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and on behalf of the State of California and
aggrieved employees

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Case #24CV441327
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

WENDY VAN SELOW, an individual,

Plaintiff,

vs.

EXPONENT, INC., a Delaware corporation,
SALLY SHEPHERD, a California citizen, and
DOES 1 through 25, inclusive,

Defendants.

Case No. 24CV441327

REPRESENTATIVE ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES**

- 1. HARASSMENT ON THE BASIS OF
AGE IN VIOLATION OF FEHA;**
- 2. DISCRIMINATION ON THE BASIS
OF AGE IN VIOLATION OF FEHA;**
- 3. HARASSMENT ON THE BASIS OF
DISABILITY IN VIOLATION OF
FEHA;**
- 4. DISCRIMINATION ON THE BASIS
OF DISABILITY IN VIOLATION OF
FEHA;**
- 5. FAILURE TO ACCOMMODATE
DISABILITY IN VIOLATION OF
FEHA;**

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6. FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS TO ACCOMMODATE DISABILITY IN VIOLATION OF FEHA;
7. VIOLATION OF CFRA;
8. VIOLATION OF 2022 COVID-19 SUPPLEMENTAL PAID SICK LEAVE LAW;
9. RETALIATION IN VIOLATION OF FEHA;
10. FAILURE TO PREVENT, INVESTIGATE, AND REMEDY HARASSMENT, DISCRIMINATION, AND/OR RETALIATION;
11. WHISTLEBLOWER RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5;
12. FAILURE TO PAY COMPENSATION FOR ALL TIME WORKED;
13. FAILURE TO PAY OVERTIME COMPENSATION;
14. FAILURE TO PROVIDE MEAL PERIODS;
15. FAILURE TO AUTHORIZE AND PERMIT REST BREAKS;
16. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS;
17. FAILURE TO PROVIDE ONE DAY'S REST IN SEVEN
18. FAILURE TO MAINTAIN REQUIRED RECORDS;
19. FAILURE TO TIMELY PAY ALL WAGES DUE;
20. VIOLATION OF LABOR CODE SECTION 558.1;
21. UNFAIR AND UNLAWFUL BUSINESS PRACTICES;
22. INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS
23. PENALTIES UNDER THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT, AS REPRESENTATIVE ACTION

DEMAND FOR JURY TRIAL.

1 Plaintiff WENDY VAN SELOW (hereinafter “PLAINTIFF”) brings this action against
2 EXPONENT, INC. (“EXPONENT”), SALLY SHEPHERD (“SHEPHERD”), and Does 1 through
3 25 (“DOES”), inclusive, (EXPONENT, SHEPHERD and DOES are hereinafter collectively referred
4 to as “DEFENDANTS”) on behalf of herself, and all aggrieved employees, as described herein.
5 PLAINTIFF complains and alleges as follows on the basis of personal knowledge and/or information
6 and belief:

7 **JURISDICTION AND VENUE**

8 1. The Superior Court of the State of California has jurisdiction over this action pursuant
9 to California Constitution Article VI, section 10, which grants the Superior Court “original
10 jurisdiction in all cases except those given by statute to other trial courts.”

11 2. The Superior Court of the State of California has jurisdiction in this matter because
12 PLAINTIFF is a resident of the State of California. Moreover, upon information and belief,
13 EXPONENT, SHEPHERD and DOES are citizens of California, the alleged violations and
14 wrongdoing occurred in California, and significant relief is being sought against DEFENDANTS
15 whose violations of California employment laws form the basis of PLAINTIFF’s claims. Further,
16 no federal question is at issue because the claims are based solely on California law.

17 3. Venue is proper in this judicial district and the County of Santa Clara because
18 PLAINTIFF is a resident of the County of Santa Clara, EXPONENT transacts business in the
19 County of Santa Clara, and EXPONENT’s illegal acts, which are the subject of this action, occurred
20 while PLAINTIFF was predominantly working in the County of Santa Clara. Thus, the County of
21 Santa Clara is the county where the unlawful employment practices are alleged to have been
22 committed pursuant to Cal. Gov’t Code § 12965(b) and where a substantial portion of the
23 transactions and occurrences related to this action occurred pursuant to Cal. Civ. Proc. Code § 395.

24 4. Prior to filing this action, PLAINTIFF timely exhausted her administrative remedies,
25 by filing an administrative complaint with the California Civil Rights Department (“CRD”) and
26 receiving a Notice of Case Closure and Right to Sue notice letter on June 17, 2024.
27 Pursuant to California Labor Code (“Labor Code”) section 2699.3, PLAINTIFF gave written notice
28 by online filing to the California Labor and Workforce Development Agency (“LWDA”) and

1 certified mail to EXPONENT of the specific provisions of the Labor Code alleged to have been
2 violated, including the facts and theories to support the alleged violations. PLAINTIFF's notice to
3 the LWDA is attached as **Exhibit A**. Within sixty-five (65) calendar days of the postmark and
4 online filing date of PLAINTIFF's notice letter, the LWDA did not provide notice to PLAINTIFF
5 that it intends to investigate the alleged violations.

6 **PARTIES**

7 5. PLAINTIFF is an individual who is, and at all times herein mentioned was, a resident
8 of California.

9 6. EXPONENT is, and at all times mentioned in this Complaint was, a publicly traded
10 corporation listed as EXPO on Nasdaq, organized and existing under the laws of the State of
11 Delaware, with six offices in California, including its headquarters. EXPONENT is an engineering
12 and scientific consulting firm which markets the appearance of diversity, equity and inclusion to its
13 investors and clients, stating on its website exponent.com "our differences make us stronger and
14 we're building a culture where diversity, equity and inclusion are embedded in everything we do."

15 7. SHEPHERD is, and at all times mentioned in this Complaint was, a California
16 resident who was employed by EXPONENT as Chief Human Resources Officer, an Executive
17 Officer appointed by EXPONENT's Board of Directors.

18 8. At all relevant times herein, DEFENDANTS employed PLAINTIFF within the
19 meaning of California Government Code section 12926(d).

20 9. The true names and capacities of DOES are unknown to PLAINTIFF at this time, and
21 PLAINTIFF therefore sues such Doe Defendants under fictitious names. PLAINTIFF is informed
22 and believes, and thereon alleges, that each Defendant designated as a DOE is in some manner
23 highly responsible for the occurrences alleged herein, and that PLAINTIFF'S injuries and damages,
24 as alleged herein, were proximately caused by the conduct of such DOE Defendants. PLAINTIFF
25 will seek leave of the court to amend this complaint to allege the true names and capacities of such
26 DOE Defendants when ascertained.

27 10. PLAINTIFF is informed and believes, and thereon alleges, that each and every one
28 of the acts and omissions alleged herein were performed by, and/or attributable to, all

1 DEFENDANTS, each acting as agents and/or employees, and/or under the direction and control of,
2 each of the other DEFENDANTS, and that said acts and failures to act were within the course and
3 scope of said agency, employment and/or direction and control.

4 11. PLAINTIFF is informed and believes, and based thereon alleges, that each
5 DEFENDANT acted in all respects pertinent to this action as the agent of the other DEFENDANTS,
6 carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of
7 each DEFENDANT are legally attributable to the other DEFENDANTS.

8 12. As a direct and proximate result of the unlawful actions of DEFENDANTS,
9 PLAINTIFF has suffered, and continues to suffer, from loss of earnings in amounts as yet
10 unascertained, but subject to proof at trial, and within the jurisdiction of this Court.

11 **FACTS COMMON TO ALL CAUSES OF ACTION**

12 **FACTS SUPPORTING PLAINTIFF'S FEHA, WHISTLEBLOWER,**
13 **AND LEAVE-RELATED CLAIMS**

14 ***PLAINTIFF's Employment History at EXPONENT***

15 13. EXPONENT describes itself as a company that provides engineering and scientific
16 consulting services to clients around the world on a project-by-project basis through support from
17 multiple practices. Its Data Sciences practice, part of its engineering and other scientific practices,
18 comprises EXPONENT's core capabilities in statistics, data analytics, and dedicated data collection.
19 EXPONENT assists clients in addressing their data challenges in creating, managing, and analyzing
20 data sets and data-driven decisions.

21 14. PLAINTIFF has worked for EXPONENT or its predecessor, Failure Analysis
22 Associates, as an exemplary employee since 1988. Since 1995, PLAINTIFF has performed the
23 duties of a data analyst. From 1995 to 2018, she had many different job titles to describe her role,
24 and in 2018, she was given the title of "Senior Manager." Although she was told the title change
25 was a promotion, and she received increased compensation, her job duties did not change from those
26 of a data analyst. PLAINTIFF understood that the title change allowed EXPONENT to charge its
27 clients a higher rate for her services.

28 15. As EXPONENT advertises on its web site, PLAINTIFF's over 30 years of experience

1 at EXPONENT has been concentrated in database development, analysis, data collection, and
2 management of large-scale data. PLAINTIFF is proficient in a variety of software and programming
3 languages including SQL and SAS, and has specialized knowledge in the analysis and mining of
4 databases maintained by manufacturers and government agencies, including manufacturer
5 databases containing production, warranty, registration, service call, call-center data, complaint
6 records, and sales data. PLAINTIFF has also worked extensively with numerous manufacturers'
7 internal and confidential databases developed for specific investigations. She has experience with
8 governmental and other specialized databases. PLAINTIFF has assisted clients in addressing issues
9 relating, but not limited to, vehicle crashworthiness, post-collision fires, occupant injuries,
10 component failure rates, and the real-world performance of consumer products. She has also assisted
11 clients in class-action settlements, providing cost projections for various scenarios, as well as
12 mining settlement filings for potentially anomalous claims.

13 16. Throughout the course of her employment with EXPONENT, PLAINTIFF worked
14 on multiple projects supervised by multiple individuals, and possessed skills and experience that
15 could assist on many projects within EXPONENT's business portfolio.

16 ***EXPONENT's Attempts to Force Plaintiff into Early Retirement***

17 17. PLAINTIFF reported to Paul Taylor ("Taylor") as her manager for approximately
18 twenty-one years, until April 2022, when he decided to officially retire, but remained intermittently
19 employed in a non-managerial project-by-project consulting capacity. PLAINTIFF understood that,
20 following Taylor's retirement, she would be transferred to a new supervisor in another group. In the
21 interim, Subbaiah Malladi, Exponent's Chief Technical Officer ("Malladi") became her supervisor,
22 who had little interest in continuing to utilize her services. No plans were made to effect a transfer,
23 and in July 2022, PLAINTIFF was told that she needed to "move on" because Malladi would not
24 be doing data work any longer. PLAINTIFF asked whether plans had been made to transfer her to
25 another group, and was told that if she wanted to continue working at EXPONENT she would need
26 to figure out how to do so. PLAINTIFF is unaware of any other EXPONENT employee being
27 treated similarly.

28 18. PLAINTIFF, whose employment had never been in question in her previous decades

1 of work with EXPONENT, especially where her work could be utilized in many groups throughout
2 the company, experienced physical symptoms of emotional distress, including more frequent
3 painful diverticulitis and irritable bowel syndrome (“IBS”) episodes, as a result of the sudden
4 professional insecurity she appeared to be facing. This caused PLAINTIFF to take multiple sick
5 days pursuant to EXPONENT’s policy. EXPONENT, including SHEPHERD, was aware that
6 PLAINTIFF required additional sick time to address these medical concerns. PLAINTIFF had
7 informed EXPONENT, including various managers and team members, of her disability/medical
8 condition of diverticulitis and IBS as early as 2016, and continued to provide information to
9 EXPONENT as episodes occurred. At no point did SHEPHERD discuss PLAINTIFF’s right to job-
10 protected leave pursuant to the California Family Rights Act (“CFRA”).

11 19. Despite the stress and stress-related physical symptoms she was experiencing,
12 PLAINTIFF promptly identified projects at EXPONENT she could work on for which her
13 experience and skills were a match. She believed she would be able to work in that capacity, but
14 EXPONENT’s then-Group Vice President, Electrical and Data Sciences, Steve Murray (“Murray”),
15 interfered with that opportunity, stating that PLAINTIFF was not what they were looking for.
16 Meanwhile, younger employees with less experience and institutional knowledge were hired and
17 retained to work on that project and others, handling the same types of responsibilities that
18 PLAINTIFF had been handling for the past several decades. PLAINTIFF was the only data analyst
19 who was asked to find a way to continue being employed at that time.

20 20. When PLAINTIFF informed Malladi and SHEPHERD, of this circumstance,
21 SHEPHERD told PLAINTIFF to market herself so that eventually Murray would “come around.”
22 PLAINTIFF followed SHEPHERD’s advice.

23 21. In August 2022, PLAINTIFF contracted the Covid-19 virus, and was unable to work
24 for several weeks, but tried to keep up with her work remotely to the extent possible. When she
25 informed EXPONENT of her positive Covid-19 diagnosis, PLAINTIFF was not informed of her
26 right to take 80 hours of additional paid sick leave on the basis of her condition. Instead, in
27 September 2022, Malladi ordered PLAINTIFF to come into the office and harassed her when she
28 was unable to do so.

1 22. In October 2022, PLAINTIFF arranged to be transferred to another team led by a
2 long-time colleague who wanted to utilize her services, but required approval from Murray before
3 he could do so. PLAINTIFF requested SHEPHERD's assistance to facilitate the transfer, given
4 Murray's previous comments, but SHEPHERD ignored PLAINTIFF's request. Murray again
5 interfered with PLAINTIFF's work opportunities, reiterating that PLAINTIFF was not what they
6 were looking for, and stated that he would never allow her to work in the Data Sciences group he
7 controlled.

