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ENDORSED
FILED
San Francisco County Superior Court

NOV 27 2018

CLERK OF THE COURT
BY: KALENE APOLONIO
Deputy Clerk

7 Attorneys for Plaintiffs
CITY AND COUNTY OF SAN FRANCISCO
8 and THE PEOPLE OF THE STATE OF CALIFORNIA

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

11 UNLIMITED JURISDICTION

12 CITY AND COUNTY OF SAN
13 FRANCISCO, a Charter City and County; and
the PEOPLE OF THE STATE OF
14 CALIFORNIA, by and through Dennis J.
Herrera, City Attorney for the City and County
15 of San Francisco,

16 Plaintiffs,

17 vs.

18 FIDELIS CYBERSECURITY, INC.;
19 MAAREK ZALATIMO (aka MARK
ZALATIMO); HEATHER ZALATIMO; JEFF
20 JORGENSON; AND DOES ONE through
TEN,

21 Defendants.

Case No.

CGC-18-571572

COMPLAINT FOR DISGORGEMENT,
PENALTIES, AND OTHER RELIEF

- (1) Conflict of Interest (Gov. Code §§ 1090 *et seq.*);
(2) Political Reform Act (Gov. Code §§ 87100 *et seq.*);
(3) Conflict of Interest (San Francisco Campaign and Gov. Conduct Code §§ 3.206 and 3.236); and
(4) Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*)

- JURY TRIAL DEMANDED -

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24 Plaintiffs, the CITY AND COUNTY OF SAN FRANCISCO ("CITY") and the PEOPLE OF
25 THE STATE OF CALIFORNIA (the "PEOPLE"), acting by and through San Francisco City Attorney
26 Dennis J. Herrera, bring this action against Defendants FIDELIS CYBERSECURITY, INC.;
27 MAAREK ZALATIMO (aka MARK ZALATIMO); HEATHER ZALATIMO; and JEFF
28 JORGENSON (collectively, "DEFENDANTS").

1 Dennis J. Herrera, elected City Attorney for the City and County of San Francisco (“CITY
2 ATTORNEY”) brings this action as the civil prosecutor for violations of the Political Reform Act
3 under Governmental Code Section 91001.5, and for violations of San Francisco’s Campaign and
4 Governmental Conduct Code pursuant to Campaign and Governmental Conduct Code Section
5 3.242(b).

6 **PARTIES**

7 1. Plaintiff CITY AND COUNTY OF SAN FRANCISCO was and is a charter city and
8 county, organized and existing under and by virtue of the laws of the State of California. Plaintiff
9 CITY includes the “people of San Francisco” as provided for in San Francisco Campaign and
10 Governmental Conduct Code Section 3.242, as well as the San Francisco Department of Public Health
11 (“SFPDPH”).

12 2. Plaintiff PEOPLE OF THE STATE OF CALIFORNIA, by and through Dennis J.
13 Herrera, City Attorney for the City and County of San Francisco, brings this action pursuant to
14 California Business and Professions Code Sections 17200-17210. This Complaint will refer to CITY
15 and PEOPLE OF THE STATE OF CALIFORNIA collectively as “PLAINTIFFS.”

16 3. At all times relevant to the allegations in this Complaint, Defendant Fidelis
17 Cybersecurity, Inc. (“FIDELIS”) was a Delaware corporation headquartered in Bethesda, Maryland,
18 that did business nationally and internationally, including in San Francisco.

19 4. At all times relevant to the allegations in this Complaint, Defendant Maarek Zalatimo
20 (“MAAREK ZALATIMO”) was an individual and a resident of the State of California. MAAREK
21 ZALATIMO was also known as Mark Zalatimo. MAAREK ZALATIMO was employed by FIDELIS
22 as Regional Sales Manager for Northern California where he received a base salary plus commissions
23 based on sales. MAAREK ZALATIMO was married to defendant Heather Zalatimo (“HEATHER
24 ZALATIMO”) until at least September 20, 2016.

25 5. At all times relevant to the allegations in this Complaint, Defendant HEATHER
26 ZALATIMO was an individual and a resident of the State of California. HEATHER ZALATIMO was
27 employed by SFPDPH as an information technology (“IT”) systems engineer. HEATHER ZALATIMO
28 was married to MAAREK ZALATIMO until at least September 20, 2016.

