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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

11
12 **THE PEOPLE OF THE STATE OF CALIFORNIA,**

Case No.

13 Plaintiff,

COMPLAINT

CGC-22-599020

14 v.

15 **ZERODIVIDE; TESSIE GUILLERMO; DAVID
16 VENEZIANO; CARLADENISE EDWARDS;
LINDA MIYA IWATAKI; JULIE MURCHINSON;
17 KELVIN QUAN; AND DOES 1 THROUGH 25,
INCLUSIVE,**

18 Defendants.

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20
21 Plaintiff, the People of the State of California (“People”) hereby complains and alleges
22 against Defendants ZeroDivide, Tessie Guillermo (“Guillermo”), David Veneziano
23 (“Veneziano”), Carladenise Edwards (“Edwards”), , Linda Miya Iwataki (“Iwataki”), Julie
24 Murchinson (“Murchinson”), Kelvin Quan (“Quan”), and DOES 1 through 25 (collectively,
25 “Defendants”) as follows:

26 **SUMMARY OF THE CASE**

27 1. This case involves a charity’s officers misspending restricted donations given for
28 particular charitable programs on unauthorized expenses. Donors were told their donations would

1 only be used to fund a particular program provided by the charity, but instead the donations were
2 used for any charity expense, such as the salaries and benefits for all staff, and on other programs
3 that donors expressly did not want to fund. The charity is defendant ZeroDivide, which ceased
4 operating in 2016 due to its financial insolvency, and the officers are defendants Guillermo and
5 Veneziano. Unbeknown to donors, approximately \$606,000 in restricted donations from entities
6 such as The California Endowment, California Wellness Foundation, Ford Foundation, and
7 Vesper Society were misappropriated. The misappropriation violated generally accepted
8 accounting principles and California charitable trust laws (e.g., Bus. & Prof. Code, § 17510.8,
9 Gov. Code, § 12599.6, subd. (a)).

10 2. Members of the charity's board of directors were aware of this misconduct and failed to
11 stop it from happening, as they should have given fiduciary duties they owed to ZeroDivide's
12 charitable beneficiaries and donors. The directors are defendants Edwards, Iwataki, Murchinson,
13 and Quan. Some of these directors were also officers, and Guillermo was also a director. The
14 directors and officers breached their fiduciary duties in violation of California law (Corp. Code, §
15 5231 and common law).

16 3. Plaintiff seeks damages from the directors and officers for the restricted donations that
17 were misspent, and penalties for violations of law. Plaintiff also seeks an injunction dissolving
18 ZeroDivide and prohibiting Guillermo and Veneziano from acting as a fiduciary for any
19 charitable organization doing business in California, among other relief.

20 **PARTIES**

21 4. Plaintiff, the People of the State of California, includes members of the class of
22 charitable beneficiaries of ZeroDivide. The Attorney General, Rob Bonta, brings this action on
23 Plaintiff's behalf, and has primary responsibility for supervising charitable organizations within
24 this State, and with enforcing the obligations of nonprofits, trustees, fundraisers, and fiduciaries
25 who hold or control property in trust for charitable purposes. The Attorney General is authorized
26 to enforce, in the name of the People, the provisions of the Supervision of Trustees and
27 Fundraisers for Charitable Purposes Act (Gov. Code § 12580 et seq.), the Nonprofit Public
28

1 Benefit Corporation Law (Corp. Code, § 5000, et seq.), and the Charitable Solicitations Law
2 (Bus. & Prof. Code § 17510 et seq.), among other charitable trust laws.

3 5. Defendant ZeroDivide is a California nonprofit public benefit corporation. All of its
4 assets are and were held subject to a charitable trust for the benefit of its charitable beneficiaries.
5 ZeroDivide was founded in 1998, under its former name, the Community Technology Foundation
6 of California. ZeroDivide ceased operating in June 2016, and has not been dissolved. ZeroDivide
7 has suspended registration with the Attorney General’s Registry of Charitable Trusts (Regis. No.
8 111824), and suspended status with the California Secretary of State (Corp. No. 2073264). Its
9 tax-exempt status with the IRS and California Franchise Tax Board has been revoked. For the
10 relevant time period, ZeroDivide’s principal place of business was in San Francisco, California,
11 and Berkeley, California. ZeroDivide’s official and most recent address on file with the Attorney
12 General’s Registry of Charitable Trusts and Secretary of State is in San Francisco, California.

13 6. Defendant Tessie Guillermo, a resident of San Francisco County, served as ZeroDivide’s
14 President from 2008 to September 2015. From September 2015 until approximately June 2016,
15 Guillermo served as ZeroDivide’s “Advisory CEO,” and was also called “Executive Advisor.”
16 An internal organizational chart defined this role as “Setting tone for [ZeroDivide’s] image,
17 fundraising, partnerships, management and operations” and being the “Lead organizational
18 strategist with the [ZeroDivide] Directors responsible for programmatic development.” Guillermo
19 also served on ZeroDivide’s board of directors from at least 2008 to present. Guillermo was a
20 member of ZeroDivide’s executive board committee, finance and investment board committee,
21 and strategy and planning board committee. As a director and officer, Guillermo owed and
22 continues to owe fiduciary duties of care and loyalty, and to act in good faith in the best interests
23 of ZeroDivide, and its charitable beneficiaries and donors.

