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Attorney for Plaintiff
ELIZABETH WARD-WALLER

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO
UNLIMITED JURISDICTION

13
14 ELIZABETH WARD-WALLER, an
15 individual,

16 Plaintiff,

17 v.

18 CALIFORNIA DEPARTMENT OF
19 TRANSPORTATION, and DOES 1-10,

20 Defendants.

Case No. 24CV008210

COMPLAINT FOR DAMAGES

**VIOLATION OF LABOR CODE SECTION
1102.5**

**VIOLATIONS OF THE FAIR
EMPLOYMENT AND HOUSING ACT**

DEMAND FOR JURY TRIAL

1 Plaintiff Elizabeth Ward-Waller (“Plaintiff”), individually, complains and alleges against
2 Defendant California Department of Transportation (“Defendant” or “Caltrans”), as follows:

3 **THE PARTIES**

4 1. Plaintiff is over the age of 18 and at all relevant times was a resident of
5 Sacramento County. She was employed by Caltrans as the Deputy Director for Planning & Modal
6 Programs.

7 2. Defendant Caltrans is the State entity that manages California's highway and
8 freeway lanes, provides inter-city rail services, permits more than 400 public-use airports and
9 special-use hospital heliports. Caltrans, is, and at all times mentioned in this Complaint was,
10 authorized to operate by the State of California, headquartered at 1120 N Street, Sacramento, CA
11 95814.

12 3. Does 1 through 10, inclusive, are sued pursuant to California Code of Civil
13 Procedure § 474. Plaintiff is unaware of the true names or capacities of these defendants, and
14 therefore sues these defendants by such fictitious names. Plaintiff will amend the Complaint to
15 allege their true names and capacities when the same are ascertained. Plaintiff is informed and
16 believes and thereon alleges that each of the fictitiously named defendants is legally responsible
17 in some manner for the occurrences herein alleged and that the injuries of Plaintiff as herein
18 alleged have been proximately caused by the aforementioned defendants.

19 4. Plaintiff is informed, believes, and thereon alleges that each of the defendants
20 herein was, at all times relevant to this action, the officer, agent, employee, representative, and/or
21 joint venture of the remaining defendants and was acting within the course and scope of that
22 relationship, and with the permission and consent of the co-defendants. Plaintiff is further
23 informed, believes, and thereon alleges that each of the defendants herein gave consent to,
24 ratified, and authorized the acts alleged herein to the remaining defendants. Each of the
25 defendants is jointly and severally liable to Plaintiff.

26 5. Plaintiff sues to call Defendants to account for these violations. She seeks actual
27 and compensatory damages; declaratory relief; and reasonable attorneys’ fees and costs for
28 Defendants’ violations of her rights.

1 **JURISDICTION AND VENUE**

2 9. This Court has personal jurisdiction over each Defendant because they conduct
3 business in the State of California and/or reside in the State of California.

4 10. This Court has subject matter jurisdiction over Plaintiff’s claims because the
5 unlawful conduct arises under California law and occurred in Sacramento County.

6 11. Defendant Caltrans is headquartered in Sacramento and committed the unlawful
7 acts alleged herein in Sacramento.

8 **FACTUAL ALLEGATIONS**

9 6. Plaintiff was hired by Defendant in September 2017 in the civil service
10 classification of Supervising Transportation Planner.

11 7. Over six years, Plaintiff was promoted due to her skill and the quality of her
12 work. In 2020, she was appointed as the Deputy Director for Planning & Modal Programs for
13 Caltrans, a Career Executive Assignment (“CEA”) role. CEA roles are defined by California
14 Government Code section 18547 as “high administrative and policy influencing position[s]
15 within the state civil service.”

16 8. In Plaintiff’s CEA role, she was generally aware of significant highway projects.
17 In 2023, Plaintiff became aware of two significant projects that were being managed by Caltrans
18 District 3 (which oversees the Sacramento region). Both projects involved modifying the
19 Interstate-80 corridor between Sacramento and Davis (together, referred to herein as the “Yolo
20 80 Projects”).

