was up to her to then determine the right team to put around the new person. The matrix basically drove the RIF decision. She developed it based on information she got from those people and from her own personal sense.

She determined that Complainant was the lowest-ranking project assistant and should be included in the RIF after looking at the information she had available and talking to individuals she trusted. She ranked everybody per the staff matrix and followed that guidance as part of the plan. In January 2011, two years after the LGG acquisition, the Dallas office was still a tense atmosphere. It was important to move the office forward and beyond that.

Complainant was not the only employee affected by the RIF. In the 12 months between June 2010 and June 2011, almost 30 positions in the Dallas office were eliminated.

At LGG, they did recognize revenue in excess of contract, but they did not have a formal REC process like URS had. A REC had to go through an approval process, involving the office manager or their delegate, for any revenue in excess of contract. If it goes beyond a certain dollar amount, then it would come to her as the regional manager. There are certain dollar thresholds that would never come to her for approval. If a REC is approved, it is claimed as revenue on the ledger for a time, but RECs expire. At the time, RECs expired in 180 days. Now the process has been changed. It is true that you can resubmit a REC, but there has to be updated information to support that. It has happened that people submit RECs, get the project done, and then close it out without ever getting contract value out of the system. You can continuously submit RECs, but there comes a point in time when those RECs are not necessarily renewed unless the client is paying them.

In a contract for $100,000, a project team would work on it and charge the job up to $100,000. If somebody charged to the job after the $100,000 limit was reached, the system will automatically write off that revenue because you cannot exceed the contract value. If the amount charged beyond the $100,000 is legitimate—there have been conversations with the client that they're going to give them a change order, or they intend to pay— they submit a REC in order to recognize that revenue in the system. At the lowest level, any of the PAs are normally the people who request a REC. They have to fill out some electronic paperwork and identify a risk level. If that goes through the process with the office manager or their designee approving first, then it goes to either a regional manager or a regional controller. It always goes to not only the office manager, but the regional controller. The office financial manager can also prepare the paperwork and often does. The first approver is the office manager or whomever they've delegated authority.

They want to recognize legitimate revenue that clients intend to pay them. The system automatically writes off anything that is not legitimate. There is an expiration date for the RECs. They want to provide the project managers with the incentive to get the formal paperwork from the actual client, and actually recognize the revenue on the books.

The risk code has to do with how much documentation they have to support it. If there is not subsequent change made with the client, then it automatically gets written down, unless it is renewed, which requires updated documents. There are six risk codes, 10 through 60, based on the documentation and their previous history with the clients. If there is a change order that's pending signature that was negotiated but hasn't been executed just because of the timing, that would be a risk code 10. The highest risk code of 60 is really based on the project managers pursuing revenue on our past history with a client to be able to get additional funding.

She doesn't know the longest a REC has been renewed. If the client doesn't follow through or something falls through, the REC is then written down. There is always a risk that the client won't pay, but they recognize revenue because they believe they have a legitimate contract and they expect to get paid. They have had their share of deadbeat clients who don't pay, and so they write down that revenue because it's not anything they can control. She has experienced situations where some project or office has received or booked a lot of revenue, but has not been profitable.

If they are working with a client and invoicing them up to $100,000, that amount is recognized right away, even if there hasn't been the cash flow. The way they work with recognizing revenue is the normal course that almost every consulting firm she knows of works under.

It is up to the judgment of those approving the RECs whether or not there is appropriate documentation. Because it is a six-month period, they could recognize revenue for 2009 that would have to be written off in the next year, 2010. Her bonus is based on the profitability of the office, not on the revenue.

After Complainant's demotion, she doesn't recall if Complainant had the authority to approve RECs. When Taylor was office manager, she delegated her REC approval authority to Complainant. She knows that Complainant had Taylor's E1 log in and often went in and did things on Taylor's behalf. After September 2009, the first line approver would have been Taylor. She does not recall if Taylor designated that duty to anyone else.

She did not know about the audit that was ordered by URS controllers and came to the Dallas office. She was not interviewed. She was told about the audit after it occurred. There were a number of project managers who told her that it was a very uncomfortable situation with Taylor and others in her camp. It appeared to be a witch hunt to many of the project managers.

She was in the office with Taylor and Complainant. She was involved with the projects that were in trouble in any one of her offices. Her role changed because it is in the Dallas office. There was a reorganization of the entire URS organization. They needed an office manager focused completely on Dallas.

She asked Dieringer to come from Austin to Dallas at the advice of Dimick. She received a bonus in 2009 based on the performance of the region and other factors. She did not receive a bonus in 2010. She has no reason to dislike Complainant or Taylor.

Emily Taylor testified at hearing in pertinent part:[66]

She is a professional engineer and now works for Cirrus Associates. Her third job in her career was working for Woodward Clyde Consultants, which was acquired by Respondent around 1997. She started at the Woodward Clyde Dallas office and was asked to transfer to Baton Rouge, Louisiana. She thinks she came back to Dallas in either late 2000 or January of 2001. When she came back to Dallas, Complainant was dealing with a lot of the financials out of the Fort Worth office, so she thinks their first introduction was moving those projects, setting them up, and setting up new projects through work authorization forms. She thinks she was promoted in April or May 2001 to lead the Dallas office as office manager.

She and Bill Corbett, the regional manager, asked Complainant to be the office financial manager. Complainant was already doing that work in Fort Worth and was familiar with the accounting system, so it was natural that she would do the financial work in Dallas. Corbett was her supervisor, they were deciding who would do the financials, and Complainant made sense. Complainant did a good job. She did what she needed to get done. She never had serious complaints about Complainant. Like any employee she was supervising, if there was anything to be corrected, she would mention it.

Most of the time between 2002 and 2008, the Dallas office made or exceeded plan. They did really well. They had a vision to grow the office, and grew it from a small one of about 12 to 130 people.

In general, she recalls that her reviews of Complainant were very good. She recalls making the 2005 mid-year review of Complainant. She wouldn't say they normally did mid-year reviews.

[66] Tr. 422-586.

On occasion she would do it with individuals if she felt there were things they needed to focus on. There were some things she wanted Complainant to focus on; it was a verbal counseling. She believes the 2005 end-of-year review was favorable because Complainant did a good job. She doesn't know how the mid-year review ended up in Complainant's personnel file.[67] She never intended for her 2005 mid-year review of Complainant to go into a personnel file. It was not inappropriate for it to be there, but she would never put something like that in a personnel file. She knows she didn't ask for it to be included in Complainant's file, for several reasons. One, it has her handwriting all over it, correcting typos and whatnot. Also, if it was something she wanted to go into a person's personnel file, she would have that person sign and she would sign it as well.

She sits down with a lot of employees to say "these are the things to work on." In her opinion, this is being made into a bigger deal than it was, because if you look at what Complainant did that year, she did a great job. The whole point of the mid-year reviews is not to ding people, it's to get them to perform at the highest level they can. Rarely are all reviews positive. Nobody's perfect. She would not have fired Complainant because of the 2005 mid-year evaluation. She wouldn't fire anyone based on an evaluation like that.

Complainant was fairly young in her career at that time, so there were things she needed to learn. But she did not feel that the mid-year comments needed to be commemorated in Complainant's file.

From 2005 to 2008, Complainant's performance was very good. She had no major complaints. In 2008, she reported to Provenza. She thinks his title was regional business unit manager at the time. He was located in Metairie, Louisiana. In 2007 and 2008, there was a very big focus in the company on increasing state and local revenues. Their region was known mostly for a lot of private sector work and some federal and transportation work, but not so much municipal work. They were asked to try to increase that market share, so there was a plan put together that had input from individuals on increasing revenues organically on their own in each of the offices, and then increasing revenues by acquisition in Texas.

The Lopez Garcia Group (LGG) was a sub on a few of their projects, so there was some working relationship with them. Provenza instructed her to ask LGG about the acquisition. There was a technical seminar where she saw Dev Rastogi and asked her if they were interested in an acquisition. At the time, she had worked with Rastogi only in one instance. She thought Rastogi was fine. Rastogi told her she would talk to Wendy and get back with her. Later, they had a meeting with three principals of LGG. The acquisition finally materialized in early August 2008. She wasn't really involved during that time. She was out on medical leave for five months, during most of the time they were doing due diligence.

She never saw a due diligence report. While she was on leave, Cliff Hall ran the office on her behalf. Hall called her and said he had gotten off the phone with the CFO for Respondent, Tom Hicks, Dimick, and Provenza. He said there was a big argument because Hicks said to Dimick that he assumed he reviewed all the contracts and projects and that they were all in order. Dimick said he hadn't really, because he hadn't had time, and apparently a major argument ensued.

[67] CX-1 at 74-76.

Provenza said not to worry about it, since they sign contracts bigger than the acquisition. That conversation made her very concerned that due diligence had not been done properly.

She was not on that particular phone call. She was concerned that due diligence was not done properly, and about the multiplier being used. She does not believe the LGG acquisition was successful.

She thinks she came back from medical leave in early August of 2008. LGG's and Respondent's offices were in different locations. She did not get a whole lot of information about LGG in August 2008. They operated separately for the first four and a half months that Respondent owned LGG. They weren't on the same accounting system until January 2009, when their projects were converted to Respondent's accounting system.

Between August 2008 and January 2009, she asked for information to see what LGG was doing, business-wise. Their spreadsheets were very scant. It wasn't the same kind of detail as Respondent's spreadsheets on income statements. There were some difficulties with LGG on DFW airport that looked like they were going to be a problem. The way she looked at it was there were things they had to work through once they converted over to their accounting system and they were all working together. She thinks the reason they didn't move into the same offices earlier was because of the leases. Before the acquisition, there were around 125 or 130 people working in the office. She thinks there were 281 after.

Some issues began to arise between her and Rastogi. She thinks it was about the state of the financial help at the office, the combined accounting system, and the way the projects converted over. The projects started converting over in January 2009. As it was coming in, it didn't look right. Complainant said it didn't look right and was a mess. There were thousands of projects, and they started going through them. Complainant brought those to her attention and she noticed some issues, as anyone did who was a project manager at the time. First, the projects were converted as individual projects and not linked together. The project managers were giving them feedback that the budgets weren't correct, so it looked to be a great mess. Complainant told her the project managers were saying there was no budget in March/April.

Provenza told her in an email in February 2009 that billing was a sore spot in Dallas for him and he wanted her to look into it. She blind-copied Complainant and Hall in her response. She did not want her project managers sitting on invoices that had not gone out to the client that increased DSOs. Sometimes project managers were slow to review their invoices and needed pressure to get their invoices reviewed so they could be sent to the client.

Originally, they weren't supposed to do the RECs until May/June, but Dimick said to start, so the project managers and Rastogi and others were putting together justification for them. The first RECs were being done in March or late February 2009. They didn't know enough about the projects. As it started evolving, more questions were being asked for the basis of a change order, the basis of a budget. It was readily apparent that there wasn't any basis for it. They were overrun. The project managers were saying they were overrun. The initial RECs were done based on what LGG, Rastogi, and the project managers were saying. Rastogi would come back and say they were doing a REC on a project because she knew the client and they were going to get paid for it. At that point, Complainant put the RECs through.

As more and more people started charging projects and they were being overrun, Complainant would get with the project manager and say “what’s going on, you are over your budget” and some would say “we were told to charge all this time last year, 2008, and now it’s overrun.” The kind of answers they were getting indicated they should have been written off a year ago. This was June and July, and they got push back from Rastogi on those projects. But the RECs were already in effect and had six months before they expired. There came a time when the RECs had not expired yet and she still wanted them written off. She did not want the six months to run out because they were overstating revenue.

If a REC is not approved, the default is for the money to be written off. She does not have any reason to disagree with Complainant’s testimony that she never approved a REC she thought was inappropriate, if that was her testimony.

She and Complainant were concerned that the RECs would expire, they would have to take a write down, and that the bases for the RECs seemed flimsy. She wanted to see something from the client actually saying they authorized them to do the work for this amount of money. She does not agree that quite a few write-downs were for pre-2009 issues. Some were pre-2009. Quite a few were 2009.

The REC approval process is part of the Sarbanes-Oxley controls for Respondent, so it can’t be subjective. There is some subjectivity between assigning a risk code of 40 or 50, for example, but the guidelines are things like “do you have an email from the client,” which is a pretty yes/no thing. There is some room for subjectivity, but not a whole lot.

The office had been working with DCTA for several years. They did alternative analysis for rail corridors and a preliminary engineering feasibility study. That was ongoing while they got the contract for the final design for 20 miles of railway in Denton County. It was a very large contract, about 20 million. Complainant didn’t really have a role in that. She was the office financial manager, so she would get information from the project manager or PA. She did not interact with the client or the subcontractors, the project manager did. They started working together and Complainant assisted in getting the financial information on the sub-consultants. Rastogi was so excited about the fact that the client agreed to the change orders that she wanted to take them all out to a spa day.

Originally she was told everything was fine, but she did some digging and found that their percent completes were not quite right. Rastogi asked them, and she told her there was a problem.

As Complainant was reviewing some of the information coming in from the E1 system, it was readily apparent that something was terribly wrong and she told her so. The more Complainant dug into it and talked to project managers, the worse it was, because it was “the project managers are telling me this, Rastogi is telling me something completely different.” Complainant was very clear that there were two stories that weren’t matching up. Usually, she would meet several times a day with financial folks.

She thinks the problem was the project managers were telling Complainant they were supposed to have written something off the prior year, 2008. Those projects converted over, there was no budget in these projects, and they were all write-offs. At that point, with Complainant alerting her to it, it was a serious enough issue for her that she called Provenza and said they had some big problems. She thinks it was probably before June. Complainant was on the call, and they told Provenza it was a mess and the projects weren't making sense. The project managers were telling them that most of the projects were write-downs and should have been written down in 2008, but hadn't been. They were concerned about how that was affecting the office. Provenza was very clear on that call. He said "look, it's my career and your career, Emily, if this acquisition doesn't work. Dev knows these projects, let her deal with it." And she said, "I'm responsible for this office." That was the conversation.