24 7. Defendant David Veneziano, a resident of the State of Florida, served as ZeroDivide’s
25 Chief Financial Officer and Chief Operating Officer from 2010 to September 2015. During this
26 time, Veneziano resided in San Francisco County, on information and belief. From September
27 2015 until approximately March to June 2016, Veneziano served as ZeroDivide’s “Chief Finance
28 & Operating Officer, Volunteer,” and was also called “Advisory CFO/COO.” An internal

1 organizational chart defined this role as “Strategic analysis and recommendations related to
2 [ZeroDivide] financial position(s), monitoring and high-level fiscal reporting” and that the role
3 “Generates financial feasibility, modeling, and budget for initiative organizational and
4 programmatic activities.” In this role, Veneziano continued to participate in the management of
5 ZeroDivide and exercised discretionary authority. For example, he reviewed and oversaw the
6 work of certain staff, participated in board discussions and hiring staff, signed grant reports on
7 behalf of ZeroDivide, and negotiated contracts as needed. As an officer, Veneziano owed
8 fiduciary duties of care and loyalty, and to act in good faith in the best interests of ZeroDivide,
9 and its charitable beneficiaries and donors.

10 8. Defendant Carladenise Edwards, a resident of the State of Michigan, served on
11 ZeroDivide’s board of directors during the relevant time period, and continues to serve as a
12 director. Edwards served as the acting Chair of the Board beginning in June 2015. Edwards was a
13 member of ZeroDivide’s executive board committee, finance and investment board committee,
14 and strategy and planning board committee. As a director and officer, Edwards owed and
15 continues to owe fiduciary duties of care and loyalty, and to act in good faith in the best interests
16 of ZeroDivide, and its charitable beneficiaries and donors.

17 9. Defendant Linda Miya Iwataki, a resident of Los Angeles County, served on
18 ZeroDivide’s board of directors during the relevant time period, and continues to serve as a
19 director on information and belief. Iwataki served as ZeroDivide’s Secretary beginning in January
20 2015, and served on ZeroDivide’s executive board committee. As a director and officer, Iwataki
21 owed and continues to owe fiduciary duties of care and loyalty, and to act in good faith in the best
22 interests of ZeroDivide, and its charitable beneficiaries and donors. Iwataki failed to cooperate
23 with the Attorney General Office’s audit of ZeroDivide.

24 10. Defendant Julie Murchinson, a resident of Marin County on information and belief,
25 began serving on ZeroDivide’s board of directors in October 2014 and continues to serve as a
26 director, on information and belief. As a director, Murchinson owed and continues to owe
27 fiduciary duties of care and loyalty, and to act in good faith in the best interests of ZeroDivide,
28

1 and its charitable beneficiaries and donors. Murchinson failed to cooperate with the Attorney
2 General Office's audit of ZeroDivide.

3 11. Defendant Kelvin Quan, a resident of San Francisco County, began serving on
4 ZeroDivide's board of directors in October 2014 and continues to serve as a director. Quan served
5 as ZeroDivide's Treasurer beginning in January 2015, and served on ZeroDivide's executive
6 board committee and finance and investment board committee. As a director and officer, Quan
7 owed and continues to owe fiduciary duties of care and loyalty, and to act in good faith in the best
8 interests of ZeroDivide, and its charitable beneficiaries and donors.

9 12. Defendants DOES 1 through 25 are named as fictitious defendants who participated with
10 or acted in concert with one or more of the defendants, or who acted on behalf of or as directors,
11 officers, de facto directors, agents, servants or employees of one or more of the defendants, or
12 who aided or abetted one or more of the defendants, but whose true names and capacities,
13 whether individual, corporate, or otherwise, are presently unknown to the People. On information
14 and belief, defendants DOES 1 through 25 have directly or indirectly participated in, and/or aided
15 or abetted, and are responsible for the acts and omissions that are more specifically described
16 herein, and the relief that the People seek were proximately caused by such defendants. Because
17 the People are presently uninformed as to the true names and capacities of defendants DOES 1
18 through 25, the People sue them by fictitious names, but will seek leave to amend this Complaint
19 when their true names and capacities are discovered.

20 13. Collectively, Defendants Guillermo, Veneziano, Edwards, Iwataki, Murchinson, Quan,
21 and DOES 1 through 25 are referred to as "Directors and Officers" in this Complaint.

22 14. Whenever reference is made in this Complaint to any act of any corporate defendant,
23 such allegation shall mean that said defendant and its owners, officers, directors, agents,
24 employees, or representatives did or authorized such acts while engaged in the management,
25 direction, or control of the affairs of such defendant and while acting within the scope and course
26 of their duties.

27 15. Whenever reference is made in this Complaint to any act of any individual defendant,
28 such allegation shall be deemed to mean that said defendant is and was acting (a) as a principal,

1 (b) under express or implied agency, and/or (c) with actual or ostensible authority to perform the
2 acts so alleged on behalf of himself and/or on behalf of every other defendant.

3 16. Whenever reference is made in this Complaint to any act of defendants, such allegation
4 shall mean that each defendant acted individually and jointly with the other defendants named in
5 that cause of action.

6 **JURISDICTION AND VENUE**

7 17. This Court has subject matter jurisdiction over this action under Article VI, Section 10 of
8 the California Constitution, exercisable under Section 410.10 of the Code of Civil Procedure.

