

JURY DEMAND

**IN THE UNITED STATES DISTRICT  
COURT FOR THE NORTHERN DISTRICT  
OF TEXAS DALLAS DIVISION**

**MICHAEL MAEKER,**

**Plaintiff,**

**v.**

**FIDELITY INVESTMENTS a/k/a  
FIDELITY BROKERAGE SERVICES  
LLC,**

**Defendant,**

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**Civil Case No. \_\_\_\_\_**

**PLAINTIFF’S ORIGINAL COMPLAINT**

Plaintiff Michael Maeker (hereinafter “Plaintiff” or “Maeker”) files this his Original Complaint against Defendant Fidelity Investments a/k/a Fidelity Brokerage Services LLC (hereinafter “Defendant” or “Fidelity” or the “Company”) in the above-referenced proceeding (hereinafter this “Action”) seeking relief for retaliation under the Sarbanes-Oxley Act of 2002 (hereinafter the “Complaint”). Plaintiff pleads as follows:

**WHAT THIS LAWSUIT IS ABOUT**

1. This case is about Fidelity’s repeated breaches of its fiduciary obligation to act in an investors’ best interests and what happened when Plaintiff blew the whistle on Fidelity’s illegal actions. This is not a “he said/he said case.” Strong evidence created contemporaneously with the events at issue proves that Fidelity violated Reg BI and securities laws. On behalf of himself and fellow situated financial advisors, Maeker blew the whistle. Given Fidelity’s unwillingness

to stop its improper practices, on behalf of himself and similarly situated financial advisors, Maeker made a number of recordings of his branch manager and Fidelity executives who oversaw his branch manager. In addition, emails and documents show the pressure that Maeker and other FAs in the Fidelity Dallas office were under to place their clients' assets into investments that paid Fidelity even if that was not in the client's best interest. This Complaint contains exact quotes coming out of the mouths of Fidelity's branch manager and other executives that Plaintiff recorded.

2. Michael Maeker has been a successful FINRA-registered financial advisor ("FA") for 26 years. Maeker is devoted to his clients and takes his responsibility to act in their best interests very seriously. Unfortunately, Fidelity is far more concerned with its own bottom line than the best interests of its clients.

3. Fidelity offers financial investment products that Fidelity identifies in three categories: Tier 1, Tier 2, and Tier 3. Tier 1 investments generate the lowest revenues for Fidelity, Tier 2 products generate the second highest revenues for Fidelity, and Tier 3 products provide the highest revenues for Fidelity. Fidelity makes the most revenues and profits from Tier 3 investments.

4. Fidelity pressured its branch managers to pressure Fidelity's financial advisors to persuade investors to place their assets into Tier 3 investments that generated higher revenues for Fidelity. A significant portion of Fidelity's branch managers' compensation was based on how much investors' assets were placed into financial products that generated higher revenues for Fidelity. Further, Fidelity circulated charts ranking the branch managers in a region based on the amount of investors' assets in Tier 3.

5. In turn, Fidelity's branch managers pushed its financial advisors to pressure clients into investments that generated higher revenue for Fidelity. Specifically, Fidelity's Dallas Branch

Manager--John Schiavone--continuously pressured Maeker to push clients into unsuitable or ill-advised, high fee generating financial investments that would make Fidelity more money--regardless of investors' best interest.

6. Fidelity used both a carrot and stick approach to incentivize and pressure FAs to push clients to invest in Tier 3 financial products. The carrots included Fidelity paying FAs greater compensation based on how the FAs ranked in placing clients into Tier 3. First, Schiavone admitted under oath that Fidelity pays its FAs approximately one basis point for assets placed in Tier 1, four basis points for Tier 2, and 10 basis points for Tier 3. Fidelity paid FAs 10 times the amount of commissions for placing client's assets in Tier 3 financial products as opposed to Tier 1 financial products. Second, this economic incentive also included awarding FAs Fidelity stock, if they put up big Tier 3 numbers.

7. The sticks included never ending direct and indirect pressure that an FA was hurting her/his career at Fidelity would suffer and could be fired if they did not get "on board" with pushing clients into Tier 3.

8. Maeker formally blew the whistle and reported this unlawful practice to various individuals at Fidelity through multiple channels. Rather than disciplining the executives and managers who violated Reg BI (and other securities laws and regulations), Fidelity retaliated against and terminated Maeker's employment to send a message to its FAs to keep quiet. After Maeker filed his SOX complaint Fidelity, belatedly stopped violating Reg. BI.

9. Fidelity's illegal retaliation against, and wrongful termination of, Maeker caused him millions in damages, emotional distress, and reputational harm.

## SUMMARY

10. Plaintiff brings causes of action under the Sarbanes-Oxley Act of 2002 (the “Sarbanes-Oxley Act”) against Plaintiff’s former employer Fidelity for unlawful termination of employment because Plaintiff objected to, opposed, and provided information about conduct that Plaintiff reasonably believed constituted violations of a “law, rule or regulation,” of the United States Securities and Exchange Commission (“SEC”) and other provisions of federal and state law relating to fraud upon shareholders.

11. Michael Maeker has been a successful FINRA-registered financial advisor (“FA”) for 26 years. Maeker is devoted to his clients and takes his responsibility to act in their best interests very seriously. Unfortunately, Fidelity is far more concerned with its own bottom line than the best interests of its clients.

12. Fidelity’s Dallas Branch Manager, John Schiavone, (“Schiavone”), continuously pressured Maeker to push clients into unsuitable or ill-advised, high fee generating financial investments that would make Fidelity more money but harm its clients. Maeker blew the whistle and reported this disturbing and unlawful practice to various individuals at Fidelity and through multiple channels. Rather than investigating and remedying this serious violation of Reg BI (and other securities laws and regulations), Fidelity decided to retaliate against and silence the whistleblower by terminating Maeker’s employment in clear violation of the anti-retaliation and whistleblower protections set forth in the Sarbanes-Oxley Act.

13. To make matters worse, in addition to terminating his employment, Fidelity tarnished Maeker’s otherwise spotless U-5 and, thus, effectively and intentionally damaged his career by making it extremely difficult for Maeker to secure equivalent employment within the industry.

14. As a result, Maeker had to take any job to support his family. Including working in Home

Depot's paint department. Like many whistleblowers, Maeker and his family paid the ultimate price for reporting Fidelity's violations of securities laws.

15. Fidelity's illegal retaliation against, and wrongful termination of, Maeker has caused Maeker millions in damages, emotional distress, and substantial reputational harm. Fidelity should be held accountable for its unlawful acts, and Maeker is entitled to all relief necessary to make him whole.

### **PARTIES AND SERVICE**

16. Plaintiff Michael Maeker is an individual who resides and is a resident of the State of Texas residing in Tarrant County, Texas and was an employee of Fidelity.

17. Fidelity is a Delaware limited liability company whose principal place of business and principal office is located at 88 Black Falcon Ave., Suite 167 V7E, Boston, MA 02210 and has a local branch office located at 4001 Northwest Parkway, Dallas, Texas 75225. Fidelity may be served by and through its registered agent CT Corporation System located at 199 Bryan Street, Suite 900, Dallas, Texas 75201.

### **JURISDICTION AND VENUE**

18. This Action arises under the employee protection provisions of the Sarbanes-Oxley Act ("SOX"), 18 U.S.C. § 1514A, and regulations promulgated thereunder at 29 C.F.R. Part 1980, and the Consumer Financial Protection Act, 12 U.S.C. § 5567 ("CFPA"), and the implementing regulations at 29 C.F.R. Part 1985.