1 communicate with HEATHER ZALATIMO regarding FIDELIS products with an eye toward selling
2 FIDELIS products to SFDPH. MAAREK ZALATIMO invited HEATHER ZALATIMO to "Fidelis
3 Overview/Demo" on or about January 7, 2016. At MAAREK ZALATIMO's direction and with his
4 knowledge, FIDELIS employees provided HEATHER ZALATIMO with information about FIDELIS
5 products.

6 13. On or about January 8, 2016, HEATHER ZALATIMO sought feedback from SFDPH
7 employees within the IT group regarding the FIDELIS presentation and product pitch. In March 2016,
8 HEATHER ZALATIMO and MAAREK ZALATIMO jointly received information by email from a
9 FIDELIS employee regarding a test, called a proof of concept, of FIDELIS products by SFDPH.

10 14. Throughout March and April 2016, HEATHER ZALATIMO coordinated a proof of
11 concept of the FIDELIS products by SFDPH. On or about March 17, 2016, FIDELIS employees, with
12 MAAREK ZALATIMO's knowledge, forwarded HEATHER ZALATIMO a "Fidelis
13 Network/Endpoint PoC Technical Project Plan for San Francisco Department of Public Health." That
14 plan listed "Mark Zalatico" as the "Territory Manager" for FIDELIS.

15 15. On or about April 29, 2016, HEATHER ZALATIMO provided a document titled
16 "Security Plan: Identifying Gaps and Recommendations to Fill Them" to JORGENSON and others at
17 SFDPH recommending FIDELIS products to address perceived security gaps at SFDPH.

18 16. On or about May 2, 2016, MAAREK ZALATIMO emailed HEATHER ZALATIMO a
19 \$1,363,500 quote for the purchase of specified FIDELIS products and services.

20 17. In July 2016, HEATHER ZALATIMO obtained a quote for the purchase of those
21 FIDELIS products and services through MoreDirect, Inc. ("MoreDirect"), a reseller of, among other
22 things, software and IT services.

23 18. On or about August 10, 2016, JORGENSON signed and approved the purchase of
24 \$1,245,919.35 of FIDELIS products and services through MoreDirect, Inc. The purchase order
25 included billing and shipping information to San Francisco General Hospital and was directed to
26 "Attention: Heather Zalatico."

27 19. On or about August 22, 2016, MAAREK ZALATIMO emailed HEATHER
28 ZALATIMO and asked for the correct SFDPH shipping address for the FIDELIS products.

1 ZALATIMO participated in the purchase of FIDELIS products and services, because he knew that
2 HEATHER ZALATIMO, among other things: (1) identified FIDELIS products for purchase by the
3 CITY; (2) tested FIDELIS products for use by SFDPH; (3) recommended FIDELIS products to him
4 and others in an April 2016 Power Point presentation; and (4) arranged for the procurement of
5 FIDELIS products through MoreDirect. JORGENSEN knowingly and intentionally aided and abetted
6 HEATHER ZALATIMO's violation of Government Code Section 1090 by signing the August 10,
7 2016, purchase order, knowing of HEATHER ZALATIMO's involvement in the purchase and of her
8 marriage to a FIDELIS employee.

9 27. Defendant MAAREK ZALATIMO similarly knew that HEATHER ZALATIMO had a
10 financial interest in the CITY's purchase of FIDELIS products and services, because he knew that he
11 was employed by FIDELIS and that HEATHER ZALATIMO was his spouse. MAAREK
12 ZALATIMO also knew that HEATHER ZALATIMO was involved in the purchase of FIDELIS
13 products and services, because he communicated directly with her about it. MAAREK ZALATIMO
14 knowingly and intentionally aided and abetted HEATHER ZALATIMO's violation of Government
15 Code Section 1090 by communicating with her in furtherance of the CITY's purchase of FIDELIS
16 products and services.

17 28. Because of HEATHER ZALATIMO's financial interest in and participation in the
18 CITY's purchase of FIDELIS products and services for SFDPH, the \$1.245 million purchase order
19 signed by JORGENSEN on August 10, 2016, was void when executed.

