

conducting financial planning with Fidelity's clients, the job he was paid hundreds of thousands of dollars a year to do. Specifically, Fidelity's Global Security and Investigations ("Investigations") group determined that Maeker sent financial planning reports to his assigned clients without confirming with them the accuracy of information underpinning those reports. Among other things, those reports told Fidelity's clients whether they were on track financially to support themselves in retirement in light of their expected retirement date, expenses, income, total assets, and the like, all of which can obviously change. Maeker's behavior was deceptive and it was done to inflate his performance. His conduct also violated a number of Financial Industry Regulatory Authority ("FINRA")¹ Rules, as well as Fidelity policies and guidance.

After joining the Dallas Investor Center (the "Dallas Branch") where Maeker worked in 2019, Maeker's manager John Schiavone consistently encouraged him to deepen his engagement with his assigned clients in order to provide them meaningful service and guidance. Despite Schiavone's frequent feedback and attempts to motivate him to improve his performance, Maeker made little progress in that regard over the next two and a half years. On May 16, 2022, Schiavone again made clear that he expected Maeker to focus on developing his

¹ FINRA is a self-regulatory organization governing broker-dealers such as Fidelity. FINRA's Rules are approved by the U.S. Securities and Exchange Commission ("SEC").

client engagement. Among other suggestions to that end, he asked Maeker to resume working in the office just a single day per week, after having worked exclusively from home for more than two years. By that point, every other Dallas Branch representative was regularly working in the office.

Rather than accommodating Schiavone's minimal return-to-office request or improving his client engagement, a mere *three days* later, Maeker made an anonymous, pretextual complaint claiming that Schiavone had violated an SEC rule requiring broker-dealers to act in their clients' best interest. Ironically, it was Maeker himself who had failed to act in his clients' best interest by neglecting to assist them with financial planning and sending them reports based on outdated and potentially inaccurate information. Regardless, Fidelity's Investigations group promptly opened an investigation into Schiavone's conduct. Investigations is an independent group within Fidelity: it does not sit within the business unit responsible for Branch activities (or any other business unit), and Investigations employees do not report to anyone in that or any other business unit.

A separate Investigations team conducted a comprehensive inquiry into Maeker's actions, prompted not by his complaint about Schiavone but by concerns about Maeker's refusal to work in the office even one day per week, his lack of effort, and discrepancies between his performance metrics and his actual activity. The investigation uncovered persistent misconduct by Maeker, leading Fidelity to

remove Maeker from his role. Schiavone played no part in the decision to remove Maeker from his role. Schiavone was not even aware that there was a separate investigation of his own conduct until late July 2022, more than a month after the investigation into Maeker was commenced. The person who made the decision to remove Maeker from his role was someone Maeker himself had specifically requested to be the one to make any decisions about his employment status.

Maeker has attempted to bring claims based on the same facts at issue here in various forums and has already been rejected on the merits by both the Occupational Safety and Health Administration (“OSHA”) and the Texas Workforce Commission (“TWC”). He submitted an OSHA complaint alleging whistleblower retaliation on October 30, 2022, followed by a TWC wage claim seeking compensation for commissions he alleged he was owed on December 13, 2022. Maeker’s TWC claim was denied on April 5, 2023, and his OSHA complaint was dismissed on April 19, 2023. Maeker then appealed OSHA’s dismissal to the Office of Administrative Law Judges (“OALJ”), which was docketed on May 17, 2023. Following an extended discovery period marked by a series of delays on Maeker’s part, on May 6, 2024—one month prior to a formal hearing to adjudicate his claims, and the same day the parties were required to exchange exhibit and witness lists and meet other pre-hearing deadlines—Maeker instead initiated the instant case by filing yet another complaint. As in his OSHA

and OALJ actions, he again alleges that Fidelity engaged in unlawful, retaliatory employment practices in violation of (i) Section 806 of the Sarbanes-Oxley Act (“SOX”), 18 U.S.C. § 1514A, and (ii) the Consumer Financial Protection Act’s (“CFPA”) whistleblower provisions, 12 U.S.C. § 5567.

