

**FREEDOM OF INFORMATION REQUEST
EXEMPTIONS AND EXPLANATIONS**

DESCRIPTION	FOIA request # 773962
EXEMPTION	2 3 4 5 (6) 7a (7c) (7d) 7e
PAGES	22
OTHER INFORMATION	Information on the following pages is exempt from FOIA release under the cited exemption(s).

EXEMPTION	EXPLANATION
2a	Internal matters of a relatively trivial nature
b	More substantial internal matters, the disclosure of which would risk circumvention of a legal requirement.
3	Information prohibited from disclosure by another statute.
4	Information that is classified as trade secrets and/or of commercial or financial value obtained from a person and is privileged or a confidential source of information.
5	Inter-agency or intra-agency memoranda or letters that would not be available by law to a party other than an agency in litigation with the agency.
6	This exclusion is intended to exclude from disclosure all personnel and medical files, and all private or personal information contained in other files which, if disclosed to the public would amount to a clearly unwarranted invasion of the privacy of any person, including members of the family of the person to whom the information pertains.
7a	Information contained in investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency.
7c	The identification of a confidential source or confidential information furnished by a confidential source.
7d	Information which could reasonably be expected to disclose the identity of a confidential source, including a state, local or foreign agency or authority which furnished information on a confidential basis
7e	Information that would disclose techniques and procedures for law enforcement investigation or would disclose guidelines for law enforcement investigation if such disclosure could reasonably be expected to risk circumvention of the law.

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*** CONFIDENTIAL TREATMENT REQUESTED ***

March 3, 2014

Tim Crouse
Regional Supervisory Investigator
U.S. Department of Labor — OSHA
46 East Ohio Street, Room 453
Indianapolis, IN 46204

Re: ██████████^{7c}, *The Dow Chemical Company, et al.*
Case No. ██████████

Dear Mr. Crouse:

As you know, we represent The Dow Chemical Company ("Dow"), along with its CEO, Andrew Liveris, and its General Counsel, Charles Kalil, in this matter. We write in response to ██████████^{7c} complaint dated January 7, 2014, wherein ██████████ claims that Dow and Messrs. Liveris and Kalil terminated ██████████ in Dow's Corporate Investigations Group in retaliation for ██████████ regarding Mr. Liveris.

As demonstrated herein, ██████████^{7c} complaint is baseless for the following reasons:

First, ██████████^{7c} employment with Dow ended in the fall of 2013 because ██████████ requested to retire with a benefits package. ██████████^{7c} It was in response to this request from ██████████ (request for a retirement benefits package) that Dow placed ██████████ into a Dow restructuring program, pursuant to which they were ██████████ requested retirement benefits packages and outplaced as of October 31, 2013. ██████████⁶

Second, although ██████████^{6, 7c} did not — because ██████████ was unhappy with the amount of ██████████ severance payment (which was generated by a generic, universally-applied formula applicable to all employees who were placed into the restructuring program). Since then, ██████████ has sought retribution against Dow — by destroying the contents of ██████████ Dow-issued computer; by demanding a \$6 million dollar payment from Dow; by filing a lawsuit against Dow and Messrs. Liveris and Kalil in the Circuit Court of Midland County, Michigan; and by filing the instant retaliatory discharge complaint with the Department of Labor. Before October 2013, ██████████^{7c} never once claimed that Dow took action against ██████████^{7d} for doing ██████████ job. It was only after Dow turned down ██████████ request for an enhanced

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benefits package (which later took the form of a \$6 million demand) that [REDACTED] first claimed retaliation. ^{7d}

^{7c} *Third*, [REDACTED] was not terminated as a result of any of [REDACTED] ^{7d} regarding Mr. Livers or any other [REDACTED], and each and every one of [REDACTED] claims to the contrary is demonstrably false, misleading, or beside the point. In fact, [REDACTED] was consistently praised and rewarded for [REDACTED] work through performance awards, annual salary increases, and bonuses, and [REDACTED] was assigned to one of the most important Dow internal [REDACTED] ever handled by the Corporate [REDACTED] Group even after [REDACTED] submitted [REDACTED] ^{7d}

^{7d} *Fourth*, [REDACTED] claim that [REDACTED] was terminated in retaliation for engaging in "protected activity" within the meaning of section 806 of Sarbanes-Oxley ("SOX") suffers from two fundamental legal defects. ^{7c} The first is that [REDACTED] cannot invoke SOX's whistleblower protections where, as here, [REDACTED] was simply doing [REDACTED] job. *In re Robinson v. Morgan Stanley/Discover Fin. Servs.*, 2007 WL 5577962, at *102 (U.S. Dept. of Labor, Mar. 26, 2007). The second fatal legal flaw in [REDACTED] claim is that [REDACTED] fails completely to show how any of [REDACTED] concerned potential violations ^{7c} of the relevant federal securities laws. 18 U.S.C. § 1514A(a)(1).

For all of these reasons, [REDACTED] ^{7c} cannot establish a prima facie case of retaliatory discharge under section 806 of SOX. To the contrary, [REDACTED] left Dow for one reason and one reason only — [REDACTED] request for a retirement benefits package [REDACTED] ^{7d}

I. ^{7c} [REDACTED] EMPLOYMENT WITH DOW ENDED BECAUSE [REDACTED] ^{7d} REQUESTED A RETIREMENT BENEFITS PACKAGE,

^{7c} [REDACTED] complaint is remarkable not only for what it says, but also for what it does not say. In reality, there is a very simple and legal explanation for the end of [REDACTED] ^{7c} employment at Dow, but it is barely and only indirectly referenced in [REDACTED] complaint. It is that [REDACTED] voluntarily asked for a retirement package. The relevant facts are as follows:

^{7c} During 2013, [REDACTED] ^{7c} regularly told Simon Solano, [REDACTED] ^{7c} was fed up with Dow, and that [REDACTED] wanted to retire.¹ At first, Mr. Solano thought that [REDACTED] was just blowing off steam.² As 2013 progressed, however, [REDACTED] expressions of ^{7c}

¹ Ex. 1 (Declaration of Director of Corporate Investigations Simon Solano), ¶ 8.

² Ex. 1 at ¶ 10.

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7d dissatisfaction with Dow and [REDACTED] job increased and, by September 2013, they were occurring almost daily.³

7c On September 3, 2013, [REDACTED] asked Mr. Solano for a retirement package.⁴ [REDACTED] stated that [REDACTED] wanted something similar to the retirement package received by Michael Hayes, a retired Dow executive who worked in the HI Hotel renovation project that also plays a prominent role in [REDACTED] complaint.⁵ [REDACTED] also stated that [REDACTED] who worked in Dow's [REDACTED].⁶

7d Mr. Solano responded that, because Mr. Hayes had been a member of Dow's Global Leadership Team, he was entitled to retirement benefits that were not available to [REDACTED].⁶ (Indeed, because of his senior leadership position at Dow, Mr. Hayes received a retirement severance benefit of [REDACTED] when he retired in 2008.)⁸ Mr. Solano also responded that [REDACTED] would need to pursue a retirement package with [REDACTED] own supervisor within [REDACTED].⁹

7d Based on this September 3, 2013 conversation, Mr. Solano concluded that [REDACTED] was no longer just venting and that [REDACTED] was serious about wanting to leave [REDACTED] job at Dow.¹⁰ Accordingly, Mr. Solano spoke with his supervisor, Jeffrey Tate, Dow's Corporate Auditor, about [REDACTED] request for a benefits package for [REDACTED].¹¹ Mr. Solano also prepared a memorandum summarizing his September 3, 2013 conversation with [REDACTED].⁶

³ Ex. 1 at ¶ 10.

⁴ Ex. 1 at ¶ 10.

⁵ Ex. 1 at ¶ 11.

⁶ Ex. 1 at ¶ 10.

⁷ Ex. 1 at ¶ 11.

⁸ Ex. 2 (Michael Hayes Severance Agreement signed January 1, 2009) at 2, 4 (providing for lump sum payment of \$ [REDACTED] plus Executive Supplement of \$ [REDACTED] representing an amount equal to [REDACTED]).

⁹ Ex. 1 at ¶ 10.

¹⁰ Ex. 1 at ¶ 14.

¹¹ Ex. 1 at ¶ 14; Ex. 3 (Declaration of Corporate Auditor Jeffrey Tate) at ¶ 4.

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who continued thereafter to voice ^{7d} job frustrations to Mr. Solano, and to reiterate ^{7e} desire for severance packages for ¹²

Mr. Tate agreed to look into whether Dow could offer ^{7c} a retirement package.¹³ In Mr. Tate's view, if ^{7c} was unhappy and wanted to retire, he should explore the possibility of a retirement package for ^{7c} since there was a restructuring program going on at Dow, and he was not interested under those ^{7c} circumstances in trying to convince ^{7c} to stay on.¹⁴

Mr. Tate then spoke with William Weideman, Dow's Chief Financial Officer, about ^{7c} request.¹⁵ Because Mr. Tate's Corporate Audit Group was within Mr. Weideman's sphere of responsibility at Dow, Mr. Tate needed Mr. Weideman's approval for a retirement package for ^{7c} because ^{7c} was not previously identified to be part of the restructuring program.¹⁶ Mr. Weideman said that he was fine with a retirement package for ^{7c} so long as ^{7c} qualified under Dow's pending restructuring program.¹⁷ Mr. Weideman instructed Mr. Tate to talk to Dow's Human Resources group to see whether ^{7c} qualified for a retirement severance payment under the the program.¹⁸

When ^{7c} requested packages for ⁶ in September 2013, Dow had a restructuring program in place, and had recently completed a second program.¹⁹ The earlier of the two programs, called the "Two Percent" Program, was announced in the first quarter of 2012 and was intended to eliminate 900 positions by June 30, 2012.²⁰ The second restructuring program, called the "Efficiency Acceleration" or "EA" program, was announced in the fourth quarter of 2012 and was intended to eliminate an additional 2,500 positions globally over two years.²¹ Those programs offered significant financial benefits to severed employees. If

¹² Ex. 1 at ¶ 12, Appendix A (September 5, 2013 Solano memorandum to file documenting ⁶ request).