19. Prior to and at the time of Plaintiff's termination, Fidelity was subject to the provisions of Sarbanes-Oxley Act. Fidelity is a contractor, subcontractor, or agent of a company within the meaning of 18 U.S.C. § 1514A or a contractor, subcontractor, or agent of a company required to

file reports under Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78o(d)) or other company that falls within the definition of 18 U.S.C. § 1514A(a). Thus, Fidelity is subject to, and required to comply with, SOX.

20. Maeker is an employee within the meaning of 18 U.S.C. § 1514A.

21. On or about October 30, 2022, Plaintiff timely filed an administrative complaint with the United States Department of Labor (hereinafter the “OSHA Complaint”).

22. On September 13, 2023, Plaintiff appealed the findings of an investigator in the Department of Labor’s Occupational Safety and Health Administration’s (“OSHA”) who issued an initial dismissal of Plaintiff’s October 30, 2022 complaint. Plaintiff filed his appeal of the OSHA Complaint with The United States Department of Labor Office of Administrative Law Judges (Covington District Office); Case No. 2023-SOX-0029, OSHA No. 301006705, which is currently pending without final decision yet being issued.

23. This Court has jurisdiction over Plaintiff’s claim under the Sarbanes-Oxley Act because that Act authorizes court actions by private parties who allege discharge or other discrimination in violation of 18 U.S.C. § 1514A in the appropriate district court of the United States without regard to the amount in controversy if the Secretary has not issued a final decision within 180 days of filing an administrative complaint. *See* 18 U.S.C. § 1514A(b)(1)(B); *see also* 29 C.F.R. § 1980.114(a). The Secretary of Labor has not issued a final decision within 180 days of the filing of the OSHA Complaint.

24. Plaintiff will, within seven days after filing this Complaint, file with OSHA and the ALJ a copy of the file-stamped Complaint. A copy of the Complaint will also be served on the OSHA official who issued findings and/or preliminary order, the Assistant Secretary, and the Associate Solicitor, Division of Fair labor Standards, U.S. Department of Labor. *See* 29 CFR 1980.114(c).

25. This Court also has jurisdiction pursuant to 12 U.S.C.A. § 5567(c)(4)(D)(i).

26. This Court has original jurisdiction pursuant to 28 U.S.C. § 1331 because Plaintiff's claims arise under the Sarbanes-Oxley Act, laws of the United States.

27. Venue for this action lies properly in the United States District Court for the Northern District of Texas, Dallas Division, pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to Plaintiff's claims occurred in Dallas County, which is a county included within those assigned to the Dallas Division of the Northern District of Texas.

## **FACTS**

### **Maeker is an Outstanding Financial Advisor**

28. Maeker started his career and became a licensed FINRA advisor while working for Merrill Lynch in 1996-1998. Fidelity recruited Maeker away from Merrill Lynch in 1998. Maeker started as a Financial Representative. In 1999, Fidelity promoted Maeker to Investment Consultant. In 2000, Fidelity promoted Maeker to Financial Consultant. In 2008, Fidelity gave Maeker a third promotion to Vice President/Financial Consultant for ultra-high net worth clients.

29. During his 28 years as a FINRA-registered FA, (24 years at Fidelity) Maeker distinguished himself as a hard-working advisor who puts clients first. Before Fidelity illegally retaliated against Maeker for blowing the whistle, Maeker's job performance and annual review records were spotless. In his 28 year career, Maeker has never had a client/investor complaint filed against him and there is no negative information on his U-4 and U-5 forms filed with FINRA.

30. After wrongfully firing Maeker, Fidelity decided to maliciously tarnish his otherwise unblemished U-5, which has significantly hurt Maeker's ability to secure similar employment.

31. Maeker received nothing but positive annual performance reviews from Fidelity. Prior to

blowing the whistle, in 24 years, Fidelity never put Maeker on probation, heightened supervision, or sent him a written warning for failure to do his job. Maeker never received a letter of education from Fidelity saying he did not meet industry standards or Fidelity's policies or procedures.

### **Fidelity Appoints Maeker to be a Mentor and Leader**

32. Prior to the whistleblowing, Fidelity repeatedly recognized Maeker's positive ethics, leadership, and industry knowledge by appointing him to mentoring and leadership positions at the firm. Fidelity selected Maeker to be a mentor in its mentoring program to help coach Investment Consultants and get them ready to become Financial Consultants and perform deeper planning. Fidelity chose Maeker as part of the inaugural Practice Management Institute in 2012. FAs selected for this honor were the best of the best Vice Presidents/Financial Consultants across the country. Fidelity also appointed Maeker to its Fixed Income Institute leadership panel to help train and discuss benefits of individual bonds with Fidelity's new hires.

33. As a Financial Consultant, Maeker was a member of the Fidelity President's Circle in 2001, 2002, and 2003. As Vice President/Financial Consultant, Maeker was a member of the President's Circle in 2015, 2017, and 2018.

34. Fidelity also recognized Maeker's workplace accomplishments by bestowing bonus awards on him. Maeker was awarded Best of the West in 2018. Only a select few FAs received this award. Maeker is also a two-time Excellence in Action winner.

### **Fidelity's Obligation to Act in the Best Interest of Investors**

35. Fidelity has a fiduciary duty to act in the best interests of investors. The Department of Labor has promoted or adopted the rule requiring FAs to be fiduciaries to their clients with a



fiduciary duty to their clients. Stated another way, financial firms like Fidelity and the FAs who work for Fidelity are required to act in the best interests of their clients. Maeker takes the fiduciary responsibilities he owes his clients--including the obligation to act in their best interest--very seriously. So much so that it got Maeker fired by Fidelity.

36. Big Wall Street investment firms have abused investors, which led to the passage of the Dodd Frank Law, Sarbanes-Oxley, and FINRA's adoption of Reg BI--which require financial firms and FAs to act in the best interest of investors.

37. Fidelity has a checkered past of violating SEC and FINRA rules. Fidelity's failure to follow rules and regulations protecting investors has resulted in the SEC, NYSE, FINRA and other regulators fining Fidelity more than \$80 million.

**Fidelity Categorizes the Financial Products it Provides to Investors in Categories into Tiers that Highlight How Much Revenue They Generate for Fidelity**

38. Fidelity offers financial investment products that Fidelity identifies in three categories: Tier 1, Tier 2, and Tier 3. Tier 1 investments generate the lowest revenues for Fidelity, Tier 2 products generate the second highest revenues for Fidelity, and Tier 3 products provide the highest revenues for Fidelity. Fidelity makes the most revenues and profits from Tier 3 investments.

**Fidelity Begins Ranking Branch Managers Based on their Branch's Tier 3 Numbers**

39. With the popularity of low cost indexed funds including such as the S&P 500 Index, Fidelity changed its business model. Previously Fidelity had earned significant revenues when it placed clients in mutual funds. Fidelity earned significantly less revenues when it placed clients' AUM in indexed funds. As more and more clients requested their AUM be placed in low cost indexed funds, Fidelity began pressuring its branch managers and FAs to push clients into Tier 3.

40. As part of this campaign of pressure, Fidelity began ranking branch managers against other branch managers in their regions by the amount of assets the branches had in Tier 3 investments. Fidelity distributed hero sheets ranking Schiavone's Tier 3 numbers against other branch managers Fidelity's Central West Division. Fidelity's pressure on branch managers to increase Tier 3 assets under management which caused Schiavone to, in turn, pressure the FAs in his office with similar rankings.

41. Schiavone started regularly distributing charts ranking the financial advisors in his Dallas Branch by the Tier 3 sales the FAs were making. This document was called many things by Fidelity and the FAs working at Fidelity. It was referred to as "score card," "report card," "rankings," "Tier 3 report," "Hero Sheet," and "Tier 3 rankings."