Fidelity unequivocally denies that it has violated the whistleblower provisions of either SOX or the CFPA. As a privately held company whose employees, including Maeker, provide services related to securities and are regulated by the SEC when doing so, Fidelity is not even subject to those provisions. But even if it were, its removal of Maeker was solely the result of his own misconduct and was unrelated to his anonymous complaint about Schiavone. In light of the severity of Maeker’s actions, Fidelity would have removed him from his role regardless of whether he had ever made a complaint. Maeker cannot succeed on his claims.

ANSWER

Fidelity generally denies all allegations in the Complaint that are not expressly denied or admitted, including those in the preamble, conclusion, and unnumbered headings and titles. Any factual averment admitted in this Answer is admitted only as to the specific facts and not as to any conclusion, characterization, implication, innuendo, or speculation contained in any averment or in the

Complaint as a whole. Headings in the Complaint are not allegations and therefore do not require responses.

1. Fidelity denies the allegations in paragraph 1 of the Complaint, except admits only that Maeker made surreptitious recordings of his Fidelity branch manager and other Fidelity employees.

2. Fidelity denies the allegations in paragraph 2 of the Complaint, except admits only that Maeker was a FINRA-registered securities broker at the time he worked for Fidelity.

3. Fidelity denies the allegations in paragraph 3 of the Complaint, except admits only that Fidelity offers its customers financial products and services, some of which are categorized into “Tiers” for limited purposes.

4. Fidelity denies the allegations in paragraph 4 of the Complaint.

5. Fidelity denies the allegations in paragraph 5 of the Complaint.

6. Fidelity denies the allegations in paragraph 6 of the Complaint, except admits only that Schiavone testified that financial advisors generally receive one, four, and ten basis points for assets placed in Tier 1, Tier 2, and Tier 3, respectively.

7. Fidelity denies the allegations in paragraph 7 of the Complaint.

8. Fidelity denies the allegations in paragraph 8 of the Complaint, except admits only that Maeker made complaints to various individuals at Fidelity and that Fidelity terminated Maeker's employment.

9. The allegations in paragraph 9 of the Complaint constitute legal conclusions to which no answer is required. To the extent paragraph 9 may be deemed to contain factual allegations, they are denied.

10. Fidelity denies the allegations in paragraph 10 of the Complaint, except admits only that Maeker purports to bring this case against Fidelity under SOX for unlawful termination of employment.

11. Fidelity denies the allegations in paragraph 11 of the Complaint, except admits only that Maeker was a FINRA-registered securities broker at the time he worked for Fidelity.

12. Fidelity denies the allegations in paragraph 12 of the Complaint, except admits only that Maeker made complaints to various individuals at Fidelity and that Fidelity terminated Maeker's employment.

13. Fidelity denies the allegations in paragraph 13 of the Complaint, except admits only that, in compliance with FINRA rules, it filed a Form U-5 terminating Maeker's registrations and providing the reason for the termination.

14. Fidelity lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first two sentences of paragraph 14 of the

Complaint. Fidelity denies the remaining allegations in paragraph 14 of the Complaint.

15. The allegations in paragraph 15 of the Complaint constitute legal conclusions to which no answer is required. To the extent paragraph 15 may be deemed to contain factual allegations, they are denied.

16. Fidelity lacks knowledge or information sufficient to form a belief as to the truth of the allegation regarding where Maeker resides. Fidelity admits the remaining allegations in paragraph 16 of the Complaint.

17. Fidelity admits the allegations in paragraph 17 of the Complaint.

18. Fidelity denies the allegations in paragraph 18 of the Complaint, except admits only that Maeker purports to bring this case under SOX and regulations promulgated thereunder and the CFPA and its implementing regulations.

19. The allegations in paragraph 19 of the Complaint constitute legal conclusions to which no answer is required. To the extent paragraph 19 may be deemed to contain factual allegations, they are denied.

20. The allegations in paragraph 20 of the Complaint constitute legal conclusions to which no answer is required. To the extent paragraph 20 may be deemed to contain factual allegations, they are denied.

21. Fidelity admits the allegations in paragraph 21 of the Complaint.

22. Fidelity denies the allegations in paragraph 22 of the Complaint, except admits only that Maeker appealed the dismissal of his October 30, 2022, complaint and that the appeal was pending when Maeker filed the instant Complaint.