¹³ Ex. 1 at ¶ 14; Ex. 3 at ¶ 5.

¹⁴ Ex. 3 at ¶ 5.

¹⁵ Ex. 3 at ¶ 6; Ex. 4 (Declaration of Chief Financial Officer William Weideman) at ¶ 5.

¹⁶ Ex. 3 at ¶ 6.

¹⁷ Ex. 3 at ¶ 6; Ex. 4 at ¶¶ 6, 7.

¹⁸ Ex. 4 at ¶ 7.

¹⁹ Ex. 5 (Declaration of Human Capital Planning & Talent Acquisition Leader Jeannette Pizzo) at ¶¶ 6, 7.

²⁰ Ex. 5 at ¶ 6.

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an employee would have retired outside the terms of either of the programs they would not have received a financial benefit—a fact not lost on ██████████⁶

Following the announcement of each of these programs, Dow's Human Resources Group and senior business leaders prepared and maintained a list of the Dow employees and/or positions that would be eliminated pursuant to the restructuring efforts.²² The lists were often updated as employees and/or positions were added or removed based on senior management's discussions and decisions.²³ The restructuring programs are not voluntary.²⁴ It is up to Dow to determine who will be outplaced, taking into account the best interests of the Company.²⁵ Moreover, because the programs are intended to achieve a targeted level of cost savings, once affected employees are designated for inclusion in one of the programs, they cannot simply request to stay and be removed from the list.²⁶

Thus, if Dow (or Messrs. Liveris or Kalll for that matter) had wanted to terminate ██████████^{7c} in retaliation for ██████████ Corporate Audit ██████████^{7d} regarding the H Hotel, Mr. Liveris's expenses, and/or the THH and Prinkipos matters as ██████████ alleges in ██████████^{7e} complaint, it would have been very easy to include ██████████ in one of the two restructuring programs that took place after ██████████ started to generate reports about Mr. Liveris, to put ██████████ name or position on one of the two program lists, and to call ██████████ job termination the result of a company-wide reduction in force.

But that did not happen. Neither ██████████^{7c, 6} were designated for termination as part of the Two Percent Program, which was completed in June 2012.²⁷ Further, neither ██████████^{7e, 6} were ever identified on the first program list or on any of the approximately 38 subsequent updates of the BA Program lists that were prepared between the

²¹ Bx. 5 at ¶ 7.

²² Bx. 5 at ¶ 3.

²³ Bx. 5 at ¶¶ 3, 4.

²⁴ Bx. 5 at ¶ 5.

²⁵ Bx. 5 at ¶ 5.

²⁶ Bx. 5 at ¶ 5.

²⁷ Bx. 5 at ¶ 6.

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EA Program's inception in 2012 and September 2013 — the month in which ██████^{7c} asked for retirement packages for ██████²⁸ 7d

After talking with Mr. Weideman and following up with Dow's HR group in September 2013, Mr. Tate was authorized to offer ██████^{7c} a retirement package and to place ██████^{7c} into the EA Program.²⁹ Under the EA Program, the amount of the retirement severance payment itself was formulaic; it was a function of ██████^{7c} salary and years of service with the Company.³⁰ For ██████^{7c}, the formula provided for a payment of approximately \$139,000.³¹ In any event, it was only after this determination was made — again, at ██████^{7c} request — that ██████⁶ was added to the EA Program reduction-in-force list on November 6, 2013.³² By then, ██████^{7d} was part of the EA Program and the cost savings associated with it.

Thus, although ██████^{7d} complaint barely and only obliquely references it, it was ██████^{7c} own voluntary request for a retirement package that led to ██████^{7d} departure from Dow. ██████^{7d} departure had nothing to do with ██████^{7c} 7d

II. ██████^{7c} DID NOT FILE CLAIMS OF RETALIATION UNTIL AFTER DOW DECLINED ██████^{7c} DEMAND FOR A \$6 MILLION PAYMENT. 7d

On October 10, 2013, Mr. Tate and Clint Shephard, a Human Resources Manager for Dow's Operations and Finance functions, met with ██████^{7c} to inform ██████^{7c} had been added to the restructuring list (at ██████^{7c} request) and was being offered a retirement benefits package, to present ██████^{7c} with the details of that package, and to notify ██████^{7d} that ██████^{7d} last day at Dow would be October 31, 2013.³³

²⁸ Ex. 5 at ¶¶ 9, 10. The lists themselves contain highly sensitive, personally identifiable information about thousands of current or former Dow employees and therefore have not been provided as exhibits to this response. Dow will make the lists available to the Department in a secure, non-public manner at the Department's request.

²⁹ Ex. 3 at ¶ 7.

³⁰ Ex. 3 at 7; Ex. 6 (Declaration of Human Resources Manager Clint Shephard) at ¶ 5.

³¹ Ex. 7 (unsigned draft agreement presented to ██████^{7c} by Dow) at 1 (providing for \$139,139 lump-sum payment).

³² Ex. 5 at ¶ 10.

³³ Ex. 3 at ¶ 8; Ex. 6 at ¶ 8.

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Although [redacted] had asked for the package in the first place, [redacted] reacted negatively to this news from Messrs. Tate and Shephard. Among other things, [redacted] expressed disappointment with the value of the package, even though it was formulaic and commensurate with severance given to other employees at the same pay grade with the same years of service.³⁴ [redacted] complained to Messrs. Tate and Shephard that "this is not the package I said I wanted" and "this is not the number I requested."³⁵ [redacted] also reiterated that [redacted] wanted a retirement benefit package too.³⁶ At the same time, [redacted] claimed — inconsistently — that [redacted] had never even asked for a package.³⁷ [redacted] also asked, "What if I don't want to leave?"³⁸ In response, Mr. Tate explained to [redacted] several times that, because [redacted] had been placed in the EA Program and granted a \$139,000 retirement severance benefit at [redacted] own request, [redacted] employment at Dow would end on October 31, 2013.³⁹

Unhappy with the value of [redacted] retirement severance payment, [redacted] rejected it and began taking steps to obtain revenge against Dow. Thus, on October 30, 2013, the day before [redacted] employment formally ended at Dow, [redacted] used data-deletion software to wipe clean the contents of the hard drive of [redacted] Dow-issued computer.⁴⁰ Three weeks later, [redacted] lawyer sent Dow a letter demanding that Dow pay [redacted] \$6 million to avoid facing a threatened lawsuit in which he warned that "the conduct of the CEO will be front and center."⁴¹ When Dow declined [redacted] \$6 million demand, [redacted] sued Dow and Messrs. Liveris and Kalil in the Circuit Court of Midland County, Michigan, and [redacted] lawyer went on a publicity

³⁴ Ex. 3 at ¶ 8; Ex. 6 at ¶¶ 9, 11.

³⁵ Ex. 6 at ¶ 9.

³⁶ Ex. 6 at ¶ 9.

³⁷ Ex. 3 at ¶ 8; Ex. 6 at ¶ 9.

³⁸ Ex. 3 at ¶ 8.

³⁹ Ex. 3 at ¶ 8.

⁴⁰ Ex. 8 (Affidavit of [redacted], Kroll Cyber Security) at ¶¶ 8-14 (testifying that [redacted] Dow computer hard drive was forensically tested, and determined to have been wiped with data-wiping software, destroying any data that existed on the hard drive); Ex. 1 at ¶ 22 (Simon Solano's testimony that, after his final meeting with [redacted], he discovered that [redacted] computer contained no data and contacted Dow Information Systems Security).

⁴¹ Ex. 9 (Settlement demand from The Mastromarco Firm to The Dow Chemical Company received on November 18, 2013) at 22, 23 (stating that "It should be underscored that [if Dow refuses [redacted] demand] . . . the conduct of the CEO will be front and center in the event that this matter is not resolved" and demanding \$6,000,000).

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campaign.^{42,43} Through ^{7d} [redacted] counsel, ^{7c} [redacted] also filed the instant complaint with the Department of Labor.

In response to ^{7c} [redacted] lawsuit, Dow promptly moved for a protective order prohibiting ^{7c} [redacted] from destroying more evidence.⁴⁴ ^{7d} [redacted] admitted in a sworn affidavit that ^{7d} [redacted] destroyed the contents of the hard drive of ^{7d} [redacted] Dow computer, claiming — incredibly — that Mr. Solano had instructed ^{7d} [redacted] to do so.⁴⁵ In response, Mr. Solano submitted his own sworn affidavit stating that he did no such thing.⁴⁶ After considering this and other evidence submitted by Dow, the trial judge in the Michigan action granted Dow's motion for a protective order to prevent further spoliation by ^{7c} [redacted].⁴⁷ The Michigan court is now considering motions to dismiss filed by Dow and Messrs. Liveris and Kalil.⁴⁸ Notably, the court has already dismissed all but two of ^{7c} [redacted] claims against Messrs. Liveris and Kalil,

⁴² Ex. 10 (Civil complaint dated January 8, 2014).

⁴³ ^{7c} [redacted] publicly campaign is perhaps best exemplified by ^{7d} [redacted] attorney, Mr. Mastromarco's, lengthy appearance on a local television affiliate, video of which is available online at <http://www.abc12.com/story/> [redacted] (last visited February 27, 2014). Ironically, when Dow issued a statement denying ^{7c} [redacted] highly-publicized allegations, ^{7d} [redacted] responded by amending ^{7c} [redacted] state-court complaint to include claims of defamation against Dow and Messrs. Liveris and Kalil.