She would say that it was about May 2009 when she blew the whistle in that conversation with Provenza, because she and Complainant were both adamant that all those things were write-offs. She was discussing this on a regular basis with Complainant. It got worse and worse every month.

Provenza knew Complainant was on that call. She thinks he intuitively knew those things had been found by her. But he did not act as if Complainant had found those things. However, Complainant was talking to the PMs, and she made it clear she was doing so.

She had other conversations with Provenza during that time. He's a short and sweet, to-the-point kind of guy. He was adamant that Rastogi needed to deal with the projects and that she knew them better than the project managers.

She, Complainant, and Rastogi would talk. Rastogi said she knew the clients and she would fix those things. Rastogi understood that Complainant was involved in researching and bringing those things to her attention.

In the office, she liked to have weekly meetings with the department heads and the finance team folks. They talked about these issues a number of times in managers' meetings. Complainant was in those meetings. She would say Hall, Geraldo del Lapina, maybe Lisa Pyles, Doug Quin, and Charles Johnson, via phone, were in them also. She, Hall, and del Lapina were vice presidents, as was Johnson. They spent a great deal of time talking about the RECs and that the reason for the issues was that so many of these projects being converted over from LGG were overrun.

During the regular managers' meetings, RECs would be discussed as a general matter, along with problem projects. Generally, Rastogi was not there, although she was at a few of them in 2009. She doesn't know if Rastogi sat in in 2010. She thinks they would have meetings with department managers who were LGG people that would get very heated because they were adamant they were write-offs.

She found out that LGG did some projects without written contracts. Unfortunately, some RECs were submitted without written documentation, and they shouldn't have been. If you approve a REC without written documentation but you have some other elements, it may not be fraudulent.

She doesn't recall the word "fraud" being used early in 2009. She thinks it was more, "it doesn't add up, this doesn't make sense, and I'm bringing it to your attention" from Complainant. She thinks Complainant told Rastogi she was concerned about those being write-offs when the RECs expire. Some of the RECs were small, but they added up to big numbers because there were so many. There were others that were fairly large, like $100,000.

After the acquisition, she believes Rastogi was regional manager for Texas and Oklahoma. Provenza had indicated to her that the job was something she would be doing, but things change. She is glad she did not get that job.

She did not make the decision to move Dieringer to the Dallas office; she thinks Rastogi did. Rastogi brought it up to her in July 2009 and she thought it was a good idea, because Dieringer had dealt with acquisitions and was going to come in and help with the converging and accounting systems. She also thought it was a good idea because the accounting was a mess. Dieringer arrived in the summer of 2009. She welcomed Dieringer's help and was told she was coming in because she had dealt with conversions before when she was working for the Dow business unit.

Her relationship with Rastogi was good at first, but the more the issues were brought up, it was becoming strained. Every time she brought them up, Rastogi would get angry and cut her off. Rastogi would get angry when Complainant brought them up. What she read from it was "stay out, don't scratch any deeper."

Once Dieringer got to the Dallas office, she started to get cut out of a lot of things. Dieringer was cutting Complainant out of her job. She thinks it was obvious the relationship deteriorated really quickly between them. Dieringer and Rastogi started running the Dallas office.

She wasn't working directly with Complainant between July and September 2009, when Complainant got demoted, because Dieringer had taken over most of the financial duties. Dieringer was telling her pretty frequently that Complainant was having performance problems. She took it at face value. The basis of Complainant's demotion was that Rastogi made the decision based on Dieringer's input. She didn't like it at all, but she was trying to make it work and went with it.

An 18 Sept 09 email refers to the Ballard invoice, a TCEQ project.[68] She thought Complainant was overwhelmed because of the state of what she got [after the acquisition]. It was so bad because of the incorrect way in which these projects were converted and the accounting irregularities she was seeing. Nothing Complainant did was right in Dieringer's mind, and Dieringer was telling her how bad Complainant was. She had had it. She was frustrated. She just wanted to get things done. In September 2009, she decided to interview for a new office financial manager.

Later in September, Complainant was demoted to a PA. She didn't have a choice that Dieringer became the new office financial manager. She didn't like how it was handled. She did not publicly disagree, but she thought it was insensitive and that Complainant was being set up to fail. If she had known the real facts, she would not have demoted Complainant.

She determined that Complainant, Rosas, and Smith would report to Dieringer and that they would be charged with the day-to-day facilitation of project financial controls.

At the time, she was frustrated because what she heard from Dieringer was that there were issues with Complainant's performance and the project managers were having trouble with Complainant. It turned out Dieringer was telling her a lot of things that weren't true. She had

[68] RX-13.

never heard that project managers didn't like working with Complainant. In fact, the opposite was true. She thinks the decision to move Complainant to the Fort Worth office was a joint one with her, Rastogi, and Dieringer.

She thinks Complainant was relieved when she told her what was going on. In Complainant's mind, she thinks, there was nothing she could do right with Dieringer and Rastogi. She had been beaten down and was looking forward to getting out of the situation. She thinks Complainant just wanted to keep her job.

In November 2009, she was aware Complainant had received a poor review from Dieringer and had been put on a performance plan. She didn't find out about it from Dieringer, who again did it under the radar without her knowing. She found out from the regional H.R. person, Kirksie. She thinks maybe Complainant told her she had been put on a performance plan and she called Kirksie, who knew about it and told her. To her recollection, Dieringer said she was going to put the whole financial team on performance plans because they were all incompetent. But she didn't do that at all; she just went after Complainant. Dieringer said all the project managers hated working with Complainant and that she didn't give them the financial information.

When Dieringer gave Complainant a poor review in November 2009, Mike McCloskey was the one who signed off as the next level manager. She wasn't happy about that because Mike knows as well as anybody that if you get a review from another office of somebody, you need to call that office manager and say "hey, you know I've got Daphne reviewing this and she gave a poor review; you need to know that and you need to see it." He never did that. He did not call her about the review that she recalls.

There are reviews done every fall in this time frame. There is not always input from others before a review is done. She likes to do that but she doesn't think that's a written rule. In the Dallas office, it's common for folks to receive or solicit input from others before they fill out one of their subordinate's reviews.

At that point, she was also being cut out of her job. Rastogi and Dieringer would make decisions on RECs and write-offs that she would normally do in her capacity. Rastogi would make personnel decisions that were her responsibility, and then inform her about it later. Before Rastogi came, as office manager she had input and was largely in charge of hiring and firing in the Dallas office. Once Rastogi came, there were cases where she had no input. Rastogi would make the decision and she would find out about it later. Rastogi took away some of her authority for hiring and firing.

She had talked to Provenza several times, but she got the same answer every time: "she knows LGG projects and what she's doing; let her deal with it." She wasn't getting any financial information out of Dieringer at that time, either.

As a manager, to her knowledge she has not managed anyone for two or three months, then put them on a performance plan. She doesn't think she was asked for any input on Complainant's performance plan. Historically, the way they did reviews was to get input from the people who worked with the individual on a day-to-day basis for that year. If someone managed the individual for the first six months of the year, they'd get their input. At the time, Dieringer had only supervised Complainant for two months.

She did know about Complainant being put on a performance plan before it occurred. She went along with the original 30-day plan. She did not approve a final warning for Complainant. She called Kirksie and asked what was going on. She thinks a final warning is always required. Kirksie always told them they needed to do that when they wanted to fire someone. She doesn't think it is a written requirement, but it is common practice.

In January 2010, she started calling the project managers Dieringer had said hated Complainant so much and had said she was doing such a bad job. She found out it was the complete opposite of that. A number of people—Dustin Ogle, Brent Lewis, Lisa Pyles—said she was the best financial person they had ever had. They hadn't had someone that good who gave them timely information, and they understood where they were on their budgets and projects. It was at that point she knew something was absolutely wrong. She talked to Soo Lee, because after she talked to the project managers who gave her opposite feedback about Complainant's performance, she wanted it corrected.

After that, she sent an email to Kirksie and Provenza, saying "this is not right." She doesn't recall how they responded. Between January and February 2010, she wasn't getting the financials she needed from Dieringer. She received a voice mail in January from Dieringer that they could probably now take all the write-downs she and Rastogi didn't want to take in 2009, because the office was doing better. That was a big red light and when she realized there was fraud going on. They had recognized revenue in 2009 that should have been written off then and was having to be written off in 2010. She felt very strongly that was not legal. Complainant consistently brought those things up.

There were a lot of things in January and February that made it abundantly clear fraud was going on and she was going to correct it. She didn't want anything Dieringer had done during her time in Dallas to affect Complainant's career. She asked the performance plan to be thrown out because she didn't agree with it and thought it was essentially falsified.[69] She also asked for Forester's performance plan to be thrown out.

She called Dimick in January and told him about a conversation she had with Rastogi and her executive assistant at the end of December that really bothered her. Dimick never followed up. She told Rastogi that Dieringer had told her there was an internal invoice she was trying to put off until next year for the write down. She said it was a write down they needed to take that year. Rastogi said no and that Provenza wanted the region to end up like this. She said four or five times that they needed to take the write down before she realized she was getting nowhere.

In February 2010, she had been getting complaints from all the department managers about Dieringer. Things weren't getting done. They had what appeared to them to be a lot of RECs expiring and revenue write-offs and were having difficulty working with her. She knew she had to do something about those and other issues and get Dieringer out of the office, so she emailed Provenza. Provenza told her to do whatever she wanted to do, so Dieringer was sent back to Austin.

[69] In testimony, the witness indicated the 2007 date in the body of the email (CX-15) was a typographical error and referred to 2010.

The day after the final warning was issued to Complainant, she asked that Dieringer immediately stop her role as office financial manager and that Rosas direct the PAs. There was no way Rastogi was going to let Complainant direct them. She temporarily took over as Dallas financial administrator. Provenza wanted someone from the outside. She also tried to get the final warning removed from Complainant's file. On 23 Feb 10, she asked Lee, the HR rep in the Dallas office, to remove performance plans from Complainant's and Forester's files.

She did have conversations with Provenza about Complainant's complaints. In mid-February, she told him it was obvious in her opinion that fraud had occurred. They had recognized revenue in 2009 on projects that were clearly write-downs. Dieringer and Rastogi knew they were write-downs. He didn't want to hear it. She thinks Provenza was defensive about her concerns about the write downs. They were a huge amount of money, adding up to something like three million dollars. After Dieringer went back to Austin, she told Provenza about Complainant's new concerns after she sent her to do some research.

She held the position of office financial manager until April, when Dorsey was hired. Complainant assisted her during that time with finances. She asked Complainant to start pulling together the information on the RECs, the aged accounts receivable, expenses, and anything that in her opinion constituted improper financial activities. She thinks "REC" is a specific term Respondent uses. She does not deny instructing Dorsey to not approve of any REC with a risk code of 60, but she cannot recall doing so. By and large, she delegated her authority to approve or disapprove RECs. She delegated it to Complainant and for a brief period of time to Dorsey and Dieringer. She doesn't think that from 2008 until the summer of 2009, she ever saw evidence of someone coming in and approving RECs as though they were her or Complainant.

In the fall of 2009, Complainant had submitted to Dieringer a list of projects with aged accounts receivables that were supposed to be written off. They were never written off. Complainant had submitted those several times. They had to take those write-offs in April 2010, a couple hundred thousand dollars. Complainant brought a number of RECs that were expiring to her attention so they couldn't be renewed. There was no information to support getting change orders from the clients.

One of them was Cowboys Stadium. That was a pretty big one that Rastogi kept insisting was an overtime issue and that they were going to be paid. That wasn't the case and they had to take a big $110,000 write-down for it. There were a number of them. Complainant complained of new RECs she found in her scrub down of the financials after Dieringer left. Complainant was saying that the RECs from that period were not valid. In Complainant's opinion, there was not information to support recognizing revenue. Complainant was warning her that they were going to be hit with a lot of write-downs. It was her impression that Complainant was concerned about the ethical situation and fraud.

When Dorsey was hired, she found him qualified. To her knowledge, Provenza never complained about Dorsey during his tenure. Dimick gave him positive feedback on his review. She thought he was outstanding. Falgout called her and said what a great decision it was to hire him. There were no major complaints about him and they all liked him. He had a very good background.

Provenza told her they hired Dorsey because of the issues they were having that she had brought to his attention, that it would be good to get someone with his type of background, and they could correct the problems. During that time, her professional relationship with Rastogi had eroded. Rastogi knew she had complained about these things. They still had to talk in their professional capacities. She does not believe Rastogi did not know Complainant made these complaints until this action was filed. She finds it impossible to believe. For one thing, she is pretty sure they discussed it. Complainant and she had brought these things to her attention in 2009. In 2010, Rastogi was aware of what was going on with the audit. There were emails from her.

She made a complaint to the hotline because of one, what was happening in the end of December. Two, they were seeing RECs coming through that were clearly expiring and having write-offs. Three, the voice mail she received from Dieringer. Four, she had made Provenza aware of it and he was in total denial. She decided the only thing she could do was to call the hotline. When she called the ethics hotline, she had to identify herself. She doesn't recall if she mentioned Complainant's name in the hotline call. Getting the financial information from Complainant was the only way she knew what was going on.

For the audit, she was asked for the projects she thought were concerns. The auditors came down to Dallas and had a lot of financial questions for the project managers. There were two or three auditors who were there for maybe a week. She thinks there was a kick-off meeting with the auditors who said what they were there to do, with the department heads and some project managers. Rastogi was not there. They were perplexed why she wasn't. Rastogi knew there was an audit. She doesn't know if it was clear that the audit was a result of complaints she and Complainant had made. She thought it was obvious, but that is her opinion. People in the office knew about her allegations regarding improper accounting. There were meetings at Respondent's office with teams of folks who talked about specific projects. There were also interviews at Jones Day attorney offices.