9 18. The Court has personal jurisdiction over Defendants because during the relevant time
10 period, each of them were residents of and domiciled in California and/or the People's claims
11 arose from their contacts and involvement with ZeroDivide, a California nonprofit public benefit
12 corporation with its principal place of business in the County of San Francisco.

13 19. Venue is proper in this Court pursuant to Code of Civil Procedure Sections 393 and 395
14 because the wrongful conduct and omission alleged occurred in the County of San Francisco, and
15 some of the defendants reside in this County.

16 **GENERAL ALLEGATIONS**

17 **I. BACKGROUND ON ZERODIVIDE'S MISSION, PROGRAMS, OPERATIONS, AND** 18 **SOLICITATIONS FOR RESTRICTED DONATIONS**

19 20. ZeroDivide's articles of incorporation state its charitable purpose "includes promotion of
20 access to basic and advanced telecommunications and information services in underserved
21 communities." To further this mission in the 2013 to 2016 timeframe, ZeroDivide provided
22 different charitable programs in California, and nationwide. Two of its primary programs during
23 this time were called Digital Bridge and the Renaissance Journalism Center ("RJC"). ZeroDivide
24 had other programs too.

25 21. The Digital Bridge program involved ZeroDivide providing technical assistance and
26 "capacity building" to nonprofits (typically in California) as they adopted new technologies and
27 upgraded their technology infrastructure, to become more effective in providing services locally.
28 For instance, ZeroDivide would recommend that certain hardware and software be purchased by

1 the nonprofits, like databases, communication and administration systems, and financial
2 management software. At times, ZeroDivide would purchase the recommended hardware and
3 software for the nonprofits. ZeroDivide provided training and other technology-related consulting
4 to the nonprofits. In addition to helping nonprofits as part of the Digital Bridge program,
5 ZeroDivide served public entities, like public libraries.

6 22. In order to provide the Digital Bridge program from 2014 to 2016, ZeroDivide primarily
7 relied on donations from grant-making private foundations. For instance, The California
8 Endowment granted ZeroDivide at least \$500,000 in 2015 strictly to provide technical assistance
9 to certain nonprofit communities in California. The California Wellness Foundation did the same
10 by giving \$250,000 in 2015.

11 23. ZeroDivide's RJC program advanced equity in the reporting of news stories by
12 journalists. For instance, in 2015 and 2016, the RJC program encouraged and paid journalists to
13 produce in-depth stories on inequity and other issues affecting the future of the Detroit, Michigan
14 community. Another example in 2015 and 2016 involved empowering youth in Imperial Valley,
15 California, and ensuring their voices were heard through storytelling on local issues and social
16 change.

17 24. In providing the RJC program, from 2013 to 2016, ZeroDivide relied on donations from
18 a different set of private foundations than that funded the Digital Bridge program. The private
19 foundations were Ford Foundation, Vesper Society, The Whitman Institute, and Wyncote
20 Foundation. From 2013 to 2015, Ford Foundation donated \$1,350,000 to ZeroDivide earmarked
21 for very specific RJC program work (like the Detroit Michigan example described in paragraph
22 24). Vesper Society, The Whitman Institute, and Wyncote Foundation each donated \$100,000
23 from 2014 to early 2016 (with the Vesper Society donation for the Imperial Valley project
24 described in paragraph 25). Ford Foundation, The Whitman Institute, and Wyncote Foundation
25 also agreed in 2014 and 2015 to provide additional funds in late 2016 that were accounted for in
26 ZeroDivide's accounting system, but ZeroDivide ceased operating by then.

27 25. In addition to having different donors, ZeroDivide operated its RJC program in a
28 different way from its other charitable programs. ZeroDivide served as a fiscal sponsor to RJC,

1 which was an unincorporated charitable group (some charitable groups choose to not legally form
2 as their own nonprofit corporation and rely on the infrastructure and tax-exempt status of a fiscal
3 sponsor in order to further their charitable purpose). Thus, RJC program management staff
4 entered into annual agreements with ZeroDivide that established the fiscal sponsor relationship,
5 and enabled RJC to operate as a ZeroDivide program. As part of this arrangement, ZeroDivide
6 provided administrative and financial management support to RJC, and the ability for RJC
7 program donors to receive tax-deductible donations. The fiscal sponsorship agreements provided
8 that either party could terminate the relationship at any time. Thus, it was important to carefully
9 account for and properly hold donations from RJC program donors in case the relationship was
10 terminated, and ZeroDivide needed to transfer RJC program donations to another fiscal sponsor.
11 Beyond this, ZeroDivide operated the RJC program like its other programs.

12 26. Typically, ZeroDivide would submit grant applications to the donors for its Digital
13 Bridge and RJC programs, which described the particular purposes for how their donations would
14 be spent. When donors granted funds, a grant agreement or contract would be executed between
15 ZeroDivide and the donor, which typically would incorporate the grant application, or a grant
16 award letter would be sent (“grant agreement(s)”). The grant agreements stated or implied the
17 donated funds could only be used for the purpose that they were given. In other words, the
18 donations were restricted, and ZeroDivide was obligated to comply with the restrictions specified
19 by the applicable donor. This was consistent with ZeroDivide’s finance policies and procedures
20 and generally accepted accounting principles. At times, the grant agreements specified by line
21 item how much of the funds could be spent for a particular budget category (like personnel and
22 benefits and travel expenses), and the time period that the funds could be spent. ZeroDivide also
23 typically needed to provide financial reports to the applicable donors that described how the
24 donations were spent consistent with the restricted purpose for granting the funds, along with a
25 financial accounting.

