

U.S. Department of Labor

Office of Administrative Law Judges
800 K Street, NW
Washington, DC 20001-8002

(202) 693-7300
(202) 693-7365 (FAX)



Issue Date: 17 April 2018

Case No.: 2017-SOX-00038
OSHA No.: 3-6600-17-054

In the Matter of:

PATRICK STEWART,
Complainant,

v.

ANDRITZ HERR-VOSS STAMCO, INC.,
Respondent.

ORDER DISMISSING COMPLAINT

This matter has been docketed for a hearing before the United States Department of Labor, Office of Administrative Law Judges (“OALJ”) pursuant to Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002 (“SOX”), as amended, 18 U.S.C. § 1514A, and the implementing regulations at 29 C.F.R. Part 1980, and the Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges found at 29 CFR Part 18A.

Factual and Procedural History

Complainant filed a complaint with the Occupational Safety and Health Administration (“OSHA”) of the U.S. Department of Labor on February 14, 2017. The Complaint alleged that his employer, Andritz Herr-Voss Stamco, Inc. (“Andritz”), terminated his employment in retaliation for reporting unsafe work conditions and shareholder fraud in violation of the SOX Act. OSHA issued its finding on May 5, 2017, stating that the Respondent was not a covered employer within the meaning on the Act in that it is not a company nor an officer, employee, contractor, subcontractor, agent, subsidiary or affiliate of such a company with a class of securities registered under Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. § 781) (the “Act”) and is not required to file reports under Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78o(d)).

Complainant filed an appeal to the Office of Administrative Law Judges (“OALJ”) on May 23, 2017. In the appeal letter, Complainant argued that:

1. This matter was dismissed on legal grounds.

2. Respondent is the subsidiary of a company which is publicly traded on foreign stock exchanges.
3. S[OX] specifically covers any company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l), or that is **required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d))** including any subsidiary or affiliate whose financial information is included in the consolidated financial statements of such company, or nationally recognized statistical rating organization (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c))....
4. Andritz in fact is covered by S[OX] because of its 15(d) filings, evidence of which is attached as Exhibit 1.

Therefore, [C]omplainant files this appeal for an abuse of discretion and/or the failure to properly research Complainant's S[OX] complaint and requests an opportunity to brief this issue before the ALJ.

Complainant's Appeal Letter at 1-2 (emphasis in original). Exhibit 1 contained information purportedly regarding Andritz AG. On September 8, 2017, I issued a Notice of Assignment, Notice of Hearing, and Initial Prehearing Order.

On November 29, 2017, Respondent filed a Motion to Dismiss ("Respondent's Motion") requesting that Complainant's complaint be dismissed with prejudice because it fails to state a claim upon which relief can be granted. Respondent further requested that proceedings be stayed pending resolution of its Motion.

Respondent argued first that the Section 15(d) documents attached to Complainant's appeal letter relate to Andrea Electronics Corporation ("Andrea"), an American technology manufacturing corporation, headquartered in Bohemia, New York. Respondent alleged that Andrea is not related to or affiliated with Respondent. Respondent further averred that Andrea's securities are sold on the over-the-counter ("OTC") market, and it is Andrea's – not Respondent's – ticker symbol that is ANDR, as show on Complainant's Exhibit 1 attached to his appeal. Respond's Motion at Exhibit F ("Affidavit of Allison R. Brown").

Second, Respondent argued that neither Respondent nor Andritz AG, are (1) companies under SOX; (2) has a class of securities registered under Section 12 of the Act; nor (3) required to file reports under Section 15(d) of the Act. Respondent is a wholly owned subsidiary of Andritz (USA), Inc., which is a wholly owned subsidiary of Andritz AG.¹ Respondent's Motion, Exhibit D. Although Respondent is also a subsidiary company of Andritz (USA), Inc., Complainant does not argue that Andritz (USA), Inc. is a covered entity under the SOX whistleblower provisions.

¹ Respondent is thus a second-tier subsidiary of Andritz AG.