She believes she and Rastogi talked afterward about the audit via emails. She brought up her concerns that the auditors said they were going to get back to her and never did. She didn't know how to deal with the continued write-downs and she did not get a response on that from Rastogi or Provenza. The auditors told her that she was right, there were significant issues on those RECs, they shouldn't have done that, they were going to find a way to deal with the issues, and they were going to send her their report. But she never heard a thing after that.

She had a couple of different interviews with the auditors. She doesn't recall if the auditors identified her as the source of the call in the group meeting. She did not identify herself as the one who called to the others in the office.

Complainant assisted the auditors on a daily basis for the whole time they were there, and everyone in the office could see that. Other employees may have assisted with respect to particular projects. She didn't have to restate her complaints to the attorneys; they were aware of them. She doesn't remember if she told them that Complainant had provided her information in early 2009 or after Dieringer had left. She knew Complainant participated in the audit. She thinks Complainant did tell her the questions they asked because they were unusual, about personal things.

She contacted a corporate governance lawyer to walk her through the right thing to do. She was very, very worried and did not want to go to jail. At the time of the audit, it was very stressful and difficult at the office. She doesn't think there were various camps aligned with her and Rastogi. There were obviously some people who were upset with her for the allegations, but she thought there were LGG people on the management team who did a great job.

In the year after the audit, they were very sensitive to RECs being submitted. She thought Dorsey did a fantastic job of getting good information to support change orders for projects. It was a horrible year because they had to write down all those things from 2009 and even 2008 LGG projects. The vast majority of the write-downs were in 2010.

Complainant never specifically asked her to call the ethics hotline on her behalf. She doesn't know if she ever counseled Complainant to not approve a REC. She may have. She doesn't recall a specific instance in which she told Complainant not to approve a REC that Rastogi had told her to.

She does not agree that all RECs require some sort of judgment call. She doesn't think there's a whole lot of room for judgment. The guidelines Respondent had were very clear. It wasn't supposed to be subjective. If you're recognizing revenue for something, you should have something from your client. It's true that not approving a REC or approving a REC without written documentation is not necessarily fraudulent. If she recalls correctly, risk code 60 said you needed to have a long working relationship with the client in which you've been compensated or have a good reason for recognizing that revenue.

Complainant was one of the people primarily responsible for insuring that invoices went out timely and was the highest person on the financial side of the office working for her. It was Dorian Potts' job to insure subcontractor invoices were sent out. It was not necessarily Complainant's responsibility in the role as office financial manager to get invoices out. Complainant had a group of staff who would assist her in that. Complainant didn't always work with the project managers. She might have a project administrator she would work with, and bring it to that project administrator's attention that an invoice was aging and needed to get out.

She does not think Complainant should have been fired. During 2009 prior to the demotion, she heard from Rastogi and Dieringer about Claimant's performance.

She was fired from Respondent in late October 2010. She suspected it was going to happen, given the complaints she made and the fact that nothing was being done about it. It was not too long after she filed her complaint. Afterward, she filed a complaint through the Department of Labor. Now she is litigating with Respondent. She was fired from Respondent in part for violating its open door policy. She currently has two cases pending against Respondent, the whistleblower and the federal court case.

Daphne Dieringer testified at hearing and in affidavit in pertinent part:[70]

She has worked for Respondent for about 32 years. For the first 14 or 15 years, she worked as an accounting manager. She transferred over to the operations side and did PA work for a couple of years for engineering and went to the construction division and worked on big projects doing

[70] Tr. 586-676; RX-41 (as cited).

project controls, troubleshooting, and forensic audits. She worked on implementing the E1 system, then went to the job business unit as the financial manager, similar to the position Complainant held. She transferred to Austin general engineering in the same position, which turned into a business manager position. She was also operations manager in the San Antonio office and took on a lot of other roles within the office. She's probably been an office financial manager for about ten years. Currently, she is regional financial manager. She has had experience with conversions like the LGG Vision system to Respondent's E1 system.

In the summer of 2009, she was working full time in Austin. She came to the Dallas office after Rastogi called. She was helping Rastogi learn some E1 so she would know how to approve things and Rastogi asked her to come and take a look at what kind of training the former LGG staff were getting. Rastogi was concerned they weren't able to understand their reports and manage their projects. When she became office financial manager in Dallas, she was responsible to Taylor.

There were some pretty fundamental differences between how LGG and Respondent did accounting that were difficult for the project managers to grasp. LGG's revenue recognition fixed unit price projects were the majority of what they had and were based on a once-a-month process where the project managers would sit down with Rastogi and do an estimate to evaluate their percent complete. They would take revenue once a month based on their percent complete. Respondent accrues revenue based on a multiplier or rate tables, while LGG kept it trued up to where their estimates to complete were. Project managers weren't used to accruing revenue on that basis, so they were at a pretty big disadvantage for a while. Because they were integrating some LGG staff into the Austin office, as well as the Dallas office, she was concerned with her role in training those staff. Dimick told her not to worry about it and that Complainant was taking care of it. She watched that for some period of time and at some point said, "No, I'm taking care of it."

She did not find that Dallas had as much training and integration on the financial side as it needed. She thinks there was some training and some integration, but when she got there in June and July, they still did not understand. In that case, it wasn't enough.

She thinks there was a lot of miscommunication during the conversion. The way LGG set up tasks looked like individual jobs to an outsider. A job might have a budget of $10,000 and have six jobs under it that really didn't have any associated contract value, because they all linked together. From the outside, it looked like seven different jobs. When they converted, it looked like seven different jobs. That was okay, but another key part of their system is a "funding level job" that links them all together, where the contract is held. It would have showed all the costs associated with the bottom six rolled up into that one contract value, which in turn would have kept it out of REC status, if the cost for all seven jobs hadn't gone over that contract value.

Since that didn't happen, the REC report for all the jobs that went into REC status at conversion was out the window. It was crazy. Once that was identified as an issue, there were a ton of RECs put in place because they knew it was a system issue they could go in and systematically correct. That was a pretty big effort.

There were issues with the multipliers. A lot of that was because of the different ways the systems took revenue. They didn't ever have any multipliers associated with their fixed price or price jobs. It caused some havoc because a number was plugged into them across the board. The project manager was not attuned to that whole weekly revenue recognition issue.

A project manager needs to understand how the revenue is taken so they can measure how fast they burn their budget. When they prepare an estimate to complete, they can project out where the revenue is going to go and make sure they stay within budget.

Office financial managers do a variety of things. They work with the project administrators. They perform project reviews by sitting down with project managers and technical team leaders, doing a review of project financials and quality, and making sure Respondent is in compliance. They forecast financials for the month. Part of what they have to do is report up to their group leader, where the offices are going to be based on their plan and if they're going to be over or under. They work with the office manager on the budgeting for the next year and on anything the office manager needs, financially.

An office financial manager has daily contact with the regional controller, sometimes multiple times per day. A PA would definitely also have regular interaction with the regional controller, because all of their work filters through that. If they're not talking to them daily, the regional accounting manager is seeing the output of their work on a regular basis and checking and verifying it.

She first came to Dallas in June before the two offices merged for a few weeks to see how well the LGG people understood the accounting side. She was supposed to stay for July and August to help get things moving. She found that the staff wasn't trained. The PAs were doing things on the side manually because they didn't understand how to run reports. There were other very basic things they weren't doing. It was concerning because they have a lot of big projects in Dallas. Her assessment of Complainant was that there was no question she worked really hard. She just didn't grasp a lot of the concepts and was concerned about that because Complainant should have known.

Complainant was responsible for the training of LGG personnel—over 100 people. She was told Complainant was responsible for training the people in the Austin office, but she took on that responsibility knowing that was kind of impossible because they were doing it over conference calls.

Some of this was staff Complainant had had for a long time, not just the newer LGG people. Complainant's role was making sure they were trained and really providing the services that the project managers needed. She expressed her concern to Taylor and Rastogi. There were things like running a report that was unbilled over 60 days; that's something they have to report on a regular basis. They'd been doing that for years. Complainant had been relying on other people to run those reports and it would never be the right report. That was a pretty routine thing. So there were basic things that Complainant just didn't have a handle on. The system isn't easy, but Complainant had been using it for many years and should have gotten it by then.

She was also concerned about the procurement staff. Procurement is a big part of financial responsibility for people in a managing area. It's all part of the accounting process. It was Complainant's responsibility to make sure policies and procedures were met, that Respondent's risk was as low as it could be, and that they were following their prime contract.

Procurement reports to the office financial manager, which would have been Complainant, so she was concerned. Procurement takes the primary contract from the client and procures a subcontract to the subconsultant, with the insurance requirements and all those things to make sure that the subcontractors were also following their contract to their prime client. LGG had more subcontracts than she'd ever seen, so their workloads were very large.

She found out that Dorian, a front-line manager who managed staff but reported to Complainant, was reducing those insurance requirements, reducing a lot of the requirements on the subcontractor, and putting Respondent at risk. Nobody seemed to think that was a big deal. Complainant should have thought that was a big deal, and should have been making sure that didn't happen. She changed that right away. She told Taylor and talked to Dorian to make sure she got office manager approval. Only office managers can give approval for making the risk to Respondent higher than what is in the prime contract.

There were a lot of subcontractors sending invoices in and by the time she saw them, a lot were over a year old. They didn't match up with the subcontracts they had issued to their vendors. They had gotten in most cases an initial contract. Sometimes they received a modification, but it never got signed. Invoices were coming in for work that hadn't been authorized in writing. It was very difficult to sort through. She did not find Complainant to be organized when she was the office financial manager.

In her review of the Dallas office's financials, she did see one thing in particular about which she was absolutely concerned and she went to talk to Taylor. When she first started getting involved in Dallas, they were making plans and doing really well. Then it seemed like there was something missing. What she discovered was that they give out something called a "P-card," a procurement card, which is a Visa on behalf of Respondent where you can go and purchase supplies, expenses.

They would put their Xerox machine rental usage on the card. It was the responsibility of the card holder to get that statement in and record those costs in the system, because the vendor was getting paid automatically by Visa. The majority of those costs are overhead and none of the costs were hitting the system. She started asking around. People who were entering it in were saying they give a list to Complainant, who would pick out which ones for them to charge that month. So they'd pick and choose which expenses would hit the books so the overhead would be increased. There were months of charges out there. She thinks the Xerox rental was the bigger one, but there were like six or seven months of that out there that hadn't been recorded on the Dallas books as an overhead expense. That wasn't proper, so she brought it to Taylor's attention and they instructed the people who were entering the costs to enter them that month. They had a big overhead hit that July or August, when Complainant was still in the financial role.

It was Complainant's job to make sure the overhead expenses charged to the credit card were being entered correctly and she was not doing it. It was improper. She did not make mention of the procurement card in any documents when she was Complainant's supervisor.

She initially talked to Taylor about her concerns with Complainant and then they both went to Rastogi to come up with a plan. After working with Complainant more, she felt that Complainant didn't even understand the PA's role. In early September, 2009, she recommended letting Complainant go.

Both Taylor and Rastogi were trying to figure out a way to make it work with Complainant without firing her. She disagreed, but it wasn't her decision. The two of them decided that demoting her to the team leader role was the best solution. She felt like if Complainant didn't know how to do it after all those years, she probably wasn't going to. Plus, her staff was very frustrated because they didn't have someone guiding and leading them. They knew they didn't have all the answers. In the meantime, she was doing brownbags three days a week with the PAs, giving them training courses on her lunch hour for those days she was in Dallas, to try to help them. They appreciated that and were frustrated that they hadn't been getting that in the past. Complainant was not providing adequate training and mentoring to the junior members of the accounting staff. She was concerned that they would resent Complainant for being demoted to their role. It is part of the job responsibility of an office financial manager to make sure that PAs and team leads are trained and doing their jobs right.

During this time, she would work in Austin on Monday and then drive to Dallas that night, then back to the Austin office Friday. After about three or four months of doing that and working 80-100 hours per week, she got to charge 10 or 15 more additional hours on her time sheet. She was not eligible for a bonus based on the financial performance in Dallas or Austin. She wasn't part of the bonus pool.

She, Rastogi, and Taylor all agreed that Complainant was not suited for the OFM position. They agreed that she did not fully understand the accounting process and did not follow basic accounting procedures. Complainant's lack of understanding and failure to follow procedures was a problem given that the Dallas office's contracts, procurement, and administrators all either flowed through or reported to her.

Complainant was demoted and became a Staff Accountant/Financial Team Lead. She assumed Complainant's former position and temporarily acted as Dallas OFM, managing accounting for the office. Many years ago, she developed project and administration role minimum requirements—the main functions of the role to keep things running. The PAs have a huge role in the financials and project administration of the office and sometimes she doesn't think they realized what a critical role it is.

From September 2009 on, the Dallas office was an oppressive place to work. People were not very happy. It was just not a good place or a good atmosphere. She felt grateful to be in Austin on Fridays. She thought there were different camps, the LGG versus URS camps. There wasn't any camaraderie and there wasn't any encouragement from a lot of senior management to build it. Taylor was probably the one she heard making comments like "we have to use those people because we're being forced to." "Those people" were former LGG employees.

She is familiar with the REC process. First a job goes into REC status, which means either there is no contract value and they're working without a contract or there is a contract value and it's been exceeded and they're continuing to work. The report runs every Saturday, so you can see a report every Sunday or Monday morning that shows what jobs went into REC status that were new or continued to be in REC status. It also shows which ones have a "REC in place," which is an electronic request to take revenue in excess of contract. If something is in REC status and there's no request to take revenue in excess of contract, then systematically it just stays on that report. But there should be action taken immediately: go talk to the project manager, find out what's going on and see if it's recoverable. If they say no, ask them why. If it sounds like there's something there and they're not pushing hard enough, then go to their manager and ask for some help.