26 27. Sometimes, Digital Bridge and RJC program donors would provide their entire donation
27 up front before ZeroDivide began work pursuant to a grant agreement. Other times, a portion of
28 the donation would be provided up front, and outstanding payments were made in installments

1 over the course of the applicable grant’s time period. In other instances, like when public entities
2 were involved with the Digital Bridge program, ZeroDivide would be paid “in arrears.” This
3 meant ZeroDivide would perform the work and get reimbursed for the expenses incurred
4 thereafter.

5 28. When ZeroDivide was paid in arrears, it used another funding source to cover the
6 expenses incurred, like unrestricted funding sources. Unrestricted funding sources included
7 investment income, loans, and money given by donors that could be used for any expense
8 consistent with ZeroDivide’s mission, as opposed to donations given for particular purposes (like
9 the donations provided by The California Endowment, The California Wellness Foundation, Ford
10 Foundation, and Vesper Society described above). Unrestricted funding is also what nonprofits,
11 like ZeroDivide, rely on to cover their non-program expenses like general operating costs.
12 Examples of general operating costs include paying for the salary and benefits of staff that do not
13 work on particular programs, and administrative costs (rent, utility bills, technology equipment,
14 and office supplies).

15 **II. AS ZERODIVIDE’S FINANCIAL CONDITION WORSENE, THE DIRECTORS AND**
16 **OFFICERS PERMITTED AND FAILED TO PREVENT THE MISSPENDING OF**
17 **RESTRICTED DONATIONS**

18 29. From 2013 to 2016, ZeroDivide relied heavily on restricted donations to provide its
19 charitable programs, including its Digital Bridge and RJC programs. Meanwhile its unrestricted
20 revenue was limited and shrinking. For instance, internal reports indicated ZeroDivide had
21 approximately \$6,000 of unrestricted revenue from donations at the end of 2014, in addition to
22 investment income and loan proceeds. ZeroDivide closed its main investment account in June
23 2015 given its depletion over time to pay for ZeroDivide’s expenses, and revenue from another
24 investment account was written off given a market crash for the underlying investment.
25 ZeroDivide also had very limited unrestricted revenue in 2015, including approximately \$1,400
26 of unrestricted revenue from donations.

27 30. Since 2013, ZeroDivide’s revenue persistently declined, and Guillermo and Veneziano
28 failed to meet financial targets set by ZeroDivide’s board of directors. For instance, at the end of

1 2014, ZeroDivide’s total revenue was 70% lower than what was budgeted, while its change in
2 total net assets (total revenue minus total expenses) was over 500% worse than what was
3 budgeted. Thus, the Directors and Officers had a duty to carefully monitor ZeroDivide’s revenue
4 and expenses, and ensure restricted funds given by donors for specific program work were not
5 “dipped into” or “borrowed” to cover unauthorized expenses. Not only does borrowing restricted
6 funds mean that ZeroDivide failed to comply with the donor-imposed restrictions, its finance
7 policies, generally accepted accounting principles, and the law, but it created a vicious cycle of
8 trying to replenish the borrowed restricted funds with other restricted donations received at a later
9 date, even though unrestricted revenue was not reasonably foreseeable to pay back the restricted
10 funds.

11 31. In January 2015, ZeroDivide’s board of directors established a process to monitor
12 ZeroDivide’s finances on a quarterly basis should 2015 budget goals not be met for that year. If
13 first quarter expenses were over budget by a certain percentage, and ZeroDivide’s revenue or cash
14 balance dropped below a certain amount in the first quarter, Guillermo and Veneziano were to
15 present options for correction, such as changes in program execution, expense reductions, or
16 dissolution. If ZeroDivide’s cash balance were to drop below \$400,000 in the second quarter
17 (which happened), this was flagged as especially problematic, as ZeroDivide would be obligated
18 to payback a loan it used to cover its expenses, thus exacerbating the financial crisis.

19 32. The process the board of directors established, as described above, was inappropriate, as
20 it was predicated on borrowing restricted donations earmarked for particular programs, like the
21 Digital Bridge and RJC programs, and using them to cover unauthorized general operating
22 expenses, or expenses on other programs a donor did not provide its donation for (like program
23 work paid in arrears). For instance, board materials on ZeroDivide’s cash projections in early
24 2015 stated or implied restricted assets had begun to be used in this way starting in October or
25 November 2014. An October 2014 presentation also discussed the risk of “dipping further into
26 restricted funds” in 2015. Thus instead of addressing the misuse of restricted donations, the
27 Directors and Officers failed to correct it as they should have consistent with the fiduciary duties
28 they owed ZeroDivide’s charitable beneficiaries and donors. This is especially the case for

1 Guillermo and Veneziano given they oversaw the day-to-day management of ZeroDivide's
2 operations and finances during this time.