⁴⁴ Ex. 11 (motion for protective order filed January 21, 2014).

⁴⁵ Ex. 12 (Affidavit of ^{7c} [redacted] dated January 28, 2014) at ¶¶ 9, 10 (testifying that Mr. Solano "was aware of my intention to wipe the laptop's hard drive and provided me instructions that I could use a portable machine that was in the office to do so.")

⁴⁶ Ex. 13 (Affidavit of Simon Solano dated January 30, 2014). Mr. Solano has also testified in his Declaration (attached hereto as Ex. 1) that he never knew of, or authorized, ^{7c} [redacted] plans to destroy the data on ^{7d} [redacted] hard drive, and would never had done so because it violates Dow's policies regarding employee's obligations to return Dow's property upon separation. Ex. 1 at ¶¶ 24-27.

⁴⁷ Ex. 14 (February 7, 2014 Order of the Circuit Court of Midland County) (concluding that "an order should enter requiring Plaintiff to preserve all relevant documents" and barring Plaintiff from "altering, deleting or otherwise destroying" relevant documents in ^{7d} [redacted] possession).

⁴⁸ Ex. 15 (Motion to Dismiss filed by Messrs. Liveris and Kalil on January 21, 2014); Ex. 16 (Motion to Dismiss filed by Dow on February 11, 2014).

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including [redacted] claims of defamation.⁴⁹ The court has taken the motion to dismiss the remaining claims under advisement.⁵⁰

Ironically, in the midst of all of this, [redacted] followed the advice that both Mr. Solano and Mr. Tato gave to [redacted] in response to [redacted] request for a retirement package for [redacted] namely, that [redacted] pursue the possibility of such a package with [redacted] supervisors in Dow's [redacted] [redacted] was successful.⁵¹ Like the request of [redacted] Dow granted [redacted] request effective as of October 31, 2013. [redacted] appeared on the BA Program reduction in force list for the first time on February 4, 2014.⁵² Unlike [redacted] however, [redacted] promptly accepted [redacted] retirement benefits package. [redacted] received approximately \$120,000.⁵³

In short, [redacted] never once claimed that [redacted] was a victim of retaliation until [redacted] concluded in October and November 2013 that the retirement benefits package that [redacted] was offered was not enough. Dow's \$139,000 payment was too low, and [redacted] proceeded to demand \$6 million from the Company — over 40 years' worth of salary — which was more than 42 times what [redacted] was entitled to receive under the BA Program, and more than 18 times what Mr. Hayes received, even though he was Vice President of Global Public Affairs and a member of Dow's Global Leadership Team. When Dow declined [redacted] demand, [redacted] filed [redacted] retaliatory discharge claims. As demonstrated below, those claims are meritless.

III. [redacted] WAS NOT TERMINATED BECAUSE OF [redacted] CORPORATE AUDIT [redacted]

As noted above, [redacted] is a [redacted] in Dow's Corporate [redacted] Group ("[redacted]") from [redacted] departure from the Company at the end of October 2013. [redacted] job was to conduct [redacted] based on specific allegations of occupational fraud and abuse" and to "present [redacted] to management/ethics committees."⁵⁴ It was then up to Dow's senior management or, in some circumstances, the Audit Committee of the

⁴⁹ Ex. 17 (Order Granting In Part Defendants Andrew N. Liveris' and Charles J. Kalil's Motion for Summary Disposition dated February 21, 2014).

⁵⁰ Ex. 17 at 2.

⁵¹ Ex. 18 (separation agreement between [redacted] and Dow).

⁵² Ex. 5 at ¶ 10.

⁵³ Ex. 18 at 1 (providing for lump sum payment of \$120,060).

⁵⁴ Ex. 19 ([redacted] position description).

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7d Company's board of directors, to decide what action, if any, should be taken based on those
7d [redacted]. In short, [redacted] was [redacted]. [redacted] was not an ultimate decision-maker.
That was not [redacted] role. 7c 7d 7d

7d In [redacted] 7d complaint, [redacted] 7c alleges that [redacted] 7d was fired in retaliation for certain [redacted] 7d
that [redacted] prepared between 2009 and 2013. The relevant [redacted] 7d related primarily to three topics:
(1) the over-budget H Hotel renovation project in downtown Midland, Michigan, which was
completed in 2009; (2) a "customer events" expense-report review that resulted in Mr. Liveris
making a \$719,000 reimbursement to Dow in 2011; and (3) a series of memoranda [redacted] 7c
prepared in 2012 and 2013 regarding Dow's support for two non-profit organizations in Greece,
the Hellenic Initiative ("THI") and the Prinkipos Environmental Foundation ("Prinkipos").

7d As set forth below, [redacted] 7c was not terminated in response to any of these [redacted] 7d,
[redacted] wide-ranging and strained claims to the contrary are completely without merit.

A. The H Hotel Project.

In the mid-2000s, Dow decided to renovate the H Hotel in downtown Midland, Michigan,
the town where Dow was founded and is headquartered, even today.⁵⁵ Dow wanted to build a
learning academy and a conference center within the hotel, and to make the hotel itself a place
that Dow, its employees and visitors, and the entire Midland community, could be proud of.⁵⁶

[redacted] 7c alleges in [redacted] 7d complaint that [redacted] 7d was terminated in retaliation for a November
17, 2009 [redacted] 7c prepared "concerning the expenses and renovation of The H Hotel."⁵⁷
According to [redacted] that the project was \$13 million over-budget; that Mr.
Liveris's wife and a friend were involved in the renovation; and that Dow retaliated against
Michael Hayes — the same Michael Hayes that [redacted] 7c referenced when [redacted] 7d first requested a
retirement package from Mr. Solano — for trying to limit Mrs. Liveris's involvement in the
renovation.⁵⁸ [redacted] 7d also claims that [redacted] 7d recommended an independent [redacted] 7d of the
costs of the H Hotel renovation and a separate Dow project at the Midland Country Club.⁵⁹ 7d

[redacted] 7c claim that [redacted] 7d was terminated in retaliation for this report is frivolous.

⁵⁵ Ex. 20 (Declaration of Michael Hayes, retired Vice President of Global Public Affairs) at ¶ 3.

⁵⁶ Ex. 20 at ¶ 3.

⁵⁷ Compl. at 7.

⁵⁸ Compl. at 7.

⁵⁹ Compl. at 9.

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First and foremost, [redacted] ^{7c} concedes that [redacted] ^{7d} submitted [redacted] ^{7d} regarding the H Hotel renovation on or about November 17, 2009. [redacted] employment was not terminated in the wake of that [redacted] ^{7d} nor was [redacted] penalized in any way. ^{7c} To the contrary, [redacted] continued in [redacted] ^{7d} job as a [redacted] at Dow for *four more years*. During those four years, [redacted] received annual pay increases every single year; received performance bonuses ranging from nearly \$11,000 to over \$40,000 every single year; and received formal recognition awards six times.⁶⁰ Notably, [redacted] ^{7c} does not allege that [redacted] suffered any adverse employment consequences at all during those intervening years. And [redacted] ^{7d} does not even try to explain why Dow would lay in the weeds for almost four years to implement a plan to fire [redacted] ^{7d} for this activity.

^{7d} Second, even if [redacted] ^{7c} could somehow base [redacted] ^{7d} own retaliatory discharge claim on [redacted] suggestion that Dow retaliated against Mr. Hayes (which is something [redacted] plainly cannot do), [redacted] allegation that Mr. Hayes was a victim of retaliation is utterly false. Contrary to [redacted] ^{7d} ^{7d} baseless conjecture, when Mr. Hayes left his job at Dow in the summer of 2008, he thanked Dow and Mr. Liveris personally and in writing for the way he had been treated at the Company.⁶¹ Further, in the attached sworn affidavit, Mr. Hayes confirms that he *wanted* to retire from his position as Vice President of Global Public Affairs in the summer of 2008 rather than continue working at the pace required of Dow's Global Leadership.⁶² Finally, [redacted] ^{7c} wholly unsupported inference that Dow must have retaliated against Mr. Hayes is more than a little disingenuous given that, in September 2013, [redacted] ^{7d} asked for a package similar to the one received by Mr. Hayes.⁶³ [redacted] ^{7c} would not have done so unless [redacted] ^{7d} believed that Mr. Hayes got a *good* deal when he retired from Dow. [redacted] ^{7c} apparently wanted a similar (indeed, far better) deal for [redacted] ^{7c}

^{7c} Third, although [redacted] ^{7c} inexplicably fails even to mention it, Dow *did* commission an independent investigation of the H Hotel project. Specifically, the Audit Committee of Dow's board of directors hired Cadwalader, Wickersham & Taft, a prominent national law firm, to investigate whether the cost overruns or Mrs. Liveris's (and her friend's) participation in the H Hotel project violated Dow's Code of Business Conduct, and whether there was any improper retaliation against Mr. Hayes or Peyman Zand, another former Dow employee whom [redacted] ^{7c}

⁶⁰ Ex. 5 at ¶¶ 12, 13, Appendix A & B.

⁶¹ Ex. 20, Appendix A (June 25, 2008 e-mail from Michael Hayes to Andrew Liveris "to say 'THANKS' for handling my retirement in such a thoughtful manner").

⁶² Ex. 20 at ¶¶ 6, 7 (describing decision to retire and expressly denying any retaliation).

⁶³ Ex. 1, at ¶ 10; Ex.1, Appendix A.

