

THE STATE OF NEW YORK
ALBANY CITY COURT: COUNTY OF ALBANY

THE PEOPLE OF THE STATE OF NEW YORK

-against-

ALAIN KALOYEROS and
JOSEPH NICOLLA,

Defendants.

FELONY COMPLAINT

*AAG Christopher Baynes
Public Integrity Bureau*

STATE OF NEW YORK)
COUNTY OF ALBANY) ss.:

Investigator Mark Spencer, a police officer with the Office of the New York State Attorney General ("OAG"), and the Complainant, accuses the following defendants: **ALAIN KALOYEROS**, with having committed three counts of Combination in Restraint of Trade and Competition in violation of General Business Law §§ 340 and 341; and **JOSEPH NICOLLA**, with having committed one count of Combination in Restraint of Trade and Competition in violation of General Business Law §§ 340 and 341.

COUNT ONE

Defendants **ALAIN KALOYEROS** and **JOSEPH NICOLLA** committed the crime of **COMBINATION IN RESTRAINT OF TRADE AND COMPETITION, in violation of General Business Law §§ 340 and 341**, a class E felony, from on or about October 30, 2014 through on or about November 12, 2015, in the City of Albany and elsewhere, County of Albany, State of New York, acting in concert with others known and unknown, by knowingly and intentionally entering into or engaging in or continuing to engage in a contract, agreement, arrangement, or combination in unreasonable restraint of competition or the free exercise of activity in the conduct of business, trade, and commerce, to wit: to restrain competition in the

bidding process of Fuller Road Management Corporation for a student housing project intended to be utilized by SUNY Polytechnic Institute in the vicinity of Loughlin Street, City of Albany, by means of bid rigging.

COUNT TWO

Defendant **ALAIN KALOYEROS** committed the crime of **COMBINATION IN RESTRAINT OF TRADE AND COMPETITION, in violation of General Business Law §§ 340 and 341**, a class E felony, from on or about November 15, 2010 through on or about May 1, 2014, in the City of Albany and elsewhere, County of Albany, State of New York, acting in concert with others known and unknown, by knowingly and intentionally entering into or engaging in or continuing to engage in a contract, agreement, arrangement, or combination in unreasonable restraint of competition or the free exercise of activity in the conduct of business, trade, and commerce, to wit: to restrain competition in the bidding process of Fuller Road Management Corporation by giving Contractor-1 (as defined below in paragraph 5), in exchange for a \$50,000,000 loan, a competitive advantage for projects intended to be utilized by SUNY Polytechnic Institute, by means of bid rigging.

COUNT THREE

Defendant **ALAIN KALOYEROS** committed the crime of **COMBINATION IN RESTRAINT OF TRADE AND COMPETITION, in violation of General Business Law §§ 340 and 341**, a class E felony, from on or about November 15, 2010 through on or about May 1, 2014, in the City of Albany and elsewhere, County of Albany, State of New York, acting in concert with others known and unknown, by knowingly and intentionally entering into or engaging in or continuing to engage in a contract, agreement, arrangement, or combination in unreasonable restraint of competition or the free exercise of activity in the conduct of business,

trade, and commerce, to wit: to restrain competition in the bidding process of Fuller Road Management Corporation and its contractors for architectural and design services for buildings intended to be utilized by SUNY Polytechnic Institute so that Architect-1 (as defined below in paragraph 4) would receive the business, by means of bid rigging.

FACTUAL BASIS

This felony complaint is made by me on direct knowledge and/or upon information and belief. The source of my information and the grounds for my belief include but are not limited to the following: (a) my training, experience and participation in an investigation conducted by the OAG; (b) publicly available documents; (c) emails and other documents obtained pursuant to subpoena; (d) evidence obtained by search warrant; (e) interviews of current and former members of entities involved in the arrangements described herein, and other witnesses; and (f) conversations with OAG attorneys. Where the actions, statements, and conversations of others are recounted herein, they are related in substance and in part, unless otherwise indicated.