8 23. Shortly after she learned of Murray's proclamations, PLAINTIFF complained to
9 SHEPHERD that she believed she was the victim of age discrimination as a result of Murray's
10 interference and comments. SHEPHERD told PLAINTIFF that her allegations were "all in her
11 head" and no investigation of PLAINTIFF's complaint was conducted, despite PLAINTIFF having
12 identified her colleague as a witness that should be interviewed and pleaded with SHEPHERD to
13 obtain additional information. Instead, SHEPHERD told PLAINTIFF, for the first time, that her
14 performance was being evaluated by criteria PLAINTIFF had not previously been informed about
15 and was not in a position to meet. When PLAINTIFF asked for more information about this alleged
16 performance criteria, she was given information that did not support EXPONENT's position.

17 24. PLAINTIFF continued to find projects to work on full time despite the challenges
18 EXPONENT had created, and successfully ensured that her work could be billed to clients in a
19 manner that allowed her employment to generate profit for the company. SHEPHERD told
20 PLAINTIFF that, as long as her work hours were utilized properly, she should not worry about
21 retaining her full-time position.

22 25. In February 2024, PLAINTIFF was called to a meeting with SHEPHERD and Malladi
23 and informed that EXPONENT expected her to retire the following year at age 65, and was
24 demoting her to a 50% part-time status, with a commensurate cut in her salary and benefits.
25 PLAINTIFF had not informed the company that she intended to retire the following year, and had
26 not made plans to do so. Malladi told PLAINTIFF that the quality of her work was good, and that
27 the decision was not based on her performance. When PLAINTIFF raised concerns about being able
28 to complete her full-time work in half the time, SHEPHERD told her that she could either turn down

1 work or work additional hours as an exempt employee without being paid for them. When
2 PLAINTIFF pointed out that the company would lose money if she turned down work, SHEPHERD
3 stated that EXPONENT was prepared to make that decision.

4 26. Shortly thereafter, PLAINTIFF secured a position within a team led by another
5 EXPONENT manager in the Data Sciences group, who made it clear that he could utilize her
6 services on a full-time basis, and that EXPONENT would benefit from PLAINTIFF working full-
7 time hours. PLAINTIFF requested to be allowed to work full-time in this group. Although Murray
8 had since departed the company, SHEPHERD now intervened and told PLAINTIFF that, although
9 she would be permitted to work in the group, PLAINTIFF would be required to work part-time and
10 receive only 70% of her prior salary. SHEPHERD emphasized that working full-time was not an
11 option for PLAINTIFF. PLAINTIFF was also informed that she would need to pay substantially
12 more for her health care and other benefits as a part-time employee. PLAINTIFF required these
13 benefits to sustain her health care for her known disability/medical condition.

14 27. PLAINTIFF subsequently learned that, in addition to being judged by previously
15 unknown performance metrics, her performance was being negatively evaluated based on the
16 percentage of work completed during the time that she had been expected to work, without adjusting
17 for the leave time PLAINTIFF had taken, as authorized by EXPONENT's policy, to deal with her
18 disability/medical conditions. PLAINTIFF pointed out that, if she was not penalized for taking leave
19 time, her performance measure fell within the expected range.

20 ***PLAINTIFF's Protected Statuses***

21 28. PLAINTIFF is a 63-year-old woman who suffers from a physical disability/medical
22 condition. PLAINTIFF's age, gender, and disability are protected categories under California law.
23 See Cal. Gov't Code § 12940(a).

24 29. During the course of her employment, PLAINTIFF engaged in protected activity
25 when she opposed discrimination, harassment, and retaliation against her, as well as other unlawful
26 activity at EXPONENT. Thus, PLAINTIFF is also a protected employee under the Labor Code.
27 See Cal. Lab. Code § 1102.5.
28

**FACTS SUPPORTING PLAINTIFF’S WAGE AND HOUR
AND REPRESENTATIVE CLAIMS**

30. Since approximately 2006, EXPONENT has willfully misclassified PLAINTIFF as exempt from overtime and other Labor Code protections to avoid compliance with the Labor Code.

31. The California Legislature authorized the Industrial Welfare Commission to establish exemptions from the overtime pay requirements for “executive, administrative, and professional employees” when certain conditions are met. *Kizer v. Trister Risk Management* (2017) 13 Cal. App. 5th 830, 838. For the exemption to apply, “[t]he employee must (1) perform ‘office or nonmanual work directly related to management policies or general business operations’ of the employer or its customers, (2) ‘customarily and regularly exercise discretion and independent judgment,’ (3) ‘perform under only general supervision work along specialized or technical lines requiring special training’ or ‘execute under only general supervision special assignments and tasks,’ (4) be engaged in activities meeting the test for the exemption at least 50 percent of the time, and (5) earn twice the state minimum wage.” *Id.* (quoting *Eicher v. Advanced Business Integrators, Inc.* (2007) 151 Cal. App. 4th 1363, 1371). These exemptions are narrowly construed, and the burden lies with the employer to prove the employee’s exemption as an affirmative defense.

32. Whether an employee is exempt depends not only upon factors related to the job itself (e.g. “employer’s realistic job expectations” and “realistic requirements of the job”), but also “first and foremost” upon what an employee actually does on the job (e.g., “work actually performed”). *Duran v. U.S. National Assn.* (2014) 59 Cal.4th 1, 27. As an employee performing data analyst functions, PLAINTIFF has not and does not primarily spend her working time performing exempt duties and does not meet the requirements for the executive, administrative or professional exemptions.

33. Regarding the executive exemption, though EXPONENT bestowed the title “Senior Manager” on PLAINTIFF in 2018, she has never managed any other employees, so she has not customarily and regularly directed the work of two or more other employees as required to meet the executive exemption.

34. Regarding the administrative exemption, PLAINTIFF’s job duties do not include

1 work directly related to the management policies or general business operations of EXPONENT or
2 its customers as also required for the administrative exemption from overtime. Rather, while
3 performing data analysis duties, PLAINTIFF's work is not directly related to management policies
4 or general business operations of EXPONENT or its customers. PLAINTIFF's work involves the
5 production aspects of EXPONENT's business as opposed to administrative functions, which the
6 California Department of Labor Standards Enforcement ("DLSE") has found to be the most
7 common misapplication of the administrative exemption.

8 35. Finally, regarding the professional exemption, PLAINTIFF has not been primarily
9 engaged in an occupation commonly recognized as a learned or artistic profession, nor was she
10 licensed by the State of California to practice law, medicine, dentistry, optometry, architecture,
11 engineering, teaching, or accounting. PLAINTIFF also does not have an advanced degree (she holds
12 an Associate in Arts degree in English from Fresno Pacific University) to qualify for the learned
13 professional exemption from overtime.

14 36. EXPONENT paid PLAINTIFF an annual salary, irrespective of the number of hours
15 she actually worked. Although EXPONENT required PLAINTIFF to work in excess of eight hours
16 per day and/or 40 hours per week, EXPONENT did not pay PLAINTIFF at one and one-half times
17 the regular rate of pay for such hours worked. Similarly, although EXPONENT required
18 PLAINTIFF to work in excess of 12 hours per day, it did not pay her at two times the regular rate
19 of pay for such hours worked.

20 37. Since being misclassified as exempt, PLAINTIFF has not been permitted regular
21 uninterrupted, duty-free, 30-minute meal periods. Instead, PLAINTIFF often eats lunch at her desk
22 while continuing to work. Additionally, on days when PLAINTIFF worked more than 10 hours, she
23 was not provided, and accordingly did not take, a second uninterrupted, duty-free, 30-minute meal
24 period, as required by California law.

25 38. PLAINTIFF was not authorized and permitted to take a 10-minute, duty-free rest
26 break for each four hours worked, or major fraction thereof, in violation of California law. Although
27 PLAINTIFF worked in excess of 3.5 hours each workday, she routinely has not been able to take
28 10-minute, duty-free rest breaks, due to the workload EXPONENT required her to complete during

1 the workday. In addition to the impact break time would have on her ability to meet EXPONENT's
2 performance metrics, PLAINTIFF was also required to be readily available to EXPONENT
3 employees and clients who sought to communicate with her during these times. In fact, PLAINTIFF
4 was given a company cell phone along with expectations that she monitor business activity as an
5 exempt employee would, including during off-hour times after the normal workday hours and on
6 weekends, when she was essentially on-call to respond substantively to her managers.

7 39. As a result of EXPONENT's unlawful misclassification of PLAINTIFF as an exempt
8 employee, PLAINTIFF was deprived of numerous fundamental rights, including the right to be paid
9 for all hours worked and overtime pay, the right to meal periods, rest breaks, and recovery periods,
10 the right to accurate itemized wage statements, and the right to timely payment of wages, all of
11 which are guaranteed to employees under various provisions of the Labor Code and Wage Order 4-
12 2001.

13 40. In perpetrating the acts and omissions alleged herein, EXPONENT intentionally and
14 willfully violated the Industrial Welfare Commission Orders, the California Code of Regulations,
15 and the Labor Code.

16 **FIRST CAUSE OF ACTION**

17 **Harassment on the Basis of Age**

18 **Violation of FEHA, Cal. Gov't Code § 12940(j)(1)**

19 **(Against DEFENDANTS)**

20 41. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and
21 every allegation set forth above.

22 42. The FEHA provides that it shall be unlawful for an employer or for any person to
23 harass an employee because of a person's age. *See* Cal. Gov't Code § 12940(j)(1). At all times
24 herein mentioned, the FEHA was in full force and effect and was binding on DEFENDANTS. This
25 statute requires DEFENDANTS to refrain from harassing any employee on the basis of age, among
26 other things.

27 43. California Government Code section 12923 states "harassment creates a hostile,
28 offensive, oppressive, or intimidating work environment and deprives victims of their statutory right

1 to work in a place free of discrimination when the harassing conduct sufficiently offends, humiliates,
2 distresses, or intrudes upon its victim, so as to disrupt the victim's emotional tranquility in the
3 workplace, affect the victim's ability to perform the job as usual, or otherwise interfere with and
4 undermine the victim's personal sense of well-being."

5 44. California Government Code section 12923 allows claims for hostile work
6 environment harassment to proceed where a reasonable person exposed to the conduct would find
7 that it "so altered working conditions as to make it more difficult to do the job." *Id.* (citing Justice
8 Ginsberg's concurring opinion in *Harris v. Forklift Systems*, 510 U.S. 17, 26 (1993)).

9 45. As set forth by the California Supreme Court in *Miller v. Dept. of Corrections* (2005)
10 36 Cal. 4th 446, 462, favoritism of employees that negatively affects an employee based on a
11 protected characteristic is a form of hostile work environment harassment where an offensive
12 message is set to the employee and ratified by the employer, regardless of whether a tangible adverse
13 employment action occurred.

14 46. As set forth by the California Supreme Court in *Roby v. McKesson Corp.* (2009) 47
15 Cal. 4th 686, 709, social interactions that affect the workplace environment because of the offensive
16 message they send to employees based on a protected characteristic constitutes hostile work
17 environment harassment. Further, personnel management actions that send the same offensive
18 message as part of a pattern of bias may form the basis of a hostile work environment, especially
19 where the message has been ratified by the employer.

20 47. As set forth in the allegations above, during PLAINTIFF's time working for
21 DEFENDANTS, DEFENDANTS intentionally engaged in harassment, including creating a hostile
22 work environment, on the basis of PLAINTIFF's age, in violation of California law. EXPONENT,
23 through its managers and supervisors, including, but not limited to Murray and SHEPHERD, acted
24 in a manner that was antagonistic to PLAINTIFF and which exhibited harassing motivations,
25 intentions, and consciousness. A reasonable person subjected to the harassing conduct would find,
26 as PLAINTIFF did, that the harassment created a hostile work environment for PLAINTIFF by
27 offending, humiliating and distressing her, disrupting her emotional tranquility in the workplace,
28 affecting her ability to perform her job as usual, and interfering with her personal sense of well-

1 being. *See* Cal. Gov't Code § 12923(a).

2 48. The doctrines of equitable tolling and continuing violations apply to PLAINTIFF'S
3 claims of harassment. *See Richards v. CH2M Hill, Inc.*, 26 Cal.4th 798 (2001); *McDonald v.*
4 *Antelope Valley Community College Dist.*, 45 Cal.4th 88 (2008).

5 49. As a proximate result of DEFENDANTS' willful, knowing, and intentional
6 harassment of PLAINTIFF, PLAINTIFF has sustained and continues to sustain substantial losses
7 of earnings and employment benefits, and has suffered and continues to suffer humiliation,
8 emotional distress, and physical and mental pain and anguish, all to her damage in a sum according
9 to proof.

10 50. PLAINTIFF has incurred and continues to incur legal expenses and attorneys' fees.
11 Pursuant to California Government Code section 12965(b), PLAINTIFF is entitled to recover
12 reasonable attorneys' fees and costs (including expert costs) in an amount according to proof.

13 51. DEFENDANTS committed the acts herein despicably, maliciously, fraudulently, and
14 oppressively, with the wrongful intention of injuring PLAINTIFF, from an improper motive
15 amounting to malice, and in conscious disregard of the rights of PLAINTIFF. PLAINTIFF is thus
16 entitled to punitive damages in an amount according to proof.

17 **SECOND CAUSE OF ACTION**

18 **Discrimination on the Basis of Age**

19 **Violation of FEHA, Cal. Gov't Code § 12940(a)**

20 **(Against EXPONENT and DOES)**

21 52. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and
22 every allegation set forth above.