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suggests was a victim of retaliation.⁶⁴ Following that independent investigation, the Audit Committee determined that no action against Mr. Liveris, Mr. Kalil, or anyone else at Dow was warranted.⁶⁵

7c [redacted] obviously disagrees with this result, but that was not 7d [redacted] call to make. [redacted] 7d was not Dow's Audit Committee and [redacted] 7c did not have decision-making authority. The only relevant question is whether [redacted] suffered any retaliation in the wake of the H Hotel report. No such retaliation ever occurred. 7c

B. Mr. Liveris's Expenses and Reimbursement.

7c [redacted] next alleges that [redacted] 7d [redacted] was terminated in retaliation for a June 14, 2010 [redacted] 7c that Dow had paid certain personal expenses of Mr. Liveris.⁶⁶ [redacted] also suggests that Dow retaliated against [redacted] one of Dow's former Corporate Auditors, as a result of this 7d [redacted] 67 These claims of retaliation are just as meritless as those regarding [redacted] H Hotel [redacted] and Mr. Hayes. 7d

6 First and foremost, 7c [redacted] concedes that [redacted] 7d [redacted] submitted [redacted] 7c regarding Mr. Liveris's personal expenses to [redacted] 7d supervisors on or about June 14, 2010. Again, [redacted] 7c was not terminated in the wake of that [redacted]. Nor was [redacted] 7d penalized in any way. To the contrary, [redacted] 7d [redacted] received a special recognition award and additional compensation in thanks for [redacted] work on the [redacted] 68 (Two of [redacted] supervisors also received special recognition for their work on this [redacted]. The first was [redacted] 7d The second was [redacted] — the employee that [redacted] now claims was a victim of retaliation because of the [redacted] 69) Thereafter, [redacted] 7c continued in [redacted] job as a Dow [redacted] 7c [redacted] for more than three years. 7d 7c

7c Second, as [redacted] 7c begrudgingly concedes, Dow's Audit Committee commissioned another prominent law firm, Gibson Dunn & Clutcher, as well as the major accounting firm of PricewaterhouseCoopers, to conduct an independent review of Mr. Liveris's expenses, including

⁶⁴ Ex. 4 at ¶ 22.

⁶⁵ Ex. 4 at ¶ 22.

⁶⁶ Compl. at 9.

⁶⁷ Comp. at 10.

⁶⁸ Ex. 1 at ¶ 6; Ex. 4 at ¶ 3.

⁶⁹ Ex. 1 at ¶ 6; Ex. 4 at ¶ 3.

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a review of the evidence compiled by ██████████^{7c}. And while ██████████^{7d} argues that Gibson Dunn and PricewaterhouseCoopers should have done more work, ██████████^{7d} also concedes that these outside firms concluded that Mr. Liveris owed Dow \$719,000.^{7d}

Third, although ██████████^{7c} quarrels that he took too long, ██████████^{7c} admits, as ██████████^{7d} must, that Mr. Liveris reimbursed Dow the \$719,000.

Fourth, although ██████████^{7d} quibbles with the wording, ██████████^{7c} concedes again, as ██████████^{7d} must, that Dow disclosed in its March 2011 proxy statement filed with the SEC that the Company had determined that, from 2007 to 2010, Dow's Customer Events Group had incorrectly processed certain of Mr. Liveris's expenses as business-related rather than personal, and that Mr. Liveris had repaid Dow \$719,000 as a result of the review.

Fifth, even if ██████████^{7c} could somehow base ██████████^{7d} own retaliatory discharge claim on ██████████^{7d} suggestions that Dow retaliated against ██████████^{7d} because of the ██████████^{7d} regarding Mr. Liveris's expenses (which, again, ██████████^{7d} plainly cannot do), ██████████^{7d} claim that ██████████^{7c} was a victim of retaliation is false.^{7d}

6 As the attached sworn affidavit of William Weideman, Dow's Chief Financial Officer, states, ██████████ told Mr. Weideman (his boss), in 2009, that he wanted to be considered for a different role with the Company.⁷⁰ Specifically, he said that he had been Dow's Corporate Auditor for a long time (approximately eight years) and that he wanted to do something where he could use his technical accounting skills.⁷¹ When, in 2010, the position of Finance Director, M&A and Special Transactions, opened up, Mr. Weideman thought that ██████████ would be a good fit, so he offered him the job.⁷² Although he could have said no, ██████████ accepted the job, and he remained in that position until he retired in August 2013.⁷³ In short, ██████████⁶ ██████████ move from the Corporate Auditor position to his Finance Director position had nothing to do with his work in the Corporate Auditor role, let alone with ██████████^{7d} regarding Mr. Liveris's expenses. After eight years in the Corporate Auditor position, Mr. ██████████ just wanted a new job. Moreover, ██████████ has never claimed that he was a victim of retaliation.⁶

⁷⁰ Ex. 4 at ¶ 9.

⁷¹ Ex. 4 at ¶ 9.

⁷² Ex. 4 at ¶¶ 10, 11.

⁷³ Ex. 4 at ¶¶ 11, 12.

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C. The Hellenic Initiative and the Prinkipos Environmental Foundation,

7c [redacted] last principal claim is that Dow terminated 7d [redacted] in retaliation for three memoranda 7c [redacted] prepared regarding The Hellenic Initiative ("THI"), an organization formed to help revive the faltering Greek economy, and the Prinkipos Environmental Foundation ("Prinkipos"), an environmental sustainability program. The gist of 7d [redacted] was that Dow improperly contributed \$100,000 to THI, which 7c [redacted] calls "the CEO's charity"; that Dow may have improperly paid for THI expenses, either directly or indirectly through a consulting firm called Teneo; and that Dow may have improperly paid for travel expenses of Mr. Liveris relating to THI and/or Prinkipos.⁷⁴ [redacted] also suggests that Mr. Grocholski was removed from his position as Dow's Corporate Auditor for following up on these 7d [redacted].⁷⁵ Finally, 7c [redacted] asserts that Jeffrey Tate, Mr. Grocholski's successor as Dow's Corporate Auditor, violated SOX by not following up on 7d [redacted].⁷⁶

7c These retaliatory discharge claims based on THI and Prinkipos have no more merit than [redacted] claims based on the H Hotel and Mr. Liveris's expenses.

7c First and foremost, 7c [redacted] concedes that 7d [redacted] submitted 7d [redacted] first 7d [redacted] regarding THI on or about September 20, 2012. Again, 7c [redacted] was not terminated in the wake of that 7d [redacted]. Nor was 7c [redacted] penalized in any way. To the contrary, 7c [redacted] continued on in 7d [redacted] job as a Dow 7d [redacted] for another year — until 7c [redacted] requested a retirement package in September 2013.⁷⁷

7c Second, 7c [redacted] admits that 7d [redacted] submitted a second memorandum regarding THI on or about January 23, 2013. In response, 7c [redacted] was neither terminated nor penalized. In fact, 7c [redacted] was assigned by Mr. Solano to one of the largest and most important internal 7d [redacted] has initiated to date — an 7d [redacted] into certain accounting improprieties at a Dow business unit in the U.S. Gulf Coast region ("the Olefins 7d [redacted]").⁷⁷ At that time, the Olefins 7d [redacted] was the Corporate Audit Group's

⁷⁴ Compl. at 11-12.

⁷⁵ Compl. at 12.

⁷⁶ Compl. at 16.

⁷⁷ Ex. 1, at ¶ 4; Ex. 3 at ¶ 10.

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highest priority.⁷⁸ Thus, [redacted] worked primarily on the Olefins [redacted] for the next nine months -- until [redacted] completed [redacted] last [redacted] in early October 2013.⁷⁹

Third, even if [redacted] could somehow base [redacted] own retaliatory discharge claim on [redacted] suggestion that Dow retaliated against Mr. Grocholski because of the THI matter (which [redacted] plainly cannot do), [redacted] claim that Mr. Grocholski was a victim of retaliation is totally false.

As the attached sworn affidavit of Mr. Weideman states, Mr. Grocholski's employment story is similar to [redacted]. Mr. Grocholski replaced [redacted] as Dow's Corporate Auditor in September 2010.⁸⁰ In the fall of 2012, Dow reorganized its senior management ranks and named a number of new business presidents and executive business leaders.⁸¹ During this process, the position of Dow's Global Business Finance Director for Business Development, Licensing, and New Ventures Oversight became available.⁸² Because Mr. Grocholski had expressed an interest in a Global Business Finance Director position, and because such positions do not open up very often, Mr. Weideman offered Mr. Grocholski the job, and promoted him, even though Mr. Grocholski had only been in the Corporate Auditor job for two years.⁸³ Mr. Grocholski did not have to accept the Global Business Finance Director position, but he did, and he remains in that senior position to this day.⁸⁴

In short, like [redacted], Mr. Grocholski's move from the Corporate Auditor role to his Global Business Finance Director role had nothing to do with his work as Dow's Corporate Auditor, let alone with the THI and/or Prinkipos matters.⁸⁵ Mr. Grocholski simply took a new

⁷⁸ Ex. 1, at ¶ 4; Ex. 3 at ¶ 10.

⁷⁹ Ex. 1 at ¶ 4.

⁸⁰ Ex. 4 at ¶ 16.

⁸¹ Ex. 4 at ¶ 18.

⁸² Ex. 4 at ¶ 18.

⁸³ Ex. 4 at ¶ 19.

⁸⁴ Ex. 4 at ¶ 19.

⁸⁵ Notably, Mr. Grocholski swears in his attached declaration that he never told [redacted] that there would be no more [redacted] of Mr. Liveris, as [redacted] suggests in [redacted] complaint. (See Compl. at 10) According to Mr. Grocholski, he would not have said that, given that Dow's Corporate Audit Group reviews the travel and expense reports of Dow's senior executives on an annual basis, and Mr. Liveris is plainly not exempt from those reviews. Ex. 21 (Declaration of Global Business Finance Director for Business Development, Licensing and Joint Venture Oversight Greg Grocholski) at ¶ 6.