OVERVIEW

I. Background

A. Relevant Entities

1. SUNY Polytechnic Institute (“SUNY Poly”), a public college in the State University of New York system, is the product of a March 2014 merger between SUNY College of Nanoscale Science and Engineering (“CNSE”), located in Albany, and SUNY Institute of Technology (“SUNYIT”), located in Utica. In addition to its educational function, SUNY Poly has served as a development arm of state government, with billions of dollars of investment in public/private partnerships flowing through projects with its imprimatur. Fundraising for SUNY Poly is the responsibility of the SUNY Polytechnic Foundation, a not-for-profit entity.

2. Fuller Road Management Corporation (“FRMC”) is a not-for-profit 501(c)(25) corporation affiliated with SUNY Poly that develops, constructs, owns, and leases the Albany CNSE facilities, including the NanoFab West building (“NFW”), NanoFab East building (“NFE”), and Zero Energy Nanotechnology building (“ZEN Building”). FRMC was created in 1993 as a “dual member corporation” by the SUNY Research Foundation and the SUNY Albany Foundation and derives its authority to spend public money from those entities. FRMC operates out of SUNY Poly buildings and its employees utilize SUNY CNSE email addresses.

3. Columbia Development (“Columbia”) is a company engaged in real estate development, headquartered at 302 Washington Ave. Ext., Albany. Columbia’s projects include major hospital, university, office and residential buildings throughout the region. Columbia is both the developer of and a tenant in FRMC’s ZEN Building.

4. “Architect-1” is an Albany-based architecture firm with a national client list. Architect-1’s offices have been located on CNSE property since 2011, moving to the ZEN Building in 2015. Architect-1 has performed architectural and design services on multiple SUNY Poly related projects.

5. “Contractor-1” is an Albany-based design, engineering and construction company with offices in the ZEN Building. Contractor-1 was involved with the construction of SUNY Poly’s NFW building, later renamed Nanotechnology Research Facility (“NFX”).

B. Defendants

6. ALAIN KALOYEROS, a physics professor, helped found CNSE, which was initially affiliated with SUNY Albany, but became an independent SUNY college in 2013. After the merger of CNSE and SUNYIT in 2014, KALOYEROS was appointed President and

CEO of SUNY Poly. KALOYEROS served on the FRMC Board of Directors in his capacity as President of SUNY Poly until his resignation in February 2016.

7. JOSEPH NICOLLA is the president of Columbia and is a close associate of KALOYEROS. NICOLLA sits on the board of the SUNY Polytechnic Foundation.

C. The Request for Proposal Process

8. I have learned during this investigation that FRMC used a process designed for competitive bidding called a Request for Proposal (“RFP”) to award certain contracts for FRMC projects, including projects involving construction of facilities for SUNY Poly and the CNSE campus. The RFP process is typically used as a mechanism for promoting competition in the awarding of government projects.

9. An RFP is a document used to solicit competition by informing potential vendors of the functional, technical, and contractual requirements sought by a company, such as FRMC, for a project. All RFPs issued by FRMC included evaluation criteria governing the process FRMC used to award the contract.

10. New York State, as well as cities, towns, villages, school districts, hospitals and other public institutions in New York, purchases billions of dollars of goods and services yearly under competitive bidding procedures.

11. According to several FRMC and SUNY employees, KALOYEROS sat on the FRMC RFP Review Committee and exerted strong influence over the RFP process for major building projects during the period of this complaint, sometimes even unilaterally overruling the selection made by a majority of the committee.

D. The Fraudulent Scheme

12. KALOYEROS, a government official who also served on the FRMC board as a representative of SUNY Poly, and his co-conspirators, executives at private businesses including NICOLLA, along with others participants, engaged in an ongoing scheme to rig the bids for government financed projects.

13. By colluding to rig bids, participants in the scheme were able to funnel contracts to favored entities on a predetermined basis, resulting in the restraint of competition.