23. Fidelity admits that the Secretary of Labor did not issue a final decision within 180 days of the filing of the OSHA Complaint. The remaining allegations in paragraph 23 of the Complaint constitute legal conclusions to which no answer is required. To the extent the remaining allegations in paragraph 23 may be deemed to contain factual allegations, they are denied.

24. Fidelity admits the allegations in paragraph 24 of the Complaint.

25. The allegations in paragraph 25 of the Complaint constitute legal conclusions to which no answer is required. To the extent paragraph 25 may be deemed to contain factual allegations, they are denied.

26. The allegations in paragraph 26 of the Complaint constitute legal conclusions to which no answer is required. To the extent paragraph 26 may be deemed to contain factual allegations, they are denied.

27. The allegations in paragraph 27 of the Complaint constitute legal conclusions to which no answer is required. To the extent paragraph 27 may be deemed to contain factual allegations, they are denied.

28. Fidelity denies the allegations in paragraph 28 of the Complaint, except admits only that Maeker started his career and became a licensed FINRA securities broker while working for Merrill Lynch, started working at Fidelity in 1998, and became a Vice President Financial Consultant (“VPFC”) during his Fidelity career.

29. Fidelity denies the allegations in paragraph 29 of the Complaint, except admits only that Maeker worked at Fidelity for approximately 24 years.

30. Fidelity denies the allegations in paragraph 30 of the Complaint, except admits only that, in compliance with FINRA rules, it filed a Form U-5 terminating Maeker’s registrations and providing the reason for the termination.

31. Fidelity denies the allegations in paragraph 31 of the Complaint, except admits only that it never put Maeker on probation or heightened supervision or sent him a written warning or a “letter of education.”

32. Fidelity denies the allegations in paragraph 32 of the Complaint.

33. Fidelity denies the allegations in paragraph 33 of the Complaint.

34. Fidelity denies the allegations in paragraph 34 of the Complaint.

35. The allegations in the first, second, and third sentences of paragraph 35 of the Complaint constitute legal conclusions to which no answer is required.

To the extent the first, second, and third sentences may be deemed to contain

factual allegations, they are denied. Fidelity denies the remaining allegations in paragraph 35 of the Complaint.

36. Fidelity denies the allegations in paragraph 36 of the Complaint, except admits only that, among other things, Reg BI requires that for any recommendation to a retail customer of a securities transaction or investment strategy involving securities, a broker-dealer must have a reasonable basis to believe that the recommendation is in the customer's best interest.

37. Fidelity denies the allegations in paragraph 37 of the Complaint.

38. Fidelity denies the allegations in paragraph 38 of the Complaint, except admits only that Fidelity offers its customers financial products and services, some of which are categorized into "Tiers" for limited purposes.

39. Fidelity denies the allegations in paragraph 39 of the Complaint.

40. Fidelity denies the allegations in paragraph 40 of the Complaint.

41. Fidelity denies the allegations in paragraph 41 of the Complaint.

42. Fidelity denies the allegations in paragraph 42 of the Complaint.

43. Fidelity admits the allegations in paragraph 43 of the Complaint.

44. Fidelity denies the allegations in paragraph 44 of the Complaint, except admits only that John Schiavone became Branch Manager of the Dallas Investor Center in approximately late August 2019.

45. Fidelity denies the allegations in paragraph 45 of the Complaint.

46. Fidelity denies the allegations in paragraph 46 of the Complaint.

47. Fidelity denies the allegations in the first sentence of paragraph 47 of the Complaint. Fidelity lacks knowledge or information sufficient to form a belief as to the truth of the allegation regarding whether a financial advisor who worked in Fidelity's Central West Division executed a declaration making the statements alleged, including but not limited to because Maeker has failed to provide Fidelity with a copy of the alleged declaration or the identity of the declarant.

48. Fidelity denies the allegations in paragraph 48 of the Complaint, except admits only that Maeker recorded Schiavone, and refers to the recordings for a full and accurate statement of their contents.