Their job is to make sure they bring in all the money they're supposed to. They're not just going to let it go. A lot of project managers are highly technical engineers, scientists, and chemists who just love to do their technical work. Interaction with the client is one of their more difficult things because they tend to be a bit nerdy and introverted. You can't just say, "okay, it's a write-off," you've got to do your job. It's her job to make sure it happens, but not to tell them what to do. There are different methods to make it happen. But you have to do it, you can't just write things off. Rastogi was relentless. She felt sorry for clients and the project managers, because she'd go find them. She'd have her hand on their shoulders, pulling them into her office to call their client and talk to them and find out what was going on.

The REC procedure does require some judgment calls. There are ways to define a "trusted client," by the current contract value with them, how much revenue you've earned, and how much they're paid. There are different variations you can look at to prove that someone is a trusted client. Level 60 is pretty subjective: it just says that you have not submitted anything in writing to your client asking for a contract or a modification, and you have not received anything in writing. But the project manager and/or his supervisor have to have a conversation with that client and get an answer that they are going to fund it. Then there is time for a change order and written response. It is obviously the highest risk and you don't want to use it every day. But it is subjective.

The risk code helps Respondent determine what the risk actually is, but it doesn't affect how much revenue is recognized. If it is a higher risk code, it may require more approvals up the ladder. The dollar value of a REC, not the risk code, governs how many levels of approval a REC has to have. Under $50,000, the office manager and the regional controller look at it. If it hits $50,000 up to $100,000, it goes to the office manager, regional controller to the regional manager, and to the next level which is the divisional controller. The next level after that it goes up through the group leader, then up to Marty Lehey or maybe higher, she doesn't know.

The initial level requires two approvals. If there's not going to be a REC in place and it's just going to be a write-off, it just happens weekly, but it will stay on that report forever because it's really called a REC reserve. So it's taking the revenue down, but when you look at your job, it's not removing the unbilled, so you still have unbilled growing out that is not being recognized as revenue, but costs on the job. It's not claimed as revenue on the books, but the cost is being incurred and is affecting cash flow.

The next step, if there is a write-off, is to put it on a write-off sheet. It has to have an explanation as to why they're writing it off.

If you've run out of the value on a contract but the people are still working and they've billed another $10,000 that has been charged to the job. An invoice has not necessarily been sent out. The cost has hit the job. The revenue was taken Saturday morning and written off Saturday night. That happens the same day. It's taken in one system and the REC process runs after that. If you have a contract, we're going to take your revenue down. To get that off that REC report, it has to go through an approval process as a final write-off. If it's approved, it comes off the REC report and shows as a full write-off. The unbilled gets reduced because they're not going to bill it. If the

REC is approved, it's kept as if they've accrued and earned it, at least for six months. So, at that point, it is showing as revenue on the books.

Once a REC is approved, it is recognized and shows up as revenue. If they have a $10 contract and actually invoice out $10, it's recognized as revenue when the work is done. It doesn't matter if the money has actually been paid by the client. Likewise, the money may not have been paid by the client for the revenue in excess of the contract value. But if the REC is approved and the work has been done, it's shown as revenue.

She would agree that the person who has the best working relationship with the client is a good source to make close judgment calls. Rastogi never forced her to approve a REC. She did tell her she didn't think a REC should be approved when Rastogi asked her to approve one. Rastogi has asked her to approve one and she has looked at it and said no, and then Rastogi said okay because she was pretty new to Respondent back then. She never felt like it was adversarial. She never felt any discomfort with saying "no" because she looked at it with her judgment and said based on these codes, she didn't feel comfortable with it. She thinks that was during the learning period for them trying to understand the risk codes and how she was personally interpreting them.

It's not like there are big rounds of subjectivity in there, but it is a personal feeling. If anyone wanted the REC approved, she wasn't the last person in the office. They could have gone to Taylor. When you are submitting a REC, it comes up with a list of what they call L1 approvers, which is the office manager. And the office manager can select a delegate, unless they were told otherwise.

There was a time when Taylor asked her to stop approving RECs on her behalf, and she immediately complied. There have been situations in which money was written off, but later recovered. For example, on a job called Grand Prairie, they cancelled a REC and wrote off the revenue, and then several months later they discovered the REC was valid and put it back in. The revenue was regenerated. Either the REC was put in place or the client came up with the money. There are cases also where they never get a contract mod, but the client says to go ahead and bill them. Then when they get paid, they can up the REC and recognize the revenue.

In the fall of 2009, she reviewed Complainant, Dorian Potts, Kathleen Smith, and Laci Rosas. She also reviewed some of her subordinates in Austin. She solicited feedback from others to do these reviews. Her overall assessment of Complainant at that time was that she needed improvement. The performance review covered work before and after Complainant was demoted. The multiplier number and the sold time numbers are not, in her mind, material to determining the performance of a PA or team lead. It just depends on how someone's work load is distributed—they don't have the ability to manage their sold time. They can't go solicit work from someone and get their sold time.

She asked everyone, including Complainant, whom they wanted her to ask for feedback. She would email those people and they would send their feedback and she would combine it. It is in her discretion how to weigh it. She has no control over whether or not people respond. Everyone has to do them and is tired of them, so it's good to have a long list so you get somebody to respond.

With respect to "technical competence," she had asked Complainant for output in E1 to see how much she could manipulate it on her own. A lot of things they would ask for, Complainant would say "let's wait until Laci gets back." That was a common theme. Complainant's PA staff wasn't trained; they didn't know how to use it. That, in her mind, was a reflection on Complainant's ability.

At the time of the review, Complainant had only been a PA for a little while. She feels it was fair to review her skills as a PA at that point, because the financial manager role is just a higher level of a project administrator role. It's not really different, just higher. You're still working with projects and still need to understand the data and run the reports. She agrees that a number of her comments on Complainant's performance review have to do with her performance in 2009 as office financial manager and not as a PA. It is geared more toward the other role because Complainant held it longer. The PA does not lead a procurement team.

Complainant is very customer-focused and pleasing people is very important to her. The problem with that is that when you have a very structured job, if you stop a lot to please people in the middle, then you're not going to meet all your deadlines and be consistent in your daily work. It's a difficult thing to manage. Complainant's strength got in the way of her job sometimes.

Complainant rated herself as "needs improvement" in the same section that she said "Jamie has not been consistent with meeting deadlines. She's not fulfilled the commitment to the LGG staff in regard to training and follow through." The same was true for the "technical competence" section.

Deadlines were missed all the time. The revenue adjustments weren't turned in on time. She's not saying she always did it perfectly herself, but there were a lot of other things like the unbilled and things for the mid-month meetings that regularly weren't turned into the controllers on time.

Complainant's work schedule was definitely an issue for a lot of people. The invoices weren't getting out every week. They would get set aside and picked up later. Part of that might have been due to a project manager. Part of it was due to Complainant at that time. Respondent places a huge importance on getting invoices out on time—it's the cash flow. If invoices don't go out, the DSO is higher, and offices are measured in part by their DSO. You don't like to see the DSO too high.

Complainant was not responding to billing rate issues immediately. It's the PA's responsibility to get the rates updated in the system so they can in turn take revenue that they can invoice. Another part of the PA's role is to work with project managers to determine if a REC is going to be submitted. They want them in on Tuesday so it can go through all the approvals by Saturday when revenue runs again and they can take revenue on a timely basis.

She wanted to give Complainant credit for caring and wanting to make the office better. There was never a question in her mind that that was her goal. She just didn't always have the ability to get it all together and do it and didn't know how to get it to happen.

If you said you were in crisis mode and needed help, Complainant was probably the first person who would change her schedule and personal life to do whatever was needed. But the other side of that was that four days out of the week, she might show up at nine. Then the next week it might be ten-thirty or eleven. You never really knew. You couldn't count on when you could set up a meeting to do something with Complainant. It was a very erratic schedule. On the other side, when you needed her, she did come through.

Mike McCloskey signed the performance plan because she hadn't officially transferred to Dallas, so hers went to Mike. First they checked to see if they could get it moved to Taylor, and that wasn't good. McCloskey did call Taylor, she knows, because he was stressed about having it in his queue.

Before she did the performance reviews for Dallas, she went to Taylor and told her she didn't feel comfortable with it because she had to do all the other ones on people she'd had for a whole year. Taylor told her she wanted her to do it because she had too many things going on. She did not want to give the review of Complainant. She told Taylor she didn't want to give the review. Taylor said she had to. She doesn't think it was unfair for her to give the review, even though she wasn't in the office for most of the year, because she used the comments of others who were there all year. She probably would prefer to be given a review by someone who has been her supervisor the entire year.

When she finished the reviews, she took them to Taylor because she wanted to go through each of them with her before she gave them to the staff. Taylor had been observing them for much more of the year than she had. Taylor went through the performance reviews while she sat in her office. Taylor had a few questions, but she couldn't remember the specifics. If Taylor had totally disagreed with her assessments, she would have wanted to have a conversation and would have changed them. Taylor told her they were fine and did not tell her to change anything.

Over a month after the demotion, she was still seeing Complainant make gross errors on basic tasks. She decided to put Complainant on a performance plan because the basic functions still weren't being met and part of it was affecting the rest of the staff because everybody could see what everybody else was doing and they were becoming disgruntled. Complainant wasn't coming up to speed fast enough. She felt like Complainant should have been on a fast track because she should have known the job. She put other people on performance plans around that time. She approached Taylor about putting Complainant on a performance plan and Taylor agreed that was appropriate.

Complainant was surprised when she gave it to her, but incredibly professional. Complainant said she needed to think about it and come back and ask questions a few days later.

She set Complainant's schedule. One of the reasons she sent Complainant to Fort Worth was because she had said many times she wished she could work there because it was so close to her house. She did not send Complainant to Fort Worth to get her out of her hair. She never hated Complainant.

She did not meet with Complainant weekly, as the performance plan says they should. She disagrees that they never met after the performance plan was implemented, though. They met two times and talked about how the work was going, what was going well, and what wasn't if there was a deadline still missed.

She did not see the improvement she was looking for after placing Complainant on the performance plan. She thinks by then that Complainant's attitude was changing. She had maintained an amazingly positive attitude for being demoted and for the initial performance plan.

But she thinks it definitely started going downhill. She eventually gave Complainant a final warning on 18 Feb 10. She told Taylor about her decision to do so. Taylor said, "whatever you have to do." She did not look at the actual document.

Typically at the end of a performance plan, if you haven't improved, you're terminated. She had not done a final warning before. She had talked to Kirksie in HR who had suggested this. She did the same for Forester because again, she wasn't there and she didn't meet all of his meetings, either.

After she issued the final warning, she got an email that she hadn't talked to Taylor, which was untrue because she had. Working with Taylor was pretty difficult. She lost her temper at Taylor, and said she didn't appreciate Taylor putting lies about her and her character in writing. She was told on the 19th that she was no longer needed in Dallas and she continued to work for Austin as office financial manager. Rastogi called and told her Taylor didn't want her to come back.

Had Taylor not intervened, her recommendation would have been to terminate Complainant's employment as early as December 2009 and at a minimum, to follow through with the final warning she gave her on 18 Feb 10.

When she gave Complainant her final warning, she did not think Complainant would ever be able to effectively perform in her PA role. She shared those thoughts with Rastogi at some point prior to 14 Jan 11. Rastogi was adamant that she was not going to take her recommendation and that Taylor was going to have to make the decisions about RIFs. She agrees with Rastogi's rankings of Complainant. While she worked in Austin after February 2010, she did observe Complainant's performance as a PA. They're all one region and all of the data is right there. There are a lot of joint projects between Dallas and Houston and Austin.

During her time at the Dallas office, Complainant never blew the whistle to her and said she believed there was accounting fraud going on. She never reported that she thought revenue was being recognized without supporting documentation. Complainant never reported that she thought revenue adjustments were being improperly delayed. With the RECs, there is a range where it could be abused to end up with misleading financial statements. She thinks it's unlikely in most cases because there are other levels of approvals. It's not just one person's decision. She was never aware of Complainant raising it as an issue. She became aware of Taylor raising it as an issue when everyone else became aware of it, when they announced the audit.

The job description in Complainant's Exhibit Six is for a project controls role, which is taking pieces of the PA role and adding to it a lot of more highly technical things. The Dallas office knew they had done that and contacted her and told her they needed good people who can do the higher level stuff. They had the clerical people, but not any of the highly technical people, so they asked for a copy of what they had been looking for. It was a newly-defined position and it just became a formal position in the last two years. It was a much higher level from the position from which Complainant was terminated. There's a formal role of project administrators—project administrator one, two, three, four. Then there are project controls, which is more highly technical and there's a career path for that. Complainant was being paid around $78,000, and the job listing was $57,200 to $77,200. The senior job was potentially going to pay $25,000 less starting salary.

Cliff Hall testified at hearing in pertinent part:[71]

He is a professional engineer and was employed by Respondent and its predecessor, Grainer Engineering. Grainer was acquired by Respondent in 1996. In September of that year he first came to the Dallas office. He was an engineer, project manager, project control engineer, vice president, and department manager during his time with Respondent. He resigned in September of 2011 to take other employment and is currently employed with Stantech Consulting Services as the principal of transportation. He first came to know Complainant when she started working in the Fort Worth office. He observed Complainant for about 12 or 13 years at Respondent and probably saw her several days a week. They were in the same office in Fort Worth, then he was in Dallas, and then they all co-located to the LBJ office for the rest of the time.