14. Although FRMC purportedly used a competitive RFP process to award certain contracts, in actuality, the awards of those contracts were manipulated by insiders to secretly direct the contracts to favored businesses. In particular, the insiders, including the defendants and others:

- met to discuss ideas for future FRMC and SUNY Poly projects
- developed the language in the RFPs for those projects to give a competitive advantage to the favored corporations
- transmitted confidential information concerning RFPs for projects with the goal of providing the favored corporations with advance knowledge and inside information, enabling the favored corporations to tailor their bid responses
- discussed their response to media inquiries involving the scheme
- based award decisions on criteria that only the favored corporations could meet
- planned for the selection of specific subcontractors, who would participate in the scheme

15. As a result of this collusion, FRMC awarded the SUNY Poly dormitory contract to Columbia.

16. As a result of this collusion, FRMC agreed to award, or influence the award by third parties, contracts to Architect-1.

17. As a result of this collusion, FRMC awarded favorable treatment in the bid process to Contractor-1.

Count 1: The Loughlin Street Student Housing Project

18. Loughlin Street is a residential dead-end street in the City of Albany abutting the SUNY Poly campus to the south. In March 2015, FRMC issued an RFP for the development of student housing in an area to include Loughlin Street. In June 2015, FRMC preliminarily awarded the RFP to Columbia.

19. Columbia began its development of a series of parcels on Loughlin and Mercer Streets adjacent to SUNY Poly in April 2014. Columbia eventually bought every home on Loughlin Street through an LLC it controlled called Mercer Road Properties. The first home went under contract on April 14, 2014. An internal Columbia email dated April 16, 2014, relating to the purchase of the Loughlin Street properties sent by an executive at Columbia, which was obtained pursuant to subpoena, states "this is for CNSE assemblage".

20. I have examined the contents of a manila folder, obtained from Columbia pursuant to subpoena, titled "FRMC Student Housing Preferred Developer." That manila folder contained documents dated August 2014. One hand-written document contained therein lays out three options for Loughlin Street: 1) to develop, own and operate; 2) to develop and "sell to college"; and 3) to develop and sell on the market. The writer noted that the second option would "require RFP + Public Bidding/labor".

21. Also contained in the folder is a Columbia site-drawing dated August 15, 2014, showing the Loughlin Street development with three dormitories and a parking lot. The three dormitories in the

drawing are designed to house 96, 128 and 92 students respectively. Of note, FRMC's eventual March 2015 RFP called for three dormitories of 100, 150 and 250 beds.

22. In an October 30, 2014 email from NICOLLA to KALOYEROS, obtained from Columbia pursuant to subpoena, sent to KALOYEROS's SUNY email address, NICOLLA notified KALOYEROS concerning the progress of the purchase of one of the Loughlin Street residences.

23. In a November 18, 2014 email, obtained from SUNY Poly pursuant to subpoena, a full six months before the RFP was issued, KALOYEROS forwarded a solicitation from a competing development company interested in SUNY Poly student housing to NICOLLA, as well as a lobbyist and the president of FRMC.

24. Since NICOLLA is the President of Columbia, which was a company that was simultaneously planning student housing for SUNY Poly, this email is evidence that KALOYEROS, through SUNY Poly and FRMC, colluded with Columbia, a private company, to give it an unfair competitive advantage.

25. I have been informed by multiple witnesses that KALOYEROS controls the conduct of the RFP process for major SUNY Poly building projects, including the 2015 permanent student housing project RFP.

26. I also reviewed a digital meeting request obtained from Columbia pursuant to subpoena, in which an FRMC secretary sent a meeting notice with the subject line: "Student Housing" for February 9, 2015, using a SUNY email address, to the president and an officer of FRMC, NICOLLA, a Columbia employee, and an employee of an investment bank.

27. In a February 20, 2015 email, included in an email chain obtained from Columbia pursuant to subpoena, KALOYEROS, again using his SUNY email account, emailed FRMC management (see portion below).