49. Fidelity denies the allegations in paragraph 49 of the Complaint and refers to the recording containing the alleged discussion for a full and accurate statement of its contents.

50. Fidelity admits the allegations in paragraph 50 of the Complaint.

51. Fidelity denies the allegations in paragraph 51 of the Complaint, except admits only that Maeker contacted both Reckart and Morrissey in December 2019 regarding his purported concerns with Schiavone.

52. Fidelity lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second and third sentences of paragraph 52 of the Complaint. Fidelity denies the remaining allegations in paragraph 52 of the

Complaint, except admits only that Maeker sent an anonymous letter to (i) Fidelity's Chairman's line, (ii) Kathleen Murphy, and (iii) Alyssa Albertelli.

53. Fidelity denies the allegations in paragraph 53 of the Complaint.

54. Fidelity denies the allegations in paragraph 54 of the Complaint, except admits only that Fidelity assigned Maeker to report to Justin Gasset and that Gasset did not put pressure on Maeker to move client assets into Tier 3 investments.

55. Fidelity denies the allegations in paragraph 55 of the Complaint, except admits only that Maeker started reporting to Schiavone again.

56. Fidelity denies the allegations in paragraph 56 of the Complaint, except admits only that Schiavone started including a "Tier 3 Solutions Activity" topic in meeting agendas in May of 2022.

57. Fidelity denies the allegations in paragraph 57 of the Complaint.

58. Fidelity denies the allegations in paragraph 58 of the Complaint.

59. Fidelity denies the allegations in paragraph 59 of the Complaint, except admits only that financial consultants were paid higher variable compensation on Tier 3 products and solutions than on Tier 1 or Tier 2 products and solutions.

60. Fidelity lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 60.

61. Fidelity admits the allegations in the first and second sentences of paragraph 61 of the Complaint. The allegations in the third sentence constitute a legal conclusion to which no answer is required. To the extent that the third sentence may be deemed to contain factual allegations, they are denied.

62. Fidelity denies the allegations in paragraph 62 of the Complaint.

63. Fidelity denies the allegations in paragraph 63 of the Complaint and refers to the recordings for a full and accurate statement of their contents.

64. Fidelity denies the allegations in paragraph 64 of the Complaint, except admits only that a client closed a managed money account and that Maeker claimed to other Fidelity employees that the client said his self-managed account was outperforming the managed account and that he did not want to pay \$45,000 a year in fees.

65. Fidelity denies the allegations in paragraph 65 of the Complaint and refers to the recordings for a full and accurate statement of their contents.

66. Fidelity denies the allegations in paragraph 66 of the Complaint, and refers to the recordings for a full and accurate statement of their contents.

67. Fidelity denies the allegations in paragraph 67 of the Complaint, and refers to the recordings for a full and accurate statement of their contents.

68. Fidelity denies the allegations in the first sentence of paragraph 68 of the Complaint, except admits only that Maeker made complaints. The remaining

allegations in the second sentence constitute legal conclusions to which no answer is required. To the extent those allegations may be deemed to contain factual allegations, they are denied.

69. Fidelity denies the allegations in paragraph 69 of the Complaint.

70. Fidelity denies the allegations in paragraph 70 of the Complaint.

71. Fidelity denies the allegations in paragraph 71 of the Complaint.

72. Fidelity denies the allegations in paragraph 72 of the Complaint.

73. The allegations in paragraph 73 of the Complaint constitute legal conclusions to which no answer is required. To the extent those allegations may be deemed to contain factual allegations, they are denied.

74. Fidelity denies the allegations in paragraph 74 of the Complaint, and refers to the recordings for a full and accurate statement of their contents.

75. Fidelity denies the allegations in paragraph 75 of the Complaint, and refers to the recordings for a full and accurate statement of their contents.

76. Fidelity admits that Maeker called the Chairman's Line on May 19, 2022 and that Caitlin Munroe of Internal Investigations received that complaint. The remaining allegations in paragraph 76 of the Complaint constitute legal conclusions to which no answer is required. To the extent that those allegations may be deemed to contain factual allegations, they are denied.

