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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13 **Western Division**

14
15 **SECURITIES AND EXCHANGE**
16 **COMMISSION,**

17 **Plaintiff,**

18 **vs.**

19 **KEITH HUNTER,**

20 **Defendant.**
21

Case No.:

COMPLAINT

22 Plaintiff Securities and Exchange Commission (“SEC”) alleges:

23 **JURISDICTION AND VENUE**

24 1. The Court has jurisdiction over this action pursuant to Sections 20(b),
25 20(d)(1), 20(e), and 22(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C.
26 §§ 77t(b), 77t(d)(1), 77t(e) & 77v(a), and Sections 21(d), 21(e) and 27 of the
27 Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78u(d), 78u(e) &
28

1 78aa.

2 2. Venue is proper in this district pursuant to Section 22(a) of the Securities
3 Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C. § 78aa
4 because certain of the transactions, acts, practices and courses of conduct constituting
5 violations of the federal securities laws occurred within this district.

6 **SUMMARY**

7 3. This case involves a financial fraud perpetrated on Computer Sciences
8 Corporation (“CSC”) by Defendant Keith Hunter, the former Executive Vice
9 President of Information Technology (“IT”) Engineering at Commonwealth Bank of
10 Australia (“CBA”), and a second person (the “Scheme Partner”), who was CSC’s
11 Executive Vice President of Cloud Computing. The Scheme Partner bribed Hunter
12 with a kickback in return for Hunter causing CBA to enter into contracts with CSC in
13 December 2013 and January 2014, for the purpose of inflating CSC’s revenues by
14 over \$10 million. The purpose of falsely inflating CSC’s revenue was to meet a \$20
15 million threshold for an additional approximately \$98 million “earn-out” payment
16 that the Scheme Partner was to share in as the consequence of CSC’s November 2013
17 acquisition of ServiceMesh, Inc. (“SMI”), a private cloud computing company based
18 in Santa Monica, California. The Scheme Partner, a majority shareholder of SMI at
19 the time it was sold to CSC, received over \$30 million of the additional \$98 million
20 earn-out payment, and funneled at least \$630,000 to Hunter through a purported
21 charitable organization. On March 17, 2015, the New South Wales Police arrested
22 Hunter in Sydney, Australia for his receipt of bribes. Hunter has admitted his role in
23 the scheme to defraud CSC and the bribes that he received from the Scheme Partner
24 in return for his participation in the unlawful conduct.

25 4. The SEC seeks permanent injunctive relief against Hunter from
26 violations of the antifraud provisions of the federal securities laws, disgorgement of
27 Hunter’s ill-gotten gains with prejudgment interest thereon, and an officer and
28 director bar.

1 **DEFENDANT AND RELEVANT ENTITIES**

2 5. **Keith Hunter** is a U.S. citizen who was CBA’s Executive Vice
3 President of IT Engineering from June 2011 until his termination on December 24,
4 2014 for the conduct alleged in this Complaint. Hunter is currently awaiting criminal
5 sentencing in Sydney, Australia for his receipt of bribes from the Scheme Partner.

6 6. **SMI** was a privately-owned cloud software company based in Santa
7 Monica, California. SMI’s main product was the patented Agility Platform, a
8 consolidated hybrid cloud system designed for large-scale businesses. The Scheme
9 Partner was the founder and President of SMI. On November 15, 2013, SMI was
10 acquired by CSC and the Scheme Partner was named CSC’s Executive Vice
11 President of Cloud Computing.

12 7. **CSC** is a computer science and information technology company
13 incorporated in Nevada and headquartered in Falls Church, Virginia. CSC’s common
14 stock is registered with the U.S. Securities and Exchange Commission under Section
15 12(b) of the Securities Exchange Act of 1934 and trades on the New York Stock
16 Exchange.

17 8. **CBA** is a multinational bank headquartered in Sydney, Australia.
18 CBA’s common stock trades on the Australian Stock Exchange.

19 **ALLEGATIONS**

20 **A. Hunter’s Relationship with SMI and the Scheme Partner**

21 9. The Scheme Partner founded SMI in 2008. SMI’s main product was the
22 Agility Platform (“Agility”), a subscription-based cloud software program that
23 enables large financial, healthcare, and retail institutions to implement a cloud-based
24 IT infrastructure. SMI began selling Agility in 2010.

25 10. SMI entered into a Master Supply Agreement with CBA on February 2,
26 2011, pursuant to which SMI agreed to provide CBA with Agility software, upgrades,
27 services, and other related clouds products on an ongoing basis.