23 53. The FEHA provides that "the opportunity to seek, obtain, and hold employment
24 without discrimination because of race, religious creed, color, national origin, ancestry, physical
25 disability, mental disability, medical condition, ... marital status, sex, gender, gender identity,
26 gender expression, age, sexual orientation ... is hereby recognized as and declared to be a civil
27 right." Cal. Gov't Code § 12921(a); *see id.* § 12940(a).

28 54. The purpose of the FEHA is to protect and safeguard the right and opportunity of all

1 persons to seek, obtain, and hold employment without discrimination or abridgment on the account
2 of, *inter alia*, a person's age. The FEHA recognizes that the practice of denying employment
3 opportunities and discriminating in terms of employment substantially and adversely affects the
4 interest of employees, employers, and the public in general. *See* Cal. Gov't Code § 12920.
5 Accordingly, the FEHA makes it an unlawful employment practice for an employer to discriminate
6 against an employee "in terms, conditions, or privileges of employment" on the basis of the
7 employee's age. Cal. Gov't Code § 12940(a).

8 55. As set forth in the allegations above, PLAINTIFF's age was a motivating factor in
9 her demotion, harassment, and attempts to force early retirement. Thus, as alleged herein,
10 EXPONENT and DOES discriminated against PLAINTIFF on the basis of her age, in violation of
11 the FEHA.

12 56. The doctrines of equitable tolling and continuing violations apply to PLAINTIFF's
13 claim of discrimination. *See Richards v. CH2M Hill, Inc.*, 26 Cal.4th 798 (2001) (an employee is
14 not required to file a lawsuit the moment conditions become intolerable for the employee);
15 *McDonald v. Antelope Valley Community College Dist.*, 45 Cal.4th 88 (2008).

16 57. As a proximate result of EXPONENT and DOES's willful, knowing, and intentional
17 discrimination against PLAINTIFF, PLAINTIFF has sustained and continues to sustain substantial
18 losses of earnings and other employment benefits, and has suffered and continues to suffer
19 humiliation, emotional distress, and physical and mental pain and anguish, all to her damage in a
20 sum according to proof.

21 58. PLAINTIFF has incurred and continues to incur legal expenses and attorneys' fees.
22 Pursuant to California Government Code section 12965(b), PLAINTIFF is entitled to recover
23 reasonable attorneys' fees and costs (including expert costs) in an amount according to proof.

24 59. EXPONENT and DOES committed the acts herein despicably, maliciously,
25 fraudulently, and oppressively, with the wrongful intention of injuring PLAINTIFF, from an
26 improper and evil motive amounting to malice, and in conscious disregard of PLAINTIFF's rights.
27 PLAINTIFF is thus entitled to punitive damages in an amount according to proof.
28

1 **THIRD CAUSE OF ACTION**

2 **Harassment on the Basis of Disability/Medical Condition**

3 **Violation of FEHA, Cal. Gov't Code § 12940(j)**

4 **(Against DEFENDANTS)**

5 60. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and
6 every allegation set forth above.

7 61. The FEHA provides that it shall be unlawful for an employer or for any person to
8 harass an employee because of a person's disability/medical condition. *See* Cal. Gov't Code
9 § 12940(j)(1). At all times herein mentioned, the FEHA was in full force and effect and was binding
10 on DEFENDANTS. This statute requires DEFENDANTS and SHEPHERD to refrain from
11 harassing any employee on the basis of disability/medical condition, among other things.

12 62. California Government Code section 12923 states "harassment creates a hostile,
13 offensive, oppressive, or intimidating work environment and deprives victims of their statutory right
14 to work in a place free of discrimination when the harassing conduct sufficiently offends, humiliates,
15 distresses, or intrudes upon its victim, so as to disrupt the victim's emotional tranquility in the
16 workplace, affect the victim's ability to perform the job as usual, or otherwise interfere with and
17 undermine the victim's personal sense of well-being."

18 63. California Government Code section 12923 allows claims for hostile work
19 environment harassment to proceed where a reasonable person exposed to the conduct would find
20 that it "so altered working conditions as to make it more difficult to do the job." *Id.* (citing Justice
21 Ginsberg's concurring opinion in *Harris v. Forklift Systems*, 510 U.S. 17, 26 (1993)).

22 64. As set forth by the California Supreme Court in *Miller v. Dept. of Corrections* (2005)
23 36 Cal. 4th 446, 462, favoritism of employees that negatively affects an employee based on a
24 protected characteristic is a form of hostile work environment harassment where an offensive
25 message is set to the employee and ratified by the employer, regardless of whether a tangible adverse
26 employment action occurred.

27 65. As set forth by the California Supreme Court in *Roby v. McKesson Corp.* (2009) 47
28 Cal. 4th 686, 709, social interactions that affect the workplace environment because of the offensive

1 message they send to employees based on a protected characteristic constitutes hostile work
2 environment harassment. Further, personnel management actions that send the same offensive
3 message as part of a pattern of bias may form the basis of a hostile work environment, especially
4 where the message has been ratified by the employer.

5 66. As set forth in the allegations above, during PLAINTIFF's time working for
6 EXPONENT, DEFENDANTS intentionally engaged in harassment, including creating a hostile
7 work environment, on the basis of PLAINTIFF's disability/medical condition, in violation of
8 California law. EXPONENT, through its managers and supervisors, including but not limited to
9 SHEPHERD, acted in a manner that was antagonistic to PLAINTIFF and which exhibited harassing
10 motivations, intentions, and consciousness. A reasonable person subjected to the harassing conduct
11 would find, as PLAINTIFF did, that the harassment created a hostile work environment for
12 PLAINTIFF by offending, humiliating and distressing her, disrupting her emotional tranquility in
13 the workplace, affecting her ability to perform her job as usual, and interfering with her personal
14 sense of well-being. *See* Cal. Gov't Code § 12923(a).

15 67. The doctrines of equitable tolling and continuing violations apply to PLAINTIFF's
16 claims of harassment. *See Richards v. CH2M Hill, Inc.*, 26 Cal.4th 798 (2001); *McDonald v.*
17 *Antelope Valley Community College Dist.*, 45 Cal.4th 88 (2008).

18 68. As a proximate result of DEFENDANTS' willful, knowing, and intentional
19 harassment of PLAINTIFF, PLAINTIFF has sustained and continues to sustain substantial losses
20 of earnings and employment benefits, and has suffered and continues to suffer humiliation,
21 emotional distress, and physical and mental pain and anguish, all to her damage in a sum according
22 to proof.

23 69. PLAINTIFF has incurred and continues to incur legal expenses and attorneys' fees.
24 Pursuant to California Government Code section 12965(b), PLAINTIFF is entitled to recover
25 reasonable attorneys' fees and costs (including expert costs) in an amount according to proof.

26 70. EXPONENT, its officer and director SHEPHERD, and DOES committed the acts
27 herein despicably, maliciously, fraudulently, and oppressively, with the wrongful intention of
28 injuring PLAINTIFF, from an improper motive amounting to malice, and in conscious disregard of

1 the rights of PLAINTIFF. PLAINTIFF is thus entitled to punitive damages in an amount according
2 to proof.

3 **FOURTH CAUSE OF ACTION**

4 **Discrimination on the Basis of Disability/Medical Condition**

5 **Violation of FEHA, Cal. Gov't Code § 12940(a)**

6 **(Against EXPONENT and DOES)**

7 71. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and
8 every allegation set forth above.

9 72. The purpose of the FEHA is to protect and safeguard the right and opportunity of all
10 persons to seek, obtain, and hold employment without discrimination or abridgment on the account
11 of, *inter alia*, a person's disability/medical condition. *See* Cal. Gov't Code § 12920. Accordingly,
12 the FEHA makes it an unlawful employment practice for an employer to discriminate against an
13 employee "in terms, conditions, or privileges of employment" on the basis of the employee's
14 disability/medical condition. Cal. Gov't Code § 12940(a).

15 73. As set forth in the allegations above, EXPONENT and DOES took adverse
16 employment actions against PLAINTIFF, including changing the terms and conditions of her
17 employment, because of her disability/medical condition. Thus, EXPONENT and DOES
18 discriminated against PLAINTIFF on the basis of her disability/medical condition, in violation of
19 the FEHA.

20 74. The doctrines of equitable tolling and continuing violations apply to PLAINTIFF's
21 claim of discrimination. *See Richards v. CH2M Hill, Inc.*, 26 Cal.4th 798 (2001) (an employee is
22 not required to file a lawsuit the moment conditions become intolerable for the employee);
23 *McDonald v. Antelope Valley Community College Dist.*, 45 Cal.4th 88 (2008).

24 75. As a proximate result of EXPONENT and DOES' willful, knowing, and intentional
25 discrimination against PLAINTIFF, PLAINTIFF has sustained and continues to sustain substantial
26 losses of earnings and other employment benefits, and has suffered and continues to suffer
27 humiliation, emotional distress, and physical and mental pain and anguish, all to her damage in a
28 sum according to proof.

76. PLAINTIFF has incurred and continues to incur legal expenses and attorneys' fees. Pursuant to California Government Code section 12965(b), PLAINTIFF is entitled to recover reasonable attorneys' fees and costs (including expert costs) in an amount according to proof.

77. EXPONENT, its officer and director SHEPHERD, and DOES committed the acts herein despicably, maliciously, fraudulently, and oppressively, with the wrongful intention of injuring PLAINTIFF, from an improper and evil motive amounting to malice, and in conscious disregard of PLAINTIFF's rights. PLAINTIFF is thus entitled to punitive damages in an amount according to proof.

FIFTH CAUSE OF ACTION

Failure to Accommodate Disability

(Violation of FEHA, Cal. Govt. Code § 12940(m))

(Against EXPONENT and DOES)

78. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and every allegation set forth above.

79. Under the FEHA, an employer that is aware of an employee who has a physical disability/medical condition has an affirmative duty to make reasonable accommodations based on the employee's physical disability/medical condition. *See* Cal. Gov't Code § 12940(m).

80. Under the FEHA, an intermittent leave of absence, the ability to work remotely, and adjusting performance evaluation criteria to account for leave time taken, among other things, can be reasonable accommodations.

81. As set forth herein, EXPONENT was aware of PLAINTIFF's disability/medical condition of diverticulitis and IBS since at least 2016, and also knew that PLAINTIFF required remote work options and sporadic intermittent time off from work when a medical episode occurred. Therefore, DEFENDANTS knew that PLAINTIFF suffered from a disability/medical condition covered under the FEHA.

82. PLAINTIFF was able to perform the essential job duties of her position with EXPONENT with reasonable accommodation for her to take intermittent leave as allowed through EXPONENT's sick leave and other leave policies, to work remotely, and to have her performance

1 criteria adjusted to account for leave time taken. At all times during PLAINTIFF's employment
2 with EXPONENT, PLAINTIFF was otherwise qualified to do her job.

3 83. PLAINTIFF asserted rights pursuant to the FEHA, requesting reasonable
4 accommodation from EXPONENT for disability, including, but not limited to, requests to take
5 intermittent sick and medical leave, requests to work remotely, and requests to have her
6 performance evaluated for the time she worked and excluding any negative consequences for the
7 time not worked as a result of medically necessary leave taken, among other things. As alleged
8 herein, EXPONENT, its agent SHEPHERD, and DOES failed to provide PLAINTIFF with a
9 reasonable accommodation for her disability/medical condition.

10 84. As a proximate result of EXPONENT and DOES' willful, knowing, and intentional
11 conduct, as alleged above, PLAINTIFF has sustained and continues to sustain substantial losses of
12 earnings and employment benefits.

13 85. As a proximate result of EXPONENT and DOES' willful, knowing, and intentional
14 conduct, as alleged above, PLAINTIFF has suffered and continues to suffer humiliation,
15 emotional distress, and physical and mental pain and anguish, all to her damage in a sum
16 according to proof.

17 86. PLAINTIFF has incurred and continues to incur legal expenses and attorneys' fees.
18 Pursuant to California Government Code section 12965(b), PLAINTIFF is entitled to recover
19 reasonable attorneys' fees and costs (including expert costs) in an amount according to proof.

20 87. EXPONENT, its officer and director SHEPHERD, and DOES committed the acts
21 herein despicably, maliciously, fraudulently, and oppressively, with the wrongful intention of
22 injuring PLAINTIFF, from an improper and evil motive amounting to malice, and in conscious
23 disregard of the rights of PLAINTIFF. PLAINTIFF is thus entitled to punitive damages in an
24 amount according to proof.

1 **SIXTH CAUSE OF ACTION**

2 **Failure to Engage in the Interactive Process to Accommodate Disability**

3 **(Violation of FEHA, Cal. Govt. Code § 12940(n))**

4 **(Against EXPONENT and DOES)**

5 88. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
6 and every allegation set forth above.

7 89. It is unlawful under the FEHA for an employer to fail to engage in a timely, good
8 faith, interactive process with the employee to determine effective reasonable accommodations for
9 an employee with a known disability. *See* Cal. Gov't Code §§ 12940(n); 12926.1(e).

10 90. Under the FEHA, employers who are aware that an employee has a disability have
11 an affirmative duty to engage in the interactive process to identify and provide reasonable
12 accommodations for such disability. The duty arises even if the employee has not requested
13 reasonable accommodation. In particular, employers are obligated to initiate a timely, good-faith
14 interactive process to accommodate an employee's disability when the employer has become
15 aware of the possible need for accommodation. *See* Cal. Code Regs., tit. 2, § 11069(b).

16 91. The FEHA requires a timely, good faith, interactive process between an employer
17 and an employee with a known disability, which includes the exchange of essential information
18 "without delay or obstruction of the process." Cal. Code Regs., tit. 2, § 11069(a).