42. Jeanie Reckart admitted under oath that the Hero Sheets Schiavone circulated contained only Tier 3 numbers for the Dallas office and no Tier 1 or Tier 2 numbers. The reason for this glaring omission is self-evident. Schiavone and Fidelity were not concerned with balanced portfolios or net results for clients--they were concerned with driving clients' investments into Tier 3, where Fidelity earned much higher revenues. Reckart admitted under oath that Schiavone's circulation of Hero Sheets with only Tier 3 numbers was "not the preferred way" of doing business.

### **Things Change for Maeker When Regional Manager Says "Get on Board" with Tier 3**

43. For approximately 11 years Brad Kniff (hereinafter "Kniff") was Maeker's Branch Manager at Fidelity. Kniff did not pressure Maeker into doing anything improper or that would have violated Reg BI or Fidelity's fiduciary or other duties to investors.

44. In approximately August or September of 2019, James Stevenson--Fidelity's Regional Manager--came to the Dallas office where Maeker worked and said John Schiavone (hereinafter

“Schiavone”) was going to be the Dallas Branch’s new Branch Manager. Stevenson further stated that there were going to be changes made at the Dallas Branch, including that a “new program” was being implemented and that all the FAs needed to “get on board” with this “new program” and any others that Schiavone would be implementing. Stevenson made it clear that Schiavone had his and Fidelity’s full support for implementing changes.

**Fidelity’s Continuous Pressure on all FAs to Push Clients Into Investments Generating Higher Revenues for Fidelity**

45. Fidelity’s pressure on Maeker to push clients into unsuitable or ill-advised, high fee generating financial investments started when Schiavone became Fidelity’s Dallas Branch Manager. Soon after Schiavone became the Dallas Branch Manager, he began putting pressure on Maeker and other FAs to push their clients into financial products that generated higher revenues for Fidelity (i.e., Tier 3 products).

46. Schiavone often stated to the FAs in Fidelity’s Dallas office that FAs who had any client in a Tier 1 or Tier 2 solution was not properly “developing the book.” The phrase “developing the book” was Schiavone’s code phrase that FAs working for Fidelity were supposed to develop a book of business with the vast majority of client assets placed in Tier 3 investments.

47. Multiple other FAs working in Fidelity’s Dallas and other offices experienced this pressure. One FA who worked in Fidelity’s Central West Division (the same division in which Schiavone and Maeker worked) has executed a declaration under oath stating:

“With the advent of low cost indexed funds including such funds as the S&P 500 Index, Fidelity switched its business model. Previously Fidelity had earned significant revenues when it placed clients in mutual funds. Fidelity earned significantly less revenues when it placed clients’ AUM in indexed funds. As more and more clients requested their AUM be placed in low cost indexed funds, Fidelity began providing more significant pressure on me and other FAs to pressure our clients into not placing their aum into indexed

funds, but instead placing their AUM into managed money.”

“At this period in time the instructions from Fidelity to FAs changed from telling us that a successful client meeting regarding their AUM went from giving the client advice and guidance to getting the client to put their AUM into [Tier 3] PAS or WAS accounts.”

“In addition, with the low cost advent of indexed funds, Fidelity also increased pressure on me and other FAs to put clients’ AUM into annuities, which paid significant revenues to Fidelity. The annuities were Tier 3 investments. **I believe that Fidelity’s pressure to push clients into Tier 3 investments violates Reg BI.**”

“With the advent of low cost indexed funds, Fidelity offered FAs a significant financial incentive to switch clients’ AUM into Tier 3 investments. Specifically, Fidelity paid the FAs more commissions for placing clients in Tier 2 and Tier 3 investments, instead of Tier 1 investments.”

**“Fidelity began putting increased pressure on me and other FAs working in the Southlake office at Fidelity to push clients into investment products generating higher revenues for Fidelity.”**

“At that time, the Southlake Branch Manager strongly encouraged me and other FAs to convince our clients to invest in investments that generated higher revenues for Fidelity. The Southlake Branch Manager made numerous comments like “any FA with lots of client assets in a Tier 1 or Tier 2 solution is not developing their book” or they “are not developing the book of business” the way Fidelity wanted. “Developing the book” was the phrase she used to emphasize that we were supposed to develop investment portfolios with lots of our clients’ assets in Tier 3 investments.”

“Fidelity had regular discussions with me regarding the amount of investors’ AUMs I had put into Tier 3 assets. Tier 3 assets were frequently an agenda item in Fidelity’s management’s group meetings with FAs in the Southlake office because **management was pressuring FAs to push investors into investments that generated higher revenues for Fidelity.**”

“Other FAs at Fidelity’s Southlake office complained to me that they had resisted pushing their clients into Tier 3 investments when it was not appropriate for those clients and those FAs did not receive any or received fewer Fidelity shares.”

“Other FAs in the Fidelity Southlake office complained to me that when Fidelity discussed the report cards with FAs in the Southlake office, FAs who had placed a lot of clients in Tier 3 were praised

and FAs who had not, were subtly or not so subtly criticized for not having a significant portion of their clients' assets in Tier 3 assets.”

“The Southlake Branch Manager’s focus was only on whether or not FAs generated more revenues for Fidelity, instead of net results FAs achieved for investors/clients!”

Declaration executed by FA who worked for Fidelity (emphasis added).

### **Fidelity’s Branch Manager’s Illegal Pressure Caught on Tape**

48. Fortunately for Maeker and his fellow FAs, Mr. Maeker recorded Mr. Schiavone. Just a few examples of Schiavone’s improper pressure include:

#### **Example 1:**

“MR. SCHIAVONE: I'm going to tell you this. So you're 2.5 million last year in Tier 3. I would never let that happen.”

#### **Example 2:**

MR. SCHIAVONE: “30 million Tier 3. I would've thrown you out.”

MR. MAEKER: “How -- how would you throw me out?”

MR. SCHIAVONE: “I don't know. I -- I would figure out a way to. I don't how that was ever allowed.”

#### **Example 3:**

MR. SCHIAVONE: “We should be capturing there too. So -- but as you know, Tier 3 is the development of the book for Tier 3 solutions. We need to drive greater success there.”

#### **Example 4:**

MR. SCHIAVONE: “So curious for you, Mike, how do we drive more Tier 3, including FILI, WAS? Obviously you're comfortable with -- with PAS, but how do we drive those other ones? Like what's -- what's happening there and how do we help drive more of that going in the future?”

#### **Example 5:**

MR. SCHIAVONE: -- “Just take them directionally. And I -- and I kind of just prorated them off the percentile ranks. So when I look at that, I'm like, what -- what prohibit -- what

-- what's preventing you from taking some of those clients and looking at the Tier 3 solutions? So I think your Tier 3 would be closer to a hundred million . . .”

**Example 6:**

MR. SCHIAVONE: “And the lack of Tier 3 is probably the volatility piece that says you're not getting shares, but you get the Present's Circle.”

. . .

MR. SCHIAVONE: “So hopefully you're on board though. We'll get you there next year, right?”

MR. MAEKER: “Yeah.”

MR. SCHIAVONE: “So just tell me that.”

MR. MAEKER: “Yeah.”

MR. SCHIAVONE: “That's what I want to know.”