Lastly, Respondent argued that even if Andritz AG could be found subject to SOX, Complainant's Complaint still fails to state a claim upon which relief can be granted because coverage of SOX does not automatically extend to subsidiaries of publicly-traded companies that are subject to SOX. Respondent listed numerous cases where subsidiaries of companies have been found subject to SOX in conjunction with their parent companies, despite the fact that the subsidiaries themselves do not have registered securities and are not required to file reports and argues that the determinative factors have been: (1) the parent and subsidiary share management, control and unity of operations; and/or (2) the publicly held parent company was acting as the non-public subsidiary's agent with regards to the complainant's termination. Respondent argued, "[Complainant] has not pled **any** facts pertaining to Andritz AG (or named it as a Respondent), let alone facts sufficient to establish a commonality of management between Andritz and Andritz AG or the involvement of Andritz AG in Stewart's employment and/or the decisions to allegedly retaliate against him." Respondent's Motion at 6 (emphasis in original).²

On January 3, 2018, Complainant filed a Response in Opposition to Respondent's Motion to Dismiss ("Complainant's Response") arguing that "the complaint, at its core, raises fact questions that leave open the possibility of a legally plausible claim that necessarily requires the denial of Respondent's Motion to Dismiss." Complainant's Response at 1. Complainant argued that Respondent misrepresented the standard of review for a Rule 12(b)(6) Motion to Dismiss for failure to state a claim upon which relief can be granted. Complainant argued that the more lenient standard of "fair notice" should be applied. *In the Matter of: Douglas Evans, Complainant, v. United States Environmental Protection Agency, Respondent*, 2012 DOL Ad. Rev. Bd. LEXIS 67. *Evans* stated that "[u]nlike in federal court, there is no pleading requirement for whistleblower complaints investigated by OSHA or litigated within the Office of Administrative Law Judges (OALJ)." *Id.*

More specifically, Complainant stated, *Evans* made clear that a whistleblower complaint need only contain "(1) some facts about the protected activity, showing some "relatedness" to the laws and regulations of one of the statutes in our jurisdiction, (2) some facts about the adverse action, (3) a general assertion of causation and (4) a description of the relief that is sought." Complainant's Response at 3 (citing *Evans* at *19-20). Complainant stated that it has done what is required under *Evans* and the inquiry should end there. As such, Complainant claims that "Respondent's arguments are better left to resolution on a factual record following motions practice under § 18.40 (motion for summary decision)." *Id.*

Next, Complainant argued that in addition to Andritz AG being a publicly traded company on the Vienna Stock Exchange, they also trade in the United States as an OTC stock under the ticker "ANDRZ." He alleged that Andritz AG trades as an American Depositary Receipt ("ADR").³ Further, Complainant argued that as recently as December 2015, Andritz AG

² Because of my ultimate ruling in this matter, I do not address this argument.

³ American Depositary Receipts:

ADRs are created by a depositary bank when a non-U.S. company, or an investor who already holds the underlying non-U.S. securities, delivers them to the bank or its custodian in the non-U.S.

filed a Form F-6 with the Securities and Exchange Commission (“SEC”). “Generally speaking, said form is used to register shares represented by American depositary receipts (ADRs) issued by a depositary against the deposit of the securities of a foreign issuer.” Complainant’s Response at 4. Complainant made no mention whether Andritz AG trades as a “sponsored” or “unsponsored” ADR, and did not present evidence that trading as any type ADR would subject Respondent to SOX whistleblower provisions.

Complainant also relied on the intersection between ADRs and personal jurisdiction as discussed by the Third Circuit Court of Appeals in *Pinker v. Roche Holdings, Ltd.*, 202 F.3d 361, 367 (3d Cir. 2002) and *Vancouver Alumni Asset Holdings Inc. v. Daimler AG*, No. CV 16-02942 SJO (KSx), 2017 U.S. Dist. LEXIS 83612 (C.D. Cal. May 31, 2017). The courts in these cases found that respondents were subject to personal jurisdiction insofar as they registered and sold an ADR in the United States. “In our view, by sponsoring an ADR facility, Roche “purposefully availed itself of the privilege of conducting activities” in the American securities market [...] By *sponsoring* an ADR, therefore, Roche took affirmative steps purposefully directed at the American investing public.” *Pinker* at 371 (emphasis added). For these reasons, Complainant argued that Andritz AG is a covered employer under SOX.