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senior position that he wanted, and for good reason. No Global Business Finance Director position has opened up since then.⁸⁶ Moreover, Mr. Grocholski has never claimed that he was a victim of retaliation.⁸⁷

Fourth, putting aside for a moment the question of whether such conduct could ever rise to the level of a SOX violation, ██████████ claim that Mr. Tate ignored ██████████ regarding THI is likewise false. In the very sentence in which ██████████ makes this claim, ██████████ also concedes that Mr. Tate asked ██████████ for a follow-up report regarding THI in the summer of 2013.⁸⁸ More importantly, Mr. Tate did not ignore ██████████ THI and Prinkipos memoranda. To the contrary, he reviewed them and concluded that, because they did not show any violations of the law or Dow's Code of Business Conduct, they did not warrant further ██████████⁸⁹ ██████████ ██████████ Mr. Solano, reached the same conclusion.⁹⁰ While ██████████^{7d} ██████████^{7c} plainly disagrees with Mr. Tate's and Mr. Solano's conclusions, the decision whether to launch an ██████████ into Dow's support for THI and/or Prinkipos was not ██████████ to make; it was theirs. Furthermore, ██████████ falls completely to articulate a legal or factual basis for that disagreement.

Nor can ██████████^{7d} Dow's support of THI and Prinkipos was entirely above-board and proper. As set forth in the sworn declaration of Robert Miller, Dow's Global Director of Corporate Citizenship, attached hereto as Exhibit 22, Dow supports numerous charities, both directly and through its separate charitable foundation.⁹¹ Indeed, Dow donates nearly \$50 million per year to civic or charitable organizations, either directly or through its foundation, as detailed in its regular Sustainability Reports.⁹² Not surprisingly, Dow executives and other employees participate in these Company-sponsored civic and charitable activities.⁹³ Some, including Mr. Livers, sit on the boards of the entities that are the recipients of Dow's financial support.⁹⁴

⁸⁶ Ex. 4 at ¶ 18.

⁸⁷ Ex. 4 at ¶ 20.

⁸⁸ Compl. at 16.

⁸⁹ Ex. 3 at ¶¶ 10, 11.

⁹⁰ Ex. 1 at ¶ 7.

⁹¹ Ex. 22 (Declaration of Global Director of Corporate Citizenship Robert Miller) at ¶¶ 3, 4.

⁹² Ex. 22 at ¶ 3; Ex. 23 (2012 Dow Sustainability Report).

⁹³ Ex. 22 at ¶ 6.

⁹⁴ Ex. 22 at ¶ 6.

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These activities redound to Dow's benefit, increasing its profile as a good global corporate citizen.

Thus, Dow's (and Mr. Liveris's) financial and other support of THI, and the related expenses incurred in doing so, not only were proper and consistent with Company policy, they were also appropriately documented and approved by the proper Dow personnel.⁹⁵ There is nothing hidden, sinister, or even unusual about Dow's support of THI and/or Prinkipos. Indeed, the same request that prompted Dow's contribution and support for Mr. Liveris's THI board seat also included a request for a donation to the Special Olympics.⁹⁶

^{7c} [REDACTED] additional allegations regarding the Teneo consulting firm show how reckless ^{7d} [REDACTED] can be in making utterly unsupported allegations. [REDACTED] makes two factual observations about Teneo — that (1) it performed work relating to THI, and (2) Teneo's 2012 consulting contract with Dow was amended mid-year and its value was increased from approximately \$5 million to approximately \$16 million.⁹⁷ From these observations alone, ^{7d} [REDACTED] leaps to an inference that Dow has surreptitiously and improperly funneled money and support to THI through Teneo.

This irresponsible assertion has no basis in fact. To begin with, Teneo has stated publicly it performed its work for THI on its own accord and free of charge.⁹⁸ Furthermore, the increase in the size of Teneo's 2012 contract with Dow was the result not of any scheme regarding THI but, rather, a conscious business decision by Dow to reduce the number of its outside consulting firms and, as a result of that process, to substantially increase both the subject-matter and geographic scope of Teneo's work.⁹⁹ This move led to an approximate \$5 million decrease in Dow's spending on consulting firms in the first year of its implementation.¹⁰⁰ Finally,

⁹⁵ Ex. 22, ¶¶ 7, 8.

⁹⁶ Ex. 22, Appendix A (January 3, 2013 e-mail from Louis Vega to Bo Miller requesting approval of donations to the Special Olympics and THI).

⁹⁷ Compl. at 12.

⁹⁸ Indeed, this fact is announced on Teneo's website, which highlights The Hellenic Initiative as a key example of the firm's pro bono activities. See <http://www.teneoholdings.com/teneo-foundation/> (last visited February 28, 2014; hard copy attached hereto as Ex. 24).

⁹⁹ Ex. 25 (Declaration of Vice President of Global Affairs and Government Affairs Matthew Davis) at ¶ 5; Ex. 26 (Declaration of Sourcing Manager Rodney Campata) at ¶¶ 5, 6 and Appendices A and B (2012 Teneo Contract and June 2012 Amendment, showing expansion of scope to include support for all of Dow's Government Affairs department activities in the European, Middle East and Pacific regions.)

¹⁰⁰ Ex. 25 at ¶ 5.

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notwithstanding ██████^{7c} insinuations to the contrary, all of Teneo's contracts were properly approved and executed pursuant to all relevant Dow authorization policies and procedures.¹⁰¹

If ██████^{7c} allegations regarding THI and Prinkipos show anything, it is that, in ██████^{7c} zeal to sling accusations at Mr. Liveris, ██████^{7c} has lost sight of the facts, the scope of ██████^{7c} role as an ██████^{7c} (as opposed to a policy maker or decision-maker), and ██████^{7c} own objectivity. Dow's support of THI was above-board, publicized consistent with its corporate-citizenship and business objectives, and appropriately approved by senior Dow officials other than Mr. Liveris. Still, ██████^{7c} somehow manages to call it misconduct on the part of Mr. Liveris. Teneo also supported THI with pro bono services, just as Dow was consolidating its vendor list and increasing Teneo's consulting work and responsibilities for Dow. From these two entirely innocent facts, ██████^{7c} imagines that Dow is secretly funneling support for THI through Teneo. That is not just reaching, it is speculative and without any basis in fact. In a separate part of ██████^{7c} complaint, ██████^{7c} even challenges Mr. Liveris's purchase of \$300 flowers for Hillary Clinton during her illness in late 2012, apparently on the preposterous theory that it could somehow amount to a federal securities law violation.¹⁰² That is reaching in the extreme.

IV. ██████^{7c} CLAIMS AGAINST MESSRS. LIVERIS AND KALIL.

█████^{7c} retaliatory discharge claims against Messrs. Liveris and Kalil — the claims ██████^{7c} actually has to prove in order to obtain relief — are particularly empty. To smear their reputations and to gain settlement leverage against Dow, ██████^{7c} claims that Messrs. Liveris and Kalil fired ██████^{7c} because of ██████^{7c} regarding Mr. Liveris, yet ██████^{7c} does not even allege, let alone prove, that they were involved at all in ██████^{7c} separation from Dow.

With respect to Mr. Liveris, ██████^{7c} makes only one relevant allegation. On page 17 of the complaint, under the heading, "The Termination of ██████^{7c} Employment," ██████^{7c} asserts that, in August 2013, ██████^{7c} was "re-targeted by Liveris for termination."¹⁰³ Yet, ██████^{7c} does not allege anywhere in ██████^{7c} complaint that Mr. Liveris had earlier "targeted ██████^{7c} for termination," let alone offer evidence to support such a bold and incendiary allegation. More importantly, ██████^{7c} does not offer even a shred of evidence to support ██████^{7c} inflammatory allegation that Mr. Liveris "re-targeted ██████^{7c} for termination" in August 2013. Not a document. Not an affidavit. Not even a hearsay statement by someone else. Nothing. ██████^{7c} offers no evidence that Mr. Liveris was even aware of ██████^{7c} activities in 2013, let alone that he "re-targeted ██████^{7c} for termination" because of that work. ██████^{7c}

¹⁰¹ Ex. 25 at ¶ 4; Ex. 26 at ¶ 7.

¹⁰² Compl. at 15.

¹⁰³ Compl. at 17 (emphasis added).

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FC case against Mr. Kalil is equally devoid of merit. Here again, FC makes only one relevant allegation — that FC supervisors were told by Dow's chief counsel, i.e., Kalil, that he "wanted FC fired."¹⁰⁴ Yet, FC offers no evidence — again, no affidavit, no document — to support this assertion either, and FC two supervisors at the time, FC and FC, swear under oath that Mr. Kalil said no such thing to them.¹⁰⁵ Mr. Weideman, the CFO, also denies that Mr. Kalil told him anything of that nature, despite the fact that they sit in adjacent offices and see each other almost daily.¹⁰⁶ More importantly, FC does not allege, let alone offer proof, that Mr. Kalil had the authority to have FC fired or that he took a single step to cause FC departure from the Company, whether he wanted FC fired or not.

For all of these reasons, FC fails completely to allege a prima facie case of retaliatory discharge against Messrs. Liveris and Kalil.