20 29. Defendants FIDELIS, JORGENSEN and MAAREK ZALATIMO aided and abetted
21 HEATHER ZALATIMO in violating California Government Code Section 1090 in that they each
22 facilitated the \$1.245 million purchase of FIDELIS products and services by the CITY knowing or
23 having reason to know that HEATHER ZALATIMO had a financial interest in that purchase as a
24 result of her marriage to FIDELIS employee MAAREK ZALATIMO and intending to assist her in
25 making that purchase.

26 30. Plaintiff CITY therefore prays for judgment against DEFENDANTS as set forth below
27 in the Prayer for Relief.

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SECOND CAUSE OF ACTION

**For Violation of the Political Reform Act, Government Code
Sections 91001.5 and 87100 *et seq.***

**Brought by the CITY
Against Defendant HEATHER ZALATIMO and Does 1-10**

31. Plaintiff CITY re-alleges and incorporates by reference each and every paragraph set forth above.

32. Government Code Section 91001.5 authorizes the CITY ATTORNEY to act as civil prosecutor with respect to any violation of the Political Reform Act, Government Code Sections 87100 *et seq.*, because the CITY ATTORNEY is the elected city attorney of SAN FRANCISCO, a charter city.

33. Defendant HEATHER ZALATIMO violated the Political Reform Act, Government Code Section 87100, by making, participating in making, and attempting to use her official position to influence the governmental decision by SFDPH to purchase FIDELIS products and services. Each of HEATHER ZALATIMO's actions to participate in making or influencing the governmental decision by SFDPH to purchase FIDELIS products and services constitutes a separate violation of the Political Reform Act. These actions include but are not limited to her: (1) identifying FIDELIS products for purchase by the CITY; (2) testing FIDELIS products for use by SFDPH; (3) recommending FIDELIS products and services to her supervisors at SFDPH; and (4) contacting MoreDirect to arrange for procurement of FIDELIS products and services.

34. HEATHER ZALATIMO knew or had reason to know that she had a financial interest in the purchase of FIDELIS products and services, because she knew that her spouse, MAAREK ZALATIMO, was employed at FIDELIS.

35. Accordingly, the CITY prays for judgment against Defendant HEATHER ZALATIMO as set forth below in the Prayer for Relief.

THIRD CAUSE OF ACTION

**For Violation of the San Francisco Campaign and Governmental Conduct Code
Sections 3.200 *et seq.* Brought by the CITY**

Against All Named DEFENDANTS and Does 1-10

36. Plaintiff CITY re-alleges and incorporates by reference each and every paragraph set

1 forth above.

2 37. San Francisco Campaign and Governmental Conduct Code Section 3.242 authorizes the
3 CITY ATTORNEY to act as civil prosecutor with respect to violations of any San Francisco conflict
4 of interest and/or governmental ethics law and to bring actions "on behalf of the people of San
5 Francisco." San Francisco Campaign and Governmental Conduct Code Section 3.242(b)-(c).

6 38. Section 3.206 of the Campaign and Governmental Conduct Code explicitly
7 incorporates both the Political Reform Act, Government Code Sections 87100 *et seq.*, and Sections
8 1090 *et seq.*

9 39. Because DEFENDANTS' conduct, as described in this Complaint, violated the
10 Political Reform Act and/or Government Code Section 1090, it also violated the San Francisco
11 Campaign and Governmental Conduct Code Section 3.206.

12 40. By engaging in the conduct described in this Complaint, Defendant HEATHER
13 ZALATIMO negligently or intentionally violated San Francisco conflict of interest and/or
14 governmental ethics laws.

15 41. By engaging in the conduct described in this Complaint, Defendants FIDELIS,
16 MAAREK ZALATIMO, and JORGENSON also knowingly and intentionally assisted in, or aided and
17 abetted, HEATHER ZALATIMO's violations, in violation of Section 3.236 of the San Francisco
18 Campaign and Governmental Conduct Code.

19 42. Accordingly, the CITY prays for judgment against DEFENDANTS as set forth below
20 in the Prayer for Relief.

21 **FOURTH CAUSE OF ACTION**

22 **For Violations of Unfair Competition Law, Business & Professions Code §§ 17200 *et seq.***
23 **Brought by the PEOPLE OF THE STATE OF CALIFORNIA**
24 **Against Defendants MAAREK ZALATIMO, FIDELIS, and Does 1-10**

25 43. Plaintiff PEOPLE re-alleges and incorporates by reference each and every paragraph
26 set forth above.