They are acquaintances now, talking a little bit here and there. He and his wife have been out socially with Complainant and her husband, but that doesn't impact his ability to testify truthfully. He never really had any questions about Complainant's work ethic. She always appeared willing to put in whatever time she had to to get a job done. He never voiced any complaints that she wasn't working hard enough and doesn't recall if he heard anyone else at Respondent make that complaint.

He observed Complainant working on the weekends and after six. She was responsive to his inquiries and requests for assistance. There was a period of time when the operations manager was out on medical leave and he was the interim operations manager, so Complainant worked directly with him. When he was department manager, they coordinated a lot of the dealing with the financial issues of the office.

He was a project manager in the Dallas area probably from about 2000 until he left. He was on one conference call about the LGG merger, but that was all. After the merger, things changed for the worse in the Dallas office. Morale kind of went downhill. It was not immediate, probably close to a year after the acquisition when they co-located. From that point, things deteriorated.

He worked with Rastogi after the acquisition, observed her work in the office, and was in meetings with her. He reported to her toward the end of his tenure at Respondent. Prior to that, he reported to Taylor. He was able to observe the managing styles of both. He preferred working for Taylor. Taylor liked to surround herself with managers she trusted to do the work she assigned them and allow them to manage their business. She treated everyone professionally, took feedback from the managers around her, and listened to them. With Rastogi, it was her way, or that was it.

If he remembers correctly, revenue was accrued as it was charged to a project. At the time, he believes that even if a project was over budget, revenue could still be accrued. Revenue could be recognized before it was actually received by Respondent. That was generally known within the office.

He knew Dieringer before she came to the Dallas office in summer 2009. He had never reported to or worked for her. His understanding was that there were some issues with some of the projects being overrun, there needed to be some cleanup, and Rastogi did not have confidence in

[71] Tr. 298-344.

Complainant in that financial position. By overrun, he means the revenue had been accrued in excess of the contract value without an opportunity to recover that money.

He knew an audit was being conducted in 2009 by Respondent. He was called in as part of it. He understood that Taylor and Complainant had reported some issues with revenue in excess of contract and that the auditors had come in to look into that. He knows Complainant reported her concerns to Taylor, and a lot of that was reported in monthly management meetings, which he attended. He doesn't recall if Rastogi ever attended those meetings. If she did, it was uncommon. He doesn't think there were detailed meeting minutes taken. He believes, based on discussions with Taylor, that issues addressed in the senior management meetings in the fall of 2009 through 2010 were relayed to Rastogi. Taylor would talk to Rastogi about any of the financial issues with the office. In the fall of 2009, Dieringer would have been in those meetings and reported those to Rastogi, too.

He thinks the audit was common knowledge. A lot of people were called in for it and he thinks it was being discussed among most of the staff. He thinks Rastogi knew about it. There wasn't much in the office she didn't know about. The auditors would have used a conference room in the office. There is no doubt in his mind Rastogi knew the audit was being undertaken. If she didn't know, she would have been one of the few.

His impression was that the auditors were there looking into, in part, the RECs and that the REC audit started with Complainant and Taylor. That was his impression of what the entire office thought. Complainant did a lot of digging in the accounting system and reported to Taylor. He understood that the audit was triggered by allegations from both Complainant and Taylor. He can't speak for the entire office, but they knew that anything that was financially-related, both Complainant and Taylor would be fully aware of. He's sure the project managers would be aware that the audit was related to Complainant. It was known by several people in the office that by the time the auditors arrived or shortly thereafter, Taylor had actually filed a complaint with the Department of Labor.

In a lot of the meetings, they were talking about the financial status of projects that had revenue in excess of contract or outstanding accounts receivable, what the status was, and whether they would be able to recover that money. It was a lot of that sort of discussion about individual projects. That sort of discussion occurred pretty much every month.

In the fall of 2009, he had a conversation with Dieringer about the REC program and why it was necessary to not write down the write-off contracts. It was not a formal conversation; they were just talking and discussing the revenue recognition issue as far as trying to clean up projects in 2009. He means projects that were overrun, where they knew they weren't going to recover the revenue in excess of contract to take a write-down at that time. They were talking about revenue adjustments, not RECs, but they're all kind of related. If you're taking a revenue adjustment, you obviously have revenue in excess of contract. They were talking about everything—RECs, aged accounts receivable, if there was something they knew they weren't going to collect. They had invoices that had not been paid and some of them had been out for a year.

He asked Dieringer when those contracts were to be written down. He mentioned that they really needed to go through all of those projects and clean them up and take the write-downs that year, in 2009. The office was already not going to meet its financial plan and his opinion was they needed to clean up as many projects as they could in 2009, so that in 2010 they could start over without having all those projects over their heads.

Dieringer responded that it wasn't going to happen because the region had an opportunity to meet plan and people whose bonuses were based on the region meeting plan would not allow that to happen. That would merely prolong the problem and he was not in favor of that. Certain people's bonuses were tied to the office and certain people's bonuses were tied to the region, so if the office didn't meet plan, then those that were tied to the office would not receive bonuses. If the region didn't meet plan, it was the same for those whose bonuses were tied to the region. His bonus was tied to the office. Since they weren't going to meet plan, it wasn't affected in 2009, but certainly could have been impacted in 2010. His understanding is that Rastogi was eligible for a bonus. His understanding is that the operations manager and above had their bonuses tied to the region, not to the office. The office as a whole would have been impacted. He has never seen Rastogi's bonus plan or asked her about it.

His office did not reach its number for 2010 and he did not receive a bonus for 2010. A lot of the projects they were asking to have write-downs taken on in 2009 were taken in the earliest part of 2010.

He doesn't recall if anyone ever asked him in 2009 or 2010 to evaluate Complainant or Taylor. Taylor and he would talk about individuals within the management structure and performance, so he's sure they talked about Complainant. If someone came to him in January 2011 and asked if they should keep Complainant, he would have said they should. Complainant had worked there for a number of years, knew the accounting system well and was very responsive to the needs of project managers when she was a PA. He always got whatever he needed from her in a timely manner.

He resigned because he didn't like the way the office was being run and did not find that he was going to be able to effect change. He thinks the number of employees left in the office shows that the merger of LGG and Respondent did not go very well. He didn't think it worked. At one point, Taylor told him she had wanted to be named regional manager and that Provenza had promised her the job. It was apparent to him that Taylor and Rastogi did not get along and the relationship became adversarial around December 2009. After the acquisition, he thought there were three different loyalties: one to Respondent, one to LGG, and people who were just trying to make it work. Initially, he put Provenza and Dieringer in the "trying to make it work" camp. He thought Dieringer knew Respondent's accounting system well. He doesn't know if either camp was instructed differently about how to handle write-downs or REC corrections.

He does not like Rastogi as a manager. He does not have personal feelings about her one way or the other. Taylor told him she had been asking to have projects' revenue written down and that was not being allowed to happen. The Dallas office didn't make plan in 2009 or 2010. That was due to a variety of things, including bad projects of both Respondent and LGG. Part of the reason why he believed the Dallas office didn't make plan in 2009 was because there wasn't enough work for all the people who were there. He understood there was a first round of layoffs and there was a need to cut some personnel. He just disagreed with who was cut.

Most of the time, when Complainant brought up financial wrongdoing, it was at the senior management meetings. There may have been other occasions where Taylor and he were talking, or Taylor and he and Complainant were talking. Rastogi was not typically a participant in senior management meetings.

When Complainant was a team lead PA, he doesn't believe she was responsible for any of his projects, but they did continue to work together. His opinion of her work is from the whole time he has known her. He admits she made some mistakes when she was the office financial manager; they all do. It's fair to say in the time he worked with Complainant, he did not see any attendance or competency problems, or anything else that would lead him to question her value.

In 2010, it would have been more difficult for people above the immediate project manager to keep an eye on revenue that had been written off in 2009, but it wouldn't have been hard to do.

He could have been considered a superior of Complainant's and was always higher in the corporate hierarchy than she was. She did talk to him about the contract recognition issue in 2009, 2010, and early 2011. He was aware of the ethics hotline and they took ethics training courses once a year. If an employee discovered something they thought was an ethics violation, they were supposed to contact their supervisor or call the ethics hotline if they wanted to remain anonymous. Taylor was Complainant's direct supervisor until Dorsey was on board, when Complainant reported to him. Based on his understanding of the ethics reporting system in place, if Complainant reported her concerns to Taylor, there was nothing else she was required to do.

He doesn't know if Respondent had a specific policy about the write-off dates, if as soon as you knew about it, you had to clean it up right away. He does know that Respondent put in procedures where you couldn't recognize revenue over contract value in the accounting system after this. Not because of it, but after it. To the best of his recollection, that change was after the audit. They were being instructed that if they knew they had revenue in excess of contract, they should clean it up sooner, rather than later. The accounting system wouldn't recognize revenue that would exceed the contract value. He presumed it had to do with the government accounting rules, but he doesn't know specifically.

He never saw the audit report. He doesn't think that most of the people called in and questioned about the audit had seen it.

Jonathan Dorsey testified at hearing and in affidavit in pertinent part:[72]

He is a consultant for Sonerro, LLC, doing internal audit and business advisory services. Prior to that, he worked for Respondent from April 2010 through January 2011 as Office Financial Manager. Before he came to Respondent, he was employed with Ernst and Young. He is a certified management accountant. Management accountants are typically internal accountants. He's also a certified internal auditor and a certified fraud examiner.

He was hired by Respondent as an office analyst, which is essentially the same thing as an office financial manager. He did not know anyone at Respondent prior to starting and found the job posting on Respondent's website. During the time he worked there, he reported to Taylor, until she was fired. After that, he reported to Rastogi. He was responsible for the overall financial management of the office, including managing project accountants, preparing annual financial

[72] Tr. 344-390; RX-16, 17.

plans, ad hoc reporting for the Office Manager, and acting as a liaison to regional accounting management.

He managed the senior financial project analysts, prepared the annual budget and operating plan, worked with the office manager on office level financials, and reported on the mid-monthly call. He also was the first line of approval for RECs. A REC is a temporary instrument within the Enterprise system that allows you to recognize revenue in excess of contract for a six-month period. RECs require a risk level code, which indicates to the reviewer/approver the risk that Respondent will recover the revenue recognized through formal change order modifications. RECs expire after six months, so if the excess revenue is not recovered through a formal modification to contract value within six months of it being approved and the REC is not renewed, the accounting system will write off excess revenue beyond contract value.

Typically the REC would start with the project manager and project accountant working together in submitting the REC. He thinks it would then go to him first. Depending on the dollar value, it would go up to certain levels of management: himself, Taylor, Rastogi, Dimick, Provenza, and Lehey. The office manager had the right to delegate approval authority, so after a period of time, Taylor delegated it to him. He thinks it was about three to four months before the delegation.

When he began at Respondent, he was not involved in the REC process immediately, because Taylor wanted him to learn the projects first and train on the REC process. Taylor also explained to him that she wanted him to be comfortable approving RECs, due to the situation before he became involved. Prior to Taylor approving RECs, Dieringer and Rastogi had apparently been pushing through RECs without proper documentation or support as defined by URS accounting guidance. These RECs were primarily related to LGG projects, which Rastogi had worked on when she was employed by LGG. When he first began, the Dallas office was scrambling to account for revenue that had been recognized under RECs that were set to expire.

He thinks RECs can be renewed indefinitely. If a REC shouldn't be submitted, the revenue would be automatically written off by the Enterprise system and that would go into a suspense account until it was permanently written off by the regional accountant. He did not see any unauthorized RECs or RECs that would be outside of generally accepted accounting principles (GAAP) being put through the system while he was there.

It is correct that there is discretion in determining whether or not to approve a REC and what risk to assign to it. He agrees that the person in the best position to make that call is the one who has a relationship and history with the client, because they can best predict if the client will pay for it. Rastogi was often in the best position to make judgments regarding RECs with the legacy LGG clients. He is not aware of Rastogi ever asking anyone in the office to submit a REC on her behalf.

When he came in as office financial manager, he recognized that there was a bit of revenue that was unbillable. There were two types of accounts receivable, unbillable and billed revenue. There was quite a bit of revenue in excess of the 90-day range that project managers were deeming uncollectible, so they would send that to regional accounting to be written off. There were also some conversion error issues they had to address that caused write-offs of revenue.

It was hard to tell if some of the RECs were extended beyond what they should have been. The information he looked at wouldn't really tell him that. He remembers the Cowboys Complex project when he first started. There was a lot of discussion when he first got there around the DCTA projects, the 601 project, and some Dallas Fort Worth Airport projects. He thinks the DCTA project fell under Cliff Hall's organization. He did notice some high accounts receivable balances. He believes the REC process affected those balances. The REC process allows you to incur revenue that just then goes into an unbilled account. Once the project manager deems it ready to be billed, it goes into a billed revenue account.

When he got there, Merridyth Falgout and Complainant trained him. Falgout probably did more. He found Complainant's training was useful and made him more comfortable with the system. It was a hard system to learn. In his time at Respondent, his knowledge of E1 surpassed that of Complainant.

He never got a bonus at Respondent. The atmosphere was tense. People tended to fall into their groups. There were alignments and neutral parties. He mostly wouldn't say it was against one person or another. It was more company-aligned. Complainant aligned with the URS crowd and there was probably a perception that she was. Rastogi probably had that perception. He immediately noticed a big division between Respondent's personnel and those who came over from LGG. Taylor and Rastogi, especially, were not on speaking terms. His office was located in between theirs and he was often put in the middle, relaying messages back and forth. Taylor was shut out of strategic decisions regarding certain LGG projects that affected the Dallas operations.

Every month, they had mid-month meetings to discuss the status of the Dallas office projects from a financial perspective. Taylor, Rastogi, Dimick, Falgout, and he attended these meetings. Dimick would ask about an LGG project and Taylor would defer to Rastogi, because she had been removed from the decision process.