**Fidelity’s Executive Caught on Tape Admitting  
He Knew that what Fidelity was Doing was Wrong**

49. Phil Jacobson, Fidelity’s Director of Managed Account Sales, was pressuring Maeker to encourage his clients to transfer assets into Tier 3. Maeker pushed back and said he would not encourage clients to buy Tier 3 investments, if it was not in the client’s best interest. Recognizing Maeker refused to pressure clients, Jacobson offered to contact the clients himself to persuade them to invest in Tier 3 products. He said:

“If you ever have a client that’s in that kind [Tier 1 investment]-- you can bring me in as the dispassionate third party, if you wanted to, to say-- **So that your hands are clean**. I can be the one kind of talking about it.--Hey these are other things [Tier 3 investments] these are things we could do.”

Tape recording of Phil Jacobson, Fidelity’s Director of Managed Account Sales. (emphasis added).

Fidelity’s Director’s “so that your hands are clean” statement is both chilling as well as damning. It shows Fidelity was aware that Maeker wanted no part of its deceptive scheme. And, it demonstrates that Fidelity’s Director was willing to jump in and get his hands dirty violating

Reg BI.

**Maeker's First Whistleblowing Report to Fidelity**

50. On multiple occasions Maeker reported to numerous people at Fidelity that Maeker believed Fidelity's Dallas Branch Manager (Schiavone) was engaging in conduct that was illegal, not in the clients' best interests, and not appropriate.

51. For example, on December 19, 2019, Maeker notified Cathy Morrissey, Fidelity Human Resources, about Schiavone's pressure on Maeker to push investors into Tier 3 investments (irrespective of whether such investments were in the clients' best interest) and threatening Maeker with losing his job if he did not do as he was instructed by Schiavone. Before reporting to Morrissey, Maeker also contacted Jeanie Reckart, Fidelity Regional Head of Branches, and reported same to her (i.e., that Schiavone was pressuring Maeker regarding Tier 3 investments and threatening his job if Maeker failed to push clients into Tier 3).

52. On December 20, 2019, Maeker sent an anonymous letter to the following: (i) Fidelity's Chairman's line, (ii) Kathleen Murphy, President of Fidelity's Personal Investing, (iii) Jeanie Reckart, and (iv) Alyssa Albertelli, Chief Compliance Officer. Maeker sent the correspondence anonymously, because he feared retaliation and thus did not want the letter tracked back to him. Maeker has a screenshot showing the time stamp of when Maeker drafted his first whistleblowing letter on his Fidelity computer. But Fidelity's receipt of Maeker's anonymous letter did not stop Fidelity's undue and improper pressure in violation of Reg BI.

53. Specifically, Schiavone's pressure on Maeker to violate Reg BI practices never changed despite the above anonymous whistleblower report. Soon after Maeker's anonymous report, the COVID pandemic reached the United States, and Maeker had less contact with Schiavone.

However, when Schiavone held monthly business reviews (hereinafter “MBR”) (via Zoom) Schiavone continued to put Tier 3 pressure on Maeker.

### **Maeker Gets a New Manager**

54. In the spring of 2021, Fidelity assigned Maeker to report to a different manager (Justin Gassett) (hereinafter “Gassett”). Unlike Schiavone, Gassett did not put pressure on Maeker to move client assets into higher paying Tier 3 investments when doing so was not in the clients’ best interest.

### **Schiavone Begins Supervising Maeker for a Second Time**

55. In January of 2022, Fidelity had Maeker start reporting to Schiavone again. As soon as Schiavone became Maeker’s supervisor (for the second time), Schiavone began pressuring Maeker to violate Reg BI and the clients’ best interest.

56. In May of 2022, Schiavone started distributing weekly meeting agendas containing a “Tier 3 Solutions Activity” discussion topic/agenda item. The agendas contained various, topics such business development events and training, which appeared on the weekly agendas one time only. The topic that was a constant on every agenda was “Tier 3 Solutions Activity.” This was a discussion of the amount of investors’ assets FAs in the Dallas Branch had put into Tier 3 assets. Tier 3 assets were always an agenda item because Schiavone was constantly pressuring FAs to push investors into investments generating higher revenues for Fidelity. These weekly agendas were usually discussed in one-on-one monthly business reviews (hereinafter “MBR”) meetings between Schiavone and the individual FAs, including Maeker. Occasionally, Schiavone held MBRs with several FAs at the same time, instead of one-on-one meetings.



57. Schiavone told Maeker he needed to place more clients in assets that are in the Tier 3 category. Schiavone praised FAs who had placed a significant number of clients and clients' assets into Tier 3 and directly criticized FAs who did not have a large portion of their clients' assets in Tier 3 investments. If Maeker's clients had invested in Tier 1 assets, Schiavone encouraged Maeker, without any concern for what was in the best interests of the client--(and instead only looking out for Fidelity's bottom line)--to talk his clients into moving their assets into Tier 3 investments.

58. Schiavone distributed the Hero Sheets/report cards weekly, which ranked the FAs in Fidelity's Dallas office based on the amount of client assets they had placed into Tier 3 accounts and the FAs' efforts to push their clients into investments that generated greater revenue for Fidelity. Schiavone used the Hero Sheets to rate the FAs and send a strong and clear message to FAs who did not push their clients into Tier 3 that their job performance was below Fidelity's expectations.

59. These Hero Sheet rankings had a direct impact on the compensation Fidelity's FAs received. First, the more assets an FA put into Tier 3 investments, the more that FA would receive in commission payments (i.e., Fidelity structured Tier 3 investments to pay a higher percentage of commission to FAs). Second, Fidelity awarded FAs a discretionary quantitative bonus of Fidelity shares based on non-formulaic factors. In other words, Fidelity would look at an FAs overall performance, their citizenship, and whether or not the FA was doing things the way Fidelity wanted them to conduct their business.

60. Other FAs in the Dallas Branch complained to Maeker that, like Maeker, they had resisted pushing their clients into Tier 3 investments when it was not appropriate for those clients and, as a result, those FAs either (i) did not receive any Fidelity shares, or (ii) received fewer Fidelity

shares. These FAs believed the decision by Fidelity to grant them no, or less, shares constituted retaliation by Schiavone and/or Fidelity because the FAs had not “gotten with Fidelity's program” of pushing investors into Tier 3 investments, which was the “new program” Schiavone implemented when he took over running Fidelity's Dallas Branch office.

**Schiavone Doesn't Distribute Report Cards Rating FAs on the Net Returns they Achieved for Investors**

61. Schiavone, however, did not create any spreadsheet ranking how financial advisors had benefitted their clients by placing their clients into low fee alternatives such as treasuries, CDs, or index mutual funds that were in their clients' best interests. Schiavone did not distribute any Hero Sheets or report cards ranking FAs by who had achieved the highest net rate of return or earnings for their clients. Evaluating that client-centric metric would be in the clients' best interest.

62. Schiavone's focus was only on whether or not FAs generated more revenues for Fidelity, instead of the metric on which Schiavone should have been focused--net results FAs and Fidelity achieved for clients.

63. In August of 2022, Schiavone again demanded that Maeker sell Tier 3 managed accounts to specific ultra-high net worth clients Maeker serviced, instead of placing their assets in Tier 2 mutual fund investments. For example, R.W. is a Fidelity client with \$25 million invested in three indexed funds and one bond fund. Schiavone wanted Maeker to push R.W. into Tier 3 SMAs. Schiavone said, “Why wouldn't he want SMAs?” Maeker explained that he was aware of that choice, but the investor was not interested in an SMA and was happy with his current investment strategy. Schiavone still wanted Maeker to go back to the client and pressure him to put his assets into an SMA--because it would generate more revenue and profits for Fidelity.

64. By way of another example, Maeker serviced a client with \$19 million in AUM. The client

closed his \$9 million managed money account and gave Maeker instructions to transfer the \$9 million into the client's self-managed account. The client's \$10 million self-managed account was outperforming Fidelity's managed money account. The client said he did not want to pay Fidelity a \$45,000 yearly fee anymore.