77. Fidelity denies the allegations in paragraph 77 of the Complaint, except admits only that Maeker emailed Munroe on May 20, 2022, and refers to the email for a full and accurate statement of its contents.

78. Fidelity denies the allegations in paragraph 78 of the Complaint, except admits only that Maeker emailed Munroe on May 24, 2022, and refers to the email for a full and accurate statement of its contents.

79. Fidelity denies the allegations in paragraph 79 of the Complaint, except admits only that Maeker emailed Munroe on June 10, 2022, and refers to the email for a full and accurate statement of its contents.

80. Fidelity denies the allegations in paragraph 80 of the Complaint, except admits only that Maeker emailed Munroe on June 15, 2022, and refers to the email for a full and accurate statement of its contents.

81. Fidelity denies the allegations in paragraph 81 of the Complaint, except admits only that Maeker emailed Munroe on June 17, 2022, and refers to the email for a full and accurate statement of its contents.

82. Fidelity denies the allegations in paragraph 82 of the Complaint, except admits only that Maeker emailed Munroe on June 29, 2022, and refers to the email for a full and accurate statement of its contents.

83. The allegations in paragraph 83 of the Complaint constitute legal conclusions to which no answer is required. To the extent that those allegations may be deemed to contain factual allegations, they are denied.

84. Fidelity denies the allegations in paragraph 84 of the Complaint.

85. Fidelity denies the allegations in paragraph 85 of the Complaint, except admits only that it informed Maeker that he had violated Fidelity policies and that he would be placed on paid administrative leave on August 24, 2022.

86. Fidelity denies the allegations in paragraph 86 of the Complaint, except admits only that it told Maeker that he would have 60 days to find other role inside or outside Fidelity, and that it ultimately terminated Maeker's employment on December 16, 2022.

87. Fidelity denies the allegations in paragraph 87 of the Complaint, except admits only that it has disciplined employees for policy or procedure violations, including and up to termination depending on the facts and circumstances, and that it terminated Maeker for violating Fidelity policies.

88. Fidelity denies the allegations in paragraph 88 of the Complaint.

89. Fidelity denies the allegations in paragraph 89 of the Complaint.

90. Fidelity denies the allegations in paragraph 90 of the Complaint.

91. Fidelity denies the allegations in paragraph 91 of the Complaint, except admits only that Maeker was placed on paid administrative leave.

92. Fidelity denies the allegations in paragraph 92 of the Complaint.

93. Fidelity denies the allegations in paragraph 93 of the Complaint, except admits only that on August 24, 2022, Maeker had a Zoom meeting with members of Fidelity's Internal Investigations team, including T.J. Rehagen, in which Maeker was asked about prior violations of Fidelity policy.

94. Fidelity denies the allegations in paragraph 94 of the Complaint, except admits that Rehagen informed Maeker that he had violated Fidelity policy by sending reports to clients without having the requisite conversation with the clients.

95. Fidelity denies the allegations in paragraph 95 of the Complaint, except admits only that Maeker claimed that he had not seen the relevant policy before.

96. Fidelity denies the allegations in paragraph 96 of the Complaint, except admits only that Reckart informed Maeker on August 25, 2022 that he was being removed from his role as a VPFC, but that he would be given 60 days to find another role inside or outside Fidelity.

97. Fidelity denies the allegations in paragraph 97 of the Complaint.

98. Fidelity denies the allegations in paragraph 98 of the Complaint.

99. Fidelity denies the allegations in paragraph 99 of the Complaint, except admits only that after the meeting with Rehagen, Maeker followed up with

an email asking Rehagen to follow up on his Chairman's Line complaint regarding his purported concerns about Schiavone.

100. Fidelity denies the allegations in paragraph 100 of the Complaint, except admits only that Maeker asked Rehagen if Fidelity was only focusing on him and suggested that he might have been targeted because of his Chairman's Line report.

101. Fidelity denies the allegations in paragraph 101 of the Complaint.

102. Fidelity lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 102 of the Complaint. The allegations in the second and third sentences of paragraph 102 constitute legal conclusions to which no answer is required. To the extent that those allegations may be deemed to contain factual allegations, they are denied.