Richard Carson and Rudy Garcia were both former LGG employees with significant Dallas office projects who often would turn to Rastogi directly in decisions related to their projects, which he observed. Taylor had him hold a meeting with the DFW Airport team to get an update so he could report back to her. She knew that nobody would come or openly discuss project status if she was involved. In contrast, Taylor was intimately involved with all aspects of other projects.

He was in the office at the tail end of the audit. He participated in one phone call. He thinks people in the office had an idea of what the audit was for. He was not interviewed by Respondent, its auditors, or its lawyers in connection with the audit done in response to Taylor's complaints of fraud. This is because most of the RECs at issue in the audit were pushed through before he was employed.

The only uncomfortable conversation he had with Rastogi about the REC process was about the REC for the City of Dallas pump station. In June or July of 2010, Rastogi approached him and asked what was going to be done about a REC on the Pump Station project. The REC was set to expire and if they could not get additional revenue from the client/contract, they would have to write off approximately $340,000 in revenue that had been recognized pursuant to one of the faulty RECs. He told Rastogi he did not think a change order would be approved and she responded that they needed to do something. She said the City would approve administrative change orders up to $25,000 without City Council approval, and that she could make that happen. She wanted him to take some kind of action, including renewing the REC for $25,000 based on her assertion, which would mean writing off approximately $315,000 of earned revenue. As he recalled, Rastogi had approved the REC for $340,000 without sufficient support that the excess revenue would eventually be accounted for, even though URS accounting guidelines required such support.

It is his recollection that later, they did get an agreement to recover those revenues, and they did submit a REC. Based on the information he was receiving from the project manager and historical knowledge of the project, it was his feeling that he would not endorse a new REC on it. Rastogi said she was comfortable that they could endorse it at a lower level. He thought it was outside the line where reasonable minds could differ, because she was not basing recognizing this $25,000 on any information other than knowing people on city council and that figure being less than their threshold.

He believes Respondent eventually received the majority of that $340,000 from the client when it approved a change order. At the time he talked to Rastogi, he didn't think it was appropriate to submit a new REC based on the conversation with the project manager who was in negotiations with the city. Rastogi made a judgment call about whether or not to apply for another REC, and it was never reissued.

Even if Rastogi had been able to account for $25,000 in excess revenue, a REC should not, per Respondent's protocol and its code/risk system, be pushed through based on someone saying they could "make something happen." You would need appropriate documentary support like a letter from the city stating it had the ability to approve a change order in that amount.

On the Dallas pump station contract, there was a parent/child relationship that caused the revenue to be recognized very differently. There were RECs on that project, as well. There were large write-offs taken on that project and there were write-offs when he was in charge.

RECs were based on GAAP. Many other companies are compliant with GAAP without a REC process. If you don't follow the REC system, you're going to recognize revenue improperly. If you recognize revenue improperly, you've violated GAAP. That means you're reporting numbers that are not accurate. It is meant to take the subjectivity out of a very broad accounting policy and make it more in line with the internal controls of URS.

In October 2010, Respondent terminated Taylor. About an hour later, there was a meeting in the Dallas office's board room. It was attended by all senior management and project managers and led by Rastogi, Provenza, and Kirksey. At the meeting, Provenza informed everyone that Taylor was let go because of the financial performance of the Dallas office and they had no idea how the office got to be in as bad financial shape as it was. Rastogi read from pre-written notes and echoed that Taylor was let go for financial reasons. Respondent never stated that Taylor was terminated in part because she retaliated against another employee or because she violated its policies or procedures.

In his opinion, the recent financial performance of the Dallas office was not Taylor's fault and was something largely out of her control. The conversion of the LGG projects to Respondent's system was horribly mismanaged, which led to the Dallas office having to take a number of write-offs to correct mistakes made in the process. Taylor had nothing to do with the conversion process as far as he understands it. The office also had to take a number of write-offs based on RECs that should not have been pushed through. Those were put through at the direction of Dieringer and approved by Rastogi. Taylor was not involved.

Another reason the Dallas office suffered is because Rastogi inexplicably took a major contract (TCEQ) away from the Dallas office and gave it to the Austin office, in late summer or early fall 2010. TCEQ was a highly profitable client that Taylor had a positive longstanding relationship with. It was the only time he had ever seen a contract taken away in that manner and no reason was given as far as he knew. Its removal significantly affected the office's financial plan and took away billable hours, resulting in lost revenue.

He believes the write-offs taken in his first month totaled about $400,000. None of the reasons listed as to Dallas' profitability issues were Taylor's fault. Historically, Taylor and the Dallas office had performed well.

Complainant reported directly to him and was a good employee. She provided the most communication about what she was doing and where she was going. She always offered to stay late or do extra work if he asked. As he was learning the process, she always asked if he understood and if she could help. They identified process improvement projects and she always volunteered to help him with those. He believes Complainant was competent in the Enterprise System. She taught him many things about it so he could perform his job.

He did a performance review of Complainant in the fall of 2010 and found she was meeting expectations. Either Soo Lee or Rastogi gave him a blank staffing analysis matrix in November. The purpose of the matrix, as he understood it, was to have a ranking of employees available when a RIF was set to occur. He made the determinations based on the predefined categories of technical competency, flexibility, work ethics, behavior, relation with others, and dependability. Overall, Complainant ranked the highest, or most valuable, among her peers—which included Laci Rosas and Kathleen Smith—and Forester ranked the highest among his. It does not make sense that the other employees were not let go before Complainant and Forester. Part of Complainant's performance rating was based on the fact that she was producing billable hours. Although Smith's sold time was higher than Complainant's, hers on the DFW project was not actually billable to clients and much of it was written off, as were Rosas' hours. Complainant was billing, producing, and making more money for Respondent than Rosas and Smith at the time she was RIF'd.

Complainant was more flexible and had a strong work ethic because she was always willing to go the extra mile, always called and let him know if he needed extra help, and met deadlines early. Complainant had a positive attitude every day and related well to others within the group. In terms of dependability, he ranked her the highest because he got phone calls almost every other day about the other individuals not coming into work or coming in late and leaving early. He didn't get that from Complainant. Smith would call in sick a lot and Rosas would either come in late or leave early.

He rated Rosas the highest as far as technical competency because she had the most experience with the E1 system, which was a big factor in the position. Complainant was in the middle. He thinks Complainant's sold time was in line with Rosas and Smith had the highest. Complainant had the best multiplier—the amount of revenue earned over her base dollar per hour. He doesn't know that he looked at multiplier or sold time at all with the matrix. For team leads, which clients the team leader was assigned to could lead to a high or low sold time or multiplier.

Complainant was on Fort Worth projects that generally had contracts structured to pay for administrative time. Sometimes, depending on the relationship you have with the project manager, they can give you the option to bill some of these administrative hours. Obviously, if the client says you can't, then you can't. He thinks billable time does sometimes factor into a RIF decision. Not on this matrix, but he thinks it does have an influence.

He has seen Rastogi's staffing analysis matrix and compared it to his own. It was completely different; he doesn't know why. He doesn't know if Rastogi ever looked at his matrix. He would think so, because the three categories in the middle—if you block off the top one that says "PAs," and the bottom one that says "senior project accountants"—are identical to his. He notices that Rastogi rated Complainant lowest overall in her evaluation, Mr. Forester lowest in his, and both of them were laid off the same day he was terminated. He doesn't think another manager should be ranking another person's employees and he doesn't think Rastogi should have been ranking Complainant. He thinks it's possible that Rastogi took his staffing analysis matrix and changed the numbers on it so she could have some justification to get rid of Complainant and Forester. It surprised him that Rastogi testified she had never seen his staffing analysis matrix.

He was working in the Dallas office and Complainant was in Fort Worth. She came to Dallas once a week, sometimes more. Complainant was a good employee for him. He considered her a friend. They went to lunch together and hung out a few times outside of work. Complainant was not the most technically competent; Rosas was. He doesn't know if Complainant and Rastogi interacted much. They didn't really have to when he was there. He believes Rastogi thought Complainant's performance was poor. He thought Complainant had enough knowledge in her job in E1 to do her job as a project accountant. He thinks Rastogi hated Complainant.

He is aware Complainant had found what she believed to be some errors in RECs, that both Taylor and Rastogi were aware of those, and that at least Respondent's management was on notice about the issues. Those issues occurred prior to his arrival at Respondent, but he was aware through various office talk and his own observations that the issues had existed and were brought up to at least the Vice President level, if not higher.

He recalls a couple of conversations about Complainant with Rastogi. He indicated that Complainant had volunteered or was willing to help to do extra work on resolving office issues such as missing time sheets and process improvements. He specifically remembers Rastogi telling him that Complainant just needed to be concerned only with her job. He felt those comments were somewhat odd. He believes that for some reason Rastogi did not want to give Complainant the same opportunities as her peers. It is his impression that Rastogi disliked Complainant because of her association with Taylor and possibly the issues that had been raised regarding the RECs.

He doesn't know if Complainant reported accounting misconduct to Rastogi, Dieringer, Dimick, or Provenza. In his time at Respondent, he never found anything he believed to be financial wrongdoing by the company.

In January 2011, he, Complainant, and Project Accountant Jeff Forester were let go in what was termed a "cost cutting measure." He believes, however, that they were let go because Respondent considered them aligned with Taylor. He had been rated as "exceeding expectations." Respondent eliminated his position for the Dallas office, which is a position that exists at every other office. Complainant and Forester had the highest labor multiplier and sold time factors amongst their peers. He believes he was laid off for personal reasons in addition to the financial reasons he stated. He thought because he was not Rastogi's hire, she wanted someone else she would feel more comfortable talking to on a daily basis. His position is a 100 percent overhead position, so he thinks that the financials within the office were a factor. He honestly doesn't know. He was told the position was eliminated. He doesn't know if there was an office financial manager at Respondent afterward. He doesn't know if Rastogi fired him because she was trying to get to Complainant, but it's possible. If he had the power to make the decision, he would have laid off Kathleen Smith. He is unaware of why Respondent would lay off an employee who was actually billing, producing, and making money for them, given her most recent positive employee review and the results of the staff analysis matrix.

Vincent Provenza testified at hearing and in affidavit in pertinent part:[73]

He has worked for Respondent for 41 years. In 2009, he was a regional business unit manager (RBU) for the Gulf Coast area. The Dallas office was part of the Texas region, which was part of the central region six, the RBU of which he was the manager. He supervised Taylor through Rastogi, the regional manager, but all employees were his responsibility.

In 2007, he was instructed by Respondent corporate headquarters to grow the public sector work in Texas from roughly 30 million dollars in revenue in 2007 to 130 million dollars within two years. To do that, they had to make an acquisition and planned to find a firm that would be able to execute more state and local work. LGG was at the top of the list. Taylor recommended it. They started the process in August 2007. The principals of LGG liked their independence and didn't want to be sold. It took from August of that year through February of the next to convince them. They started negotiating terms and conditions from February through the close of August.

They wanted to make sure the principals of LGG would stay on for at least two years, to continue to exhibit the kind of image they wanted. That was the primary focus because what they were buying was people. They did due diligence and then executed the contract in August of 2008.

The conversion from LGG's system to Respondent's did not go well. They were more concerned with getting the key people to buy into the acquisition and probably didn't focus as much as they should have on looking at the individuals or individual details of the projects they had. For example, there were many projects where they were both working for the same client as prime and subcontractor. So once they did actually integrate, they had a lot of issues with double counting revenues, but not because it was improper. It took them a lot longer to resolve those issues than they thought. Frankly, they were not as impressed with the accounting people who came over from LGG. There were some individuals they thought would aid in that part of the transition and they didn't. He felt the staff from both sides wasn't as diligent as they should have been.

[73] Tr. 676-733; RX-45 (as cited).

The acquisition was in August. The time frame was to get the two accounting systems merged by the end of the year so that when they started the first quarter of 2009, they would be reporting with a consistent set of numbers, terminology, procedures on how they recognized revenue, and so forth.

Moving the offices together was another thing in which he was very disappointed. They actually operated better separately than when they were combined. The atmosphere was terrible. It was one of the most stressful times of his career. There was clearly an "us versus them" mentality. The old URS people thought the LGG acquisition was something they bought. The LGG people felt they had all this independence and then suddenly became part of a publicly-owned company with very strict requirements. "Clash of cultures" is the perfect phrase.

In 2008, LGG finished exactly where they said they were going to. The Dallas office was starting to feel the effects of the economy because their market was not as strong as they would have liked. He was frustrated because they did not finish the integration as successfully as they could have. The performance kept deteriorating in the first part of 2009. He lost confidence in the ability to execute the integration in accounting. He would get forecasts on where they were going to perform that were way off.

Taylor brought up several complaints about revenue adjustments and RECs to him in 2009. She brought it up more than three times and less than ten times. He looked into them. He took the particular projects that she was concerned with, looked at the contract, talked to the project manager, and talked to the outside controllers. He was not convinced there was a problem. He never talked to Complainant about that.

The forecast is a team approach, but ultimately it's the office manager who submits it. Complainant was the office financial manager at the time. He was not happy because they were not making forecasts. He would look at them and analyze whether or not he thought it was reasonable. He was constantly asking "why are you not performing? Why are you not doing what you said?" So he got to the point where he said they needed someone to go in and really look at how they were forecasting revenue. Dieringer knew how to do it, so he asked her to go out. It wasn't just him. A regional controller, Dimick, had the same frustrations. Toni Skiles hadn't done a very good job of converting over. Complainant hadn't done a good job of working with Taylor to give them good numbers. Taylor hadn't done a very good job of scrubbing the numbers. They needed to do something different, so they agreed to send Dieringer up there for a short time. She was initially supposed to be in Dallas only two weeks. She ended up being there for months, crying the whole time. It was very upsetting.