### **Fidelity's Upper Management Put Pressure on Maeker**

65. Schiavone and Phil Jacobson, Fidelity's Regional Director of Managed Accounts, called Maeker. Both of them were upset with Maeker because Maeker did not talk a client out of moving his \$9 million AUM from Fidelity's Tier 3 managed money account. They told Maeker that he should not have let the client move his AUM out of Tier 3. Schiavone and Jacobson said Fidelity's upper management (SVP) had asked why Maeker allowed that to happen. They wanted Maeker to get the client to renege on his decision.

### **Fidelity's Motive For Pushing Tier 3: Fidelity is "Bleeding" from Reduced Revenues**

66. For decades Fidelity's business model had been to place clients' assets into mutual funds. As noted, that business model was much less profitable with the advent of low fee indexed funds. Schiavone recognized this new dynamic when he criticized Maeker for having so much of his investor's assets in Tier 1. Schiavone was taped stating that:

“the model you described, kind of set it, forget about it, in funds. That was viable for us [Fidelity] for decades, and now we're bleeding.”

Tape recorded statement of Schiavone.

67. Fidelity's "bleeding" financial performance explains the motive for Fidelity's upper managements and Branch Manager Schiavone's relentless push on FAs to pressure clients into

Tier 3 investments. And it explains why out of Fidelity's 40 million investor clients Fidelity's upper management was closely monitoring one individual client's withdrawal of \$9 million from a managed money account out of the \$ 3.9 Trillion in assets Fidelity manages. It also explains why the SVP went apoplectic and instructed two Fidelity managers to grill Maeker and try to force to call the client in an effort to persuade the client to renege on his decision to transfer \$ 9 million in AUM out of a managed money Tier 3 account.

### **Maeker Opposes Fidelity's Branch Manager's Pressure to Violate Reg BI**

68. Maeker refused his Branch Manager's instructions to try to persuade clients to move their assets into Tier 3 investments, regardless of whether those investments were in the clients' best interests, which would have violated Reg BI. In addition, Maeker blew the whistle on Fidelity's illegal activities that violate securities laws and regulations, Texas State Securities Board's rules and regulations, the DOL's rules and regulations, and FINRA's rules and regulations.

69. Schiavone, Fidelity's Dallas Branch Manager (and Maeker's boss and supervisor), asked Maeker to sell separately managed Tier 3 accounts to a major charitable Dallas hospital system (hereinafter the "Dallas Hospital"). The Dallas Hospital had a non-long term, conservative investment fund. Schiavone said that persuading the Dallas Hospital to put its assets into separately managed Tier 3 accounts would generate higher and significant revenue for Fidelity. Schiavone threatened Maeker, warning him:

If you do not persuade the [Dallas Hospital] to switch its investments in low-cost mutual funds, the [Dallas Hospital] will not be as profitable to Fidelity.

70. Schiavone was focused on revenues to Fidelity, not a non-profit hospitals' best interest. Schiavone told Maeker he should switch the Dallas Hospital into separately managed Tier 3

accounts for both stock managed accounts and bond managed accounts. Maeker told him the Dallas Hospital wanted this investment to be a long term, “sleep well at night,” “rainy day fund” with conservative, long-term moderate growth goals. Maeker told Schiavone it was not in the Dallas Hospital’s best interest to make switch their assets into Tier 3 due to its investment committee’s desires and liquidity needs for rebalancing.

71. Early in 2022, the Dallas Hospital made a switch from active funds to Index 500 funds. The Dallas Hospital made a \$500 million trade was made to lower the fees and charges Fidelity was charging it. Schiavone asked Maeker to go back to the Dallas Hospital and try to persuade it to put its assets back in Tier 3 managed stock and managed bond accounts, because that would generate more revenue for Fidelity and help his Dallas Branch achieve the managed account revenue goal Fidelity had established for Schiavone and his branch.

72. Maeker told Schiavone that it was in the best interest of the Dallas Hospital to place its assets in a low-cost passive index mutual fund and that Maeker would not try to persuade the Dallas Hospital to do something that was not in its best interest. Schiavone was not pleased with Maeker’s response.

### **Fidelity Violates FINRA Rule 2010**

73. In addition to violating the Sarbanes-Oxley Act and the Consumer Financial Protection Act, Fidelity violated FINRA rules. Fidelity is obligated to comply with all FINRA rules. Specifically, actions by the Dallas Branch Manager (Schiavone), Fidelity’s Compliance Department, and Fidelity’s HR Department (after Maeker blew the whistle) constitute illegal retaliation. Such illegal retaliation violates FINRA rules, which require:

“A member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of

trade.”

FINRA Rule 2010.

### **Schiavone Threatens to Fire Maeker if He does not Increase His Clients’ Tier 3 Investments**

74. Schiavone told Maeker that an FA working for Schiavone in Fidelity’s Edina, Minnesota office didn’t have enough of his clients’ assets in Tier 3 and that FA no longer worked for Fidelity and the FA who replaced him put more of the clients assets in Tier 3 investments.

75. On another occasion Schiavone told Maeker that he reviewed Fidelity's records and that in 2018 Maeker had \$2.5 million per month in Tier 3 assets and that if Schiavone had been Maeker's Branch Manager at that time, he would have fired Maeker. That was a direct warning and unequivocal threat to Maeker that, if Maeker did not give in to Fidelity's pressure to put more clients into Tier 3 products, he would be fired. See the recorded statements made by Schiavone in paragraph 48 herein.

### **Maeker’s Second Whistleblowing Report**

76. Maeker contacted Caitlin Munroe, a Fidelity Internal Investigator (hereinafter “Munroe”) on the Chairman’s Line on May 19, 2022, to report the Reg BI violation and the inappropriate pressure Schiavone was placing on Maeker and other FAs.

77. Maeker followed up his oral report on the Chairman’s Line with his second email to Fidelity on May 20, 2022, notifying Fidelity that “My concern is this type of reporting [the Hero Sheets] creates either a conscious or unconscious bias on what [investment] solutions are presented [to investors].”

### **Maeker's Third Whistleblowing Report**

78. When Fidelity ignored Maeker's whistleblowing reports, on May 24, 2022, Maeker sent a third email (to Munroe, an Internal Investigator at Fidelity) reminding her that the Branch Manager was still circulating Hero Sheets to all the FAs.

### **Maeker's Forth Whistleblowing Report**

79. When Maeker's emails complaining of Reg BI violations did not stop Schiavone's improper pressure, on June 10, 2022, Maeker sent his fourth email to Munroe notifying Fidelity that Schiavone was continuing the improper pressure and violating Reg BI.

### **Maeker's Fifth Whistleblowing Report**

80. When the improper pressure continued, Maeker sent a fifth email to Fidelity's Investigator on June 15, 2022, complaining about Schiavone's and Fidelity's illegal conduct.

### **Maeker's Sixth Whistleblowing Report**

81. On June 17, 2022, Maeker forwarded a sixth email to Fidelity's Investigator with another Hero Sheet Schiavone sent to Maeker and other FAs in Fidelity's Dallas Branch.

82. Maeker sent a seventh email to Munroe reminding her of Fidelity's Reg BI violations and asking Fidelity's Investigator:

“Here is the Tier 3 only report again, on a weekly basis. Is this the only planning solution for clients? I am doing 2 million in Treasuries for a client and that is in their best interest and that is not reported [by Schiavone]. Is there a conflict here?”

Maeker email to Monroe June 29, 2022.