V. FC DID NOT ENGAGE IN "PROTECTED ACTIVITY" WITHIN THE MEANING OF SOX.

For the reasons stated above, FC retaliatory discharge complaint against Dow and Messrs. Liveris and Kalil is factually baseless. It is also legally baseless. Section 806 of SOX (18 U.S.C. § 1514A(a)) is designed to protect corporate "whistleblowers" from retaliation for certain specified "protected activities," such as reporting potential violations of the federal securities laws. 18 U.S.C. §§ 1514A(a)(1)-(2). Here, FC was not a whistleblower entitled to protection under the Act. Nor was FC engaged in "protected activity" within the meaning of the statute.

A. FC Was Not A "Whistleblower."

As the Department has made clear in prior administrative decisions, not every employee qualifies as a corporate whistleblower under SOX. The purpose of SOX's whistleblower protection provisions is to "protect employees who risk their job security by taking steps to protect the public good." *In re Robinson v. Morgan Stanley/Discover Fin. Servs.*, 2007 WL 5577962, at *102 (U.S. Dept. of Labor, Mar. 26, 2007) (internal quotes and citations omitted). This focus on employees who "risk their job security" means that "when [the alleged reporting]

¹⁰⁴ Compl. at 17.

¹⁰⁵ Ex. 1 at ¶ 8; Ex. 3 at ¶ 13.

¹⁰⁶ Ex. 4 at ¶ 4.

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Here, ██████^{7c} does not even attempt to explain how any of ██████^{7c} concerned a potential violation of a federal securities law or any other federal law relating to fraud against shareholders.

Nor could ██████^{7d}. For example, the upshot of ██████^{7d} TH Hotel report was that the project was over-budget, that Mrs. Liveris was involved, and that Mr. Hayes was let go for trying to limit ██████^{7d} involvement. Even if all of those claims were true (and they are not), they do not even begin to suggest a federal securities law violation or a fraud against shareholders. Simply put, federal law does not prohibit corporate renovation projects from running over-budget. Nor do they prohibit executives' spouses from being involved in such projects. Similarly, ██████^{7c} does not and cannot explain how ██████^{7d} regarding Mr. Liveris's personal expenses concerned a potential material misstatement to the SEC or shareholders, particularly where, as here, Mr. Liveris paid \$719,000 back to the Company and Dow disclosed the matter in its 2011 proxy statement. ██████^{7c} quibbles with some of the wording of that disclosure, but ██████^{7d} does not explain how any of those quibbles is material.¹¹⁰ That is because they are not. And the same goes for ██████^{7d} memoranda regarding THH. ██████^{7d} might question Dow's wisdom in supporting that endeavor — again, a call that is *not* ██████^{7d} to make in ██████^{7d} role as an ██████^{7d} but ██████^{7d} does not and cannot explain how Dow's support, or the expenses associated with it, add up to a shareholder fraud or a federal securities law violation.

In short, ██████^{7c} was not a whistleblower. Rather, ██████^{7d} was doing ██████^{7d} assigned work. Further, ██████^{7d} was not engaged in "protected activity" under SOX because ██████^{7c} fails to explain how any of ██████^{7d} concerned potential violations of the federal securities laws.

VI. CONCLUSION.

For the reasons stated above, ██████^{7c} complaint should be dismissed. Simply put, ██████^{7d} left Dow last October because ██████^{7c} asked for retirement benefits packages. It was only after ██████^{7c} concluded that the amount of ██████^{7c} retirement severance payment was too small that ██████^{7c} first claimed retaliation and, as demonstrated herein, those retaliation allegations are totally baseless. ██████^{7c} was not fired as a result of any of ██████^{7c}. To the contrary, ██████^{7c} was consistently given positive performance reviews, increased compensation, regular annual five-figure bonuses and special recognition awards — right up until the time of ██████^{7d} request for a severance package (which ultimately took the form of a \$6

¹¹⁰ For example, ██████^{7c} argues that the proxy statement claims that Mr. Liveris repaid the \$719,000 "immediately," which was misleading because he took too long to repay the money. Compl. at 10. In fact, the proxy statement says that Mr. Liveris repaid the money "promptly," not "immediately," illustrating ██████^{7c} inattention to the very language ██████^{7c} claims was misleading to investors. Ex. 27 (March 25, 2011 Proxy Statement) at 18. Moreover, no reasonable person could conclude that these distinctions regarding how quickly the \$719,000 was repaid could be misleading or material enough to constitute a violation of the securities laws.

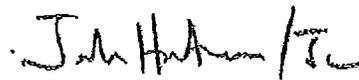
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million demand). At bottom, this is not a SOX whistleblower case — not factually, and not legally, since [REDACTED] was neither a whistleblower nor engaged in “protected activity.” It is simply a vehicle through which [REDACTED] is seeking more money from Dow.

7c

Sincerely,



John F. Hartmann, P.C.

JFH/dam

**FREEDOM OF INFORMATION REQUEST
EXEMPTIONS AND EXPLANATIONS**

DESCRIPTION	FOIA Request # 773962
EXEMPTION	2 3 4 5 6 7a 7c 7d 7e
PAGES	500
OTHER INFORMATION	The following pages (Respondent's exhibits submitted on May 3, 2014) are exempt from FOIA release under the cited exemption(s).

EXEMPTION	EXPLANATION
2a	Internal matters of a relatively trivial nature.
b	More substantial internal matters, the disclosure of which would risk circumvention of a legal requirement.
3	Information prohibited from disclosure by another statute.
4	Information that is classified as trade secrets and/or of commercial or financial value obtained from a person and is privileged or a confidential source of information.
5	Inter-agency or intra-agency memoranda or letters that would not be available by law to a party other than an agency in litigation with the agency.
6	This exclusion is intended to exclude from disclosure all personnel and medical files and all private or personal information contained in other files which, if disclosed to the public would amount to a clearly unwarranted invasion of the privacy of any person, including members of the family of the person to whom the information pertains.
7a	Information contained in investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency.
7c	The identification of a confidential source or confidential information furnished by a confidential source.
7d	Information which could reasonably be expected to disclose the identity of a confidential source, including a state, local or foreign agency or authority which furnished information on a confidential basis.
7e	Information that would disclose techniques and procedures for law enforcement investigation or would disclose guidelines for law enforcement investigation if such disclosure could reasonably be expected to risk circumvention of the law.

FREEDOM OF INFORMATION REQUEST
EXEMPTIONS AND EXPLANATIONS

DESCRIPTION	FOIA Request # 773962
EXEMPTION	2 3 4 5 6 7a 7c 7d 7e
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*** CONFIDENTIAL TREATMENT REQUESTED ***

June 5, 2014

██████████⁶
Investigator
U.S. Department of Labor — OSHA
365 Smoke Tree Plaza
North Aurora, IL 60542

Re: ██████████^{7c} *The Dow Chemical Company, et al,*
Case No. ██████████

Dear ██████████⁶:

In ██████████^{7d} "reply" to Dow's response to ██████████^{7d} complaint, ██████████^{7c} mostly rehearses ██████████^{7d} prior complaint. However, ██████████ also makes several new factual allegations and arguments. We write to address these new matters, which were not included in ██████████ initial complaint and therefore not addressed in Dow's earlier response. (We will not repeat herein evidence and arguments submitted earlier.) Simply put, none of these new allegations and arguments can salvage ██████████^{7d} retaliatory discharge complaint from dismissal.

Messrs. Anderson and Hayes

In ██████████^{7d} complaint, ██████████^{7c} attempts to ground ██████████^{7d} own retaliatory discharge claim on purported "evidence" from or relating to other former Dow employees that is either irrelevant and/or flatly inaccurate. ██████████^{7d} reply relies on more of this type of material.

At the threshold, any claim that Dow retaliated against other employees, even if true (and it is not), is utterly irrelevant to the question whether Dow took any retaliatory action against ██████████^{7c} for ██████████^{7d} activities. ██████████^{7c} claim is not the time or the place to litigate the circumstances surrounding the departure of others from Dow. In any case, the allegations are demonstrably false.

Much of ██████████^{7c} "evidence" relates to Douglas Anderson, who was Dow's Corporate Auditor until the fall of 2010, and who retired from Dow in the summer of 2013. ██████████^{7d} submits two of ██████████ personal email exchanges with Mr. Anderson, one from August 2013 and the other from October 2013, suggesting that they corroborate ██████████^{7d} claim of retaliation. ██████████^{7d} also submits Mr. Anderson's retirement letter, wherein, at the request of Dow, Mr. Anderson identified in writing all ethical and compliance concerns of which he was aware at the time of his

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departure from the company. Finally, ██████^{7c} insinuates that Mr. Anderson himself was a victim of retaliation when he left his Corporate Auditor position for a new job within Dow in 2010.

██████^{7c} extraordinary reliance on Mr. Anderson's emails, letters, and job transfer is entirely misplaced for several reasons, including the following:

- Mr. Anderson, who left his Corporate Auditor position in 2010 and retired from Dow in the summer of 2013, has no personal knowledge of the circumstances of ██████^{7c} departure from Dow in October 2013. None. Accordingly, he has absolutely nothing to say that is relevant to ██████^{7c} claim of retaliatory discharge.
- If ██████^{7c} submissions regarding Mr. Anderson show anything, it is that ██████^{7c} is ██████^{7c} echo chamber. In their August 2013 email exchange, ██████^{7c} suggests to the retired Mr. Anderson that ██████^{7c} superiors have inappropriately declined to launch an ██████^{7c} into ██████^{7c} "special project" (a reference to ██████^{7c} TFI and Teneo ██████^{7c}," which were supposed to be confidential) and he reacts. In their October 2013 exchange, ██████^{7c} suggests—inaccurately—to Mr. Anderson that ██████^{7c} has been fired for ██████^{7c} work on the Olefins ██████^{7c} (a claim ██████^{7c} does not even seriously assert in ██████^{7c} complaint) and he reacts. Finally, with respect to Mr. Anderson's retirement letter, ██████^{7c} admits that most of the "concerns" identified therein "were based on information contained within the ██████^{7c} prepared by ██████^{7c} ██████^{7c}." Thus, Mr. Anderson does not corroborate ██████^{7c}'s one-sided and self-serving allegations; he merely reacts to them or repeats them. ██████^{7c}
- Insinuations are not evidence, and ██████^{7c} offers no evidence that Mr. Anderson was a victim of retaliation for his (or ██████^{7c}) work within Dow's Corporate Audit group. Moreover, ██████^{7c} has no response at all to Dow CFO William Weideman's sworn testimony—which is competent evidence—that Mr. Anderson voluntarily switched jobs within Dow in 2010. (See Dow Response, Ex. 4, ¶¶10-11)

For all of these reasons, ██████^{7c} repeated references to Mr. Anderson miss the mark.