From: [Alain Kaloyeros](#)
To: [Joe Nicolla](#)
Subject: Fwd: <no subject>
Date: Friday, February 20, 2015 8:20:48 PM

Coming to you with minimal fuss from the iPhone 6 plus

From: <Kaloyeros>, AEK [REDACTED]@sunycnse.com>
Date: Friday, February 20, 2015 at 7:52 PM
To: [REDACTED]@sunycnse.com>, [REDACTED]
[REDACTED]@sunycnse.com>, [REDACTED]@sunycnse.com>, [REDACTED]
[REDACTED]@sunycnse.com>
Subject: <no subject>

Time to prepare an RFP for student housing
A 3 phase plan with 100 beds, then 250 beds, then 500 beds
Need to be in close proximity (preferably walking distance) to SUNY Poly CNSE
Need all 3 phase buildings to be adjacent to each other

28. Twenty-eight minutes later, at 8:20 PM, KALOYEROS, using his Gmail email address, forwarded the same email to NICOLLA, effectively notifying him and Columbia of the content of FRMC's new RFP.

29. FRMC issued the RFP publicly the following month, on March 19, 2015. The RFP called for three dormitories for 100, 150 and 250 students each, which had to be adjacent to each other; and the winning bidder had to be headquartered in the "Greater Albany Area". The RFP described the requirements for the location of the dorm complex as "adjacent to" and "within 10 minutes walking distance of the SUNY Poly Albany Nanotech Campus". According to an FRMC executive, the draft RFP was written to require the dorm complex be "approximate to" the campus, but KALOYEROS insisted on the change to "adjacent".

30. The bids were due on May 1, 2015. Though twenty companies showed initial interest in the RFP, only one company responded with a formal proposal: Columbia. Columbia was preliminarily awarded the contract to develop the SUNY Poly permanent student housing on June 4, 2015. In a

document dated September, 2015, obtained from Columbia pursuant to subpoena, Columbia projected its profit on the project to be \$3,832,483. Columbia estimated the dormitory project to cost FRMC \$27,000,000, any necessary bond to be paid for with the revenue from “room fees” paid by SUNY Poly students.

31. In March 2016, I interviewed an executive from a major Albany construction company who stated that despite being one of the twenty builders who showed initial interest in the project his firm would not bid on it because the RFP was geared toward one company. He¹ went on to explain that the one company in question was Columbia.

32. After a series of media reports questioning the propriety of the Loughlin Street project, and a September 21, 2015, subpoena from the OAG, FRMC withdrew the award to Columbia and reissued the RFP on November 12, 2015. The Loughlin Street parcels have since been sold by Columbia to another developer.

33. I also reviewed a chain of emails obtained from Columbia pursuant to subpoena that revealed the following. As further evidence of collusion in this scheme, KALOYEROS and NICOLLA coordinated Columbia’s response to media inquiries with regard to the Loughlin Street transactions. On April 30, 2015, prior to the deadline for submitting bids, in reply to questions from a Times Union reporter concerning Columbia’s assemblage of the Loughlin Street properties, KALOYEROS drafted a one-paragraph response and forwarded it via his Gmail account to NICOLLA. The response was vetted by public relations advisors and Columbia personnel before it was sent, verbatim, to the reporter.

34. I respectfully submit that there is probable cause to believe that KALOYEROS and NICOLLA rigged the RFP process to insure that Columbia would win approval to build the FRMC/SUNY Poly student housing project in the vicinity of Loughlin Street.

¹ For the reader’s convenience the masculine pronouns “he” and “him” have been used universally in this document.

Count 2: Contractor-1 Given Future Consideration on Bidding In Exchange For Loan

35. An executive with a Boston-based construction management firm (“Developer-1”) described the events surrounding the construction of an FRMC/SUNY Poly research building to be called NanoFab West (“NFW”).² In August 2010, Developer-1 submitted a response to an RFP for a developer qualified to build a cleanroom chip fabrication building. On November 15, 2010, it was awarded the contract for the first stage of the build. Developer-1 had previously selected an architect (“Architect-2”), an engineering firm and a construction company to be the other members of its team. The executive informed me that in a contract of this nature it is customarily the prerogative of the developer to select its own design and construction team.