19 92. As part of a timely, good-faith interactive process, an employer "shall analyze the
20 particular job involved and the essential functions of the job." *See* Cal. Code Regs., tit. 2,
21 § 11069(c)(5). An employer "shall identify potential accommodations and assess the effectiveness
22 each would have in enabling the applicant to have an equal opportunity to ... perform the essential
23 function of the position held." Cal. Code Regs., tit. 2, § 11069(c)(7). An employer "shall either
24 grant the applicant or employee's requested accommodation, or reject it after due consideration,
25 and initiate discussion with the applicant or employee regarding alternative accommodations."
26 Cal. Code Regs., tit. 2, § 11069(c)(1).

27 93. As alleged above, EXPONENT and DOES failed to engage in the interactive
28 process with PLAINTIFF to determine what accommodations would enable PLAINTIFF to

1 perform the essential functions of her position. Instead, EXPONENT and DOES reduced
2 PLAINTIFF's compensation by 30% despite the negative effect it would have on the company's
3 business operations.

4 94. EXPONENT and DOES' conduct violated the FEHA's requirement to engage in a
5 timely, good faith interactive process in response to PLAINTIFF's requests for reasonable
6 accommodation. *See* Cal. Gov't Code § 12940(n).

7 95. As a proximate result of EXPONENT and DOES' willful, knowing, and intentional
8 conduct, as alleged above, PLAINTIFF has sustained and continues to sustain substantial losses of
9 earnings and employment benefits.

10 96. As a proximate result of EXPONENT and DOES' willful, knowing, and intentional
11 conduct, as alleged above, PLAINTIFF has suffered and continues to suffer humiliation,
12 emotional distress, and physical and mental pain and anguish, all to her damage in a sum
13 according to proof.

14 97. PLAINTIFF has incurred and continues to incur legal expenses and attorneys' fees.
15 Pursuant to California Government Code section 12965(b), PLAINTIFF is entitled to recover
16 reasonable attorneys' fees and costs (including expert costs) in an amount according to proof.

17 98. EXPONENT, its officer and director SHEPHERD, and DOES committed the acts
18 herein despicably, maliciously, fraudulently, and oppressively, with the wrongful intention of
19 injuring PLAINTIFF, from an improper and evil motive amounting to malice, and in conscious
20 disregard of the rights of PLAINTIFF. PLAINTIFF is thus entitled to punitive damages in an
21 amount according to proof.

22 **SEVENTH CAUSE OF ACTION**

23 **Violation of California Family Rights Act ("CFRA"), Including Interference and Retaliation**
24 **(Cal. Gov. Code § 12945.2)**
25 **(Against EXPONENT and DOES)**

26 99. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
27 and every allegation set forth above.

28 100. PLAINTIFF was employed by EXPONENT and DOES for more than one year and

1 had in excess of 1250 hours of service during the 12-month period immediately preceding her
2 need for intermittent medical leave. PLAINTIFF was employed at a worksite where EXPONENT
3 employs at least fifty (50) employees within seventy-five (75) miles.

4 101. 2 California Code of Regulations section 11091(a)(1)(A) states that “[u]nder all
5 circumstances, it is the employer’s responsibility to designate leave, paid or unpaid, as CFRA or
6 CFRA/FMLA qualifying, based on information provided by the employee or the employee’s
7 spokesperson, and to give notice of the designation to the employee.”

8 102. CFRA states that “[i]t shall be an unlawful employment practice for an employer to
9 ... discharge ... or discriminate against, any individual because of ... [the] individual’s exercise of
10 the right to family care and medical leave provided by [CFRA].” Cal. Gov’t Code § 12945.2
11 (l)(1).

12 103. CFRA further states that “[i]t shall be an unlawful employment practice for an
13 employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right
14 provided under [CFRA].” Cal. Gov’t Code § 12945.2(t).

15 104. As set forth above, PLAINTIFF requested intermittent sick time and/or CFRA leave
16 from EXPONENT as a result of her disability/medical condition. EXPONENT, including
17 SHEPHERD, knew the PLAINTIFF required intermittent job-protected leave to address her
18 medical concerns. Instead of providing PLAINTIFF with information about or the ability to take
19 the necessary leave, EXPONENT and DOES discriminated and retaliated against PLAINTIFF by
20 cutting her salary and benefits regardless of the amount of hours she worked, in violation of the
21 CFRA. *See* Cal. Gov’t Code § 12945.2. Instead of informing PLAINTIFF of her rights to take job-
22 protected leave, SHEPHERD told PLAINTIFF that her only choice was to work additional hours
23 without pay to accomplish the impossible goals EXPONENT gave her.

24 105. As a direct and legal result of EXPONENT and DOES’ conduct, PLAINTIFF
25 suffered and will suffer special damages for lost earnings and wages in an amount not yet fully
26 known, but in excess of the jurisdictional limits of this Court.

27 106. As a direct and legal result of EXPONENT and DOES’ conduct, PLAINTIFF
28 suffered general damages including, but not limited to, stress-related physical symptoms, damage

1 to her reputation, pain and suffering, humiliation, embarrassment, mortification, hurt feelings, and
2 emotional distress, all in an amount to be proved at trial.

3 107. PLAINTIFF has incurred and continues to incur legal expenses and attorneys' fees.
4 Pursuant to California Government Code section 12965(b), PLAINTIFF is entitled to recover
5 reasonable attorneys' fees and costs (including expert costs) in an amount according to proof.

6 108. EXPONENT and DOES committed the acts herein despicably, maliciously,
7 fraudulently, and oppressively, with the wrongful intention of injuring PLAINTIFF, from an
8 improper and evil motive amounting to malice, and in conscious disregard of the rights of
9 PLAINTIFF. PLAINTIFF is thus entitled to punitive damages in an amount according to proof.

10 **EIGHTH CAUSE OF ACTION**

11 **Violation of 2022 Covid-19 Supplemental Paid Sick Leave Law**

12 **Cal. Lab. Code § 248.6**

13 **(Against EXPONENT and DOES)**

14 109. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and
15 every allegation set forth above.

16 110. In August 2022, when PLAINTIFF provided notice to EXPONENT that she had
17 tested positive for the Covid-19 virus and needed to take additional sick time and work remotely,
18 the 2022 California COVID-19 Supplemental Paid Sick Leave law (the "2022 CSPSL"), codified
19 at Labor Code sections 248.6, was in effect and applied to EXPONENT.

20 111. The 2022 CSPSL required employers to provide supplemental paid sick leave to
21 California employees for a variety of COVID-19 related reasons, including up to eighty (80) hours
22 of paid sick leave.

23 112. At the time, Labor Code section 248.6(b)(4) stated that "An employer shall not require
24 a covered employee to use any other paid or unpaid leave, paid time off, or vacation time provided
25 by the employer to the covered employee before the covered employee uses COVID-19
26 supplemental paid sick leave or in lieu of COVID-19 supplemental paid sick leave."
27
28

113. EXPONENT and DOES did not provide PLAINTIFF with the 80 hours of additional paid sick leave she was entitled to receive, and instead PLAINTIFF had to rely on her balance of other available sick time provided when she required additional sick time, so that she did not receive the needed benefit of the 2022 CSPSL. EXPONENT and DOES, including through their agent Malladi, harassed PLAINTIFF to come into the physical office to work when her right to work remotely was protected by the 2022 CSPSL.

114. EXPONENT and DOES also did not replenish PLAINTIFF's available sick leave time.

115. EXPONENT and DOES did not provide PLAINTIFF with information regarding the balance of 2022 CSPSL that was available to her, as required by Labor Code section 248.6(d)(2).

116. EXPONENT and DOES also retaliated against PLAINTIFF by treating her need for 2022 CSPSL leave as a reason to reduce her pay.

117. As a result of EXPONENT's and DOES' conduct, PLAINTIFF has been damaged in an amount according to proof at trial, and seeks all wages earned and due, interest, penalties, expenses, attorneys' fees and costs of suit.

NINTH CAUSE OF ACTION

Retaliation for Opposing Practices Forbidden by FEHA

Violation of FEHA, Cal. Gov't Code § 12940(h)

(Against EXPONENT and DOES)

118. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and every allegation set forth above.

119. At all times herein mentioned, the FEHA required EXPONENT to refrain from retaliating against any employee for opposing practices forbidden by the FEHA or asserting rights under the FEHA, including complaining of harassment and discrimination on the basis of age and/or disability/medical condition, and/or taking or needing medical leave, among other things. *See* Cal. Gov't Code § 12940(h).

120. As alleged herein, during PLAINTIFF's employment with EXPONENT, EXPONENT and DOES intentionally engaged in harassment and discrimination against PLAINTIFF, about which PLAINTIFF complained.

121. As alleged herein, EXPONENT and DOES retaliated against PLAINTIFF by, among other things, changing the material terms and conditions of her employment, forcing her to accept reduced pay, and attempting to force her into early retirement.

122. The doctrines of equitable tolling and continuing violations apply to PLAINTIFF'S claims of retaliation. *See Richards v. CH2M Hill, Inc.*, 26 Cal.4th 798 (2001) (an employee is not required to file a lawsuit the moment conditions become intolerable for the employee); *McDonald v. Antelope Valley Community College Dist.*, 45 Cal.4th 88 (2008).

123. As a proximate result of EXPONENT and DOES' willful, knowing, and intentional retaliation against PLAINTIFF, PLAINTIFF has sustained and continues to sustain substantial losses of earnings and other employment benefits, and has suffered and continues to suffer humiliation, emotional distress, and mental and physical pain and anguish, all to her damage in a sum according to proof.

124. PLAINTIFF has incurred and continues to incur legal expenses and attorneys' fees. Pursuant to California Government Code section 12965(b), PLAINTIFF is entitled to recover reasonable attorneys' fees and costs (including expert costs) in an amount according to proof.

125. EXPONENT, its officer and director SHEPHERD, and DOES committed the acts herein despicably, maliciously, fraudulently, and oppressively, with the wrongful intention of injuring PLAINTIFF, from an improper and evil motive amounting to malice, and in conscious disregard of the rights of PLAINTIFF. PLAINTIFF is thus entitled to punitive damages in an amount according to proof.

TENTH CAUSE OF ACTION

Failure to Prevent, Investigate, and Remedy Discrimination, Harassment, and/or Retaliation

Violation of FEHA, Cal. Gov't Code § 12940(k)

(Against EXPONENT and DOES)

126. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and

every allegation set forth above.

127. California law requires that employers take reasonable steps to prevent and correct wrongful behavior, including but not limited to, harassing, discriminatory, and retaliatory behavior in the workplace. *See* Cal. Gov't Code §12940(k). Pursuant to this statute, EXPONENT was required to take all reasonable steps to prevent harassment, discrimination, and retaliation based on PLAINTIFF's age and disability/medical condition, and/or other protected characteristics.

128. As alleged herein, although EXPONENT and its officer and director SHEPHERD and DOES were made aware of harassment, discrimination, and retaliation against PLAINTIFF, they did not take immediate or corrective action to prevent further harassment, discrimination, or retaliation. Thus, EXPONENT and DOES violated the FEHA by failing to take all reasonable steps necessary to prevent the harassment and retaliation from occurring. Cal. Gov't Code § 12940(k).

129. As a proximate result of EXPONENT and DOES' willful, knowing, and intentional conduct, PLAINTIFF has sustained and continues to sustain substantial losses of earnings and other employment benefits, and has suffered and continues to suffer humiliation, emotional distress, and mental and physical pain and anguish, all to her damage in a sum according to proof.

130. PLAINTIFF has incurred and continues to incur legal expenses and attorneys' fees. Pursuant to California Government Code section 12965(b), PLAINTIFF is entitled to recover reasonable attorneys' fees and costs (including expert costs) in an amount according to proof.

131. EXPONENT, its officer and director SHEPHERD, and DOES committed the acts herein despicably, maliciously, fraudulently, and oppressively, with the wrongful intention of injuring PLAINTIFF, from an improper and evil motive amounting to malice, and in conscious disregard of the rights of PLAINTIFF. PLAINTIFF is thus entitled to punitive damages in an amount according to proof.

ELEVENTH CAUSE OF ACTION

Whistleblower Retaliation

Violation of Cal. Lab. Code Section 1102.5

(Against DEFENDANTS)

132. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and

every allegation set forth above.

133. At all relevant times, Labor Code section 1102.5 was in effect and was binding on EXPONENT. Section 1102.5 states, “An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information... if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation....” Cal. Lab. Code § 1102.5(b).

134. At all relevant times, SHEPHERD was a director, officer, and/or managing agent of EXPONENT.

135. Labor Code section 1102.5(c) also states that “[a]n employer, or any person acting on behalf of the employer, shall not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.” Cal. Lab. Code § 1102.5(c).

136. As alleged herein and above, PLAINTIFF engaged in activity protected by the Labor Code when she opposed harassment, discrimination, and retaliation against her in the workplace. DEFENDANTS knew that PLAINTIFF had engaged in protected activity by complaining about discrimination, by seeking medical leave and reasonable accommodations, and by advocating for herself to receive wages commensurate with the hours she worked as required by the Labor Code.

137. As a proximate result of DEFENDANTS’ willful, knowing, and intentional retaliation against PLAINTIFF, PLAINTIFF has sustained and continues to sustain substantial losses of earnings and other employment benefits, and has suffered and continues to suffer humiliation, emotional distress, and mental and physical pain and anguish, all to her damage in a sum according to proof.

138. EXPONENT, its officer and director SHEPHERD, and DOES committed the acts herein despicably, maliciously, fraudulently, and oppressively, with the wrongful intention of injuring PLAINTIFF, from an improper and evil motive amounting to malice, and in conscious disregard of the rights of PLAINTIFF. PLAINTIFF is thus entitled to punitive damages in an amount according to proof.