So do ██████^{7c} references to Michael Hayes, the Dow senior executive who worked on the HI Hotel renovation project before he retired in 2008—more than five years before ██████^{7c} left Dow in the fall of 2013. ██████^{7c} suggests that Mr. Hayes was also a victim of retaliation based upon a May 2008 email exchange in which Messrs. Liveris, Kalil and others purportedly discussed Mr. Hayes's "fate," and upon ██████^{7c} own notes of ██████^{7c} of Mr. Hayes that took place in December 2009. ██████^{7c} reliance on this new "evidence" is likewise misplaced for the following reasons: ██████^{7c}

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- [redacted]^{7c} offers no response to Mr. Hayes's sworn testimony that he retired voluntarily, that he was treated well by Dow, and that he did *not* suffer any retaliation. (See Dow Response, Ex. 20, ¶¶ 6-7)
- Nothing in the May 2008 email chain regarding Mr. Hayes's "fate" links Mr. Hayes's fate to, or even references, any disagreements with Ms. Liveris regarding the H Hotel.
- [redacted]^{7c} own notes of [redacted]^{7d} December 12, 2009 [redacted]^{7d} of Mr. Hayes contradict [redacted]^{7c} suggestion that he was a victim of retaliation. According to [redacted]^{7c} notes, Mr. Hayes told [redacted]^{7d} that he voluntarily retired, that there was no pressure to retire, that it was his decision, that he was treated well, and that he did not believe his employment was terminated because he disagreed with Mrs. Liveris on certain aspects of the H Hotel renovation project. (See Reply, Ex. 6 at 44A-45A)

For these reasons, [redacted]^{7c} repeated references to Mr. Hayes do not support [redacted]^{7d} claims of retaliatory discharge, either.

Mr. Kalil

In its earlier response to [redacted]^{7c} complaint, Dow pointed out that [redacted]^{7c} offers no evidence that Messrs. Liveris or Kalil had anything at all to do with [redacted]^{7c} separation from Dow. In [redacted]^{7d} reply, [redacted]^{7c} is silent with respect to Dow's CEO, Mr. Liveris, but not with respect to Dow's General Counsel, Mr. Kalil.

[redacted]^{7c} now claims for the first time that, in August 2013, Simon Solano, [redacted]^{7d} supervisor, told [redacted]^{7d} that Mr. Kalil had approached Mr. Solano in the gym and said that [redacted]^{7c} was "out of control." (Reply at 11) [redacted]^{7c} also claims for the first time in [redacted]^{7d} reply that Mr. Solano later told [redacted]^{7d} that Mr. Kalil "wanted [redacted]^{7d} gone sooner" but that Mr. Solano resisted, saying that he needed [redacted]^{7c} for the Olefins investigation. (*Id.* at 17) Finally, [redacted]^{7c} devotes several pages of [redacted]^{7d} reply to a new argument that Dow improperly modified its [redacted]^{7d} procedures effective September 2013 to require Mr. Kalil's approval before an [redacted]^{7d} can be launched. (*Id.* at 12-13)

[redacted]^{7c} nowhere explains why these new allegations against Mr. Kalil—which [redacted]^{7d} claims directly support [redacted]^{7c} claims of retaliation—were raised for the first time in [redacted]^{7d} reply and never made their way into [redacted]^{7c} complaint, even though they purportedly took place months earlier. In any case, these new allegations and arguments regarding Mr. Kalil are also without merit.

First, Mr. Solano's sworn testimony flatly contradicts [redacted]^{7c} claim that Mr. Kalil told Mr. Solano that he wanted [redacted]^{7c} terminated. (See Dow Response, Ex. 1 at ¶ 8)

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Notably, [REDACTED] offers no credible explanation why Mr. Solano, a former FBI agent who is not a party to this case or to [REDACTED] civil litigation against Dow, would lie under oath about this. Nor does [REDACTED] offer a credible explanation why [REDACTED] omitted this supposedly important information regarding Mr. Kalil from [REDACTED] complaint, even though the purported conversations occurred months before [REDACTED] filed it.

Second, even if these allegations about what Mr. Kalil purportedly said to Mr. Solano were credible (and they are not), there is still no evidence that Mr. Kalil had the authority to have [REDACTED] fired, or that he took even a single step to cause [REDACTED] departure from the company, whether he wanted [REDACTED] fired or not. In other words, there is still not a shred of evidence that he engaged in retaliation, which he did not.

For these reasons, the new allegations in [REDACTED] reply do not move the bar with respect to [REDACTED] claims against Mr. Kalil.

Dow's [REDACTED] Procedures Policy

[REDACTED] new allegations regarding Dow's [REDACTED] procedures cry out for a thorough response.

As an initial matter, [REDACTED] claims regarding the September 2013 changes to Dow's "[REDACTED] Procedures for Potential Code Violations" policy are completely irrelevant for the simple reason that [REDACTED] never alleges any connection between the new procedures and the end of [REDACTED] employment with Dow. [REDACTED] does not allege that [REDACTED] conducted any [REDACTED] or made any allegation that was affected by the new procedures. Nor does [REDACTED] allege that [REDACTED] suffered any harm as a result of the new procedures.

[REDACTED] appears to believe that [REDACTED] allegations are relevant because they show that control over [REDACTED] was being consolidated under Mr. Kalil and those who directly or indirectly report to him (although, to be clear, this would still not establish a SOX retaliation claim). However, [REDACTED] allegations fall short of establishing even this tangential point.

Like [REDACTED] other claims, [REDACTED] allegations about changes to Dow's [REDACTED] Procedures are based on misleading factual assertions and incomplete evidence. First, [REDACTED] claim that the policy required all [REDACTED] of potential misconduct to be made to the Office of Ethics and Compliance ("OEC") is contradicted by the plain language of the policy, which [REDACTED] attaches to [REDACTED] reply as Exhibit 16. The policy clearly states that "complaints may be made through a number of options, including a supervisor, Human Resources ("HR"), Dow attorney, the OEC, a member of the Regional Ethics and Compliance Committee ("RECC"), or the Dow Ethics Line." (Reply, Ex. 16 at 128A) (emphasis added).

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Nor does the revised policy grant sole authority to determine whether an [redacted] is warranted to the OEC or to Mr. Kalil. To quote the policy, "After receiving the complaint, ^{7d} the OEC, the RECC, a Dow attorney, the Director of Corporate [redacted] ^{7d} or HR must determine if the information provided is enough to determine that, if true, the alleged conduct would be inconsistent with the Code or the law and therefore requires [redacted]" ^{7d} (Reply, Ex. 16 at 128(A)) (underlining in original, emphasis added).

Worst yet, intentionally or otherwise, ^{7c} [redacted] allegations are based on only one section of the policy, and the exhibit [redacted] relies on omits other, highly relevant, sections. (The policy is attached hereto in its entirety as Exhibit 1.) Specifically, [redacted] quotes a portion of the policy stating that [redacted] ^{7d} potentially implicating members of Dow's Global Leadership must be reported to the OEC and the Associate General Counsel for Human Resources ("AGC HR"), who "will determine next steps." (Reply at 13) According to [redacted] ^{7c} the OEC and the AGC HR ultimately report to Mr. Kalil, and therefore "it is Respondent Kalil and his subordinates and not the corporate auditor that was now the final decision maker [sic]" in [redacted] ^{7d} involving senior executives. (*Id.*)

This claim is completely inaccurate and terribly misleading. ^{7c} [redacted] neither refers to nor includes in [redacted] exhibit the "Supplement for Executive Matters" which is an important part of the September 1, 2013 [redacted] ^{7d} Procedures policy and which sets out the specific procedures to be followed in [redacted] ^{7d} involving senior Dow employees who report directly to the CEO. (Ex. 1 at 10-11) The Supplement shows that neither Mr. Kalil, the OEC, nor the AGC HR exercises exclusive control over such [redacted] ^{7d} Among other things, the OEC is required to report any such matters to several individuals and groups aside from the General Counsel, including the Audit Committee, the CEO and CFO, and the Corporate Auditor. (See Ex. 1 at 10, Item #1). Furthermore, the Supplement requires the Director of the OEC to assign the [redacted] ^{7c} of such allegations to the Corporate [redacted] ^{7d} the Legal Department, or outside counsel, unless otherwise directed by the Audit Committee. (*Id.*, Item #2). Once an [redacted] ^{7d} is complete, the CEO determines what action, if any, is appropriate—unless the CEO is alleged to have participated in the misconduct, in which case the Audit Committee decides. (*Id.*, Item #3)

These passages make clear that no one in the senior management group, including Mr. Kalil and Mr. Liveris, has exclusive control over [redacted] ^{7d} of senior executives, let alone the ability to suppress allegations of wrongdoing. [redacted] ^{7d} arguments, which are based on selective, out-of-context quotations from just one portion of the policy, illustrate [redacted] ^{7d} carelessness with the facts and [redacted] ^{7d} willingness to shoot first based on incomplete information and ask questions later—or not at all. Taken as a whole, Dow's [redacted] ^{7d} Procedures policy does not support [redacted] ^{7d} allegations, and instead further demonstrates [redacted] ^{7d} extreme bias and lack of credibility. ^{7c}

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At bottom, [redacted] seems to take issue with any person or policy that would limit what [redacted] views as [redacted] unfettered authority to pursue any [redacted] or suspicion, no matter how thinly supported it is or how many times it was considered, and rejected, by multiple superiors. [redacted] personal disagreement with their judgment and with Dow's policies does not, however, create an actionable claim under SOX.