3 33. Even if certain Directors and Officers claimed they were not aware of restricted
4 donations being misused in late 2014, ZeroDivide's 2015 budget and financial statements, which
5 the Directors and Officers were responsible for reviewing and understanding (and approving, in
6 the case of the budget), gave them notice of the misuse of restricted funds. Beginning in March
7 2015, ZeroDivide's financial statements showed that ZeroDivide had a negative unrestricted total
8 net asset balance, and that its total net assets were less than its total restricted assets balance. This
9 was also the case for the 2015 budget and projected asset balances by the end of 2015. When this
10 occurs, it can mean that a nonprofit, like ZeroDivide, has borrowed from or misspent restricted
11 funds held in trust to cover the nonprofit's charitable programs. At the very least, this signals that
12 the spending of restricted funds should be investigated, and that procedures be put in place to
13 prevent or correct the misspending. The Directors and Officers failed to do this.

14 34. Instead, in June 2015, the board of directors received and discussed proposals from
15 Guillermo and Veneziano on how to address the financial crisis. The first proposal was to shut
16 down ZeroDivide altogether. This proposal made clear that RJC restricted donations had been
17 misused. This is because ZeroDivide was RJC's fiscal sponsor, and the program would need to be
18 transferred to a new fiscal sponsor if Zero Divide shut down altogether. At the same time, a
19 restricted net asset release schedule provided to the Directors and Officers revealed that
20 ZeroDivide had an estimated \$702,000 balance of restricted donations for the RJC program. Yet
21 Guillermo and Veneziano's proposal stated, "There will not be enough cash to cover RJC assets.
22 The plan assumes that a workout plan can be negotiated with funders" and the proposal was
23 "problematic due to lack of sufficient funds to transfer [RJC restricted] assets to the new
24 organization." A June 2015 memorandum from Veneziano to ZeroDivide's board finance and
25 investment committee, which Edwards, Guillermo, and Quan were members of, also described
26 the borrowing of restricted donations earmarked for the RJC program.

27 35. Guillermo and Veneziano's second proposal allowed ZeroDivide to continue to operate
28 with expense reductions and plans to transition some of its charitable programs to other

1 nonprofits (but not the RJC program). For instance, ZeroDivide would no longer pay its rent and
2 move to cheaper office space, and the roles that Guillermo and Veneziano performed would be
3 eliminated. Then, they would respectively serve as volunteer CEO and CFO. This proposal was
4 premised on the ongoing misspending of restricted funds, which the Directors and Officers knew
5 based on their discussions during this time, in addition to reviewing the proposals and other
6 information provided. At a June 2015 board of directors meeting, wherein a negative unrestricted
7 net asset balance and “borrowing” were discussed, the board approved this proposal with an
8 amendment that allowed for possible dissolution. Notably, this proposal failed to address or
9 correct the misspending of donations restricted to at least ZeroDivide’s RJC program.

10 36. Consistent with this board-approved proposal, Guillermo and Veneziano were laid off in
11 September 2015. Guillermo continued to serve as a director, and both Guillermo and Veneziano
12 served as volunteer officers.

13 37. Since June 2015, ZeroDivide’s financial records confirmed dire financial distress, and
14 that donations given for ZeroDivide’s RJC program appeared to be misappropriated and spent on
15 expenses unrelated to the RJC program. For instance, ZeroDivide’s bank statements revealed very
16 low balances, and reflected deposits or electronic transfers of RJC restricted donations in July and
17 September 2015, which were promptly spent down for salary and benefits expenses for all staff at
18 ZeroDivide (as opposed to the staff who only worked on the RJC program). Meanwhile, little to
19 no unrestricted funding was available around these times. ZeroDivide’s cash balance at the end of
20 2015 was also around \$127,000, yet financial statements prepared by a CPA firm showed
21 ZeroDivide had a restricted net asset balance of about \$805,000 or \$905,000 (all restricted for the
22 RJC program). ZeroDivide also did not receive any unrestricted donations in 2016.

23 38. ZeroDivide ceased operating and laid off its staff in June 2016 when it ran out of money
24 to operate, even though there was work to be completed on the Digital Bridge and RJC programs
25 given the large donations made to fund those programs through the duration of 2016.

26 39. About \$76,000 of donations provided by The California Wellness Foundation and The
27 California Endowment for specific projects of the Digital Bridge programs were misspent by
28 ZeroDivide on unauthorized purposes. For instance, ZeroDivide could not purchase certain

1 software and hardware for the nonprofits they served, even though these donors gave funds
2 specifically for this purpose.

3 40. As for the RJC program, an estimated \$530,000 of donations from Ford Foundation,
4 Vesper Society, The Whitman Institute, and Wyncote Foundation were misappropriated. This
5 constitutes the balance of donations for the RJC program that were previously given by donors
6 specifically for this program, but for work to occur on that program after May or June 2016. As a
7 result, specific RJC projects were compromised. The Directors and Officers did not seek to
8 determine how much money was misspent and should have been transferred to RJC's new fiscal
9 sponsor around this time. Instead, they did not cooperate with requests from RJC and donors
10 about the missing money. In July 2020, after ZeroDivide received unanticipated investment
11 income, it transferred about \$93,000 to RJC's new fiscal sponsor.