On January 31, 2018, Respondent, with leave of the court, filed a Reply to Complainant’s Response in Opposition to Respondent’s Motion to Dismiss (“Respondent’s Reply”). In its Reply, Respondent stated that “Complainant ... continues to rely upon mischaracterizations of public records and red-herring arguments that lack legal support.... Simply put, [Complainant] cannot, as a matter of law, establish that (1) named Respondent, Andritz, or its parent company,

company’s home country. The bank will issue ADRs to the investor in the U.S., and the investor will be able to re-sell the ADRs on a U.S. exchange or the over-the-counter market. ADR holders may also surrender ADRs in exchange for receiving the shares of the non-U.S. company. These transactions are generally performed by brokers and other types of investors who are active in foreign securities markets.

ADRs may be “sponsored” or “unsponsored.” Sponsored ADRs are those in which the non-U.S. company enters into an agreement directly with the U.S. depositary bank to arrange for recordkeeping, forwarding of shareholder communications, payment of dividends, and other services. An unsponsored ADR is set up without the cooperation of the non-U.S. company and may be initiated by a broker-dealer wishing to establish a U.S. trading market. An ADR, however, may not be established unless the non-U.S. company is either subject to the reporting requirements under the Securities Exchange Act of 1934 or is exempt under the Act.

ADRs are always registered with the SEC on a Form F-6 registration statement. Disclosure under Form F-6 relates only to the contractual terms of deposit under the deposit agreement and includes copies of the agreement, a form of ADR certificate, and legal opinions. A Form F-6 contains no information about the non-U.S. company. If a foreign company with ADRs wishes to raise capital in the United States, it would separately file a registration statement on Form F-1, F-3, or F-4. If a foreign private issuer seeks to list ADRs on a U.S. stock exchange, it would separately file with the SEC a registration statement on Form 20-F.

SEC Investor Bulletin: American Depositary Receipts, <https://www.sec.gov/files/adr-bulletin.pdf> (Aug. 1, 2012). See also *Pinker v. Roche Holdings, Ltd.*, 202 F.3d 361, 367 (3d Cir. 2002) (explaining that a sponsored ADR is established with the active participation of the issuer of the underlying security).

Andritz AG, are covered employers subject to SOX.” Reply at 1. Respondent noted that it is undisputed that Respondent and Andritz AG do not have securities registered under Section 12 of the Act and are not required to file reports under Section 15(d). “That neither [Respondent] nor Andritz AG is subject to the SOX is fatal to [Complainant]’s claim. Accordingly, the ALJ’s inquiry should end here and [Complainant]’s Complaint should be dismissed.” Reply at 2.

Although Respondent contended that the inquiry should end as noted above, it nonetheless addressed Complainant’s argument regarding ADRs. Respondent argued that Complainant’s opposition is largely predicated upon his claims that Andritz AG “trades as an American Depositary Receipt” and that “as recently as December 2015, Andritz AG filed a form F-6 with the Securities Exchange Commission.” Respondent’s Reply at 3 (quoting Complainant’s Response at 4). Respondent asserted that the Complainant’s belief that ADRs confer personal jurisdiction upon Respondent is irrelevant to whether or not Respondent is a covered employer under SOX, but nonetheless argued that Complainant’s newest contention also lacked merit. *Id.* at 3, 10.

Respondent noted that an unsponsored ADR is one that is established by the depository bank without the consent or involvement of the issuer of the underlying security. Therefore, a foreign issuer whose shares are referenced in an unsponsored ADR program may not even be aware that the program exists.

Thus, a foreign private issuer that complies with the current rule’s listing and publication requirements is now automatically exempt from SEC registration and from the reporting obligations that would arise from a registration, regardless of the issuance of ADRs by a depository in an unsponsored ADR program; the foreign issuer need not apply for an exemption.

Even though the foreign issuer of the shares underlying an ADR may be exempt from SEC registration and reporting requirements, the depository institution that issues the ADRs must register the transaction involving issuance of the ADRs by filing a Form F-6 with the SEC.

Respondent’s Reply at 5.