Taylor had been the office manager in the Dallas operations before the LGG acquisition and was very autonomous. She was used to doing what she thought was right. Then, all of the sudden Dieringer came in and said, "you can't do this," so they started having friction immediately. Dieringer was there so much longer than they originally thought because the mess was so much greater than they thought it was. There was no credibility in the staff or the processes.

He eventually sent Dieringer back because he felt she could no longer function in that role with the relationship between her and Taylor. Taylor actually called him and told him she refused to work with Dieringer anymore. They'd had a big argument over a critical review Dieringer wanted to give Complainant.

It is not correct that he sent Dieringer back because he agreed with Taylor's accusations about accounting misconduct. He sent her back because they couldn't work together anymore and it was counterproductive to have Dieringer there. The idea was to go back to what they'd originally said they were going to do, which was to hire someone new. The problems had been identified and they gave him confidence to be able to look at the results in a different light. But there was still that lack of credibility in forecasting and reporting.

Taylor told him she would take responsibility for making sure he got accurate forecasts while they looked for an individual to hire. He doesn't think that happened and still didn't have any confidence. Dorsey was eventually hired as the OFM because he insisted they not hire from within. He just felt that what they had was a fracture in the Dallas office between the old and the new. He wasn't getting facts. He was getting allegiances and wanted someone who understood proper accounting methods and what public companies were required to produce. He wanted to bring in another party who wouldn't be loyal to either company, someone neutral and unbiased. He also wanted someone who was loyal to him and not anyone else. He thinks Dorsey started off well, but didn't end well. Dorsey started agreeing with Taylor. He kept getting the same complaints from staff that they couldn't work with Dorsey and Taylor because he was favoring what she was telling him to do. He felt Dorsey was intimidated and couldn't trust his numbers. He talked to Dorsey about once a month. Dorsey never told him he was intimidated or had to do anything he was not supposed to.

Neither Complainant nor anyone on her behalf ever reported any fraud or accounting misconduct to him. He flew up to Dallas in February 2010 because he was really concerned about the office. He was hearing gripes from every single employee about how they couldn't work there anymore. His plan was to visit Taylor and she told him there was fraud. She was very upset. She couldn't work there and she was going to take Rastogi down. That was the first time she told him there was fraud. He didn't believe it. She showed him a notebook that she alleged had documentation of fraud. She did not offer it to him or tell him to review it. She was making a point. He talked to Dimick, their controller, who said he would look into it again. It was the same project they had been talking about for months, but Dimick took another fresh look at it and reported directly to him.

He was not aware that Taylor was alleging fraud until then. He knew Taylor disagreed with the way revenue was being recognized as soon as they made the integration. She did her job. She alerted him to a potential problem. He looked into it and was satisfied they were handling it. He really thought she was unable in her mind to resolve proper revenue. She was telling him they were either taking too much or not enough and he needed to look into it. Every month, the same errors would come up. Because they didn't have proper information to go to the client to resolve it, they were constantly playing catch-up.

It sounds logical that he would have associated Complainant with Taylor's concerns, but it did not cross his mind at the time. He has never seen anything in the financials to validate any fraud allegations.

There's a difference between LGG and Respondent in the way they accrued revenue. They made mistakes in accruing revenue because of the accounting system, versus taking revenue they didn't deserve. That was pretty much the first time she made that allegation. She did not mention

Complainant or that she was complaining on her behalf. Complainant did participate in conversations they had on jobs about whether or not the revenue was being properly recorded.

The effect of incorrect reporting on Dallas' office revenue would not have any effect on Respondent's overall profitability. At the time he thinks they were a six billion dollar company. The Dallas office was one of hundreds of centers, so it would not have been material. It would not have had an effect on Respondent's public filings.

In accounting, there's materiality. For Respondent, it's a couple percent. From his viewpoint, the revenue recognition issues Taylor was bringing up may not have been material. Every conversation he had with her was part of a group talking about the forecast of the numbers for the month. There would have been conference calls with several people, which was part of the process of resolving monthly numbers. There would be projects where the project manager was delaying getting a change order and they would talk about how they were going to do the revenue associated with that change order. Normally, Taylor, Complainant, and he would have been on the call. Perhaps Rastogi would have been included, or the project manager.

He thinks that once they made the integration and acquisition, they overloaded Complainant's skill set. She had practical on-the-job experience back in the URS days for a particular type of client and work. Once they acquired LGG and the office and number of clients tripled in size, the type of contracts all became much more difficult. That was reflected in her consistently inaccurate forecasting. Complainant's forecast would have gone to Taylor, then Rastogi, and then to him.

He felt Complainant was spending a lot of time defending Taylor. He would call Taylor at eight a.m. and she wouldn't be there, and Complainant would say she was in a meeting. He wasn't comfortable with that. He can't think of any other complaints about Complainant. He did not talk to her daily, but probably monthly.

He was not consulted regarding the January 2011 RIF. The Dallas financials were suffering. Their overhead was way too high. They weren't making their revenue goals. Part of overhead reductions are RIFs.

The office financial manager is the one who is processing the RECs, not creating them. The project manager would have been the first approval. He would assume that in Dallas, Complainant would have been the first line approver. It goes to the office manager, then generally to the regional manager in concurrence with the controllers. He considers himself able to determine if revenue has been properly approved.

He has never prepared a REC. He has approved many. Respondent has restructured and they no longer have RBU managers. Now they have regional managers, which is what he is. It is an increase in pay and much larger responsibility.

He thinks Complainant's performance started to suffer when they combined the companies, as did Taylor's. He wanted to make sure Taylor had enough time to learn the system and new clients, to acclimate, and to give her another chance to succeed. That they needed Taylor for the DCTA contract was another reason, not the only reason. He asked to terminate her and was told that as long as DCTA was going on, they needed her. He did tell the OSHA investigator that. He wanted to fire her before then, but by the time it got to the point he wanted to, they wanted to keep her around. He didn't have anything to do with letting Complainant go.

If an employee has an ethical concern at Respondent, they report it directly to the ethics hotline. He does not agree that they also have to report directly to their supervisor. He thinks that reporting directly to a supervisor is a logical first step.

He was aware that an ethics audit was done in response to Taylor's complaint. He participated in it and was questioned by their internal auditor and outside auditors. He had no idea Complainant had complaints about this until this suit came up. He never heard that Complainant made an ethics complaint. The audit in which he participated was an ethics audit. In his mind, he would never associate the two. Taylor told him she made the ethics complaint. At no time did he understand Taylor to be speaking on behalf of anyone but herself, nor did Taylor mention Complainant during those discussions.

David Dimick testified in affidavit and in an OSHA interview pertinent part:[74]

He is a Group Controller at Respondent and works out of the Austin office. He has been working for Respondent since 1976. As a Group Controller, he was part of the financial side of the organization. There is a very specific separation between the financial side of the organization and the operations side, which Taylor was on, but he did have fairly significant interaction working with Complainant, even though they were on separate sides. During the period in question, he reported to Division Controller Leahy, who reported to CAO Reed Brimhall, who reported to CFO Thomas Hicks. On the operations side, Complainant reported to Taylor, who reported to regional manager Rastogi, who reported to RBU manager Provenza, who reported to Gary Jandegian, who reported to CFO Marin Koffel.

Between 13 Jan 10 and 31 Dec 10, he also took on the additional role of regional controller for the region in which the Dallas office is located. During that time, he had a little more interaction with Complainant than usual because he was simultaneously working as a Group and Regional Controller.

During that time, he found Complainant's work performance to be terrible. It was very, very poor. He did not evaluate her, because they were in separate parts of the organization. He was never asked his opinion by those whose job it was to provide her performance review.

Complainant didn't seem to understand even very fundamental things about their processes, which include RECs, estimates at completion, over/under accruals, and the processing of electronic Work Authorization forms. It generally takes even the brightest people some time to come up to speed with those processes. He found the fact that Complainant was promoted to OFM to be very odd. He was continually baffled at her lack of understanding of even the most basic aspects of their processes. He assumed she had been working with them for a very long time, so he was shocked that she seemed to be so inadequately, woefully, and hopelessly flummoxed, confused, and dysfunctional as it pertained to her role in the process.

Emily Taylor seemed to him to be a very bright person, but she was continually too busy with other aspects of their operations to be paying more than just passing attention to the financial

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[74] RX-46; 59.

aspects of the office. He thought Taylor aligned her priorities in such a way that put more emphasis on other things and delegated way too much of her personal responsibilities as Office Manager to others, including Complainant.

He agreed with Rastogi that it was a good idea for Dieringer to go to the Dallas office and assist them with some of the issues they were having. Dieringer called him occasionally and he thinks their discussions primarily involved her comprehension of the overall processes. He never recalls her suggesting there was anything fraudulent or financially inappropriate. There may have been some frustration expressed on her part regarding how timely people were doing things or whether or not they were using their best judgment.

He spoke to the division controller, Leahy, about his concerns with Complainant in the context of thinking that with Dieringer's help, the Dallas office's situation would be corrected. It surprises him very much to hear that Dorsey gave Complainant a good review in September 2010. He can only conclude that at that time, Dorsey had failed to learn much about their processes and systems himself, so he could not understand how incompetent she was.

He believes that if Rastogi discussed the RIF that included Complainant with him, it occurred after the fact.

Through the course of normal business, he would be involved in discussions concerning RECs and judgments regarding those issues, but he does not recall anything that could be described as an "irregularity." He cannot recall that it ever came up that Complainant or Taylor were concerned about financial irregularities or REC issues.

During her employment with Respondent, Complainant never communicated to him that she had any concerns about any alleged accounting misconduct in the Dallas office or that she believed revenue was being fraudulently misstated.

He believes the first awareness he had that there was an issue of any kind was on 13 Jan 10, when he was in Dallas and Taylor told him she had some concerns. He vaguely recalls her listing the names of some jobs, but other than just general allegations that she thought things were not done properly pertaining to those jobs, there was no substance.

Merridyth Falgout testified in an OSHA interview in pertinent part:[75]

She is Regional Accounting Manager for West 24. Prior to February 2009, she was the Houston Office Financial Administrator, so she was Complainant's counterpart in Houston. In December 2010, Rastogi and Holocek asked her to give input on the Dallas financial team and their capabilities. Holocek was taking over as the Regional Controller. He asked for her assessment of what was going on in their region and in the three offices: Houston, Austin, and Dallas.

The conversation didn't center on individuals specifically, but the strengths and weaknesses of each team. Her advice to Rastogi was that she had the best performance of her team and she should keep the best and brightest. Complainant is a very nice person. She is very outgoing and friendly, but she lacks the ability to supervise people. In her experience, the quality of Complainant's work is not up to par. Things would frequently be turned in late, information

[75] RX-55.

would be incomplete, deadlines wouldn't be met, and the quality of the information, when it did come, was poor. She processed Complainant's revenue adjustments every month and very frequently she just wouldn't turn them in at all. If she did, they would be rife with errors.

About the middle of 2009, it was decided that Complainant was really struggling and needed additional training, so Dieringer was brought in. After a period of a few months, apparently Dieringer arrived at the conclusion that Complainant was in over her head and did not possess the skills, even with additional training, to function as the OFM. She just wasn't capable.

After Complainant was demoted, the interaction she had with her was in reviewing job set-ups and things she had submitted when they won a new contract. Every time they won a new contract, paperwork had to be filled out to set up the new job in the accounting system so that people could charge time to it and then they could invoice their finance and collect fees. Complainant's role was to fill out the paperwork and obtain proper signatures and attach all the proper support that's required under their policies and procedures and submit that information to Austin.

Every time a new job was set up for a new project, Complainant was the project administrator. It was her experience, reviewing Complainant's work authorization forms, that the quality of her paperwork was poor. She frequently made mistakes and didn't fill them out completely. She didn't have the attention to detail necessary to get the job set up properly so that revenue would be generated in accordance with the contract and clients could be billed correctly.

Complainant never discussed with her any concerns she may have had with any kind of financial irregularities or anything to do specifically with those RECs. She was invited to Dallas in April 2010 to visit with Dorsey, the new hire. She was in a conference with Rosas, Dorsey, and Candler, when Taylor came in and began a tirade about Dieringer being out to get her. Complainant chimed in that Dieringer wanted to see her and Taylor gone and Taylor went on to talk about the fact that there was some sort of investigation going on. She was shocked, given that she had no prior knowledge of any of that and there was a brand new hire sitting there. Taylor went on to say that everything in her office was fine until LGG came along and that they were the cause of all the financial problems in her office.

Taylor said she was concerned that revenue had been recognized on the pump station project, but the REC that allowed the revenue to be recognized was submitted, reviewed, and approved by Complainant and Taylor. She couldn't imagine why they would have a concern with RECs that they had participated in approving and reviewing. If they didn't agree, all they had to do was not approve it.

She was familiar with the Dallas financials and some of their biggest losses were on projects that didn't belong to LGG, so she didn't feel Taylor was making accurate or fair statements. She didn't argue with Taylor, who was clearly agitated and just made every effort to steer the conversation back to the training. She reported this meeting to Rastogi, who didn't comment except to thank her for notifying her.

Complainant chimed in and said that Dieringer had been very hard on her and that she was a nervous wreck and had been put on medication. Later that year, when she was asked to give feedback for the purposes of annual employee reviews, she again mentioned the incident and that she felt Taylor had not conducted herself in a manner befitting an officer of the company.

She thinks Complainant was struggling because somebody was holding her accountable for doing her job, and it wasn't a feeling she was accustomed to. She has worked with Dieringer for many years. Dieringer does have high expectations of people, but is very fair and easy to get along with.

Dieringer has been around forever and when it came time to find somebody who was seasoned and could help train Complainant, get good practices in place, and get her office under control, they tasked her. Dieringer's office runs smoothly.