103. Fidelity lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first, third, fourth, and fifth sentences of paragraph 103 of the Complaint. Fidelity denies the remaining allegations in paragraph 103 of the Complaint, except admits only that Brad Kniff was a Fidelity branch manager and Jeanie Reckart is a Fidelity regional manager who made the decision to terminate Maeker.

104. Fidelity denies the allegations in paragraph 104 of the Complaint.

105. Fidelity denies the allegations in paragraph 105 of the Complaint as materially incomplete, except admits only that Maeker received written performance reviews of “successful performance” in 2019, “exceptional performance” in 2020, and “successful performance” in 2021.

106. Fidelity denies the allegations in paragraph 106 of the Complaint.

107. Fidelity denies the allegations in paragraph 107 of the Complaint.

108. Fidelity denies the allegations in paragraph 108 of the Complaint, except admits only that the 2019 Fidelity Vice President, Financial Consultant Compensation Plan states, “. . . additional payment amounts available for achievement over and above your targets. . . . Participants who achieve certain annual compensation thresholds related to Acquisition, Development, TOA and Loyalty measures will be eligible to receive an Achiever Bonus.”

109. Fidelity denies the allegations in paragraph 109 of the Complaint, except admits that at various times during his employment with Fidelity, Maeker was paid bonuses.

110. Fidelity denies the allegations in paragraph 110 of the Complaint.

111. Fidelity denies the allegations in paragraph 111 of the Complaint.

112. The allegations in paragraph 112 of the Complaint constitute legal conclusions to which no answer is required. To the extent that paragraph 112 of the Complaint may be deemed to contain factual allegations, they are denied.

113. Fidelity denies the allegations in paragraph 113 of the Complaint, except admits only that Schiavone received a performance expectations memo and that one other branch manager received a similar memo for similar actions.

114. Fidelity denies the allegations in paragraph 114 of the Complaint.

115. The allegations in paragraph 115 of the Complaint constitute legal conclusions to which no answer is required. To the extent that paragraph 115 of the Complaint may be deemed to contain factual allegations, they are denied. Fidelity incorporates by reference its answers to paragraphs 1 through 114 set forth above.

116. The allegations in paragraph 116 of the Complaint constitute legal conclusions to which no answer is required. To the extent that paragraph 116 of the Complaint may be deemed to contain factual allegations, they are denied.

117. The allegations in paragraph 117 of the Complaint constitute legal conclusions to which no answer is required. To the extent that paragraph 117 of the Complaint may be deemed to contain factual allegations, they are denied.

118. The allegations in paragraph 118 of the Complaint constitute legal conclusions to which no answer is required. To the extent that paragraph 118 of the Complaint may be deemed to contain factual allegations, they are denied.

119. The allegations in paragraph 119 of the Complaint constitute legal conclusions to which no answer is required. To the extent that paragraph 119 of the Complaint may be deemed to contain factual allegations, they are denied.

120. The allegations in paragraph 120 of the Complaint constitute legal conclusions to which no answer is required. To the extent that paragraph 120 of the Complaint may be deemed to contain factual allegations, they are denied.

121. The allegations in paragraph 121 of the Complaint constitute legal conclusions to which no answer is required. To the extent that paragraph 121 of the Complaint may be deemed to contain factual allegations, they are denied.

122. The allegations in paragraph 122 of the Complaint constitute legal conclusions to which no answer is required. To the extent that paragraph 122 of the Complaint may be deemed to contain factual allegations, they are denied.

Fidelity incorporates by reference its answers to paragraphs 1 through 121 set forth above.

123. The allegations in paragraph 123 of the Complaint constitute legal conclusions to which no answer is required. To the extent that paragraph 123 of the Complaint may be deemed to contain factual allegations, they are denied.

124. The allegations in paragraph 124 of the Complaint constitute legal conclusions to which no answer is required. To the extent that paragraph 124 of the Complaint may be deemed to contain factual allegations, they are denied.

125. The allegations in paragraph 125 of the Complaint constitute legal conclusions to which no answer is required. To the extent that paragraph 125 of the Complaint may be deemed to contain factual allegations, they are denied.