21 9. The first project was billed as a “Rehab Project” and was under construction in
22 the summer of 2023. It used \$250 million in funding from the State Highway Operation and
23 Protection Program (“SHOPP”).

24 10. SHOPP monies may only be used for certain projects, and may not be used to
25 widen roadways. California Government Code section 14526.5, the SHOPP statute, provides in
26 relevant part that “Projects included in the program shall be limited to improvements relative to
27 the maintenance, safety, operation, and rehabilitation of state highways and bridges that do not
28 add a new traffic lane to the system.” Furthermore, SHOPP Guidelines provide in relevant part,

1 “In other words, the addition of a lane to widen a highway and thereby increase the overall
2 route’s throughput capacity would not be eligible” for SHOPP funds.

3 11. The second project was the “Yolo 80 Managed Lanes Project,” (“ML Project”),
4 which proposed to implement managed lanes on Interstate 80 and Highway 50 and was under
5 environmental review. It proposed to use \$86 million in Federal Infrastructure for Rebuilding
6 America (“INFRA”), which had already been secured, as well as other funding sources that had
7 not been secured. In total, the ML Project was estimated to cost more than \$140 million (and as
8 much as \$310 million), but it had not been prioritized in a competitive grant process. In fact, it
9 was Caltrans’s lowest priority project (24th out of 24) of all Caltrans applications to the
10 California Transportation Commission in the 2023 competitive grant cycle for the Trade
11 Corridor Improvement Program.

12 12. During the late spring and early summer of 2023, Plaintiff was asked to provide
13 assistance to Caltrans District 3 staff to make the ML Project more competitive. In the course of
14 familiarizing herself with the project, however, Plaintiff became concerned that the two projects
15 may have been undertaken in violation of state and federal laws. Specifically, she became
16 concerned that that the Yolo 80 projects involved an unlawful road-widening effort that had not
17 undergone the environmental review and public notice requirements of the California
18 Environmental Quality Act (“CEQA”), Public Res. C § 21000, et seq. and the National
19 Environmental Policy Act (“NEPA”), 42 U.S. 4331, et seq.

20 13. Plaintiff also began investigating whether the Rehab Project used SHOPP funds to
21 begin a road widening effort in violation of the SHOPP statute. If the Yolo 80 projects were
22 actually one construction effort “piecemealed” into multiple projects in order to conceal the road-
23 widening effort being undertaken in the Rehab Project and to evade the environmental mandates
24 under CEQA and NEPA, Plaintiff believed this would constitute a violation of the law.

25 14. Plaintiff directed her staff to investigate details about the Yolo 80 projects.
26 Through this investigation, Plaintiff came to understand that the actual scope of work being
27 performed through the Rehab Project violated SHOPP proscriptions on the use of the funds
28 because the project was, in fact, widening the highway.

1 15. Beginning in early July 2023, Plaintiff met with her supervisors, including
2 Caltrans Director Tony Tavares, Chief Deputy Director Michael Keever, Transportation Agency
3 Undersecretary Mark Tollefson, and Governor’s Office Deputy Cabinet Secretary James Hacker.
4 In these meetings, Plaintiff complained that the Rehab Project was being undertaken in violation
5 of the SHOPP rules because of its highway-widening objective.

6 16. For example, though this project was described in plan documents as a
7 “rehabilitation” project, the construction involved the use of continuously reinforced concrete
8 pavement, a process that is used when highways are being permanently widened, not merely
9 temporarily rehabilitated.

10 17. The Caltrans Highway Design Manual provides that there would be no need for
11 the type of construction being undertaken in the Rehab Project unless there was a plan to use the
12 lanes for traffic within the next 20 years. The Manual provides in relevant part, “If shoulders are
13 Portland cement concrete and the District plans to convert shoulders into through lanes within
14 the 20 years following construction, then shoulders are to be built in the plane of the traveled
15 way and to lane standards for width and structural section.” See [https://dot.ca.gov/-/media/dot-](https://dot.ca.gov/-/media/dot-media/programs/design/documents/chp0300-a11y.pdf)
16 [media/programs/design/documents/chp0300-a11y.pdf](https://dot.ca.gov/-/media/dot-media/programs/design/documents/chp0300-a11y.pdf) (Ch. 300, (Index 603.4) at p. 300-7. No
17 plan of conversion had been approved or identified.