28 11. In June 2011, four months after the MSA was signed, CBA hired Hunter

1 as its Executive Vice President of IT Engineering to manage the development and
2 implementation of CBA's new cloud computing strategy using SMI's Agility
3 Platform. CBA asked the Scheme Partner to interview Hunter before he was hired to
4 make sure Hunter would be a good fit for the implementation of the cloud strategy.

5 12. Immediately after joining CBA, Hunter began working with the Scheme
6 Partner, holding weekly phone calls with him and socializing with him fairly
7 frequently.

8 **B. CSC's Acquisition of SMI Includes an "Earn-out Payment"**

9 13. In 2013, CSC agreed to purchase all of SMI's shares pursuant to an
10 Equity Purchase Agreement ("Agreement") dated October 29, 2013. Under the terms
11 of the Agreement, CSC was to make an initial cash payment of \$163,261,172 to SMI
12 plus a potential earn-out payment of up to \$137,014,548 to SMI's shareholders
13 depending on revenues earned by SMI's operations for the period from January 1,
14 2013 through January 31, 2014 (the "Measurement Period").

15 14. The Earn-out Payment was contingent on SMI's operations meeting a
16 revenue target during the Measurement Period. Under the terms of the Agreement,
17 CSC was to pay SMI shareholders approximately \$10.15 for every dollar of revenue
18 SMI generated on a stand-alone basis if it met a revenue threshold of \$20 million
19 during the Measurement Period. The Earn-out Payment was due to be paid in early
20 2014, after the end of the Measurement Period.

21 15. CSC closed its purchase of SMI on November 15, 2013. Following the
22 closing, SMI became a wholly-owned subsidiary of CSC, the Scheme Partner became
23 CSC's Executive Vice President of Cloud Computing, and the majority of SMI's
24 workforce became CSC employees.

25 16. When CSC's acquisition of SMI closed, the Scheme Partner received
26 approximately \$26 million for his shares of SMI as well as a \$13 million bonus
27 payment and an additional \$9 million cash payment.

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1 **C. The Scheme to Defraud CSC**

2 **1. Hunter Agrees to Help the Scheme Partner Generate Earn-out**
3 **Revenue in Exchange for a Kickback**

4 17. Hunter learned in September 2013 that CSC planned to acquire SMI, and
5 understood that the terms would include an earn-out clause pursuant to which SMI
6 shareholders could receive an additional payment based on SMI's software revenue
7 generated through the end of January 2014.

8 18. Later in September 2013, Hunter traveled with another CBA executive
9 to SMI's Santa Monica office for in-person meetings. During one of the meetings
10 attended by Hunter, the Scheme Partner, and others, the Scheme Partner offered to
11 pay a kickback to Hunter and two of his CBA colleagues in return for helping SMI
12 shareholders maximize their Earn-out Payment from CSC.

13 19. Hunter and at least one other CBA employee agreed to help the Scheme
14 Partner generate revenue for SMI through sales to CBA in exchange for the offered
15 kickback.

16 **2. Hunter Causes CBA to Enter Into Two Deals With CSC**

17 **a. CBA Buys McAfee Software from CSC**

18 20. In early December 2013, Hunter began to lobby for CBA's immediate
19 approval of a proposal for CSC to provide McAfee security software and services.
20 While two other companies had offered competitive bids to supply the software,
21 including McAfee itself, Hunter touted the benefits of the deal with CSC and
22 squelched dissenting views voiced by other CBA employees who expressed concerns
23 about CBA buying the McAfee security software so quickly, or from SMI rather than
24 another vendor.

25 21. On or about December 17, 2013, a CBA employee working in league
26 with Hunter wrote an email to other CBA employees responsible for approving the
27 deal that had raised concerns about the deal that "Keith [Hunter] and I want this
28 sorted out ASAP – with the next 48 hours."

1 22. CBA approved the purchase of McAfee software from CSC on
2 December 23, 2013.

3 23. Between the date that CBA approved the purchase from CSC and the
4 end of the Measurement Period on January 31, 2014, CBA's purchase of McAfee
5 software from CSC generated over \$5 million of earn-out revenue that counted
6 towards the Earn-out Payment due to the sellers of SMI.

7 **b. CBA Purchases Pivotal Software From CSC**

8 24. Near the end of January 2014, SMI's total revenues for the Measurement
9 Period were still below the \$20 million threshold for the Earn-out Payment, in which
10 case the SMI shareholders would receive nothing.