Lusanna Ro testified in an affidavit in pertinent part:[76]

She is a lawyer for Respondent and serves as regional counsel. Part of her job involves handling calls to Respondent's ethics hotline. She also manages and conducts investigations that involve ethics matters in Respondent's infrastructure and Environment business on behalf of its compliance officer.

Respondent has an open-door policy for reporting complaints regarding accounting and auditing matters. It also has a Code of Business Conduct and Ethics that encourages employees to make complaints about any suspected violations of URS policies. Complaints URS receives are investigated.

During her employment, Complainant never called its ethics hotline to allege any accounting misconduct. Emily Taylor called the hotline on 5 Feb 10. Her complaints were understood to be on her own behalf. Taylor did not mention that her complaints were on behalf of Complainant or anyone other than herself.

In January 2011, Respondent imposed a RIF that terminated seven employees.[77] At least one of those seven had a longer tenure with Respondent than Complainant.

Complainant's Employee File and other miscellaneous employment-related evidence state in pertinent part:[78]

Complainant's 2003 annual review in the position of staff accountant was completed by Taylor. Complainant was rated "meets some expectations" on Job Knowledge and Work Schedule/Time Management, and "meets expectations," "exceeds expectations," or "outstanding" in every other category. Complainant's peer performance review feedback in 2003 was overall positive. Several people noted that Complainant could be more organized.

Holocek completed a "Performance Review Feedback for Jamie Candler," for fiscal year 2004, to be returned to Taylor. It states that Complainant understands the most important accounting procedures of the company, has done an excellent job in providing timely feedback to his

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[76] RX-44.
[77] *C.f.* RX-47, indicating that nine people were RIF'd in January, 2011.
[78] CX-1, 2, 3; RX-3, 5, 7, 9, 33, 34, 58.

requests for the most part, has a positive attitude, has made dramatic improvement in meeting deadlines, and needs to work on financial analytical skills and be able to quickly identify and understand any issues that may be affecting Dallas performance as it continues to grow.

On 27 Jul 05, a memorandum entitled "Mid-Year Review" from Taylor to Complainant describes Complainant's job and duties, major contributions and strengths, specific areas requiring improvement, and actions to improve performance. There are several hand-written notes and corrections on the memorandum. At the end, the "Summary" states: "Significant Improvement on these items needs to occur within six months from today's date."

A review of Complainant by Emily Taylor dated 23 Oct 06 states that Complainant met or exceeded expectations in all categories. It states "Jamie is a quick study and learned the new accounting system upon return from FEMA…Still needs to focus on checking her work to make certain mistakes are caught – major improvement from last year."

A review of Complainant by Emily Taylor dated 24 Oct 07 states that Complainant met, exceeded, or significantly exceeded expectations in all categories. Taylor stated that Complainant significantly exceeded expectations with respect to technical competency, commending "Jamie has truly learned the ins and outs of the URS financial system. She understands what is important and makes certain that the office financials and administration runs smoothly."[79] Taylor also commented "This has been by far Jamie's best year. She has come into [her] own and has become the best financial administrator in the region."

A review of Complainant by Emily Taylor dated 7 Nov 08 states that Complainant met, exceeded, or significantly exceeded expectations in all categories. Taylor stated that Complainant exceeded expectations with respect to technical competence.

A review of Complainant by Daphne Dieringer on 12 Nov 09 states that Complainant met expectations in the following areas: teamwork, customer focus, and that she had accepted changes in her role with a positive attitude.[80] It stated that Complainant needed improvement in the following areas: integrity, quality and safety focus, effective communication, initiative, technical competence, delivering on commitments, creating value, managing people and/or projects, and dependability. Dieringer's overall rating for Complainant was "needs improvement." Dieringer commented that "Jamie has not spent the necessary time to learn E1. She is not able to assist the office in the financial management and does not have the knowledge to lead the financial and procurement teams." Complainant commented that "I struggled this year with the technical aspect of being a financial manager of a large office…I was not very successful with working so closely with the Regional Management team and managing the overall office financials." Mike McCloskey signed the review as the next level manager.

A review of Complainant by Jonathan Dorsey on 7 Sept 10 states that Complainant met expectations in every category except for initiative and technical competence, in which he rated her "exceeds expectations." Dorsey commented that Complainant "is viewed by her peers and those she supports as a very valuable team member as it relates to her ability to provide critical

[79] CX-1 at p. 242.
[80] CX-1 at 228-234; RX-3.

finance data. Jamie has a very good grasp on E1 which allows her to support her PMs and direct reports effectively." Complainant did not comment on the prior year's review.

In a Staff Analysis Matrix completed by Dorsey on 30 Nov 10, Complainant is grouped in the Senior Project Accountant section with Rosas and Smith.[81] Complainant's overall rank was 2.7, higher than the other two in her group, with Rosas being ranked 2.0 and Smith ranked 1.4. Complainant was ranked the highest in the categories of flexibility, work ethics, behavior and relate with others [sic], and dependability. Rosas was ranked above Complainant in technical competency. In the PA category, Forester is ranked first, with a 2.8, followed by Sherri McGriff with a 2.7, Charlie Rosas with a 2.1, and Nicole Baimonte with a 1.9.

In a Staff Analysis Matrix completed by Rastogi on 7 Jan 11, Complainant was ranked last, behind Smith and Rosas.[82] The only category in which she was ranked highest was flexibility. In the PA category, Forester is ranked last, with a 1.2. McGriff is ranked first, with a 3.6, followed by Rosas with a 3.1, and Baimonte with a 1.6. The two matrices of Dorsey and Rastogi are identical in the categories of Contract Administrators, Procurement, and Senior Project Accountant—Field, down to the decimal points.

A memorandum from Dieringer to Complainant dated 12 Jan 10 outlines a performance plan for Complainant.[83] A memorandum from Dieringer to Complainant dated 18 Feb 10 constitutes a final warning, stating "while you have made some improvement [in] some areas, there continues to be substandard performance in a number of critical areas."[84]

Various emails from Emily Taylor state in pertinent part:[85]

On 20 Feb 09, Taylor emailed Provenza and stated that she thought it would be difficult for the Dallas office to meet the proposed goals "with the issues we are having getting invoices corrected and accruing revenue properly for the LGG projects. Also, we still have the retainages for TCEQ (two new contracts), FWTA, and DCTA. I think it would be more reasonable for Dallas to have a goal of 95 days."

Provenza responded that there was no way that would be approved and that she needed to figure out a way of getting invoices out and paid quicker. Taylor forwarded Provenza's email to Complainant and stated "Looks like we are hosed on this one. TCEQ continues to be a problem. I am putting this on you and your team's shoulders to improve this year. Obviously, my argument about LGG does not hold water because of our terrible DSO last year. This has to be corrected this year or your and my credibility will be lost. I am counting on you this year!"

On 27 Feb 09, Taylor emailed Provenza and bcc'd Complainant and Hall. The email stated in pertinent part: "We clearly have a process issue here in Dallas. It is completely unacceptable that we are not tracking our unbilled and drafts and ""letting"" [sic] a PM sit on an invoice. We should have caught this on the financial side. I apologize. This is a big project and I am completely at a loss of why there was not the proper amount of importance put on billing. I am

[81] CX-2; RX-9.
[82] CX-3; RX-58.
[83] RX-5.
[84] RX-7.
[85] CX-7, 9-10, 13; RX-24-25, 28-29, 37-39, 42, 43, 51-53.

committed to improving the Dallas DSO problem. In particular, we will focus on the larger revenue projects for the unbilled and billed amounts. This is very, very disappointing for me.

On 24 Apr 09, Taylor emailed Rastogi and stated in part: "Wanted to get you up to date on some GOOD NEWS from my 2 and a half hr meeting with Scott Neeley. After a few hours of negotiating, he will let us increase our detail design budget by $459,000 to include the Hike and Bike Trail design to Hebron Parkway."

On 27 Apr 09, Taylor emailed Rastogi and stated in part: "Well, it appears I spoke too soon. After months of Robert and Charlie telling me the budget is fine and Raimie saying no, we have issues on the budget, it appears Raimie was correct….I have to go back to Scott and tell him not only do we need the $459K but to do the additional scope of work items that Robert said we could do under the existing budget, we need $2 million. I am sick about this. Scott is going to throttle me and now, any goodwill we have with DCTA that has been established is now gone."

On 18 Sep 09, Taylor emailed Rastogi in response to an email sent by Complainant entitled "Ballard invoice for 1M." The email states, in part: "I have had it with Jamie. She has dumped everything on Laci. I am at a point now where I trust nothing I get from her. I suggest dealing with Laci directly on this one."

On 18 Sep 09, Taylor emailed Provenza and stated: "I would like to apologize for the state of the Chart 11 sent to you Wednesday night. This was the first year that I did not do it all myself….I will be interviewing for a new office financial administrator as Jamie just can not handle what I need done. I am having to do most of this work myself, which is a waste of my time. I know I need better staff in key positions. I am trying to upgrade here but it does not happen overnight[.]"

On 18 Sep 09, Taylor emailed Provenza and stated in part, "I really thought my staff would step up this year but I am disappointed….I know that Dev is supportive and I really respect her….I can do this and I am upto [sic] it if I have the right staff in place. It just means making some difficult decisions. I will make those. As always." Provenza forwarded this email to Rastogi.

On 25 Sep 09, Taylor emailed Soo Lee regarding Complainant's demotion to Project Administrator/Team lead.

On 18 Feb 10, she emailed Dieringer and cc'd Kirksey and Provenza. The email states, in part: "I was unaware that you were going to do this [issue Complainant a final warning] until today. You did not inform me, as Office Manager, that this was a Final Warning….I also know that Jamie worked several days while on vacation to assist you in various endeavors….I am very concerned about how this issue has been dealt with so far. I went along with the original 30 day with the assumption that the criteria for performance improvement would involve feedback from the project managers that Jamie is assisting as well as guidance from you on areas to improve upon. I have not seen evidence of this. When I became aware that this feedback was not occurring, I took it upon myself to call the project managers and Department Leaders. The feedback that I received from them is completely inconsistent with the feedback I am getting from you. My concern is that we are not being balanced and fair in this performance plan….This situation is appearing to me to be more of a personal vendetta than a true performance plan for an individual.

Taylor forwarded the email to Hall on the same day. Also on the same day, Taylor emailed Provenza with the title "Office Financial Manager." The email states in part: "We have some big problems here with Daphne and her interaction with the Department Managers based upon their feedback to me in our last meeting held on Tuesday of this week. She has promised to do a lot for them but has not had the time or responsiveness to do these things….My observation is that she is Dev's employee and does whatever Dev says….The feedback from the Department Managers on the last person interviewed has been that this person is not qualified for the job….Vince, if you let me run this office, I can fix these problems. Daphne needs to go back to Austin. I am fighting a grass roots movement here with my staff and I have to do something. Please let me be able to make decisions for the office. If I am accountable, I have to be able to make decisions on personnel."

On 23 Feb 10, Taylor emailed Lee and informed her that as of 19 Feb, she was acting as the Dallas Financial Administrator. "As such, all performance plans for the two aforementioned individuals are null and void. Additionally, as the Dallas Office Manager, I did not sanction or agree with the recent performance plan final warnings. Please remove the performance plans from their personnel files."

Miscellaneous emails state in pertinent part:[86]

On 2 Sep 09, Rastogi responded to an email from Provenza regarding moving expenses. The email stated in part that they just found out there were additional moving expenses and so that could not be used to cover bills that may be coming in late. She stated "I have no confidence in the Dallas financial information."

On 17 Sep 09, Rastogi emailed Provenza and stated in part, "Given the state of Emily's Chart 11 and the condition of the overall Dallas office financials, I am prepared to step in as Dallas Office Manager as well as my Regional Role. I propose that we RIF the following individuals: Emily, Jamie, Beth, Janet and Gary Reed. I estimate that this will reduce Dallas indirect labor about 45k per month, including PRC. Given severance, we would probably only save $1001k [sic] this year, but I would not have to keep waiting for things to get done and then have to step in myself and fix them."

On 14 Jan 10, Complainant emailed Dieringer and Soo regarding the performance plan put in place. She stated that she accepted it but would like some clarifications.

On 28 Apr 10, Complainant emailed Dorsey and Taylor to request a mid-year review "to determine if I have made improvements since my yearly review was given to me."

On 16 Aug 10, Complainant emailed Darryl Robinson and stated in pertinent part: "You and I had spoke when you were in the Dallas office in March regarding the performance review I received last year. During out conversation I requested that it be removed from my file. You had stated that it couldn't be removed from my file because with a scoring of "NI", my Office Manager had approved the review.

Today I went to complete my self evaluation and went to last year's review, I then noticed that Michael McCloskey, the Austin Office Manger signed my review. This concerns me because Emily Taylor, the Dallas Office Manager didn't have the opportunity to review my performance review, to either approve it or not approve it. I am also concerned as to why Michael McCloskey

[86] CX-11; RX-6, 11-13, 18, 26, 36, 49, 56.

would have any access to approve my review, how did something like that happen? This is a personal matter and am concerned with the fact another Office Manager besides the Dallas Office Manager would have of been sent my review. It is also concerning that Michael McCloskey, knowing I am not a Dallas employee and having no knowledge of my performance would approve my review. In my opinion, he should have of let someone know my review was sent to him in error and given Emily the opportunity to approve/not approve my review. I am extremely sensitive to this situation because Daphne Dieringer had put me on a final warning in February without Emily's knowledge. I am concerned this review was put in my permanent record without Emily's knowledge.

My review from last year was unfair and not constructive. Daphne Dieringer had only been my supervisor for 2 months prior to this review being given to me. I had been demoted from my position as Office Financial Manager on September 23, 2009. Yet this review is criticizing me for my performance in Daphne's eyes on a position that I no longer held.

I am requesting that my 2009 review be removed from the system and my permanent record" [sic].