36. In autumn 2010, prior to the project beginning, KALOYEROS met with the executive and repeatedly urged Developer-1 to take some risk and “have some skin in the game”. The executive understood that to mean that KALOYEROS wanted Developer-1 to provide its own financing for the NFW building. KALOYEROS also asked the executive to have Developer-1 lease space in one of the SUNY Poly buildings, which he declined.

37. In fact, the eventual RFP for the NFW project, obtained from FRMC pursuant to subpoena, states that successful bidder “is expected to lease and occupy a portion of space in the Albany Nanotech Complex as its local base of operations after Project award.”

38. A “commencement meeting” was scheduled for November 15, 2010. The attendees were to be representatives of FRMC and Developer-1’s team. Within two weeks of the scheduled meeting, an FRMC project coordinator (“project coordinator”) called to request that Architect-1 be added to the team. I interviewed the project coordinator who told me that this was done pursuant to KALOYEROS’s orders. The Developer-1 executive acceded to the request, though he believed it was “unnecessary” and would create extra costs. The president of

²NFW was later renamed NanoFab Xtension (“NFX”).

Architect-1 and a partner in Architect-2 were both in attendance at the November 15th meeting. According to the FRMC project coordinator, during the meeting, the president of Architect-1 called KALOYEROS, demanding that Architect-2 be thrown out of the meeting and off the project. Moments later, KALOYEROS called the project coordinator and, using an expletive, demanded that Architect-2 leave the meeting immediately. According to both parties, the project coordinator took the Developer-1 executive out in the hall and demanded he fire Architect-2 immediately. The Developer-1 executive believed he had little choice but to comply, so Architect-1 became the sole architect on the project.

39. In May 2011, before the conclusion of the first stage of the NFW project, the project coordinator notified Developer-1 that it was being taken off the project at KALOYEROS's request. Subsequently, Contractor-1 was named the developer. FRMC and Contractor-1 executed a Notice to Proceed ("NTP") on March 18, 2011, which memorialized their contractual relationship. The NTP states that it was purportedly awarded "as a result of the competitive process." In the NTP, Contractor-1 agreed to lend \$50,000,000 to FRMC to cover the early construction costs for the NFW project. Developer-1 had declined to provide its own financing in this manner. The second stage of the NFW project was not subject to a new RFP; instead, the loser of the original RFP process, the Contractor-1 team, was awarded the second stage based on their losing submission to the original RFP.

40. The NTP contains an attachment titled "Loan Term Sheet" (see portion below).

EXHIBIT "F"

LOAN TERM SHEET

1. CONTRACTOR agrees to provide project funding for an amount of FIFTY Million and 00/100 dollars (\$50,000,000.00) to enable the immediate start of the project on or before 4-1-2011. Funding is expected to advance the critical path of the project to 8-1-2011 and have sitework and foundations ready to place in precast concrete.
2. CONTRACTOR funding shall be in the form of a loan with terms as follows:
 - a. The first Twenty Five Million and 00/100 Dollars (\$25,000,000.00) shall be paid in full by March 15th 2012.
 - b. The second Twenty Five Million and 00/100 Dollars (\$25,000,000.00) shall be paid in two equal installments of Twelve Million Five Hundred Thousand and 00/100 Dollars (12,500,000.00) each. Payments shall be made prior to the last day of 2012 and 2013.
 - c. The loan shall be interest free and will be secured by \$50M worth of 300mm wafer processing tools for the 65 nanometer device technology or better owned by RF on behalf of CNSE and located at the CNSE facilities.
3. In return for the above loan term OWNER agrees:
 - a. OWNER will award the construction of the NFW building and associated infrastructure to CONTRACTOR. CONTRACTOR shall be responsible for the handling and resolution of any issues or matters that may arise with any state and/or local municipal permitting authority.
 - b. Parties will work together in good faith to ensure project financing no later than August 1, 2011.
 - c. OWNER will make best efforts to extend existing tool installation contract to cover the NFW building.
 - d. OWNER will make best efforts to support CONTRACTOR in establishing a 450mm Facilities development team at the CNSE campus to establish the facility and utility requirements for a 450mm processing.
 - e. OWNER will make best efforts to consider CONTRACTOR proposal for Zen building as competitively bid under Stage 1 and yet to be bid Stage 2.
 - f. OWNER will make best efforts to consider award of a future facility to CONTRACTOR in line with the commercial proposal accepted on NFW project.