12 41. If the Directors and Officers acted consistent with the fiduciary duties they owed
13 ZeroDivide's charitable beneficiaries and donors, the misuse of donations earmarked for the
14 Digital Bridge and RJC programs would not have happened. Guillermo and Veneziano
15 demonstrated they were ineffective at managing the finances of ZeroDivide in 2014 and 2015.
16 Thus, the other Directors and Officers should have been more involved, less reliant on Guillermo
17 and Veneziano, and more skeptical about information or opinions provided by them. This is
18 particularly the case around June 2015 and thereafter. The Directors and Officers also should not
19 have adopted a plan in June 2015 that was premised on misusing restricted donations, especially
20 donations given after this time. These donations were restricted for specific future programs and
21 should not have been spent on ZeroDivide's general operating expenses, particularly given the
22 persistent lack of available unrestricted funds.

23 42. Furthermore, the Directors and Officers failed to review or carefully review
24 ZeroDivide's finances from June 2015 to June 2016, as they should have given the financial crisis
25 and the fiduciary duties owed to ZeroDivide's charitable beneficiaries and donors. If they had
26 done this, the Directors and Officers should have realized it would have been best to decline
27 donations from RJC program donors in July and September 2015 described in paragraph 37, and
28 other restricted donations. It was clear then that ZeroDivide would not be able to comply with the

1 donor-imposed restrictions, and it was unreasonable to expect that ZeroDivide would receive
2 adequate unrestricted funds to continue its operations. The Directors and Officers failed to
3 exercise care in managing ZeroDivide since at least June 2015, and in preventing the misspending
4 of donations.

5 **III. THE DIRECTORS AND OFFICERS MISMANAGED ZERODIVIDE BEYOND**
6 **MISAPPROPRIATING RESTRICTED DONATIONS**

7 43. The Directors and Officers mismanaged ZeroDivide in other ways:

8 a. ZeroDivide maintained inaccurate financial statements related to the receipt and
9 spending of RJC program funds. For instance, ZeroDivide's reports on the release of restricted
10 net assets falsely stated the balances of donations for the RJC program that remained unspent in
11 2014 and 2015.

12 b. ZeroDivide's financial records were not maintained as of early May 2016.
13 ZeroDivide also failed to maintain, as required by law, an annual report for at least 2016 that
14 detailed assets and liabilities, the principal changes in assets and liabilities, revenue or receipts of
15 the corporation both unrestricted and restricted, and expenses or disbursements both general and
16 restricted.

17 c. ZeroDivide failed to file a different set of annual reports with the Attorney
18 General's Registry of Charitable Trusts for at least 2015 and 2016. Charitable organizations such
19 as ZeroDivide must file an Annual Registration Renewal Fee Report (Form RRF-1) and a copy of
20 the Return of Organization Exempt from Income Tax filed with the IRS (Form 990) with the
21 Attorney General's Registry. Also for any year that the balance sheet shows negative unrestricted
22 net assets, the organization must provide to the Registry an explanation of its compliance with
23 trust responsibilities and proof of directors' and officers' liability insurance coverage
24 (Explanation of Compliance). These are important documents the Attorney General's Office
25 reviews to detect wrongdoing and prevent misuse of charitable assets. The Attorney General also
26 makes the reports publicly available on the Attorney General's website in order to educate and
27 promote accountability to donors and the public at large. ZeroDivide failed to file with the
28 Registry a Form RRF-1 and a Form 990 for at least fiscal years 2015 and 2016, and an

1 Explanation of Compliance for at least fiscal year 2015. These failures caused ZeroDivide's
2 registration to be suspended by the Attorney General. Meanwhile, the failure to file a Form 990
3 with the IRS and Franchise Tax Board caused ZeroDivide's tax-exempt status to be revoked.

4 d. ZeroDivide failed to maintain minutes of a board finance and investment committee
5 meeting held in June 2015, a board executive committee meeting held in June 2015, and board of
6 director meetings held in late May and June 2016. These are documents that would have indicated
7 key deliberations and decisions, if any, on ZeroDivide's finances and management during its
8 financial crisis.

9 44. The Directors and Officers have committed and continue to commit the breaches of
10 fiduciary duty, violations of trust, violations of law and other wrongful acts as alleged herein. In
11 order to preserve charitable assets and to prevent waste, dissipation and loss of charitable assets in
12 this State to the irreparable damage of the People, it is necessary that the requested injunctive
13 relief be granted, charitable funds recovered on behalf of the People, and penalties assessed
14 against Defendants.

15 45. Unless otherwise stated herein, the actions and omissions forming the bases of the
16 causes of action alleged in this Complaint occurred on or after January 1, 2013. Unless otherwise
17 stated in this Complaint, the People did not have knowledge or information of the facts and
18 circumstances underlying these causes of action before March 10, 2017, when ZeroDivide
19 responded to the Attorney General's first document demand in connection with the Attorney
20 General's audit of ZeroDivide. Furthermore, the materials produced on March 10, 2017 were
21 incomplete. The People did not discover these circumstances before that date, and could not in the
22 exercise of reasonable diligence have discovered them before that date.

23 **FIRST CAUSE OF ACTION**
24 **BREACH OF FIDUCIARY DUTY**
25 **(Against All Defendants but for ZeroDivide)**

26 46. Plaintiff re-alleges and incorporates by reference each and every allegation of this
27 Complaint.