Respondent further argued that Complainant’s reliance on *Pinker* and *Vancouver Alumni Asset Holdings, Inc.* is misplaced. Respondent claimed that Complainant ignores the critical distinction between sponsored ADRs that are established with the active participation of the issuer of the underlying security, and unsponsored ADRs, which may be established with no involvement of the issuer of the underlying security.

Both *Pinker* and *Vancouver Alumni Asset Holdings, Inc.* involved claims that a foreign issuer’s sponsored ADR program, where the foreign issuers took affirmative steps to market these ADRs to American investors in the US securities markets, subjected the foreign issuers to personal jurisdiction in the United States to answer claims for securities fraud under the Exchange Act. Accordingly, the courts found that because of the sponsored nature of the ADR programs, the

foreign issuers had “purposefully availed [themselves] of the privilege of conducting activities in the American securities market, and thereby established the requisite minimum contacts to establish personal jurisdiction.” *Pinker v. Roche Holdings, Ltd.*, 202 F.3d 361, 367 (3d Cir. 2002); *see also Vancouver Alumni Asset Holdings Inc. v. Daimler AG*, No. CV 16-02942 SJO (KSx), 2017 U.S. Dist. LEXIS 83612 (C.D. Cal. May 31, 2017).

Respondent’s Reply at 8-9.

Respondent averred that the important distinction between sponsored versus unsponsored ADRs for purposes of personal jurisdiction was noted by the court in *Stoyas v. Toshiba Corporation*, 191 F.Supp. 3d 1080 (C.D. Cal. 2016). According to Respondent, *Stoyas* provided that not drawing the distinction between sponsored and unsponsored ADRs would essentially create limitless reach of personal jurisdiction because “even if the foreign defendant attempted to keep its securities from being sold in the United States, the independent actions of depository banks selling on OTC markets could create liability.” Respondent’s Reply at 9 (quoting *Stoyas* at 1094-95).

Finally, although Respondent contended that the matter should be dismissed because Respondent is not a covered employer under SOX, Respondent argued, alternatively, that even under the more lenient Motion to Dismiss legal standard under *Evans*, Stewart’s Complaint fails because he has not alleged any facts demonstrating that his purported “protected activity” *relates* to the federal fraud statutes, an SEC rule or regulation, or any federal law relating to shareholder fraud. This is an argument not raised in Respondent’s original Motion or Complainant’s Response. Respondent alleged that Complainant sent a letter to the head of Andritz (USA) Inc., complaining about a new facility’s lack of space; harmonic distortions and vibrations; inconvenient bathrooms; and the lack of a crane for moving product. Respondent argued that none of these complaints “may reasonably be considered to fall within the six SOX specified categories of impermissible [conduct].” Respondent’s Reply at 11 (quoting *Levi v. Anheuser-Busch Companies, Inc.*, ALJ No. 2006-SOX-00037 (ALJ May 3, 2006)).⁴

Standard of Review

Motions to dismiss for failure to state a claim are disfavored in SOX cases before the OALJ. *Sylvester v. Parexel Int’l, LLC*, ARB No. 07-123, slip op. at 13 (May 25, 2011) (*en banc*). If additional evidence beyond the pleadings is in the record, an administrative law judge should consider the motion as one for summary decision pursuant to 29 C.F.R. § 18.40. *Id.*; *Erickson v. U.S. EPA*, ARB No. 99-095, slip op. at 3 n.3 (July 31, 2001).

Additional evidence was submitted in support of Respondent’s Motion to Dismiss in the form of six exhibits, including three sworn affidavits by Kip Mostowy, Timothy Ryan, and Allison Brown. Complainant also referred to these affidavits in its Response. In support of his Response, Complainant attached a Form F-6, allegedly filed by Respondent. In support of its Reply to the Response in Opposition of the Motion to Dismiss, Respondent attached EDGAR

⁴ In light of my ruling in this matter, I need not address this contention.

search results for “Andritz AG,” profiles of various depository banks, and multiple Form F-6s relating to Andritz AG. Because evidence beyond the pleadings is in the record, I will consider Respondent’s Motion to Dismiss as a Motion for Summary Decision.