41. The Term Sheet, which was obtained from FRMC pursuant to subpoena, explicitly states that "In return for the above [\$50,000,000] loan term OWNER [FRMC] agrees" to "award the construction of the NFW building and associated infrastructure to CONTRACTOR

[Contractor-1].” Among other items of collusion contained therein, paragraph 3(c) states that the “OWNER will make best efforts to extend existing tool installation contract to cover the NFW building.” The Developer-1 executive informed me that the tool installation is the most lucrative step in the construction of a chip fabrication facility, with the tools themselves costing over a hundred million dollars. The FRMC tool installation contract granted Contractor-1 the installation of all major equipment on the campus for a set number of years. According to the Developer-1 executive, an extension of Contractor-1’s contract to cover the NFW tool installation represents a major windfall.

42. An executive at FRMC who was involved with the Contractor-1 contract process for NFW informed me that KALOYEROS was the primary author of the Loan Term Sheet. The project coordinator confirmed this account, stating that KALOYEROS dictated the terms of the Loan Term Sheet to the FRMC Counsel.

43. Based on my review of the evidence gathered thus far, there is probable cause to believe that FRMC, which is a state-related and state-controlled entity under the direct influence of KALOYEROS, improperly agreed to provide favorable consideration for future purportedly competitively bid projects to a private company (Contractor-1) in exchange for a \$50,000,000 loan on a previous project.

44. According to the terms of the NTP Loan Term Sheet, in addition to being awarded the NFW contract and the tool installation extension, Contractor-1 was given consideration on three future projects.

45. Additionally, in Contractor-1’s October 2010 response to the RFP for the NFW building, obtained from FRMC pursuant to subpoena, Contractor-1 committed to give a \$3,000,000 research grant to CNSE if it was awarded the NFW contract.

46. According to documents obtained from SUNY Poly pursuant to subpoena, KALOYEROS's compensation package for the years 2010 through 2015 included a "bonus" payment of up to \$500,000 a year from the Research Foundation of the State of New York ("RF") for his "stewardship of SUNY Polytechnic Institute's portfolio of externally sponsored grants". That portfolio of grants would include the \$3,000,000 grant from Contractor-1.

47. The NFW project was completed by Contractor-1 in May 2014 at an approximate cost of \$336,000,000. NFW was financed, in part, by a \$150,000,000 disbursement from New York State, administered by the Empire State Development Corporation.

48. FRMC's agreement to give future consideration on publicly bid contracts in exchange for a \$50,000,000 loan from Contractor-1 is evidence that they engaged in an illegal restraint of trade.

Count 3: The Lease Agreement with Architect-1

49. On May 29, 2015, the president of Architect-1 signed a lease with FRMC for one full floor of office space in FRMC and SUNY Poly's ZEN Building. Prior to signing the ZEN Building lease, Architect-1 was a tenant in SUNY Poly's NFE building, having moved from downtown Albany offices in 2010.

50. According to a former FRMC project coordinator, as well as a former Architect-1 employee, and another former executive with FRMC, Architect-1's initial rent of \$30 per square foot for the ZEN Building was above market rate for Upstate New York office space. The Developer-1 executive, a career-long developer of commercial real estate, informed me that in his opinion the construction price of the ZEN Building was roughly twice the amount of what a typical office building would cost for the Capital District. The high cost of construction created the need for high

rental rates, which appears to have led to a strong push by KALOYEROS for FRMC contractors to rent space in the ZEN Building.