1 **TWELFTH CAUSE OF ACTION**

2 **Failure To Pay Compensation for All Time Worked**

3 **Violation of Cal. Lab. Code §§ 1194, 1194.2, 1198; Cal. Code Regs. Tit. 8, § 11040**

4 **(Against EXPONENT and DOES)**

5 139. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and
6 every allegation set forth above.

7 140. At all times relevant hereto, the Labor Code and IWC Wage Order No. 4-2001 applied
8 to EXPONENT and DOES.

9 141. At all times relevant hereto, EXPONENT and DOES improperly classified
10 PLAINTIFF as an exempt employee, and failed to properly compensate PLAINTIFF as a result of
11 such misclassification.

12 142. At all relevant times herein, employers operating under California law were required
13 to comply with Labor Code 1194, which states that “Notwithstanding any agreement to work for a
14 lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
15 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance
16 of the full amount of this minimum wage or overtime compensation, including interest thereon,
17 reasonable attorney's fees, and costs of suit.” *See* Cal. Lab. Code § 1194; IWC Order No. 4-2001(4),
18 *codified* at Cal. Code Regs. tit. 8 § 11040. In addition, an employee is entitled to recover liquidated
19 damages equaling the wages unlawfully unpaid, as well as interest. *See* Cal. Lab. Code § 1194.2.

20 143. At all relevant times herein, EXPONENT and DOES failed to pay PLAINTIFF for
21 all hours worked. Instead of paying PLAINTIFF an hourly wage, EXPONENT and DOES
22 compensated PLAINTIFF with an annual salary, irrespective of her actual hours worked. This
23 resulted in PLAINTIFF receiving less than all wages for her hours worked, in violation of Labor
24 Code sections 1194, 1194.2 and 1198, and IWC Wage Order No. 4-2001(4), *codified* at Cal. Code
25 Regs. tit. 8 § 11040.

26 144. As a result of EXPONENT’s and DOES’ conduct, PLAINTIFF has been damaged in
27 an amount according to proof at trial, and seeks all wages earned and due, interest, penalties,
28 expenses, attorneys’ fees and costs of suit.

1 **THIRTEENTH CAUSE OF ACTION**

2 **Failure to Pay Overtime**

3 **Violation of Cal. Lab. Code §§ 510, 1198; Cal. Code Regs. tit. 8 § 11050**

4 **(Against EXPONENT and DOES)**

5 145. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and
6 every allegation set forth above.

7 146. At all relevant times herein, Labor Code section 510 has mandated that any time
8 worked beyond eight hours in one workday or beyond 40 hours in any workweek must be
9 compensated at no less than one and one-half times the regular wage. *See* Cal. Lab. Code § 510(a).

10 147. IWC Wage Order 4-2001 further provides that employees “shall not be employed
11 more than eight (8) hours in any workday or more than 40 hours in any workweek unless the
12 employee receives one and one-half (1½) times such employee’s regular rate of pay for all hours
13 worked over 40 hours in the workweek.” IWC Wage Order No. 4-2001(3)(A), *codified* at Cal. Code
14 Regs. tit. 8 § 11040.

15 148. At all relevant times herein, EXPONENT and DOES misclassified PLAINTIFF as an
16 exempt employee. In actuality, EXPONENT and DOES were required to compensate PLAINTIFF
17 for all overtime, calculated at one and one-half (1½) times the regular rate of pay for all hours
18 worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight
19 (8) hours on the seventh consecutive workday, with double-time for all hours worked in excess of
20 twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the
21 seventh consecutive day of work in any workweek. *See* Cal. Lab. Code §§ 510, 1194.

22 149. Instead, at all relevant times herein, EXPONENT and DOES only paid PLAINTIFF
23 an annual salary, irrespective of her actual hours worked. Although PLAINTIFF routinely worked
24 more than eight hours per day, forty hours per week, twelve hours per day, and/or seven consecutive
25 days in a workweek, EXPONENT failed to pay PLAINTIFF any overtime wages. Thus,
26 EXPONENT violated Labor Code sections 510 and 1198, and IWC Wage Order No. 4-2001(3),
27 *codified* at Cal. Code Regs. tit. 8 § 11040. EXPONENT and DOES also failed to properly calculate
28 PLAINTIFF’s regular rate of pay to account for all types of compensation earned.

150. As a result of EXPONENT's and DOES' conduct, PLAINTIFF has been damaged in an amount according to proof at trial, and seeks all wages earned and due, penalties, interest, expenses, attorneys' fees and costs of suit.

FOURTEENTH CAUSE OF ACTION

Failure To Provide Meal Periods

Violation of Cal. Lab. Code §§ 226.7, 512(a); Cal. Code Regs. tit. 8 § 11040

(Against EXPONENT and DOES)

151. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and every allegation set forth above.

152. At all relevant times, Labor Code section 226.7 has provided that no employer shall require an employee to work during any meal period mandated by an applicable order of the IWC. *See also*, IWC Wage Order 4-2001(11), *codified* at Cal. Code Regs. tit. 8 § 11040.

153. At all relevant times herein, Labor Code section 512 has provided that "[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes," except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and employee. *See* Cal. Lab. Code § 512(a). During this meal period of not less than thirty (30) minutes, the employee is to be completely free of the employer's control and must not perform any work for the employer. If the employee does perform work for the employer during this thirty (30) minute meal period, the employee has not been provided with a duty-free meal period, in accordance with California law, and is to be compensated for any work performed during this (30) minute meal period in addition to one (1) additional hour of compensation at each employee's regular rate of pay for each workday that a meal period was not provided. *See* Cal. Lab. Code § 226.7; IWC Wage Order 4-2001(11), *codified* at Cal. Code Regs. tit. 8 § 11040.

154. At all relevant times herein, pursuant to Labor Code section 512(a) and IWC Wage Order 4-2001(11), an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with another meal period of not less than thirty

(30) minutes, or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

155. At all relevant times herein, although PLAINTIFF regularly worked more than five or ten hours per day, as a result of EXPONENT and DOES' misclassification of PLAINTIFF as an exempt employee, EXPONENT and DOES failed to provide PLAINTIFF with timely thirty (30) minute meal periods free from job duties, as required by Labor Code sections 226.7, 512(a), and IWC Wage Order No. 4-2001(11), *codified* at Cal. Code Regs. tit. 8 § 11040.

156. At all relevant times herein, EXPONENT and DOES further violated Labor Code section 226.7 and IWC Order No. 4-2001 by failing to compensate PLAINTIFF one (1) additional hour of compensation at her regular rate of pay for each workday that EXPONENT and DOES failed to provide compliant meal periods. *See* Cal. Lab. Code § 226.7(c); IWC Wage Order No. 4-2001(11), *codified* at Cal. Code Regs. tit. 8 § 11040.

157. PLAINTIFF has been damaged in an amount according to proof at trial, and seeks all wages earned and due, penalties, interest, expenses, and costs of suit.

FOURTEENTH CAUSE OF ACTION

Failure to Authorize and Permit Rest Breaks

Violation of Cal. Lab. Code § 226.7; Cal. Code Regs. tit. 8 § 11040

(Against EXPONENT and DOES)

158. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and every allegation set forth above.

159. At all relevant times herein, IWC Wage Order 4-2001 has stated that "[e]very employer shall authorize and permit all employees to take rest periods ... at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3.5) hours. IWC Order No. 4-2001(12), *codified* at Cal. Code Regs. tit. 8 § 11040.

160. At all relevant times herein, Labor Code section 226.7 has provided that "[a]n

1 employer shall not require an employee to work during a meal or rest or recovery period mandated
2 pursuant to an applicable statute....” Cal. Lab. Code § 226.7(b).

3 161. At all relevant times herein, as alleged above, although PLAINTIFF regularly worked
4 more than 3.5 hours per day, as a result of EXPONENT and DOES’ misclassification of
5 PLAINTIFF as an exempt employee, EXPONENT and DOES regularly failed to authorize or permit
6 PLAINTIFF to take ten (10) minute rest periods for each four (4) hours worked, or major fraction
7 thereof. PLAINTIFF was regularly denied rest periods in violation of the Labor Code. *See* IWC
8 Wage Order 4-2001, *codified* at Cal. Code Regs. tit. 8 § 11040; Cal. Lab. Code § 226.7(b).

9 162. At all relevant times herein, EXPONENT and DOES further violated Labor Code
10 section 226.7 and IWC Wage Order No. 4-2001 by failing to compensate PLAINTIFF one (1)
11 additional hour of compensation at her regular rate of pay for each workday that EXPONENT and
12 DOES failed to authorize and permit compliant rest breaks. *See* Cal. Lab. Code § 226.7(c); IWC
13 Wage Order No. 4-2001(12), *codified* at Cal. Code Regs. tit. 8 § 11040.

14 163. PLAINTIFF has been damaged in an amount according to proof at trial, and seeks all
15 wages earned and due, penalties, interest, expenses, and costs of suit.

16 **SIXTEENTH CAUSE OF ACTION**

17 **Failure To Provide Accurate Itemized Wage Statements**

18 **Cal. Labor Code §§ 226(a), 226(e), 226.3, Cal. Code Regs. tit. 8 § 11040)**

19 **(Against EXPONENT and DOES)**

20 164. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and
21 every allegation set forth above.

22 165. At all relevant times, Labor Code § 226 has required an employer to provide an
23 accurate itemized statement in writing showing:

24 (1) gross wages earned, (2) total hours worked by the employee, except for any
25 employee whose compensation is solely based on a salary and who is exempt from
26 payment of overtime under subdivision (a) of Section 515 or any applicable order
27 of the Industrial Welfare Commission, (3) the number of piece-rate units earned
28 and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all

1 deductions, provided that all deductions made on written orders of the employee
2 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
3 dates of the period for which the employee is paid, (7) the name of the employee
4 and only the last four digits of his or her social security number or an employee
5 identification number other than a social security number, (8) the name and address
6 of the legal entity that is the employer, and (9) all applicable hourly rates in effect
7 during the pay period and the corresponding number of hours worked at each hourly
8 rate by the employee.

9 *See* Cal. Labor Code § 226(a); IWC Wage Order 4-2001(7), *codified* at Cal. Code Regs. tit. 8
10 § 11040.

11 166. At all relevant times herein, EXPONENT and DOES systematically provided
12 PLAINTIFF with incomplete and inaccurate wage statements. The violations include, without
13 limitation, the failure to accurately list the total daily hours worked by PLAINTIFF, all applicable
14 hourly rates in effect during the pay period and the corresponding number of hours worked at each
15 hourly rate by PLAINTIFF, or total regular and overtime wages earned by PLAINTIFF.

16 167. At all relevant times herein, EXPONENT and DOES' failure to provide accurate
17 itemized wage statements was a knowing and intentional act based on its illegal misclassification
18 of PLAINTIFF as an exempt employee, and its practice of paying PLAINTIFF the same amount at
19 a pre-determined rate of pay regardless of the hours she worked and the applicable hourly rates for
20 overtime and doubletime compensation, in violation of the Labor Code. *See* Cal. Lab. Code §§
21 226(a), 226(e), 226.3.

22 168. By EXPONENT and DOES' practice of inaccurately reflecting the time during which
23 PLAINTIFF worked, and failing to record actual work times, including times taken for meal and
24 rest periods, EXPONENT knowingly and intentionally failed to comply with Labor Code section
25 226(a). *See* Cal. Labor Code §§ 226(a); IWC Wage Order 4-2001(7), *codified* at Cal. Code Regs.
26 tit. 8 § 11040.

27 169. PLAINTIFF has been damaged in an amount according to proof at trial, and seeks all
28 wages earned and due, penalties, interest, attorneys' fees, expenses, and costs of suit.

1 **SEVENTEENTH CAUSE OF ACTION**

2 **Failure to Provide One Day's Rest in Seven**

3 **Violation of Cal. Lab. Code §§ 551, 552**

4 **(Against EXPONENT and DOES)**

5 170. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and
6 every allegation set forth above.

7 171. Labor Code section 551 provides that "[e]very person employed in any occupation of
8 labor is entitled to one day's rest therefrom in seven." Cal. Lab. Code § 551. Labor Code section
9 552 provides that "[n]o employer of labor shall cause his employees to work more than six days in
10 seven." Cal. Lab. Code § 552. As set forth above, EXPONENT and DOES failed to provide
11 PLAINTIFF the legally-mandated rest days as required by California law.

12 172. Further, "an employer's obligation is to apprise employees of their entitlement to a
13 day of rest and thereafter to maintain absolute neutrality as to the exercise of that right." *Mendoza*
14 *v. Nordstrom, Inc.* (2017) 2 Cal. 5th 1074, 1091. EXPONENT and DOES failed to provide
15 PLAINTIFF with this notice.

16 **EIGHTEENTH CAUSE OF ACTION**

17 **Failure To Maintain Required Records**

18 **Violation of Cal. Lab. Code §§ 226, 1174(d), 1198.5; Cal. Code Regs. tit. 8 § 11070**

19 **(Against EXPONENT and DOES)**

20 173. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and
21 every allegation set forth above.

22 174. At all relevant times herein, Labor Code section 1174 provides that every employer
23 shall "[k]eep, at a central location in the state or at the plants or establishments at which employees
24 are employed, payroll records showing the hours worked daily by and the wages paid to, and the
25 number of piece-rate units earned by and any applicable piece rate paid to, employees employed at
26 the respective plants or establishments. These records shall be kept on file for not less than three
27 years." Cal. Lab. Code § 1174(d). Pursuant to IWC Wage Order 4-2001, employers are required to
28 keep accurate time records including, but not limited to, when the employee begins and ends each

1 work period and meal period. IWC Order No. 4-2001(7), *codified* at Cal. Code Regs. tit. 8 § 11070.