Summary decision procedures are set forth in the OALJ Rules of Procedure published at 29 C.F.R. § 18.72. Summary decision is proper when the record demonstrates that there is no genuine dispute as to any material fact, and that the moving party is entitled to disposition as a matter of law. 29 C.F.R. § 18.72; Fed. R. Civ. P. 56 (c); *see also, Celotex Corp. v. Catrell*, 477 U.S. 317 (1986). In determining whether there is a triable dispute of material fact, a court must review all of the evidence and construe all inferences in the light most favorable to the non-moving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986); *Adickes v. S.H. Kress & Co.*, 398 U.S. 144 (1970). A court should not make credibility determinations or weigh evidence at the summary decision stage of proceedings. *Reeves v. Sanderson Plumbing Prod., Inc.*, 530 U.S. 133, 150 (2000).

Initially, the moving party bears the burden of informing the court of the basis for its belief that there is no genuine issue of material fact and must identify those portions of the record that demonstrate such absence. The moving party bears the burden of production to prove that the non-moving party cannot make a showing sufficient to establish an essential element of the case. *Celotex Corp.*, 477 US 317; *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 US 574, 106 S. Ct. 1348 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 US 242 (1986). The burden of showing the absence of a material fact is a heavy one. *Pitts v. Shell Oil Co.*, 463 F.2d 331 (5th Cir. 1972). Once the moving party has made an initial showing, the party opposing the motion must come forward with competent summary judgment evidence of the existence of a material fact issue. *Matsushita Elec. Indus. Co., Ltd.*, 475 U.S. 574.

Discussion

Whether Andritz AG is a covered employer under the SOX whistleblower provisions, thus extending SOX liability to Respondent as a second-tier subsidiary, is the threshold issue before me. Although Complainant frames the issue in terms of the sufficiency of its pleading – i.e., whether or not it provided fair notice to Respondent – I may not reach that issue if Respondent is not subject to SOX. Thus, whether or not Respondent is a covered employer under SOX is an essential element of Complainant’s case – an element that Respondent has challenged.

SOX’s whistleblower provisions are predicated on the employer having a class of securities registered under Section 12 of the 1934 Act, 15 U.S.C.A. § 78l, or being required to file periodic reports under Section 15(d) of the 1934 Act, 15 U.S.C.A. § 78o(d). SOX’s whistleblower provision provides in relevant part:

(a) Whistleblower Protection for Employees of Publicly Traded Companies.—No company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l), or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)) including

any subsidiary or affiliate whose financial information is included in the consolidated financial statements of such company, or nationally recognized statistical rating organization (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c), . . . may discharge, demote suspend, threaten, harass, or in any other manner discriminate against an employee....

18 U.S.C.A. § 1514A(a). Coverage under SOX's whistleblower provisions is therefore limited to companies registered under Section 12 and those required to file reports under Section 15(d) of the Securities Exchange Act. *Fleszar v. Am. Med. Ass'n*, ARB Nos. 07-091, 08-061; ALJ Nos. 2007-SOX-00030, 2008-SOX-00006; slip op. at 4 (ARB Mar. 31, 2009); *Flake v. New World Pasta Co.*, ARB No. 03-126, ALJ No. 2003-SOX-00018, slip op. at 4 (ARB Feb. 25, 2004).

To avoid summary decision, the non-moving party must rebut the moving party's motion and evidence with contrary evidence sufficient to create a genuine issue of material fact. The opposing party "may not rest upon mere allegations or denials in his pleadings, but must set forth specific facts showing that there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Siemaszko*, ARB No. 09-123, slip op. at 3.

In his appeal of OSHA's findings, Complainant specifically averred that Respondent is a subsidiary of a foreign company that has filed reports under section 15(d) of the Act.⁵ Complainant attached purported evidence in support of that contention. In its Motion to Dismiss, Respondent argued that neither Respondent, nor Andritz AG: (1) has a class of securities registered under Section 12 of the Securities Exchange Act of 1934; or (2) is required to file reports under Section 15(d) of the Act. Therefore, Respondent claimed it is not a covered employer under SOX. In support of this argument, Respondent provided the sworn affidavits of Kip Mostowy, President of Respondent (Motion to Dismiss, Exhibit D), and Timothy Ryan, President of Andritz (USA), Inc. (Motion to Dismiss, Exhibit E), and Allison R. Brown, Associate at Respondent's law firm (Motion to Dismiss, Exhibit F).