11 25. Prior to January 25, 2014, employees of CBA had discussed the
12 possibility, at some point in the future, of purchasing Pivotal Cloud Foundry software
13 and services designed to supplement the Agility platform. No decisions had been
14 made as of that date.

15 26. On January 25, 2014, Hunter signed nine individual contracts for CBA
16 to purchase Pivotal software from CSC.

17 27. Hunter and the Scheme Partner structured CBA's purchase of Pivotal
18 software from CSC as nine separate contracts, so that each contract amount fell below
19 \$1 million AUD, which was Hunter's dollar level of signatory authority at CBA. By
20 breaking the purchase into several smaller contracts, Hunter and the Scheme Partner
21 circumvented CBA's internal policy requiring contracts over \$7 million AUD to be
22 reviewed and approved by higher-level executives.

23 28. CBA's January 2014 purchase of Pivotal software from CSC generated
24 over \$5.4 million USD of revenue for CSC, which counted toward the revenue target
25 threshold to obtain SMI's Earn-out Payment.

26 29. CSC realized revenue of over \$10 million from the two CBA software
27 purchases finalized by Hunter and the Scheme Partner in December 2013 and January
28 2014. These two transactions raised the earn-out revenue above the \$20 million

1 threshold, and but for those transactions and the revenue they generated, the SMI
2 shareholders would not have received an Earn-out Payment.

3 **3. The Scheme Partner Reaps His Ill-Gotten Gains and Pays Hunter a**
4 **\$630,000 Kickback from His Earn-out Proceeds**

5 30. From January 31 to March 14, 2014, CSC's technical accounting team
6 and three outside accounting firms reviewed the revenue attributable to SMI's stand-
7 alone operations, including the post-acquisition contracts with CBA, to determine
8 whether they met CSC's requirements for revenue recognition and the Agreement's
9 provisions for an Earn-out Payment to the SMI shareholders.

10 31. As part of the verification process, the Scheme Partner signed a
11 representation letter dated January 30, 2014, in which he falsely attested that CSC
12 had not entered into any contracts during the Measurement Period pursuant to "any
13 side letters or agreements (written or oral)."

14 32. CSC management, including its CFO, relied on the Scheme Partner's
15 representation that all of the revenue generated by SMI's stand-alone operations
16 during the Measurement Period was legitimately earned without any fraudulent
17 inducements not known to CSC management.

18 33. On March 14, 2014, pursuant to the Agreement and the provision for an
19 Earn-out Payment, CSC made an additional Earn-out Payment to SMI shareholders in
20 the amount of approximately \$98,034,058.

21 34. The Scheme Partner, who was a majority shareholder of SMI prior to the
22 acquisition, received over \$25 million of the additional Earn-out Payment in his
23 individual capacity, and an additional \$5.6 million through his wholly-owned
24 company.

25 35. The approximately \$98 million that CSC paid for the Earn-out Payment
26 constituted 11% of CSC's pre-tax income for the fiscal year ended March 31, 2014.

27 36. After the Scheme Partner received his Earn-out Payment millions, he
28 transferred a portion of his ill-gotten gains from his wholly-owned company's

1 account to his purported non-profit organization.

2 37. The Scheme Partner then caused Hunter to be paid a total of \$630,000
3 from the account of his purported non-profit organization.

4 38. On August 7, 2014, the Scheme Partner's purported non-profit
5 organization wired \$330,000 to Hunter's CBA account in Sydney, Australia.

6 39. On August 27, 2014, the Scheme Partner's purported non-profit
7 organization wired \$150,000 to Hunter's Bank of America account in Austin, Texas.

8 40. On September 23, 2014, the Scheme Partner's purported non-profit
9 organization wired another \$150,000 to Hunter's Bank of America account in Austin,
10 Texas.

11 **D. Hunter Conceals, and Then Admits, The Scheme to Defraud CSC**

12 41. In October 2014, CBA's group security unit ("CBA Security")
13 discovered anomalous wire transfers from the bank account of the Scheme Partner's
14 purported charitable organization to the bank accounts of a CBA executive who
15 traveled with Hunter to California in September 2013. CBA Security tried to
16 question Hunter about these transfers, but Hunter refused to talk about the payments
17 from the purported charitable organization to his colleague.