28 47. The Directors and Officers each have or had a fiduciary relationship owed to
ZeroDivide, and its charitable beneficiaries and donors. The fiduciary relationship was

1 established by statute (Bus. & Prof. Code, § 17510.8, Corp. Code, § 5231) and common law. For
2 instance, Business & Professions Code section 17510.8 states that a charitable organization, like
3 ZeroDivide, and any person soliciting on behalf of the organization, like Guillermo and
4 Veneziano, have a duty to use the donations only for the declared charitable purposes for which
5 the donations were sought. ZeroDivide's board of directors was and continues to be responsible
6 for the activities and affairs of the corporation (Corp. Code, § 5210), and thus, for ensuring that
7 donations were only spent for the purposes they were given. ZeroDivide's directors were required
8 to perform their duties as members of the board of directors and any board committees on which
9 they served, in good faith, in a manner that each director believed to be in the best interests of the
10 ZeroDivide, and with such care, including reasonable inquiry, as an ordinarily prudent person in a
11 like position would have used under similar circumstances. (*Id.*, § 5231.) Similarly, based on
12 common law, ZeroDivide's officers were and continue to be required to scrupulously protect the
13 interests of ZeroDivide, to act in good faith and with best efforts, and to refrain from doing
14 anything that injures the corporation.

15 48. The Directors and Officers breached their fiduciary duties as described in this
16 Complaint. This includes:

17 a. Guillermo and Veneziano intentionally misspent donations restricted by donors for
18 particular charitable programs offered by ZeroDivide (the Digital Bridge and RJC programs), and
19 instead spent the donations on unauthorized expenses, which was inconsistent with ZeroDivide's
20 finance policies, donor-imposed restrictions reflected in grant agreements, generally accepted
21 accounting principles, and California law (e.g., Bus. & Prof Code, §§ 17510.5, 17510.8);

22 b. Edwards, Iwataki, Murchinson, and Quan authorized or permitted Guillermo and
23 Veneziano to misspend these donations, and failed to prevent the misspending, especially on or
24 around June 2015 and thereafter;

25 c. Edwards, Iwataki, Murchinson, and Quan failed to adequately review and consider
26 ZeroDivide's financial reports that demonstrated or signaled the misspending of restricted
27 donations, and also approved a budget demonstrating the same;

28

1 d. Veneziano prepared inaccurate financial statements, in particular relating to RJC
2 program donations, which the other Directors and Officers failed to ensure were correct;

3 e. Edwards, Guillermo, Iwataki, Murchinson, and Quan failed to maintain, or ensure
4 that ZeroDivide's financial records were maintained from early May 2016 to the time when
5 ZeroDivide ceased operating in June 2016, including annual financial reports for at least 2016;

6 f. Edwards, Guillermo, Iwataki, Murchinson, and Quan failed to file certain annual
7 reports with the Attorney General's Registry of Charitable Trusts for at least fiscal years 2015 and
8 2016 (at a minimum Forms RRF-1 and 990 for 2015 and 2016, and an Explanation of
9 Compliance for 2015);

10 g. The Directors and Officers failed to maintain board of director meeting minutes and
11 board committee meeting minutes for any committees they participated in and minutes were not
12 taken, including board minutes since late May 2016, board finance and investment committee
13 minutes in June 2015, and board executive committee minutes in June 2015.

14 49. As a direct and proximate result of the Directors and Officers breaching their fiduciary
15 duties and pursuant to Corporations Code sections 5142 and 5250, the People suffered currently
16 known damages, in an amount to be proven at trial, of about \$512,000. This comprises the
17 estimated amount of donations earmarked for particular ZeroDivide charitable programs that were
18 misappropriated (about \$606,000) through June 2016, minus the amount (about \$93,000)
19 ZeroDivide later repaid to the fiscal sponsor that took responsibility for providing the RJC
20 program after ZeroDivide ceased operating. The People also seek interest at the legal rate,
21 injunctive relief, and other remedies as may be appropriate.

22 **SECOND CAUSE OF ACTION**
23 **MISREPRESENTATIONS IN SOLICITATIONS**
24 **(Against Defendants ZeroDivide, Guillermo, Veneziano)**

25 50. Plaintiff re-alleges and incorporates by reference each and every allegation of this
26 Complaint.

27 51. Government Code section 12599.6 prohibits misleading and deceptive charitable
28 solicitations. Charitable organizations, like ZeroDivide, are prohibited from misrepresenting the
nature, purpose, or beneficiary of a solicitation. (Gov. Code, § 12599.6, subd. (a).)

1 52. ZeroDivide, Guillermo, and Veneziano violated Government Code section 12599.6,
2 subdivision (a), by misrepresenting to donors the nature, purpose, or beneficiary of a solicitation,
3 and using unfair, deceptive, or fraudulent business practices in solicitations, as described in this
4 Complaint. For instance, ZeroDivide, Guillermo, and Veneziano, intentionally misrepresented
5 that donations solicited for specific programmatic work for the RJC program would only be used
6 for those purposes, when that was not the case. This deception also occurred for certain Digital
7 Bridge program work.

8 53. As a result, the People seek restitution, civil penalties, injunctive relief, and other relief
9 as may be appropriate to ensure the due application of charitable funds. (Gov. Code, § 12591.1,
10 subds. (a), (f).)

11 **THIRD CAUSE OF ACTION**
12 **FAILURE TO FILE REPORTS**
13 **(Against Defendants ZeroDivide, Guillermo, Edwards, Iwataki, Murchinson, Quan)**

14 54. Plaintiff re-alleges and incorporates by reference each and every allegation of this
15 Complaint.