In his Response, Complainant did not dispute Respondent's assertions and the evidence it provided that it, and its parent corporations, are not subject to SOX. Rather, apparently abandoning his original argument regarding section 15(d) filings, he argued that Andritz AG trades as an ADR, which he believes confers personal jurisdiction, thus liability under SOX by way of Respondent. Further, Complainant argued that Andritz AG filed a Form F-6 with the Securities and Exchange Commission as recently as December 2015 and attached the December 2015 Form F-6 in support of its argument. Aside from the December 2015 Form F-6, which all facts before me show was filed by a depository bank without the consent or knowledge of Respondent, Complainant did not offer any registration statements, reports, or documentation showing that Respondent or its parent company is registered or required to file Section 15(d)

⁵ Although unnecessary to the determination of this case, I note that an employer is subject to SOX if it is *required* to file reports under section 15(d), not simply because it *has* filed reports. There is no indication in this case, however, that the Andritz AG has filed section 15(d) reports, let alone is required to file section 15(d) reports.

reports or has a class of securities registered under Section 12 of the Securities Exchange Act of 1934.

Respondent argued that the ADR to which Complainant refers is an unsponsored ADR. Respondent further argued that the “unsponsored ADRs that appear in the EDGAR search results were created, issued, and managed by depositary banks in the United States” without the establishment, consent, or involvement of Andritz or Andritz AG. Respondent’s Reply at 6. In support of these arguments, Respondent attached, as evidence, the EDGAR search results for “Andritz AG,” a list of depositary bank profiles, and multiple Form F-6s.

As noted above, whether or not Respondent is a covered employee under SOX is an essential element of Complainant’s case. SOX’s whistleblower provisions are predicated on the employer having a class of securities registered under Section 12 of the 1934 Act, or being required to file periodic reports under Section 15(d) of the Act. Summary decision is proper when the record demonstrates that there is no genuine dispute as to any material fact, and that the moving party is entitled to disposition as a matter of law.

Viewing all the evidence in the light most favorable to the non-moving party, I find that the Respondent has provided un rebutted evidence that neither Respondent, nor its parent company, have a class of securities under Section 12 of the Act, nor are they required to file periodic reports under Section 15(d) of the Act. Thus, they are not covered employers under the Act on those bases.

Complainant would have me confer liability under SOX to a second-tier subsidiary on the basis of the unsponsored ADRs of a parent company. Although Complainant cited cases that conferred personal jurisdiction on companies under the Securities Exchange Act based on *sponsored* ADRs, he did not put forth any evidence to refute Respondent’s evidence that it, nor its parent company have a class of securities under Section 12 of the Act, or are required to file periodic reports under Section 15(d) of the Act.⁶ As such, I further find that Respondent is not a covered employer on this basis.

In conclusion, Complainant has failed to rebut the Respondent’s Motion and supporting evidence with contrary evidence sufficient to create a genuine issue of material fact as to whether Respondent is a covered employer under the SOX whistleblower provisions. Based on the evidence before me, I find that Respondent is not a covered employer. Respondent is therefore entitled to disposition as a matter of law.

⁶ Although I grant the Respondent’s Motion on other grounds, I also find that Complainant did not put forth any evidence to support his argument that *unsponsored* ADRs would make a company – let alone a second-tier subsidiary – subject to SOX, and I decline to make such a leap. In the cases cited by Complainant, the companies had knowledge and active participation in the sponsored ADR programs. Without this “active participation” or even the knowledge of the unsponsored ADR by Andritz AG, liability could be limitless and is unwarranted. *See Stoyas v. Toshiba Corporation*, 191 F.Supp.3d 1080 (C.D. Cal. 2016).

ORDER

IT IS HEREBY ORDERED that Respondent's Motion is **GRANTED**, and the complaint in Case No. 2017-SOX-00038 filed by Complainant Patrick Stewart under the Sarbanes-Oxley Act is **DISMISSED WITH PREJUDICE**.

SO ORDERED.

CARRIE BLAND
Administrative Law Judge

Washington, D.C.