### **Maeker's Seventh Whistleblowing Report**

83. Maeker's seventh email to Munroe made it clear that Schiavone pushing FAs to persuade investors into Tier 3 investments--that were not in the investors' best interests--created a conflict of interest whereby, on the one hand, Fidelity FAs were obligated to act in investors' best interests under applicable law, but--on the other hand--Fidelity was demanding its FAs to persuade and push their clients into higher revenue generating investments--regardless of the investors' best interests.

### **Suspicious Timing of Fidelity's "Investigation" of Maeker**

84. Despite Maeker's report of Schiavone's unethical actions, Fidelity did nothing to stop Schiavone from continuing to put improper pressure on Maeker and other FAs. After Maeker's seven letters and emails blowing the whistle, Fidelity began investigating Maeker to see if it could dig up any dirt on Maeker, instead of disciplining the Fidelity executives and Dallas Branch manager for violating Reg BI.

### **Fidelity Retaliates After Maeker Blows the Whistle**

85. Fidelity retaliated against Maeker for refusing to violate his fiduciary duties owed to his clients and reporting Fidelity's breach of Reg BI securities laws. Specifically, on August 24, 2022, Fidelity told Maeker he was being fired from being an FA, and placed on paid administrative leave. Fidelity blocked Maeker's access to Fidelity's computer system and forbid him from having any contact with clients. Fidelity claimed Maeker violated one of Fidelity's policies.

86. Fidelity told Maeker he had 60 days to try to find another job in a different Fidelity division; and, if Maeker had not found such a job in 60 days, his employment with Fidelity would



cease. Fidelity terminated Maeker's employment with the company on December 16, 2022.

### **The Punishment Doesn't Fit the Alleged Crime**

87. After 24 years of excellent performance without one customer complaint or memo criticizing Maeker's job performance, Fidelity summarily fired him from being an FA for an alleged policy violation. Numerous other FAs who violated Fidelity's policies or procedure received written or oral warnings, performance improvement plans, probation, or heightened supervision. Fidelity wanted to send a message to other FAs in the Dallas Branch to keep their mouths shut and "get on board" with pushing clients into Tier 3 investments.

88. Even assuming, *arguendo*, that Maeker violated a written Fidelity policy (which Maeker disputes), the punishment certainly does not fit the crime and is disproportionate to the alleged violation.

89. The disproportionate and unusually harsh action Fidelity imposed on Maeker is strong proof of Fidelity's retaliatory intent. It is completely atypical for a firm that does not immediately fire an FA, who has a spotless U-4 and U-5, and a strong 24-year track record with the company from the private wealth division, distribute all his clients to other FAs, and not pay him any commissions on the clients he found and brought to Fidelity. The only reason it was done here is because Fidelity wanted to punish Maeker for blowing the whistle and make an example out of him to scare and silence any other Fidelity employees who might think about speaking out.

90. The proof is in the pudding, if Maeker's policy violation was serious enough to immediately fire him from being an FA and mark his U-5, why did Fidelity offer Maeker the opportunity to find another job elsewhere in the company? Stated another way, if Maeker had committed a serious violation of a significant policy or done anything unethical, Fidelity would

not have encouraged Maeker to find another job within the company.

### **Fidelity Reduces Maeker's Pay While Investigating the Whistleblowing**

91. While Fidelity told Maeker he was being placed on “paid administrative leave.” Fidelity breached this representation to pay Maeker while he was on leave. As soon as Fidelity put Maeker on “paid administrative leave,” it redistributed all of Maeker's clients to other FAs and quit paying Maeker any commissions on those clients, which Fidelity had been paying him for the past 20+ years.

92. Fidelity's failure to pay Maeker his full monthly compensation while he was on “paid administrative leave” is another instance of Fidelity's immediate retaliation.

### **Fidelity's Claim that Maeker was Fired Because of a Policy Violation is a Pretext**

93. On August 24, 2022, Maeker had a Zoom meeting with T.J. Rehagen (hereinafter “Rehagen”), who works in Fidelity's internal investigations. Rehagen claimed five or six months ago Maeker had sent out a retirement analysis report to three clients without speaking to the clients on the same day Maeker emailed the clients the analysis.

94. Rehagen told Maeker we see that you sent a report to three of your clients and attempted phone calls and noted that in Salesforce, but you did not speak to the clients. Rehagen further claimed that sending these reports without having an active conversation with the clients at the time the reports were sent violated company policy. Rehagen said Maeker had violated Fidelity's written policy, which allegedly requires FAs to call a client the same day they send a report to a client. Rehagen flashed the Fidelity policy Maeker allegedly violated on the Zoom screen for approximately 10 seconds.

95. Maeker responded that he did not know of this policy and did not recall being informed of any such policy. Rehagen responded that Fidelity has so many policies that Rehagen would not expect Maeker to memorize every company policy.

96. The next day, August 25, 2022, Jeanie Reckert had a Zoom Meeting with Maeker and confirmed that Fidelity had fired Maeker as an FA, that Maeker could not work in private wealth, and his employment with Fidelity would end in 60 days if he did not find another job elsewhere in the company.

97. Maeker asked Reckert to give him a copy of the Fidelity policy Maeker allegedly violated. But Reckert refused to give Maeker a copy of the written policy Fidelity claims he violated. On September 1, 2022, Maeker asked Eric Bronner (hereinafter “Bronner”) for a copy of Fidelity's written policy. Bronner also refused to give Maeker a copy of the policy he allegedly violated.

98. This begs an obvious question: If Maeker truly violated a written Fidelity policy, why would Fidelity refuse Maeker's request to receive a copy of that policy?

### **Fidelity Ignores Maeker’s Follow-up Email and Singles Out Maeker in Retaliation**

99. After the meeting with Rehagen, Maeker followed up with an email asking Rehagen to follow up with two of Fidelity’s Internal Investigators regarding his Chairman’s Line complaint regarding Schiavone and the pressure he was putting on FAs to push clients into Tier 3 Solutions.

100. Maeker asked Rehagen if Fidelity was making a nationwide investigation into other FAs violating the policy Fidelity accused Maeker of violating; or if the firm was instead focusing on Maeker only. Rehagen said he could not answer that question. Maeker told Rehagen that the investigation seemed like it was targeted against Maeker in retaliation for Maeker’s Chairman's

Line report. Rehagen did not provide a response to that comment either.

### **Fidelity Fires the Whistleblower, but Keeps an FA Who Forged a Client's Signature**

101. Maeker was really violate a Fidelity policy that didn't disqualify him from working elsewhere in the company, some lesser punishment such as a letter of education, a warning letter, or heightened supervision is more appropriate and standard in the industry than immediate termination from his job as an FA.

102. Approximately five years ago, P.B., one of Fidelity's FAs, told Maeker that he had forged a client's initials on an annuity application to expedite a sale. Obviously, P.B.'s forgery is a serious and major violation of FINRA rules and SEC regulations--which require accurate record keeping. It is a violation significantly more serious than Maeker's alleged policy violation.

103. P.B. told Maeker Fidelity was investigating his forgery, and P.B. thought he was in big trouble. Fidelity's Branch Manager was Brad Kniff and Fidelity's Regional Manager was Jeanie Reckart--the very person who approved firing Maeker. P.B. told Maeker that Kniff and Reckart both knew about the forgery. Maeker does not know whether Fidelity took any disciplinary action against P.B. Maeker does know, however, that P.B. was not fired and still works for Fidelity today. Schiavone has acknowledged under oath that P.B. forged a client's initials on a document.