2 175. At all relevant times herein, EXPONENT and DOES failed to keep records for
3 PLAINTIFF, due to EXPONENT and DOE's misclassification of PLAINTIFF as an exempt
4 employee, in violation of the Labor Code. *See* Cal. Lab. Code §1174; IWC Wage Order 4-2001(7),
5 *codified* at Cal. Code Regs. tit. 8 § 11070.

6 176. PLAINTIFF has been damaged in an amount according to proof at trial, and seeks all
7 wages earned and due, penalties, interest, attorneys' fees, expenses, and costs of suit.

8 **NINETEENTH CAUSE OF ACTION**

9 **Failure to Timely Pay All Wages Due**

10 **Violation of Labor Code § 204**

11 **(Against EXPONENT and DOES)**

12 177. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and
13 every allegation set forth above.

14 178. Labor Code section 204, provides, in relevant part: "All wages, other than those
15 mentioned in Section[s] [not applicable here] earned by any person in any employment are due and
16 payable twice during each calendar month." Cal. Lab. Code § 204. In short, this means an employee
17 must be paid for *all* hours worked at the time those wages were due. Here, PLAINTIFF was not
18 compensated for all hours worked because she was improperly classified as an exempt employee
19 when she did not meet the requirements of an exemption.

20 179. EXPONENT and DOES failed to pay PLAINTIFF overtime for the time spent
21 working more than eight (8) hours in a workday and forty (40) hours in a workweek and failed to
22 issue premium pay for missed meal and rest periods. As such, PLAINTIFF was never compensated
23 for all time worked in violation of Labor Code section 204.

24 180. PLAINTIFF has been damaged in an amount according to proof at trial, and seeks all
25 wages earned and due, penalties, interest, attorneys' fees, expenses, and costs of suit.

1 **TWENTIETH CAUSE OF ACTION**

2 **Violation of Cal. Lab. Code § 558.1**

3 **(Against SHEPHERD)**

4 181. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and
5 every allegation set forth above.

6 182. At all relevant times herein, Labor Code section 558.1 has stated that “any employer
7 or other person acting on behalf of an employer, who violates, or causes to be violated, any
8 provision regulating minimum wages or hours and days of work in any order of the Industrial
9 Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194,
10 or 2802, may be held liable as the employer for such violation.”

11 183. At all relevant times, SHEPHERD, in her capacity as Chief Human Resources
12 Officer and an Executive Officer appointed by EXPONENT’s Board of Trustees, was a director,
13 officer, and/or managing agent of EXPONENT, and therefore was an “other person acting on
14 behalf of an employer.”

15 184. As a result, SHEPHERD may be held liable for the violations of Labor Code
16 sections 226, 226.7, 510, 1194, and 1198 alleged herein, and responsible for all resulting damages
17 alleged herein, including recovery of unpaid wages, unpaid meal and rest break premium pay,
18 unreimbursed business expenses, associated penalties, attorneys’ fees and costs of suit.

19 **TWENTY-FIRST CAUSE OF ACTION**

20 **Unfair and Unlawful Business Practices**

21 **Violation of Cal. Bus. & Prof. Code § 17200, *et seq.***

22 **(Against EXPONENT and DOES)**

23 185. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and
24 every allegation set forth above.

25 186. At all times herein, California Business & Professions Code provides that “person”
26 shall mean and include “natural persons, corporations, firms, partnerships, joint stock companies,
27 associations and other organizations of persons.” Bus. & Prof. Code § 17201.

28 187. At all times herein, EXPONENT’s conduct, as alleged herein, was unfair, unlawful

1 and harmful to PLAINTIFF, the general public, and EXPONENT's competitors. PLAINTIFF has
2 suffered injury in fact and has lost money as a result of EXPONENT's unlawful business practices.

3 188. At all times herein, EXPONENT's activities, as alleged herein, violated California
4 law, and constituted false, unfair, fraudulent and deceptive business acts and practices in violation
5 of California Business & Professions Code sections 17200, *et seq.*

6 189. Each and every one of EXPONENT's acts and omissions in violation of the Labor
7 Code, as alleged herein, constitutes an unfair and unlawful business practice under California
8 Business & Professions Code sections 17200, *et seq.*

9 190. As a result of the violations of California law herein described, EXPONENT and
10 DOES unlawfully gained an unfair advantage over other businesses. PLAINTIFF has suffered
11 pecuniary loss by EXPONENT's unlawful business acts and practices alleged herein.

12 191. Pursuant to California Business & Professions Code sections 17200 *et seq.*,
13 PLAINTIFF is entitled to restitution of the wages withheld and retained by EXPONENT and DOES;
14 a permanent injunction requiring EXPONENT and DOES to pay all outstanding wages due to
15 PLAINTIFF; an award of attorneys' fees pursuant to California Code of Civil Procedure section
16 1021.5 and other applicable laws; and an award of costs.

17 **TWENTY-SECOND CAUSE OF ACTION**

18 **Intentional Infliction of Emotional Distress**

19 **(Against DEFENDANTS)**

20 192. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
21 and every allegation set forth above.

22 193. A person intentionally inflicts emotional distress when he/she engages in extreme
23 and outrageous conduct with either: (1) an intent to cause emotional distress; or (2) reckless
24 disregard of the probability of causing emotional distress, and actually does cause severe
25 emotional suffering. *See Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050.

26 194. DEFENDANTS owed PLAINTIFF a duty of care not to cause PLAINTIFF
27 emotional distress.

28 195. As alleged herein and above, DEFENDANTS knowingly harassed, retaliated and

1 discriminated against PLAINTIFF based on her age and disability, causing her severe emotional
2 distress. DEFENDANTS further caused PLAINTIFF severe emotional distress by conspiring
3 against PLAINTIFF to subject her to unattainable performance expectations, reduce her pay,
4 increase the cost of her needed health benefits, force her to work without pay, and force her into
5 early retirement for illegal and improper reasons.

6 196. DEFENDANTS were aware that treating PLAINTIFF in the manner alleged above,
7 including depriving PLAINTIFF of her livelihood, would devastate PLAINTIFF and cause her
8 extreme hardship.

9 197. DEFENDANTS breached their duty to PLAINTIFF by way of their own conduct, as
10 alleged herein and above.

11 198. DEFENDANTS' illegal and improper actions against PLAINTIFF constituted
12 severe and outrageous misconduct and caused PLAINTIFF to suffer extreme emotional distress
13 that exceeded the normal risks of the employment relationship.

14 199. Such acts of DEFENDANTS were intentional, extreme, and outrageous, and were
15 done with the intent to cause serious emotional distress or with reckless disregard of the
16 probability of causing PLAINTIFF serious emotional distress.

17 200. As a proximate result of DEFENDANTS' extreme and outrageous conduct,
18 PLAINTIFF has suffered and continues to suffer humiliation, emotional distress, and mental and
19 physical pain and anguish, all to her damage in a sum according to proof.

20 201. As a proximate result of DEFENDANTS' extreme and outrageous conduct,
21 PLAINTIFF was compelled to and did employ the services of medical personnel, and the like, to
22 care for and treat her, and did incur, medical, professional and incidental expenses.

23 202. DEFENDANTS committed the acts herein despicably, maliciously, fraudulently,
24 and oppressively, with the wrongful intention of injuring PLAINTIFF, from an improper and evil
25 motive amounting to malice, and in conscious disregard of the rights of PLAINTIFF. PLAINTIFF
26 is thus entitled to punitive damages from DEFENDANTS in an amount according to proof.

27 **TWENTY-THIRD CAUSE OF ACTION**
28

Civil Penalties under the Private Attorneys General Act

(Cal. Labor Code Sections 2698, *et seq.*)

(Against EXPONENT and DOES on behalf of the State of California

by and through PLAINTIFF as a proxy for all aggrieved employees)

203. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and every allegation set forth above.

204. PLAINTIFF is an “aggrieved employee” within the meaning of Labor Code section 2699(c), and a proper representative to bring a civil action on behalf of herself and other current and former employees of EXPONENT and DOES pursuant to the procedures specified in Labor Code section 2699.3, because PLAINTIFF is employed by EXPONENT and DOES and the alleged violations of the Labor Code were committed against PLAINTIFF.

205. Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code sections 2698-2699.5, PLAINTIFF seeks to recover civil penalties, including but not limited to penalties under Labor Code sections 2699 from EXPONENT and DOES in representative action for the violations set forth above, including but not limited to violations of Labor Code sections 201, 202, 204, 210, 226, 226.7, 510, 512, 551, 552, 1174, 1194, 1194.2, 1198 and/or 2699(f). PLAINTIFF is also entitled to an award of reasonable attorneys’ fees and costs pursuant to Labor Code section 2699(g)(1).

206. Pursuant to Labor Code section 2699.3, PLAINTIFF gave written notice by online filing to the LWDA and certified mail to EXPONENT of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. PLAINTIFF’s notice to the LWDA is attached as Exhibit A. Within sixty-five (65) calendar days of the online filing and postmark date of PLAINTIFF’s notice letter, the LWDA did not provide notice to PLAINTIFF that it intends to investigate the alleged violations.

207. Therefore, PLAINTIFF has complied with all of the requirements set forth in Labor Code section 2699.3 to commence a representative action under PAGA.

208. EXPONENT and DOES have violated Labor Code sections 510, 1194, 1194.2, 1198, and Cal. Code Regs. tit.8 § 11040 by misclassifying PLAINTIFF and aggrieved employees

1 as exempt from overtime compensation.

2 209. At all relevant times herein, EXPONENT misclassified PLAINTIFF and other
3 aggrieved employees as exempt. In actuality, EXPONENT was required to compensate
4 PLAINTIFF and other aggrieved employees for all overtime, calculated at one and one-half (1½)
5 times the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or forty
6 (40) hours per week, and for the first eight (8) hours on the seventh consecutive workday, with
7 double-time for all hours worked in excess of twelve (12) hours in any workday and for all hours
8 worked in excess of eight (8) hours on the seventh consecutive day of work in any workweek. Cal.
9 Lab. Code §§ 510, 1194. Instead, EXPONENT only paid PLAINTIFF an annual salary,
10 irrespective of her actual hours worked. Although PLAINTIFF routinely worked more than eight
11 hours per day, forty hours per week, twelve hours per day, and/or seven consecutive days in a
12 workweek, EXPONENT failed to pay PLAINTIFF any overtime wages. Thus, EXPONENT
13 violated Labor Code sections 510 and 1198, and IWC Wage Order No. 4-2001(3), *codified* at Cal.
14 Code Regs. tit. 8 § 11040. From her tenure working for EXPONENT, PLAINTIFF observed
15 other employees whom she believes were similarly misclassified as exempt by EXPONENT.

16 210. EXPONENT and DOES have also violated Labor Code sections 226.7, 512 and Cal.
17 Code Regs. tit. 8 § 11040 by failing to provide compliant meal periods and failing to compensate
18 PLAINTIFF and aggrieved employees for non-compliant meal periods.

19 211. Labor Code section 226.7 provides that no employer shall require an employee to
20 work during any meal period mandated by an applicable order of the IWC. *See also* IWC Wage
21 Order 4-2001(11), *codified* at Cal. Code Regs. tit. 8 § 11040. Labor Code section 512 provides
22 that “[a]n employer may not employ an employee for a work period of more than five hours per
23 day without providing the employee with a meal period of not less than 30 minutes,” except that if
24 the total work period per day of the employee is not more than six (6) hours, the meal period may
25 be waived by mutual consent of both the employer and employee. Cal. Lab. Code § 512(a).
26 During this meal period of not less than thirty (30) minutes, the employee is to be completely free
27 of the employer’s control and must not perform any work for the employer. If the employee does
28 perform work for the employer during this thirty (30) minute meal period, the employee has not

1 been provided with a duty-free meal period, in accordance with California law, and is to be
2 compensated for any work performed during this (30) minute meal period in addition to one (1)
3 additional hour of compensation at each employee's regular rate of pay for each workday that a
4 meal period was not provided. *See* Cal. Lab. Code § 226.7; IWC Wage Order 4-2001(11), codified
5 at Cal. Code Regs. tit. 8 § 11040.

6 212. Pursuant to Labor Code section 512(a) and IWC Wage Order 4-2001(11), an
7 employer may not employ an employee for a work period of more than ten (10) hours per day
8 without providing the employee with another meal period of not less than thirty (30) minutes, or
9 paying an employee one (1) additional hour of pay at the employee's regular rate, except that if
10 the total hours worked is no more than twelve (12) hours, the second meal period may be waived
11 by mutual consent of the employer and the employee only if the first meal period was not waived.

12 213. Although PLAINTIFF regularly worked more than five or ten hours per day, as a
13 result of EXPONENT's and DOES' misclassification of PLAINTIFF and aggrieved employees as
14 exempt, EXPONENT and DOES failed to provide PLAINTIFF and aggrieved employees with
15 timely thirty (30) minute meal periods free from job duties, as required by Labor Code sections
16 226.7, 512(a), and IWC Wage Order No. 4-2001(11), codified at Cal. Code Regs. tit. 8 § 11040.

17 214. EXPONENT and DOES further violated Labor Code section 226.7 and IWC Order
18 No. 4-2001 by failing to compensate PLAINTIFF and aggrieved employees with one (1)
19 additional hour of compensation at her regular rate of pay for each workday that EXPONENT and
20 DOES failed to provide compliant meal periods. *See* Cal. Lab. Code § 226.7(c); IWC Wage Order
21 No. 4-2001(11), codified at Cal. Code Regs. tit. 8 § 11040.