27 44. Plaintiff PEOPLE, acting to protect the public as consumers and competitors from
28 unlawful, unfair, and fraudulent practices, brings this cause of action in the public interest in the name
of the People of the State of California, pursuant to Business and Professions Code Sections 17200-

1 17209. Section 17200 of the Business and Professions Code provides that unfair competition shall
2 mean and include any “unlawful, unfair, or fraudulent business act or practice.”

3 45. By engaging in the conduct described in this Complaint, Defendants MAAREK
4 ZALATIMO and FIDELIS engaged in unfair competition within the meaning of the Unfair
5 Competition Law, Business and Professions Code Section 17200. Each of the acts alleged in this
6 Complaint constitutes an unlawful, unfair, or fraudulent business act or practice under Section 17200.
7 Defendants’ MAAREK ZALATIMO and FIDELIS’ acts caused damage to the CITY. The predicate
8 unlawful business acts or practices include, without limitation, violations of California and San
9 Francisco conflict of interest laws and/or governmental ethics laws. These wrongful acts include, but
10 are not limited to:

- 11 (a) MAAREK ZALATIMO’s assistance to HEATHER ZALATIMO in the CITY’s
12 purchase of FIDELIS products and services for SFDPH, in violation of
13 Government Code Section 1090 and San Francisco Campaign and
14 Governmental Conduct Code Section 3.236;
- 15 (b) FIDELIS’ receipt of monies from the CITY that were obtained through
16 violations of San Francisco Campaign and Governmental Conduct Code Section
17 3.236 and Government Code Section 1090; and
- 18 (c) FIDELIS’ aiding and abetting violations of San Francisco Campaign and
19 Governmental Conduct Code Section 3.206 and Government Code Section
20 1090.

21 46. Plaintiff PEOPLE therefore prays for judgment against Defendants MAAREK
22 ZALATIMO and FIDELIS as set forth below in the Prayer for Relief.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, the PLAINTIFFS pray for judgment against DEFENDANTS as follows:

- 25 (1) For disgorgement by DEFENDANTS of all of the CITY’s payments toward the \$1.245
26 million purchase of FIDELIS products and services, with pre and post-judgment interest.
- 27 (2) For the costs of this action, including litigation costs, costs of investigation, and court
28 costs;

1 (3) For declaratory and injunctive relief under Government Code Section 91003(b) setting
2 aside, as void from the beginning, the \$1.245 million purchase order for the purchase of FIDELIS
3 products and services;

4 (4) For civil penalties against HEATHER ZALATIMO under Government Code Section
5 91005(b) for an amount three times the value of the economic benefit that she realized as a result of
6 her violation of Government Code Sections 87100 *et seq.* according to proof at trial;

7 (5) For civil penalties against HEATHER ZALATIMO under Government Code Section
8 91005.5 for five thousand dollars (\$5,000) per violation of Government Code Section 87100 *et seq.*;

9 (6) For civil penalties against DEFENDANTS and each of them under San Francisco
10 Campaign and Governmental Conduct Code Section 3.242(b) for five thousand dollars (\$5,000) per
11 violation of City conflict of interest and/or governmental ethics laws;

12 (7) For civil penalties against Defendants MAAREK ZALATIMO and FIDELIS under
13 Business and Professions Code Section 17206, not to exceed two thousand, five hundred dollars
14 (\$2,500) for each violation of Section 17200. Under Business and Professions Code Section 17205,
15 these penalties shall be cumulative to any other penalties or other remedy;

16 (8) For an order under Business and Professions Code Section 17203 enjoining Defendants
17 from performing or proposing to perform any of the aforementioned acts of unfair competition within
18 the City and County of San Francisco; and

19 (9) For such other and further relief as the Court may deem proper.

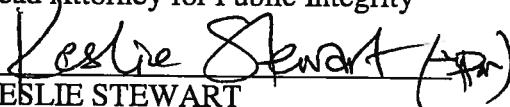
20 **JURY DEMAND**

21 PLAINTIFFS demand a jury trial.

22 Dated: November 27, 2018

23 DENNIS J. HERRERA
24 City Attorney
25 KESLIE STEWART
26 Head Attorney for Public Integrity

27 By:

28 
KESLIE STEWART
Attorneys for Plaintiffs
CITY AND COUNTY OF SAN FRANCISCO and THE
PEOPLE OF THE STATE OF CALIFORNIA