18 18. Given the plans for the Rehab Project, if the second project, the ML Project, were
19 to commence as Caltrans District 3 planned, Plaintiff complained to her supervisors that it could
20 then be done without full disclosure of road-widening efforts that were part of the Rehab Project
21 construction processes – a distortion of the environmental impact of the project.

22 19. Plaintiff explained to her supervisors that the use of continuously reinforced
23 concrete pavement was evidence that the roadway was currently being *expanded* rather than
24 *rehabilitated*. Plaintiff also identified discrepancies in internal and external project documents
25 related to the scope of work, including work with the awarded construction contract for the
26 Rehab Project, and stated to her supervisors that the discrepancies further suggested an unlawful
27 road widening effort.

28

1 20. Plaintiff also complained that the Rehab Project threatened federal law pertaining
2 to cost-sharing requirements because the execution of construction work in the Rehab Project,
3 which was supposed to be undertaken throughout the course of the planned ML Project, would
4 violate federal law because U.S. Department of Transportation (“USDOT”) requires prior
5 authorization before beginning work on a project. The ML Project did not have such
6 authorization.

7 21. In June and July of 2023, the ML Project had not completed its legally-required
8 environmental review. These environmental reviews must be completed before work can begin
9 on any project of this kind; and, the completion of an environmental review was a necessary step
10 for the ML project to be funded. Environmental reviews take several months to complete, and
11 several more to become final; they can be challenged in a variety of ways after they are made
12 public. Delays in the completion of the environmental review would thus threaten to delay
13 funding.

14 22. Furthermore, if the ML Project was not started by October 2024, Caltrans would
15 lose the ability to use the \$86 million in federal INFRA funding and have to return it to the
16 USDOT. Thus, Caltrans was acting on an incentive to ensure that the ML project could begin as
17 soon as possible, in part to ensure that federal funds, rather than Caltrans funds, were used for the
18 ML Project. Delays to the project – by environmental reviews or for any other reason – could
19 exacerbate the existing funding gap.

20 23. In addition to the foregoing details Plaintiff provided to her supervisors, Plaintiff
21 also complained that the two projects identified the same funding sources, SHOPP, for some of
22 the scope of work. Plaintiff stated that this discrepancy was further evidence that the Rehab
23 Project was unlawfully using SHOPP funds for a road widening project.

24 24. Plaintiff raised these concerns at meetings in July and August 2023 with her direct
25 supervisor, Mr. Keever. Plaintiff reasonably believed that Caltrans was engaged in an unlawful
26 road widening project that violated, at a minimum, the SHOPP statute, as well as CEQA and
27 NEPA, and also identified possible violations of federal highway funding laws that prescribe
28 how and when federal funds may be used.

1 25. On August 17, Plaintiff called Mr. Keever and raised these concerns again. She
2 informed him that her complaints about the potential violations of the law were not being
3 listened to. She stated that his inaction, and the inaction of his supervisors, compelled Plaintiff to
4 report the misconduct as a whistleblower.

5 26. Plaintiff had a scheduled leave that was set to begin at the end of August. When
6 she returned from leave, she learned that no actions had been taken to address her complaints.
7 She contacted Mr. Tollefson on September 6, 2023, to complain again, and then raised these
8 issues with Mr. Keever once again on the same day.

9 27. On September 7, 2023, Plaintiff drafted a whistleblower complaint (which she
10 ultimately filed with the State Auditor), which she shared the following day with three of her
11 colleagues by email.