18 42. CBA Security subsequently reviewed Hunter's CBA bank account and
19 discovered the \$330,000 wire transfer from the Scheme Partner's purported charitable
20 organization. CBA Security asked Hunter to provide an explanation for the \$330,000
21 payment. In response, Hunter submitted a fabricated Statement of Work ("SOW")
22 dated May 5, 2014 on "Hunter Management Consulting" letterhead describing
23 management consulting work that he had purportedly provided to the Scheme
24 Partner's charitable organization. Hunter produced similar false SOWs for the
25 \$300,000 that had been wired from the purported charitable organization to Hunter's
26 Bank of America account in Texas.

27 43. CBA terminated Hunter on December 24, 2014.

28 44. The New South Wales Police arrested Hunter on March 17, 2015 on two

1 counts of bribery. Hunter initially pled not guilty to the charges. Hunter provided the
2 Australian authorities with the same fabricated SOWs he had provided to CBA, and
3 claimed that the Scheme Partner’s purported charitable organization had paid him for
4 legitimate charity-related work.

5 45. In late 2015, Hunter admitted his role in the scheme to defraud CSC.
6 Hunter admitted that the SOWs were false, and that he had created them in December
7 2014 on his home computer for the sole purpose of providing CBA Security with an
8 explanation for the payments. “Hunter Management Consulting” does not exist, and
9 Hunter was never asked to provide consulting services for the Scheme Partner’s
10 purported charitable organization.

11 46. At all relevant times, Hunter acted with scienter.

12 **FIRST CLAIM FOR RELIEF**

13 ***Violations of Sections 17(a)(1) and (3) of the Securities Act***

14 47. The SEC realleges and incorporates by reference paragraphs 1 through
15 46 above.

16 48. By engaging in the conduct described above, defendant Hunter directly
17 or indirectly, in connection with the offer or sale of securities, by use of the means or
18 instruments of transportation or communication in interstate commerce or by use of
19 the mails,

- 20 (1) with scienter, employed devices, schemes, and artifices to defraud;
- 21 and
- 22 (3) engaged in transactions, practices, or courses of business that
- 23 operated or would operate as a fraud or deceit upon purchasers.

24 49. By reason of the foregoing, defendant Hunter violated, and unless
25 restrained and enjoined, will continue to violate Section 17(a) of the Securities Act
26 [15 U.S.C. § 77q(a)].

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1 **SECOND CLAIM FOR RELIEF**

2 *Violations of Section 10(b) of the Exchange Act and*
3 *Rules 10b-5(a) and (c) Thereunder*

4 50. The SEC realleges and incorporates by reference paragraphs 1 through
5 46 above.

6 51. By engaging in the conduct set forth above, defendant Hunter directly or
7 indirectly, by use of means or instrumentalities of interstate commerce, or of the
8 mails, or of a facility of a national securities exchange, in connection with the
9 purchase or sale of securities, with scienter:

10 (a) employed devices, schemes, and artifices to defraud; and

11 (c) engaged in acts, practices, and courses of business that operated or
12 would operate as a fraud or deceit upon any person.

13 52. By reason of the foregoing, defendant Hunter violated, and unless
14 restrained and enjoined, will continue to violate Section 10(b) of the Exchange Act
15 [15 U.S.C. § 78j] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

16 **PRAYER FOR RELIEF**

17 WHEREFORE, the SEC respectfully requests that the Court:

18 **I.**

19 Permanently enjoin Hunter from directly or indirectly violating Section 17(a)
20 of the Securities Act [15 U.S.C. § 77q(a)] and Section 10(b) of the Exchange Act [15
21 U.S.C. § 78j] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] as alleged and
22 asserted above.

23 **II.**

24 Pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and Section
25 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], prohibit defendant Hunter
26 from serving as an officer or director of any entity having a class of securities
27 registered with the Commission pursuant to Section 12 of the Exchange Act [15
28 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the

1 Exchange Act [15 U.S.C. § 78o(d)].

2 **III.**

3 Order Hunter to disgorge all ill-gotten gains from his illegal conduct, together
4 with prejudgment interest thereon.

5 **IV.**

6 Retain jurisdiction of this action in accordance with the principles of equity and
7 the Federal Rules of Civil Procedure in order to implement and carry out the terms of
8 all orders and decrees that may be entered, or to entertain any suitable application or
9 motion for additional relief within the jurisdiction of this Court.

10 **V.**

11 Grant such other and further relief as this Court may determine to be just and
12 necessary.

13 Dated: September 27, 2016

14 /s/ Catherine W. Brilliant
15 Catherine W. Brilliant
16 Ansu N. Banerjee
17 John B. Bulgozdy
18 Attorneys for Plaintiff
19 Securities and Exchange Commission
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