16 55. Charitable organizations such as ZeroDivide must annually file a Form RRF-1 and Form
17 990 with the Attorney General's Registry of Charitable Trusts. Also, for any year that the balance
18 sheet of a charitable organization holds restricted net assets, while reporting negative unrestricted
19 net assets, the organization must provide to the Attorney General's Registry an Explanation of
20 Compliance with its charitable trust responsibilities and proof of directors' and officers' liability
21 insurance coverage. For organizations like ZeroDivide whose fiscal years correspond with a
22 calendar year, the filings must be made, along with payment of a renewal fee, no later than May
23 15 of the following year. (Gov. Code §§ 12586, 12591.1, subd. (b)(3), 12599.8; Cal Code Regs.,
24 tit. 11, §§ 301-306, 311, 314, subd. (a)(3), & 999.9.2, subd. (a).)

25 56. ZeroDivide, Edwards, Guillermo, Iwataki, Murchinson, and Quan failed to file annual
26 reports with the Registry of Charitable Trusts as described in paragraphs 43 and 48. For example,
27 they never filed a Form RRF-1 and a Form 990 for at least 2015 and 2016, with corresponding
28 fees. ZeroDivide failed to provide an Explanation of Compliance for 2015, when ZeroDivide had
negative unrestricted net assets on its year ending balance sheet. These reports were required to

1 be filed by May 15 in 2016 and 2017 respectively, and were not filed. ZeroDivide, Edwards,
2 Guillermo, Iwataki, Murchinson, and Quan violated Government Code sections 12586, 12591.1,
3 subdivision (b)(3), 12599.8, and California Code of Regulations, title 11, sections 301 through
4 306, 311, 314, subdivision (a)(3), and 999.9.2, subdivision (a).

5 57. The People seek late fees, injunctive relief, and other relief as may be appropriate to
6 ensure the due application of charitable funds. (Gov. Code, §§ 12586.1, 12591.1, subd. (f).)

7 **FOURTH CAUSE OF ACTION**
8 **INADEQUATE AND INCORRECT BOOKS AND RECORDS**
9 **(Against All Defendants)**

10 58. Plaintiff re-alleges and incorporates by reference each and every allegation of this
11 Complaint.

12 59. Corporations Code sections 6320 and 6321 require ZeroDivide to maintain certain books
13 and records, including adequate and correct books and records of account, minutes of the
14 proceedings of its board of directors and board committees, and an annual financial report.

15 60. Defendants violated Corporations Code sections 6320 and 6321, by failing to maintain,
16 or failing to adequately and correctly maintain, ZeroDivide's records as described in paragraphs
17 43 and 48. For instance, ZeroDivide maintained inaccurate financial statements related to RJC
18 program funds. ZeroDivide's financial records also were not maintained as of early May 2016,
19 even though ZeroDivide incurred expenses thereafter. Defendants did not maintain reports to be
20 filed with the Attorney General's Registry of Charitable Trusts for at least 2015 and 2016, and a
21 separate annual financial report for at least 2016. Furthermore, important meeting minutes of
22 ZeroDivide's board of directors, board executive committee, and board finance and investment
23 committee were not kept.

24 61. The People request injunctive relief, and other remedies as may be appropriate. (Corp.
25 Code, §§ 5142, 5250.)

26 **PRAYER FOR RELIEF**

27 WHEREFORE, the People pray for the following relief:

28 1. Judgment in the People's favor and against Defendants on all causes of action alleged
herein;

1 2. For an order dissolving ZeroDivide pursuant to Corporations Code section 6510 et seq.,
2 which provides for involuntarily dissolving a nonprofit public benefit corporation based on
3 grounds including ZeroDivide has abandoned its activity for more than one year; ZeroDivide is
4 failing, and has continuously failed to carry out its purposes; and ZeroDivide has violated statutes
5 regulating charitable organizations, as indicated in this Complaint;

6 3. For an order, under Corporations Code sections 5142 and 5250 and Government Code
7 section 12591.1, prohibiting Guillermo and Veneziano from violating California's charitable
8 trusts laws;

9 4. For an order, under Corporations Code sections 5142 and 5250 and Government Code
10 section 12591.1, prohibiting Guillermo and Veneziano from acting as a founder, officer, director,
11 agent, employee, or a fiduciary for any charitable corporation, charitable association, charitable
12 organization, or charitable trust doing business in California for three years;

13 5. For an order, under Corporations Code sections 5142 and 5250 and Government Code
14 section 12591.1, prohibiting Guillermo and Veneziano from soliciting or holding charitable
15 donations and assets in California or from any resident of California for three years;

16 6. For damages and restitution in an amount to be proven at trial, plus interest at the legal
17 rate until paid;

18 7. For civil penalties under Government Code section 12591.1;

19 8. For late fees under Government Code section 12586.1;

20 9. For attorney's fees, costs of suit, and other costs as provided in Government Code
21 sections 12597 and 12598, Code of Civil Procedure section 1021.8, and as otherwise permitted by
22 law; and

23 10. For such other relief as the Court may deem just and proper.

24 THIS COMPLAINT IS DEEMED VERIFIED UNDER THE PROVISIONS OF CODE OF
25 CIVIL PROCEDURE SECTION 446.

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Dated: April 5, 2022

Respectfully Submitted,
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