22 215. EXPONENT and DOES have also violated Labor Code section 226.7 and Cal. Code
23 Regs. tit. 8 § 11040 by failing to authorize and permit rest breaks and failing to compensate
24 PLAINTIFF and aggrieved employees for non-compliant meal periods.

25 216. IWC Wage Order 4-2001 states that "[e]very employer shall authorize and permit all
26 employees to take rest periods ... at the rate of ten (10) minutes net rest time per four (4) hours or
27 major fraction thereof" unless the total daily work time is less than three and one-half (3.5) hours.
28 IWC Order No. 4-2001(12), codified at Cal. Code Regs. tit. 8 § 11040. Labor Code section 226.7

1 provides that “[a]n employer shall not require an employee to work during a meal or rest or
2 recovery period mandated pursuant to an applicable statute....” Cal. Lab. Code § 226.7(b).

3 217. At all relevant times herein, as alleged above, although PLAINTIFF and aggrieved
4 employees regularly worked more than 3.5 hours per day, as a result of EXPONENT and DOES’
5 misclassification of her and other aggrieved employees as exempt and its work demands,
6 EXPONENT and DOES regularly failed to authorize or permit PLAINTIFF and aggrieved
7 employees to take ten (10) minute rest periods for each four (4) hours worked, or major fraction
8 thereof. PLAINTIFF and aggrieved employees were regularly denied rest periods in violation of
9 the Labor Code. *See* IWC Wage Order 4-2001, codified at Cal. Code Regs. tit. 8 § 11040; Cal.
10 Lab. Code § 226.7(b).

11 218. At all relevant times herein, EXPONENT and DOES further violated Labor Code
12 section 226.7 and IWC Wage Order No. 4-2001 by failing to compensate PLAINTIFF and
13 aggrieved employees one (1) additional hour of compensation at their regular rate of pay for each
14 workday that EXPONENT and DOES failed to authorize and permit compliant rest breaks. *See*
15 Cal. Lab. Code § 226.7(c); IWC Wage Order No. 4-2001(12), codified at Cal. Code Regs. tit. 8 §
16 11040.

17 219. EXPONENT and DOES have also violated Labor Code section 226 by failing to
18 furnish accurate wage statements.

19 220. Labor Code section 226 requires an employer to provide an accurate itemized
20 statement in writing showing:

21 (1) gross wages earned, (2) total hours worked by the employee, except for any employee
22 whose compensation is solely based on a salary and who is exempt from payment of
23 overtime under subdivision (a) of Section 515 or any applicable order of the Industrial
24 Welfare Commission, (3) the number of piece-rate units earned and any applicable piece
25 rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all
26 deductions made on written orders of the employee may be aggregated and shown as one
27 item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is
28 paid, (7) the name of the employee and only the last four digits of his or her social security

1 number or an employee identification number other than a social security number, (8) the
2 name and address of the legal entity that is the employer, and (9) all applicable hourly rates
3 in effect during the pay period and the corresponding number of hours worked at each
4 hourly rate by the employee.

5 221. As discussed herein, EXPONENT and DOES systematically provided and provides
6 PLAINTIFF and other aggrieved employees with incomplete and inaccurate wage statements. The
7 violations include, without limitation, the failure to accurately list the total hours worked by each
8 employee, total regular and overtime wages earned, or all applicable hourly rates in effect during
9 the pay period and the corresponding number of hours worked at each hourly rate by each
10 employee.

11 222. EXPONENT and DOES' failure to provide accurate itemized wage statements was a
12 knowing and intentional act based on its company-wide policy and practice of misclassifying
13 employees to avoid paying penalty pay and overtime premiums to employees in violation of the
14 Labor Code. *See* Cal. Labor Code §§ 226(a), 226(e), 226.3. By EXPONENT and DOES'
15 company-wide failure to record the time in which PLAINTIFF and other aggrieved employees
16 worked, EXPONENT and DOES knowingly and intentionally failed to maintain records as
17 required by the Labor Code and the IWC Wage Order. *See* Cal. Labor Code §§ 226(a), 226(e),
18 226.3; IWC Wage Order 4-2001(7), codified at Cal. Code Regs. tit. 8 § 11040.

19 223. EXPONENT and DOES have also violated Labor Code sections 551 and 552 by
20 failing to provide one day's rest in seven.

21 224. Labor Code section 551 provides that "[e]very person employed in any occupation of
22 labor is entitled to one day's rest therefrom in seven." Cal. Labor Code § 551. Labor Code section
23 552 provides that "[n]o employer of labor shall cause his employees to work more than six days in
24 seven." Cal. Labor Code § 552. As set forth above, EXPONENT and DOES failed to provide to
25 PLAINTIFF and other aggrieved employees the legally-mandated rest days as required by
26 California law. Further, "an employer's obligation is to apprise employees of their entitlement to a
27 day of rest and thereafter to maintain absolute neutrality as to the exercise of that right." *Mendoza*
28 *v. Nordstrom, Inc.*, (2017) 2 Cal. 5th 1074, 1091. EXPONENT and DOES failed to provide this

1 notice to PLAINTIFF and other aggrieved employees.

2 225. EXPONENT and DOES have also violated Labor Code section 1174 by failing to
3 maintain required records.

4 226. Labor Code section 1174 provides that every employer shall “[k]eep, at a central
5 location in the state or at the plants or establishments at which employees are employed, payroll
6 records showing the hours worked daily by and the wages paid to, and the number of piece-rate
7 units earned by and any applicable piece rate paid to, employees employed at the respective plants
8 or establishments. These records shall be kept ... on file for not less than three years.” Cal. Lab.
9 Code § 1174(d). Pursuant to IWC Wage Order 4-2001, employers are required to keep accurate
10 time records including, but not limited to, when the employee begins and ends each work period
11 and meal period. IWC Order No. 4-2001(7), codified at Cal. Code Regs. tit. 8 § 11040.

12 227. As set forth above, EXPONENT and DOES failed to keep records for PLAINTIFF
13 and other aggrieved employees, due to the EXPONENT and DOES’ willful misclassification of
14 PLAINTIFF and other aggrieved employees as exempt, in violation of the Labor Code. *See* Cal.
15 Lab. Code § 1174, IWC Order No. 4-2001(7), codified at Cal. Code Regs. tit. 8 § 11040.

16 228. EXPONENT and DOES have also violated Labor Code section 204 by failing to
17 timely compensate PLAINTIFF and aggrieved employees for all time worked.

18 229. Labor Code section 204, provides, in relevant part: “All wages, other than those
19 mentioned in Section[s] [not applicable here] earned by any person in any employment are due
20 and payable twice during each calendar month.” Cal. Labor Code § 204. In short, this means an
21 employee must be paid for all hours worked at the time those wages were due. Here, PLAINTIFF
22 and other aggrieved employees were not compensated for all hours worked because they were
23 improperly classified as exempt employees when they did not meet the requirements of an
24 exemption. Based on information and belief, other aggrieved employees frequently worked
25 overtime and never received compensation for the same. Because EXPONENT and DOES
26 improperly misclassified PLAINTIFF, and other aggrieved employees, as exempt, EXPONENT
27 and DOES failed to pay them overtime for the time spent working more than eight (8) hours in a
28 workday and forty (40) hours in a workweek and failed to issue premium pay for missed meal and

1 rest periods.

2 230. As such, PLAINTIFF and other employees were never compensated for all time
3 worked. Therefore, EXPONENT and DOES have violated Labor Code sections 204, 1194,
4 1194.2, and 1197.

5 231. PLAINTIFF seeks to recover the prescribed civil penalties by Labor Code sections
6 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 551, 552, 1174, 1194, 1194.2, 1198, and/or 2699(f)
7 pursuant to Labor Code § 2699 *et seq.* for the violations referenced herein on behalf of herself and
8 other aggrieved employees. PLAINTIFF also seeks interest and attorney's fees and costs and any
9 other remedies prescribed and permitted by PAGA.

10 **PRAYER FOR RELIEF**

11 Wherefore PLAINTIFF WENDY VAN SELOW respectfully prays for judgment and relief
12 against DEFENDANTS EXPONENT, INC., SALLY SHEPHERD, and DOES 1 through 25,
13 inclusive, and each of them, as follows:

14 1. For compensatory damages, including emotional distress damages, in an amount to
15 be ascertained at trial;

16 2. For unpaid wages (including unpaid overtime wages), and meal period and rest break
17 premiums;

18 3. For liquidated damages as permitted by law;

19 4. For statutory and civil penalties according to proof;

20 5. For punitive damages against DEFENDANTS in an amount sufficient to punish or
21 make an example of them;

22 6. For restitution of all monies due to PLAINTIFF;

23 7. For all available injunctive, equitable and other relief, including remedies authorized
24 by California Government Code section 12965(c) and Labor Code section 248.6;

25 8. For "affirmative relief" as defined in California Government Code section 12926(a);

26 9. For statutory and civil penalties according to proof, including but not limited to all
27 penalties authorized by Labor Code Section 2699;

28 10. For restitution of all monies due to PLAINTIFF, as well as disgorged profits from

1 the unfair and unlawful business practices of EXPONENT and DOES;

2 11. For interest on unpaid wages at 10% per annum, pursuant to Labor Code sections
3 218.6 and 1194, California Civil Code sections 3287 and 3288, and/or any other applicable
4 provisions;

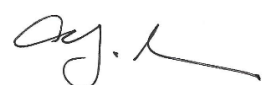
5 12. For reasonable attorneys' fees and costs, including expert costs;

6 13. For declaratory relief; and

7 14. For such further relief that the Court may deem just and proper.

8
9 DATED: July 15, 2024

GUNN COBLE LLP

10
11 By: 

Beth Gunn
Catherine J. Coble

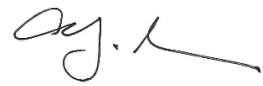
12
13 Attorneys for Plaintiff
WENDY VAN SELOW

14
15 **DEMAND FOR JURY TRIAL**

16 PLAINTIFF WENDY VAN SELOW hereby demands a jury trial with respect to all issues
17 triable of right by jury. The amount demanded exceeds \$25,000. *See* Cal. Gov't Code § 72055.

18
19 DATED: July 15, 2024

GUNN COBLE LLP

20
21 By: 

Beth Gunn
Catherine J. Coble

22
23 Attorneys for Plaintiff
24 WENDY VAN SELOW, individually and on
25 behalf of the State of California and aggrieved
26 employees
27
28

EXHIBIT A



Cathy Coble
818.573.6392
cathy@gunncoble.com

May 2, 2024

VIA ONLINE FILING

Stewart Knox, Secretary
California Labor and Workforce Development Agency

**RE: Labor Code Private Attorneys General Act of 2004 –
Notice on behalf of Wendy Van Selow Regarding Exponent, Inc.**

Dear Secretary Knox:

This letter is intended to comply with the requirements of California Labor Code § 2699.3(a)(1).

Gunn Coble LLP represents Wendy Van Selow (“Ms. Van Selow”) and all other aggrieved employees in the claims arising from their employment with Exponent, Inc. (“Exponent”). The “aggrieved employees” are all current and former employees of Exponent in the State of California who were misclassified and/or had one or more of the below California Labor Code violations committed against them. This letter is being submitted to you pursuant to the Private Attorneys General Act of 2004 (“PAGA”). Cal. Labor Code § 2698, *et seq.*

Below we set forth the facts and theories which we believe support our contention that Exponent has violated and continues to violate provisions of the California Labor Code.

FACTUAL BACKGROUND

Ms. Van Selow has worked for Exponent or its predecessor Failure Analysis Associates as an exemplary employee since 1988. Though Ms. Van Selow was initially classified as non-exempt, since approximately 2006, Exponent has willfully misclassified Ms. Van Selow as exempt from overtime and other California Labor Code protections. On information and belief, Ms. Van Selow believes other aggrieved employees were and are willfully misclassified as exempt from California and federal wage and hour laws, when in fact they were and are not exempt. In addition, on information and belief, Ms. Van Selow believes that other aggrieved employees worked and work in excess of the California Labor Code’s hours and days of work requirements, in a manner similar to that described below. Exponent has willfully misclassified its employees to avoid compliance with the California Labor Code.

As a data analyst, Ms. Van Selow has and does not primarily spend her working time performing exempt duties and does not meet the requirements for the executive, administrative or professional exemptions. Regarding the executive exemption, though Exponent bestowed the

title “Senior Manager” on Ms. Van Selow, she does not manage any other employees. Accordingly, she does not customarily and regularly direct the work of two or more other employees as required to meet the executive exemption.

Regarding the administrative exemption, Ms. Van Selow’s job duties do not include work directly related to the management policies or general business operations of Exponent or its customers as also required for the administrative exemption from overtime. Rather, as a data analyst, Ms. Van Selow’s work is not directly related to management policies or general business operations of Exponent or its customers. Ms. Van Selow’s work involves the production aspects of Exponent’s business as opposed to administrative functions, which the DLSE has found to be the most common misapplication of the administrative exemption.¹

Finally, regarding the professional exemption, Ms. Van Selow is not licensed or certified by the State of California in a recognized profession of law, dentistry, optometry, architecture, engineering, teaching, or accounting. Ms. Van Selow also does not have an advanced degree (she holds an AA Degree in English from Fresno Pacific University) to qualify for the learned professional exemption from overtime.