12 28. Plaintiff’s refusal to “look the other way” with respect to the Yolo 80 projects set
13 in motion an effort to remove her from her position in order to ensure that she would not be able
14 to continue to press for further investigation into the Yolo 80 projects.

15 29. On Sept 14, 2023, Plaintiff was summoned to Caltrans headquarters for a late
16 afternoon meeting. She arrived to find Mr. Keever and Aaron Ochoco, a Caltrans Administrative
17 Deputy.

18 30. Mr. Keever informed Plaintiff that her CEA appointment was terminated. Keever
19 indicated that the decision was made by Director Tavares and California Transportation
20 Secretary Toks Omishakin.

21 31. Plaintiff’s termination from her CEA role was substantially motivated by her
22 protected speech in raising possible violations of state and federal law about the Yolo 80
23 projects. Her termination was also consistent with a culture of sex-based discrimination that is
24 rampant at Caltrans, including stereotypical assumptions about women. For example, Plaintiff
25 was told on multiple occasions that she was “too aggressive” in her advocacy, though men were
26 praised for similar advocacy efforts, or their conduct went unremarked upon.

27 32. Plaintiff’s claims about the possible misappropriation of funds and the lack of
28 compliance with CEQA and NEPA were not mere “policy disputes” between Plaintiff and her

1 supervisors within Caltrans. Plaintiff's concerns involved significant questions about the
2 Department's compliance with its state and federal obligations to disclose the true nature of the
3 projects, provide notice to the public, conduct environmental reviews mandated by the law, and
4 ensure that restricted funds were used for allowable purposes.

5 33. Despite raising these serious concerns, Plaintiff's complaints to her supervisors
6 were ignored. Plaintiff's concerns about the Yolo 80 projects were part of a pattern in which her
7 concerns were ignored or minimized. Conduct that Caltrans leadership accepted in men – such as
8 speaking up in meetings, or challenging department processes – was deemed a “failure to bring
9 people along” when this same behavior was exhibited by Plaintiff.

10 34. Under the terms of her civil service assignment, Plaintiff was entitled to return to
11 a position at Caltrans. However, in November 2023, Plaintiff was informed that she was being
12 reassigned to a Planning Director role as “Affordable Housing Policy and Recruitment/Retention
13 Manager in the Division of Right of Way and Land Surveys.” This position was not posted, did
14 not have a duty statement, and involved no management function. The position was well below
15 Plaintiff's seniority and outside her well-known expertise. For example, the proposed “Manager”
16 role to which she was being reassigned did not have anyone reporting to Plaintiff.

17 35. The reassignment was another, independent act of retaliation against Plaintiff.

18 36. As it was clear that Defendant was intent on sidelining Plaintiff in a role that
19 would isolate her, Plaintiff was forced to resign her position on December 15, 2023.

20 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

21 37. Prior to the filing of this action, Plaintiff timely filed a charge with the California
22 Civil Rights Department (“CRD”), alleging that the acts of Defendants established violations of
23 the Fair Employment and Housing Act (“FEHA”). Plaintiff received a “right to sue” letter from
24 the CRD on March 7, 2024. Plaintiff has timely brought this action thereafter.

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FIRST CAUSE OF ACTION
Whistleblower Retaliation
Labor Code § 1102.5

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3 38. Plaintiff incorporates by reference the allegations in the foregoing paragraphs as
4 though fully set forth herein.

5 39. California Labor Code § 1102.5 prohibits retaliation against an individual for
6 disclosing information concerning the violation of or noncompliance with any state or federal
7 statute.

8 40. California Labor Code §1102.5 states:

9 (a) An employer, or any person acting on behalf of the employer, shall not make,
10 adopt, or enforce any rule, regulation, or policy preventing an employee from
11 disclosing information to a government or law enforcement agency, to a person
12 with authority over the employee, or to another employee who has authority to
13 investigate, discover, or correct the violation or noncompliance, or from providing
14 information to, or testifying before, any public body conducting an investigation,
15 hearing, or inquiry, if the employee has reasonable cause to believe that the
16 information discloses a violation of state or federal statute, or a violation of or
17 noncompliance with a local, state, or federal rule or regulation, regardless of
18 whether disclosing the information is part of the employee's job duties.