126. The allegations in paragraph 126 of the Complaint constitute legal conclusions to which no answer is required. To the extent that paragraph 126 of the Complaint may be deemed to contain factual allegations, they are denied.

127. Fidelity lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 127 of the Complaint.

128. Fidelity lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 128 of the Complaint.

129. The allegations in paragraph 129 of the Complaint constitute legal conclusions to which no answer is required. To the extent that paragraph 129 of the Complaint may be deemed to contain factual allegations, Fidelity lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 129 of the Complaint.

130. Fidelity lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 130 of the Complaint.

AFFIRMATIVE AND OTHER DEFENSES

FIRST DEFENSE

The Complaint fails to assert a claim under SOX because (i) Maeker did not provide services to a publicly traded company and (ii) Maeker did not blow the whistle on alleged violations by a publicly traded company, as required to assert a claim under 18 U.S.C. § 1514A.

SECOND DEFENSE

The Complaint fails to assert a claim under SOX because Fidelity is not a “contractor” or “subcontractor” of a publicly traded company within the meaning of 18 U.S.C. § 1514A(a).

THIRD DEFENSE

The Complaint fails to assert a claim under SOX because Maeker did not engage in any conduct that SOX protects pursuant to 18 U.S.C. § 1514A(a).

FOURTH DEFENSE

The Complaint fails to assert a claim under the CFPA because Fidelity is not a “covered person” within the meaning of 12 U.S.C. § 5567.

FIFTH DEFENSE

The Complaint fails to assert a claim under the CFPA because Maeker is not a “covered employee” within the meaning of 12 U.S.C. § 5567.

SIXTH DEFENSE

The Complaint fails to assert a claim under the CFPA because Maeker did not engage in any conduct that the CFPA protects pursuant to 12 U.S.C. §§ 5567(1)(1) and 5481(12).

SEVENTH DEFENSE

The Complaint fails to allege a *prima facie* case of retaliation under SOX.

EIGHTH DEFENSE

The Complaint fails to allege a *prima facie* case of retaliation under the CFPA.

NINTH DEFENSE

Maeker's alleged protected activity was not the cause of or a contributing factor to an adverse employment action.

TENTH DEFENSE

Fidelity would have taken the same action against Maeker even if he had not engaged in the alleged protected activity.

ELEVENTH DEFENSE

The Complaint is barred because Maeker has not suffered any cognizable damages.

TWELFTH DEFENSE

The Complaint is barred because of Maeker's failure to mitigate, minimize, or avoid his damages, if any.

THIRTEENTH DEFENSE

The Complaint is barred because, and to the extent that, any relief or recovery would unjustly enrich or constitute a windfall to Maeker.

FOURTEENTH DEFENSE

Fidelity affirmatively raises and reserves all applicable equitable defenses.

RESERVATION OF RIGHTS

By alleging the matters set forth in the defenses listed herein, Fidelity does not allege or admit that it has the burden of proof and/or persuasion with respect to any of them. Fidelity presently has insufficient knowledge or information upon which to form a belief as to whether there may be other, as yet unstated, defenses and/or affirmative defenses available to Fidelity, and therefore expressly (1) reserves the right to amend or supplement its Answer, defenses, affirmative defenses, and all other pleadings, and (2) reserves the right to (a) assert any and all additional defenses and/or affirmative defenses under any applicable federal and state law in the event that discovery indicates such defenses and/or affirmative defenses would be appropriate, and (b) assert any cross-claims, counterclaims, and third-party claims when and if they become appropriate in this action. Fidelity hereby gives notice that it intends to rely upon such other and further defenses as may become available or apparent during pre-trial proceedings or through investigation and discovery in this case.

WHEREFORE, Fidelity respectfully requests judgment granting the following relief:

- I. Dismissing the Complaint against Fidelity with prejudice;
- II. Denying Maeker's request for relief;
- III. Awarding Fidelity the costs of defending this action, including attorneys' fees, costs, and disbursements; and
- IV. Granting Fidelity such other and further relief as this Court may deem just and necessary.

Dated: July 5, 2024

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on July 5, 2024, the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system and all counsel of record will receive an electronic copy via the Court's CM/ECF system.

/s/ Karl G. Nelson
Karl G. Nelson