Exponent paid Ms. Van Selow an annual salary, irrespective of the number of hours she actually worked. Although Exponent required Ms. Van Selow to work in excess of eight hours per day and/or 40 hours per week, Exponent did not pay Ms. Van Selow at one and one-half times the regular rate of pay for such hours worked. Similarly, although Exponent required Ms. Van Selow to work in excess of 12 hours per day, it did not pay her at two times the regular rate of pay for such hours worked.

Since being misclassified as exempt, Ms. Van Selow has not been permitted regular uninterrupted, duty-free, 30-minute meal periods. Instead, Ms. Van Selow often eats lunch at her desk while continuing to work. Additionally, on days in which Ms. Van Selow has worked more than 10 hours, she was not provided, and accordingly did not take, a second uninterrupted, duty-free, 30-minute meal period, as required by California law.

Ms. Van Selow was not authorized and permitted to take a 10-minute, duty-free rest break for each four hours worked, or major fraction thereof, in violation of California law. Although Ms. Van Selow worked in excess of 3.5 hours each workday, due to Ms. Van Selow’s workload, she routinely has not been unable to take 10-minute, duty-free rest breaks, due to the workload Exponent required her to complete during the workday. This was and is a result of Exponent employees and clients messaging Ms. Van Selow and expecting her to be readily available to them. In perpetrating the acts and omissions alleged herein, Exponent intentionally and willfully violated the Industrial Welfare Commission Orders, the California Code of Regulations, and the California Labor Code. From her tenure working for Exponent, Ms. Van Selow observed other employees whom she believes were similarly misclassified as exempt by Exponent.

¹ See <https://www.dir.ca.gov/dlse/Glossary.asp?Button1=A#administrative%20exemption>.

SUMMARY OF LEGAL THEORIES

1. Failure to Pay Overtime – Violation of Cal. Lab. Code §§ 510, 1194, 1194.2, 1198, Cal. Code Regs. tit. 8 § 11040

California Labor Code section 510 mandates that any time worked beyond eight hours in one workday or beyond 40 hours in any workweek must be compensated at no less than one and one-half times the regular wage. See Cal. Lab. Code § 510(a).

IWC Wage Order 4-2001 further provides that employees “shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek.” IWC Wage Order No. 4-2001(3)(A), *codified* at Cal. Code Regs. tit. 8 § 11040.

At all relevant times herein, Exponent misclassified Ms. Van Selow and other aggrieved employees as exempt. In actuality, Exponent was required to compensate Ms. Van Selow and other aggrieved employees for all overtime, calculated at one and one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive workday, with double-time for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in any workweek. Cal. Lab. Code §§ 510, 1194.

Instead, Exponent only paid Ms. Van Selow an annual salary, irrespective of her actual hours worked. Although Ms. Van Selow routinely worked more than eight hours per day, forty hours per week, twelve hours per day, and/or seven consecutive days in a workweek, Exponent failed to pay Ms. Van Selow any overtime wages. Thus, Exponent violated California Labor Code sections 510 and 1198, and IWC Wage Order No. 4-2001(3), *codified* at Cal. Code Regs. tit. 8 § 11040.

The California Legislature authorized the Industrial Welfare Commission to establish exemptions from the overtime pay requirements for “executive, administrative, and professional employees” when certain conditions are met. *Kizer v. Trister Risk Management*, 13 Cal. App. 5th 830, 838 (2017). For the exemption to apply, “[t]he employee must (1) perform ‘office or non-manual work directly related to management policies or general business operations’ of the employer or its customers, (2) ‘customarily and regularly exercise discretion and independent judgment,’ (3) ‘perform under only general supervision work along specialized or technical lines requiring special training’ or ‘execute under only general supervision special assignments and tasks,’ (4) be engaged in activities meeting the test for the exemption at least 50 percent of the time, and (5) earn twice the state minimum wage.” *Id.* quoting *Eicher v. Advanced Business Integrators, Inc.*, 151 Cal. App. 4th 1363, 1371 (2007). These exemptions are narrowly construed, and the burden lies with the employer to prove the employee’s exemption as an affirmative defense.

Whether an employee is exempt depends not only upon factors related to the job itself (e.g. “employer’s realistic job expectations” and “realistic requirements of the job”), but also “first and foremost” upon what an employee actually does on the job (e.g., “work actually performed”). *Duran v. U.S. National Assn.*, 59 Cal.4th 1, 27 (2014). Here, there is no feasible

argument that the executive, administrative, or the professional exemptions were applicable to Ms. Van Selow at any time during her employment with Exponent. Ms. Van Selow did not supervise any employees, which means she could not qualify for the executive exemption. In addition, Ms. Van Selow's job duties do not include work directly related to the management policies or general business operations of Exponent or its customers. Rather, as a data analyst, Ms. Van Selow's work involves the production aspects of Exponent's business as opposed to administrative functions. Finally, Ms. Van Selow did not qualify for the professional exemption because she was not primarily engaged in an occupation commonly recognized as a learned or artistic profession, nor was she licensed by the State of California to practice law, medicine, dentistry, optometry, architecture, engineering, teaching, or accounting. In addition, Ms. Van Selow does not hold an advanced degree for a learned profession.

From her tenure working for Exponent, Ms. Van Selow observed other employees whom she believes were similarly misclassified as exempt by Exponent.

2. Failure to Provide Meal Periods in Violation of California Labor Code §§ 226.7, 512; Cal. Code Regs. tit. 8 § 11040

California Labor Code section 226.7 provides that no employer shall require an employee to work during any meal period mandated by an applicable order of the IWC. *See also*, IWC Wage Order 4-2001(11), *codified* at Cal. Code Regs. tit. 8 § 11040. California Labor Code section 512 provides that "[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes," except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and employee. Cal. Lab. Code § 512(a). During this meal period of not less than thirty (30) minutes, the employee is to be completely free of the employer's control and must not perform any work for the employer. If the employee does perform work for the employer during this thirty (30) minute meal period, the employee has not been provided with a duty-free meal period, in accordance with California law, and is to be compensated for any work performed during this (30) minute meal period in addition to one (1) additional hour of compensation at each employee's regular rate of pay for each workday that a meal period was not provided. *See* Cal. Lab. Code § 226.7; IWC Wage Order 4-2001(11), *codified* at Cal. Code Regs. tit. 8 § 11040.

Pursuant to California Labor Code section 512(a) and IWC Wage Order 4-2001(11), an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with another meal period of not less than thirty (30) minutes, or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

Although Ms. Van Selow regularly worked more than five or ten hours per day, as a result of Exponent's misclassification of Ms. Van Selow and aggrieved employees as exempt, Exponent failed to provide Ms. Van Selow and aggrieved employees with timely thirty (30) minute meal periods free from job duties, as required by California Labor Code sections 226.7, 512(a), and IWC Wage Order No. 4-2001(11), *codified* at Cal. Code Regs. tit. 8 § 11040.

Exponent further violated California Labor Code section 226.7 and IWC Order No. 4-2001 by failing to compensate Ms. Van Selow and aggrieved employees with one (1) additional hour of compensation at her regular rate of pay for each workday that Exponent failed to provide compliant meal periods. *See* Cal. Lab. Code § 226.7(c); IWC Wage Order No. 4-2001(11), *codified* at Cal. Code Regs. tit. 8 § 11040.

3. Failure to Authorize and Permit Rest Breaks in Violation of California Labor Code §§ 226.7; Cal. Code Regs. tit. 8 § 11040

IWC Wage Order 4-2001 states that “[e]very employer shall authorize and permit all employees to take rest periods ... at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3.5) hours. IWC Order No. 4-2001(12), *codified* at Cal. Code Regs. tit. 8 § 11040. California Labor Code section 226.7 provides that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute....” Cal. Lab. Code § 226.7(b).

At all relevant times herein, as alleged above, although Ms. Van Selow regularly worked more than 3.5 hours per day, as a result of Exponent’s misclassification of her and other aggrieved employees as exempt, its illegal Employment Agreement, and its work demands, Exponent regularly failed to authorize or permit Ms. Van Selow and aggrieved employees to take ten (10) minute rest periods for each four (4) hours worked, or major fraction thereof. Ms. Van Selow was regularly denied rest periods in violation of the California Labor Code. *See* IWC Wage Order 4-2001, *codified* at Cal. Code Regs. tit. 8 § 11040; Cal. Lab. Code § 226.7(b).

At all relevant times herein, Exponent further violated California Labor Code section 226.7 and IWC Wage Order No. 4-2001 by failing to compensate Ms. Van Selow and aggrieved employees one (1) additional hour of compensation at her regular rate of pay for each workday that Exponent failed to authorize and permit compliant rest breaks. *See* Cal. Lab. Code § 226.7(c); IWC Wage Order No. 4-2001(12), *codified* at Cal. Code Regs. tit. 8 § 11040.

4. Failure to Furnish Timely and Accurate Wage Statements in Violation of Labor Code § 226

California Labor Code § 226 requires an employer to provide an accurate itemized statement in writing showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates

in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

As discussed above, Exponent systematically provided and provides Ms. Van Selow and other aggrieved employees with incomplete and inaccurate wage statements. The violations include, without limitation, the failure to accurately list the total hours worked by each employee, total regular and overtime wages earned, or all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by each employee.

Exponent's failure to provide accurate itemized wage statements was a knowing and intentional act based on its company-wide policy and practice of misclassifying employees to avoid paying penalty pay and overtime premiums to employees in violation of the California Labor Code. *See* Cal. Labor Code §§ 226(a), 226(e), 226.3. By Exponent's company-wide failure to record the time in which Ms. Van Selow and other aggrieved employees worked, Exponent knowingly and intentionally failed to maintain records as required by the California Labor Code and the IWC Wage Order. *See* Cal. Labor Code §§ 226(a), 226(e), 226.3; IWC Wage Order 4-2001(7), *codified* at Cal. Code Regs. tit. 8 § 11040.

5. Failure to Provide One Day's Rest in Seven in Violation of Labor Code §§ 551, 552

California Labor Code section 551 provides that "[e]very person employed in any occupation of labor is entitled to one day's rest therefrom in seven." Cal. Labor Code § 551. California Labor Code section 552 provides that "[n]o employer of labor shall cause his employees to work more than six days in seven." Cal. Labor Code § 552. As set forth above, Exponent failed to provide to Ms. Van Selow and other aggrieved employees the legally-mandated rest days as required by California law. Further, "an employer's obligation is to apprise employees of their entitlement to a day of rest and thereafter to maintain absolute neutrality as to the exercise of that right." *Mendoza v. Nordstrom, Inc.*, (2017) 2 Cal. 5th 1074, 1091. Exponent failed to provide this notice to Ms. Van Selow and other aggrieved employees.

6. Failure to Maintain Required Records in Violation of Labor Code §§ 1174

California Labor Code section 1174 provides that every employer shall "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept ... on file for not less than three years." Cal. Lab. Code §1174(d). Pursuant to IWC Wage Order 4-2001, employers are required to keep accurate time records including, but not limited to, when the employee begins and ends each work period and meal period. IWC Order No. 4-2001(7), *codified* at Cal. Code Regs. tit. 8 § 11040.

As set forth above, Exponent failed to keep records for Ms. Van Selow and other aggrieved employees, due to the Exponent's willful misclassification of Ms. Van Selow and other aggrieved employees as exempt, in violation of the California Labor Code. *See* Cal. Lab. Code §1174, IWC Order No. 4-2001(7), *codified* at Cal. Code Regs. tit. 8 § 11040.

7. Violation of Labor Code § 204

California Labor Code section 204, provides, in relevant part: "All wages, other than those mentioned in Section[s] [not applicable here] earned by any person in any employment are due and payable twice during each calendar month." Cal. Labor Code § 204. In short, this means an employee must be paid for *all* hours worked at the time those wages were due. Here, Ms. Van Selow and other aggrieved employees were not compensated for all hours worked because they were improperly classified as exempt employees when they did not meet the requirements of an exemption. Based on information and belief, other aggrieved employees frequently worked overtime and never received compensation for the same. Because Exponent improperly misclassified Ms. Van Selow, and other aggrieved employees, as exempt, Exponent failed to pay them overtime for the time spent working more than eight (8) hours in a workday and forty (40) hours in a workweek and failed to issue premium pay for missed meal and rest periods.

As such, Ms. Van Selow and other employees were never compensated for all time worked. Therefore, Exponent has violated Labor Code sections 204, 1194, 1194.2, and 1197.

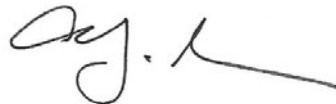
Based upon these facts, Ms. Van Selow intends to pursue a claim in civil court based upon violations of California Labor Code sections 201, 202, 204, 210, 226, 226.7, 510, 512, 551, 552, 1174, 1194, 1194.2, 1198, and/or 2699(f) pursuant to California Labor Code § 2699 *et seq.*

This notice is provided pursuant to California Labor Code section 2699.3 and hereby provides the LWDA an opportunity to investigate the claims and/or take any action it deems appropriate. We respectfully request a timely response as to the LWDA's decision(s), as required by California Labor Code section 2699.3. If the LWDA elects not to take any action, Ms. Van Selow intends to file a complaint on behalf of herself and all other aggrieved employees in the California Superior Court seeking unpaid wages, including unpaid overtime wages, meal and rest period premiums, recovery of amounts of unreimbursed expenses, unpaid vacation wages, interest, penalties, attorneys' fees, costs, and any other relief available under California law.

If you have any questions or require any further information regarding the facts and theories to support these claims, do not hesitate to contact our office.

Thank you for your attention to this matter.

Sincerely,



Cathy Coble
Gunn Coble LLP

Exponent, Inc. may be contacted at the following address:

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Menlo Park, CA 94025

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