19 (b) An employer, or any person acting on behalf of the employer, shall not retaliate
20 against an employee for disclosing information, or because the employer believes
21 that the employee disclosed or may disclose information, to a government or law
22 enforcement agency, to a person with authority over the employee or another
23 employee who has the authority to investigate, discover, or correct the violation or
24 noncompliance, or for providing information to, or testifying before, any public
25 body conducting an investigation, hearing, or inquiry, if the employee has
26 reasonable cause to believe that the information discloses a violation of state or
27 federal statute, or a violation of or noncompliance with a local, state, or federal rule
28 or regulation, regardless of whether disclosing the information is part of the
employee's job duties.

41. As set forth above, Plaintiff reported to governmental agencies, including senior
members of Governor Newson's administration, that Defendant was engaging in conduct that was
in violation of state and federal rules and regulations.

1 WHEREFORE, Plaintiff requests relief as more fully set forth below.

2 **THIRD CAUSE OF ACTION**
3 **Failure to Prevent Discrimination**
4 **California's Fair Employment and Housing Act**
5 **Cal. Gov't Code § 12955(k)**

6 50. Plaintiff incorporates by reference the allegations in the foregoing paragraphs as
7 though fully set forth herein.

8 51. California Government Code Section 12940(k) makes it an unlawful employment
9 practice for an employer "to fail to take all reasonable steps necessary to prevent discrimination
10 and harassment from occurring."

11 52. Plaintiff was employed by Defendant as the Deputy Director of Planning and
12 Modal Programs, a career executive assignment position.

13 53. On information and belief, Defendant failed to take those steps necessary to
14 prevent Plaintiff from being discriminated against on the basis of her sex. In doing so, Defendants
15 violated Government Code Section 12940(k).

16 54. As a result of the Defendants' conduct, Plaintiff was harmed and has incurred and
17 will continue to incur economic and non-economic damages in an amount to be proven at trial.

18 55. Defendants' failure to take all reasonable steps to prevent discrimination was a
19 substantial factor in causing Plaintiff's harm, including the decision to terminate Plaintiff from
20 her CEA role.

21 56. In connection with this cause of action, Plaintiff is entitled to reasonable attorney's
22 fees, costs, and expert fees pursuant to California Government Code section 12965(b).

23 WHEREFORE, Plaintiff requests relief as more fully set forth below.

24 **FOURTH CAUSE OF ACTION**
25 **Failure to Prevent Retaliation**
26 **California's Fair Employment and Housing Act**
27 **Cal. Gov't Code § 12955(k)**

28 57. Plaintiff incorporates by reference the allegations in the foregoing paragraphs as
though fully set forth herein.

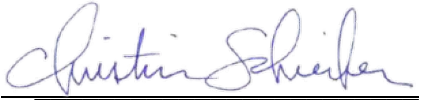
1 6. For an order awarding Plaintiff interest on such damages as are appropriate,
2 including pre- and post-judgment interest and an upward adjustment for inflation; and

3 7. Such other relief as the Court may deem just and proper.

4
5 Dated: April 25, 2024

Respectfully submitted,

6 OLIVIER & SCHREIBER LLP

7 By: 
8 Christian Schreiber

9 *Attorneys for Plaintiff Elizabeth Ward-Waller*

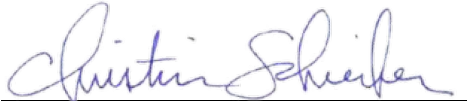
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11 **DEMAND FOR JURY TRIAL**

12 Plaintiff hereby requests a jury trial on all claims so triable.

13 Dated: April 25, 2024

Respectfully submitted,

14 OLIVIER & SCHREIBER LLP

15 By: 
16 Christian Schreiber

17 *Attorneys for Plaintiff Elizabeth Ward-Waller*