51. The FRMC project coordinator informed me that KALOYEROS controls virtually all important aspects with regard to major negotiations. A former FRMC executive also informed me he was on the FRMC selection committee for RFPs until his departure in 2013 and that KALOYEROS would often unilaterally overrule the recommendation by the majority of the committee and select a favored company. Of note, the Architect-1 president sat on the FRMC board from 2011 to 2014.

52. KALOYEROS has asked several potential SUNY Poly contractors to be partners or “have skin in the game”. A former employee of Architect-1 and other architecture firms doing business with SUNY Poly informed me that he heard KALOYEROS say in the context of Architect-1’s pending lease with SUNY Poly that he takes care of his partners. The former FRMC project coordinator stated that KALOYEROS ties awards to leasing space at the ZEN Building. A former employee of an FRMC vendor observed that he was aware that companies working with SUNY Poly, including his own, were highly encouraged to lease space there. The Developer-1 executive also noted that his company was pressured to lease space at SUNY Poly in order to foster a stronger relationship, but it declined.

53. KALOYEROS also told the former Architect-1 employee, in front of two other witnesses, that he could write an RFP in such a way that only one company could win it. The two other witnesses to KALOYEROS’s claim each confirmed for me the sum and substance of KALOYEROS’s boast.

54. I also interviewed a former Columbia employee, who from July 2014 to February 2016 worked on the Loughlin Street project and other FRMC deals. The former Columbia employee told me that he believed, based on Architect-1’s involvement in virtually every SUNY Poly building

project, that Architect-1 was their “in-house architect” and would work on FRMC projects by default.

55. Significantly, Architect-1’s lease for the ZEN Building, signed by its president on May 28, 2015, contains the following provision:

3.2.1 On each anniversary of the Date of Commencement beginning with the second anniversary, Tenant shall pay to Landlord as Additional Rent for access to Albany Nanotech Complex facilities three percent (3%) of the Net Revenue (as defined below) of the business generated by Landlord and its affiliated entities and granted to Tenant and its affiliated entities for the immediately prior lease year that is in excess of the business generated and granted during the base period of 12 months prior to the Date of Commencement, to be paid by Tenant to Landlord as Additional Rent in accordance with Section 1.1.2. Such amount shall not exceed Five Dollars (\$5.00) per square foot of the Premises in any year. Net Revenue means total business generated by Landlord and its affiliated entities and granted to Tenant less fees paid by Tenant to its consultants, contractors and direct expenses on the business granted by Landlord and its affiliated entities to Tenant.

56. In the above excerpt, FRMC is formalizing its intent to “generate and grant” increased business to Architect-1, in exchange for an increase in rent Architect-1 would pay FRMC. This agreement places Architect-1 at a competitive advantage in receiving work on these public projects. According to a former FRMC executive familiar with the RFP contracting process, the architecture firm for a given project is typically selected and hired by the developer, not by SUNY Poly or FRMC.

57. The 2014 FRMC Annual Report, covering the period July 1, 2013 to June 30, 2014, lists Architect-1 as having paid \$762,901 in rent to FRMC and having received \$9,864,765 in payments from FRMC for architectural services during the period covered by the report.

58. I respectfully submit that there is probable cause to believe that KALOYEROS established a relationship with Architect-1 that insured it would perform design and architectural work on FRMC projects in restraint of trade.

Notice: Any person who knowingly makes a false statement in a written instrument such as this Felony Complaint and which such person does not believe to be true has committed a crime under the laws of the State of New York punishable as a class A misdemeanor (Penal Law § 210.45).

Dated: September 22, 2016

ERIC T. SCHNEIDERMAN
New York State Attorney General

BY: 
OAG Investigator Mark Spencer