104. Immediately firing Maeker from Fidelity's Private Wealth Division while Fidelity continues to employ a forger is strong evidence that Maeker was fired in retaliation for opposing and for blowing the whistle on Fidelity's fraud and unlawful conduct.

### **Firing Maeker for An Alleged Policy Violation Doesn't Make Sense**

105. In his last three written performance reviews Fidelity rated Maeker's overall

performance as “successful performance” (2019), “exceptional performance” (2020), and “successful performance” (2021). Exceptional performance is the highest rating achievable, successful performance is the second highest rating.

106. If Schiavone allegedly warned Maeker that he was not doing his job, where is any written proof of this? Where is the warning memo, an e-mail, or at least a notation in Maeker’s personnel file? The fact is that Fidelity did not raise any policy violations or performance issues with Maeker until after his whistleblowing report.

107. Maeker received five financial bonuses and two recognition awards during the three-year period priority to Fidelity firing him supposedly for violating Fidelity’s policies. The proof is in the pudding. Despite supposedly coasting and not doing his job in the right way, Fidelity rewarded Maeker financially for a job well done.

108. The Fidelity Investments Vice President, Financial Consultant Compensation Plan states:

“Participants who achieve certain annual compensation related to Acquisition, Development, TOA, and customer Loyalty measures will be eligible to receive an Achiever Bonus.”

“Additional payment amounts available for Achievement over and above your Targets.”

The Fidelity Investments Vice President, Financial Consultant Compensation Plan.

109. There are many examples of Maeker being awarded additional payment amounts by Fidelity for his “achievement over and above his targets,” including the following:

- Jan. 2019, Fidelity paid Maeker Top Half Achiever Level Bonus (approx. \$50k)
- Spring 2019, Fidelity honors Maeker with Best of the West Award
- Spring 2019, Fidelity honors Maeker with President's Circle Membership

- Jan. 2020, Fidelity paid Maeker Top Half Achiever Level Bonus (approx. \$60k)
- Jan. 2021, Fidelity paid Maeker Second Highest Level Achiever Bonus (approx. \$90k)
- Jan. 2021, Fidelity paid Maeker Fidelity Shares as a performance award
- Jan. 2022, Fidelity paid Maeker Top Half Achiever Level Bonus (approx. \$60k)

110. By the second quarter in 2023, Maeker had already won a Top Half Achiever Level Bonus. That bonus would have been paid in January of 2023 (approx. \$60k).

111. If Maeker hadn't been doing good work, following Fidelity's policies, communicating with and keeping clients happy for a long time, why did he win five bonuses and two awards in the last three years of his employment with Fidelity? Why was he winning all these awards at the very same time Fidelity now (and conveniently) claims Maeker was violating a policy that justified immediate termination of his job as an FA.

112. Fidelity should be held accountable for its unlawful retaliation and illegal attempt to silence a whistleblower who was only trying to protect himself and fellow FAs and fulfill his obligations to protect investors' best interests -- that is exactly what Fidelity should have been doing instead of retaliating against Maeker for refusing to pressure clients into investments that would financially benefit Fidelity irrespective of whether such investments were in the best interests of the client.

**After Maeker Filed a Written Whistleblowing Complaint and SOX Complaint, Fidelity Belatedly Stopped Violating Reg BI**

113. Fidelity has finally admitted that the Hero Sheets Schiavone sent to the Dallas financial advisors--only reflecting Tier 3 investment results for each individual FA--were not appropriate and not "the preferred way." As a result of the Fidelity's investigation of Schiavone's actions,

Fidelity sent Schiavone a “memo of expectation” and direct instructions to stop communicating only Tier 3 numbers to the FAs in his Dallas branch. Additionally, Fidelity discovered that other branch managers were sending similar Hero Sheets to their respective financial advisors and sent them a “memo of expectation”--a warning memo regarding Fidelity’s expectations regarding communications.

114. Not coincidentally, around the same time that Maeker filed his SOX Complaint, Fidelity’s “financial team”--made up of five or six of Fidelity’s high-ranking individuals--made the decision to stop sending Fidelity’s branch managers, like Schiavone, similar Hero Sheet performance metrics and branch goals concerning ONLY Tier 3. Indeed, Fidelity’s five plus year practice of sending branch managers goals and performance metrics reflecting only Tier 3 abruptly came to a halt in 2023, only after Fidelity knew its Reg BI violations had been exposed by Maeker’s whistleblowing and the filing of his SOX Complaint.

## **CAUSES OF ACTION**

### **COUNT ONE: SARBANES-OXLEY WHISTLEBLOWER PROTECTION -- 18 U.S.C. § 1514A**

115. Maeker asserts a cause of action against Fidelity for violation of the anti-retaliation and whistleblower protection provisions provided under SOX (18 U.S.C. § 1514A). The allegations contained in all the paragraphs of this Complaint are hereby reaverred and realleged, for all purposes, and incorporated herein with the same force and effect as is set forth verbatim in this section.

116. Maeker brings this claim under the anti-retaliation provision of SOX, codified at 18 U.S.C. § 1514A(a), as amended by Section 929A of Dodd-Frank. The Supreme Court, in comparing this provision with the “core objective” of Dodd-Frank’s robust whistleblower

program, stated Congress had a “more far-reaching objective” when enacting Sarbanes-Oxley’s whistleblower regime: it sought to disturb the “corporate code of silence” that “discourage[d] employees from reporting fraudulent behavior not only to the proper authorities, such as the FBI and SEC, but even internally.” *Digital Realty Tr., Inc. v. Somers*, 138 S. Ct. 767, 777-78 (2018). Accordingly, the SOX anti-retaliation provision covers employees who report and blow the whistle not only to the SEC (as Maeker has done), but also to any other federal agency, Congress, or even internally (as Maeker did on multiple occasions as outlined above). *Id.* at 778.

117. To make out a prima facie case for retaliation under § 1514A(a), an employee must show “by a preponderance of the evidence, that (1) he engaged in protected whistleblowing activity, (2) the employer knew that he engaged in the protected activity, (3) he suffered an ‘adverse action,’ and (4) the protected activity was a ‘contributing factor’ in the ‘adverse action.’” *Wallace v. Andeavor Corp.*, 916 F.3d 423, 426 (5th Cir.), cert. denied, 140 S. Ct. 206 (2019) (quoting *Halliburton, Inc. v. Admin. Review Bd.*, 771 F.3d 254, 259 (5th Cir. 2014)).

118. Fidelity is a contractor, subcontractor, or agent of a company within the meaning of 18 U.S.C. § 1514A or a contractor, subcontractor, or agent of a company required to file reports under Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78o(d)) or other company that falls within the definition of 18 U.S.C. § 1514A(a). Thus, Fidelity is subject to, and required to comply with, SOX.

119. Maeker is an employee within the meaning of 18 U.S.C. § 1514A.

120. As discussed herein, (1) Maeker engaged in protected whistleblowing activity by reporting his concerns and blowing the whistle regarding Schiavone and Fidelity continuously pressuring Maeker to push clients into unsuitable or ill-advised, high fee generating financial investments, (2) Fidelity knew that Maeker engaged in the protected activity, (3) Fidelity retaliated



against Maeker, including by first placing Maeker on leave and then ultimately terminating his employment (i.e., Maeker suffered an “adverse action” or “adverse employment action”), and (4) the protected activity (i.e., the multiple times Maeker reported and blew the whistle) was a contributing factor in the adverse action.

121. Under 18 U.S.C. § 1514A(c), Maeker is entitled to all relief necessary to make him whole. Thus, Maeker is entitled to recover all the relief requested in this Complaint from Fidelity, including but not limited to all monetary relief and reinstatement with the same seniority status that Maeker would have had, but for the discrimination.