Teneco and THI

In its earlier response to [redacted] complaint, Dow submitted evidence—i.e., sworn affidavits—establishing that its contracts with the Teneco public relations firm and its support for The Hellenic Initiative (“THI”) and the Prinkipos Environmental Foundation were legitimate and properly approved by appropriate Dow officers.

In [redacted] reply, [redacted] cites to one of [redacted] own [redacted] for the proposition that two of Dow's affiants, Messrs. Davis and Cumpata, lacked the delegated authority to approve Teneco's \$16 million contract. (Reply, at 8, Ex. 8) Beyond the self-serving citation to [redacted] own unsupported report, [redacted] supplies no evidence for [redacted] claim that these individuals could not approve the Teneco contract. [redacted] own [redacted] is not evidence on this point, of course, but even if it is, it misses the point. Messrs. Davis and Cumpata did not testify that they had sufficient authority on their own to approve a \$16 million contract, as [redacted] seems to suggest. Rather, they each testified that they approved the \$16 million Teneco contract on behalf of their respective business unit functions, and that the contract was also approved by other senior officers of Dow with the requisite authority. (See Dow Resp. Ex. 25, ¶ 4; Ex. 26, ¶ 7) [redacted] “evidence”—again, [redacted] own [redacted]—does not refute this. But even if it did, a mistake in the approval process of a contract hardly constitutes fraud or a violation of securities laws, and it hardly supports [redacted] preposterous suggestion that the \$16 million Teneco contract somehow constituted a “donation to [The Hellenic Initiative] under the guise of a business expense.” (See Reply at 8) And [redacted] adds nothing to rebut the extensive evidence supplied by Dow concerning the tangible services that Teneco provided to Dow (and the savings that Dow realized as a result) in connection with this contract.

[redacted] also submits with [redacted] reply Teneco invoices that purportedly support [redacted] related claim that Teneco performed work for THI that was paid for by Dow. In reality, [redacted] relies on just one invoice. It is dated February 8, 2012—five months before Dow allegedly increased the amount of the Teneco contract by \$11 million in order to “funnel” money to THI. (Reply, Ex. 11 at 94A-96A). And, far from showing millions of dollars' worth of Teneco work for THI as [redacted] alleges, the invoice shows just three line items (out of an 11-page itemized list of tasks performed) that reference a “Hellenic award release.” (*Id.*) What is clear from these limited and isolated entries on this extensive invoice is that it is scant support for [redacted] shrill and strained claim that Dow improperly funneled millions of dollars to THI through Teneco.

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To the contrary, the Teneo invoice confirms the extensive work Teneo was doing for Dow that had nothing to do with THI.

Finally, [REDACTED]^{7c} claims in [REDACTED]^{7d} reply that Dow's support of the Prinkipos Environmental Foundation was somehow sinister because Dow's payment of a \$58,000 McKinsey invoice was recorded as a business expense rather than a charitable donation. Again, [REDACTED]^{7c} is manufacturing [REDACTED]^{7d} own demons. In an affidavit submitted with Dow's earlier response, Robert Miller, Dow's Global Director for Corporate Citizenship, swore under oath that Dow's support of charitable organizations in which Dow executives have leadership roles is consistent with Dow's corporate giving policies and guidelines. (Resp. Ex. 22, ¶ 6) In his affidavit, Mr. Miller also explained that about half of Dow's support for charities is funded by Dow's charitable foundation, while the other half is funded by the corporation itself. (*Id.* at ¶ 3) Lastly, Dow's Corporate Sustainability Report, which was submitted as Exhibit 23 to Dow's response, shows that Dow supports environmental projects around the world, including in Germany, Japan, South Africa, the Philippines, and Thailand. (Resp. Ex. 23 at 65-66) Consistent with this evidence, neither the fact that Dow supported the Prinkipos Environmental Foundation or the fact that it was paid as a business expense by Dow rather than a charitable contribution by the Dow Chemical Company Foundation demonstrates any impropriety, let alone a securities law violation.

For these reasons, [REDACTED]^{7c} allegations regarding Teneo, THI and the Prinkipos Foundation remain meritless, just as [REDACTED]^{7d} supervisors concluded prior to [REDACTED]^{7d} departure from Dow.

Legal Standards

[REDACTED]^{7c} claims in [REDACTED]^{7d} reply that Dow's earlier response to [REDACTED]^{7d} complaint contains "misstatements of the law." (Reply at 1) However, [REDACTED]^{7d} own arguments are misleading and are based primarily on case law interpreting other statutes and/or addressing irrelevant legal issues.

[REDACTED]^{7c} legal argument consists primarily of block quotations from cases that have nothing to do with this one. For example, [REDACTED]^{7c} devotes two pages of [REDACTED]^{7d} reply to a lengthy block quotation from a New Jersey district court case, *Khazin v. TD Ameritrade Holding Corp.*, that interpreted the Dodd-Frank Act, *not* Sarbanes-Oxley. At the same time, [REDACTED]^{7c} acknowledges that this is not a Dodd-Frank case. (See Reply at 2) ^{7c}

Similarly, [REDACTED]^{7c} argues that the United States Supreme Court's March 14, 2014 decision in *Lawson v. FMR, Inc.*, 134 S. Ct. 1158 (2014), "greatly expanded the scope of protected individuals" and "held that an [REDACTED]^{7c} is sufficient to trigger whistleblower protection under SOX." (Reply at 4) But the issue in *Lawson* was whether a third-party contractor performing work for an issuer of securities could qualify as a whistleblower. 134 S.

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Ct. at 1159. It is undisputed that [REDACTED]^{7c} was an employee of Dow, not a third-party contractor. For this reason, the Supreme Court's *Lawson* decision is inapposite here.

[REDACTED]^{7c} also alleges that Dow "misrepresented the law" by relying on the Department of Labor Administrative Law Judge's ("ALJ") decision in *In re Robinson v. Morgan Stanley/Discover Fin. Servs.*, No. 2005 SOX 44, 2007 WL 5577962, at *102 (U.S. Dept. of Labor, Mar. 26, 2007) for the proposition that an employee does not engage in protected activity when their reporting of alleged misconduct is merely the performance of their ordinary job duties. [REDACTED]^{7c} claims that the decision Dow cited was "reversed on appeal by the Administrative Review Board."¹ (Reply at 1) But this argument itself is misleading and, in any event, does not change the fact that [REDACTED]^{7c} were insufficient as a matter of law because none purported to report a violation of the federal securities laws.

As an initial matter, while the Administrative Review Board ("ARB") did criticize the ALJ's conclusion that performance of an employee's ordinary job duties could never be protected activity, it nonetheless *affirmed* the decision Dow cited. See *In re Robinson v. Morgan Stanley*, ARB No. 07-070, ALJ No. 2005 SOX 44, at *1 (DOL Admin. Rev. Bd, Jan. 10, 2010) ("a United States Department of Labor (DOL) Administrative Law Judge (ALJ) issued an Initial Decision and Order . . . concluding that Robinson failed to prove that her protected activity was a contributing factor in the decision to discharge her. We affirm."). Thus, the ARB's disagreement with the ALJ's statements regarding protected activity within the scope of ordinary job duties was immaterial to the outcome of that case and was not a basis for the ARB's decision.

In any event, even if [REDACTED]^{7c} is not barred from bringing a SOX claim based on [REDACTED]^{7c} that [REDACTED] prepared consistent with the requirements of [REDACTED] job, the outcome of this case would be the same because there are independent legal and factual bases to dismiss [REDACTED] claims. In addition to the factual flaws discussed at length in Dow's initial submission, [REDACTED] claim would still fail as a matter of law because [REDACTED] alleged reporting did not relate to a "violation of . . . any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders" as required by SOX, 18 U.S.C. § 1514A(a)(1). Despite pages of attacks on the integrity of Dow and its senior officers, [REDACTED] makes no showing that any of the activity complained of amounted to a violation of any relevant federal law or regulation.

¹ The Administrative Review Board's decision did not appear in the subsequent case history of the ALJ decision on Westlaw, and therefore was not discussed in Dow's response. Dow regrets this oversight. As discussed above, however, the Administrative Review Board decision hardly alters the outcome of [REDACTED] case.

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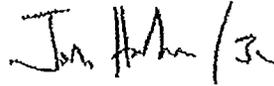
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Conclusion

In its response to [REDACTED] ^{7c} Administrative Complaint, Dow provided 500 pages of contemporaneous documentation and sworn testimony from 10 current and former employees demonstrating that [REDACTED] claims are factually baseless. [REDACTED] reply brief introduces new factual allegations and documents, but fails to rebut the key deficiencies highlighted by Dow's response: the absence of any factual basis to find that [REDACTED] suffered retaliation and the fact the evidence shows [REDACTED] requested an early retirement package. Nor do [REDACTED] new legal arguments, relying on inapplicable statutes and precedents, alter the conclusion that the allegations in [REDACTED] ^{7d} Administrative Complaint are insufficient as a matter of law to state a claim under SOX.

Sincerely,



John F. Hartmann, P.C.

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