**COUNT TWO: CONSUMER FINANCIAL  
PROTECTION ACT WHISTLEBLOWER PROTECTION -- 12 U.S.C. § 5567**

122. Maeker asserts a cause of action against Fidelity for violation of the anti-retaliation, whistleblower protection, and employee protection provisions provided under CFPA (12 U.S.C. § 5567). The allegations contained in all the paragraphs of this Complaint are hereby reaverred and realleged, for all purposes, and incorporated herein with the same force and effect as is set forth verbatim in this section.

123. To state a claim for retaliation under CFPA, 12 U.S.C. § 5567, Maeker must establish that “(1) he engaged in protected activity; (2) the employer knew or suspected, either actually or constructively, that he engaged in protected activity; (3) he suffered an unfavorable personnel or employment action; and (4) the protected activity was a contributing factor in the unfavorable action.” *Veard v. F & M Bank*, 704 F. App’x 469, 473 (6th Cir. 2017).

124. Fidelity is a covered person or service provider within the meaning of 12 U.S.C. § 5567, and Maeker is an employee with the meaning of 12 U.S.C. § 5567.

125. As discussed herein, (1) Maeker engaged in protected whistleblowing activity by

reporting his concerns and blowing the whistle regarding Schiavone and Fidelity continuously pressuring Maeker to push clients into unsuitable or ill-advised, high fee generating financial investments, (2) Fidelity knew that Maeker engaged in the protected activity, (3) Fidelity retaliated against Maeker, including by first placing Maeker on leave and then ultimately terminating his employment (i.e., Maeker suffered an “unfavorable personnel or employment action”), and (4) the protected activity (i.e., the multiple times Maeker reported and blew the whistle) was a contributing factor in the unfavorable action.

126. Thus, Fidelity violated the employee protection and anti-retaliation provisions provided in CFPA, and Maeker is entitled to recover from Fidelity the relief requested in this Pleading.

#### **STATEMENT REGARDING RELIEF SOUGHT BY PLAINTIFF**

127. The following is only preliminary as discovery hasn't started. Plaintiff seeks past lost wages/compensation (back pay), lost benefits, and compensation including: salary increases, bonuses, commissions, profit sharing, vacation pay and health insurance, compensatory damages, consequential and/or incidental damages, special damages, including but not limited to reputational, mental anguish, emotional distress, and personal humiliation damages, punitive and/or exemplary damages, make whole damages, the true value of his vested and forfeited stock options that Plaintiff would have earned as of the time of trial, which were forfeited and/or not paid, the true value of earned bonuses and/or deferred compensation, which was forfeited and not paid, the true value of any other options/shares, compensation (including bonuses), and benefits Fidelity's wrongful termination prevented Plaintiff from vesting in and/or receiving, reasonable attorneys' fees, expert witness fees, reasonable paralegal fees, court costs and pre- and post-judgment interest at the highest rate allowed by law.

128. Plaintiff further seeks reinstatement to his former position effective on the date of any finding that Plaintiff was discharged in retaliation for making a report, giving notice of violations, exercising Plaintiff's SOX's rights, and/or engaging in any other protected activity. If reinstatement is not foreseeable Plaintiff seeks future lost compensation (front pay).

129. Plaintiff's back pay, front pay, and lost benefits will be computed by taking what Plaintiff would have been paid (in excess of what he has actually been paid), including promotions and salary increases, and the benefits Plaintiff would have received (in excess of what he has actually received), had Plaintiff not (i) been wrongfully fired in retaliation for reporting and blowing the whistle, and (ii) had his U-5 tarnished by Fidelity making it effectively impossible for Plaintiff to secure employment that provides for equivalent compensation and/or earning potential (despite Plaintiff's diligent and reasonable efforts to do so and mitigate his damages).

130. Plaintiff also seeks any other relief necessary to make Plaintiff whole as authorized under SOX. *See* U.S.C. § 1514A(c).

### CONCLUSION

**THEREFORE**, Plaintiff Michael Maeker respectfully requests the following relief in this Action:

- a) Issuance of an order and declaration that Plaintiff be reinstated to Plaintiff's former position, with the same seniority status that Plaintiff would have had but for Fidelity's unlawful retaliation against, and termination of, Plaintiff and enjoining Fidelity from further retaliation against Plaintiff;
- b) Award Plaintiff all back pay (with interest) and benefits, including salary increases, bonuses, commissions, stock options, vacation pay, health insurance, and any other compensation or benefits Plaintiff would have received but for Fidelity's unlawful retaliation against, and termination of, Plaintiff;
- c) If reinstatement is not ordered, Award Plaintiff future lost wages (front pay) in an amount to be proved at the trial, to compensate Plaintiff for the loss of income and earning capacity that Fidelity's conduct has caused;
- d) Award Plaintiff money damages for the [emotional distress] caused by Fidelity's

unlawful actions;

e) Award Plaintiff money damages for the [reputational damages] caused by Fidelity's unlawful actions;

f) Award Plaintiff the maximum amount of punitive, exemplary, and/or special damages that are recoverable from Fidelity under any applicable statute, law, and/ or in equity;

g) Award Plaintiff all other available relief under 18 U.S.C. § 1514A necessary to make Plaintiff whole, including but not limited to an award of reasonable attorney's fees, paralegal fees, and expert witness fees;

h) Award Plaintiff pre-judgment interest at the highest rate allowed by law;

i) Award Plaintiff post-judgment interest at the highest rate allowed by law;

j) Award Plaintiff costs of court; and

k) Award Plaintiff such other and further relief, whether at law or in equity, to which Plaintiff shows himself to be entitled.

Dated: this 6th day of May \_\_\_\_\_ 2024

Respectfully submitted,



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**ROGGE DUNN**

State Bar No. 06249500

E-mail: [dunn@trialtested.com](mailto:dunn@trialtested.com)

**ALEC E. PEDIGO**

State Bar No. 24102344

E-mail: [pedigo@roggedunngroup.com](mailto:pedigo@roggedunngroup.com)

**ROGGE DUNN GROUP, PC**

500 N. Akard Street

Suite 1900

Dallas, Texas 75201

Telephone: (214) 888-5000

Facsimile: (214) 220-3833

**ATTORNEYS FOR PLAINTIFF**

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Michael Maeker

(b) County of Residence of First Listed Plaintiff Tarrant County, Texas (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Rogge Dunn
Alec Pedigo

DEFENDANTS

Fidelity Investments a/k/a Fidelity Brokerage Services LLC

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

James R. Carroll, Esq
Marley Ann Brumme, Esq.

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Real Property, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 18 U.S.C. § 1514A; 12 U.S.C. § 5567

Brief description of cause:

This Action arises under the employee protection provisions of the Sarbanes-Oxley Act ("SOX"), 18 U.S.C. § 1514A, and regulations promulgated...

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [ ] No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Hon. Christine Hilleren-Wilkens Administrative Lx DOCKET NUMBER Case No. 2023-SOX-00029

DATE SIGNATURE OF ATTORNEY OF RECORD

May 6, 2024

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Case 3:24-cv-01078-E Document 1-1 Filed 05/06/24 Page 2 of 2 PageID 38  
**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket. **PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related cases, if any. If a related case exists, whether pending or closed, insert the docket numbers and the corresponding judge names for such cases. A case is related to this filing if the case: 1) involves some or all of the same parties and is based on the same or similar claim; 2) involves the same property, transaction, or event; 3) involves substantially similar issues of law and fact; and/or 4) involves the same estate in a bankruptcy appeal.

**Date and Attorney Signature.** Date and sign the civil cover sheet.