

1 Tamarah P. Prevost (SBN 313422)
Kevin J. Boutin (SBN 334965)
2 **COTCHETT, PITRE & McCARTHY, LLP**
3 San Francisco Airport Office Center
840 Malcolm Road, Suite 200
4 Burlingame, CA 94010
Telephone: (650) 697-6000
5 Facsimile: (650) 697-0577
tprevost@cpmlegal.com
6 kboutin@cpmlegal.com

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BY: KAREN VALDES
Deputy Clerk

7 Robert S. Arns, State Bar No. 65071 (rsa@arnslaw.com)
8 Jonathan E. Davis, State Bar No. 191346 (jed@arnslaw.com)
Katherine A. Rabago, State Bar No. 333374 (kar@arnslaw.com)

9 **THE ARNS LAW FIRM**
A Professional Corporation
10 515 Folsom St., 3rd Floor
11 San Francisco, CA 94109
Tel: (415) 495-7800
12 Fax: (415) 495-7888

13 *Attorneys for Plaintiff*

CGC-22-598686

14 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15
16 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

17 **SHAWN O'CONNELL, an individual,**

Case No. _____

18
19 Plaintiff

COMPLAINT FOR:

20 v.

1. Intentional Misrepresentation
2. False Promise
3. Negligent Misrepresentation
4. Declaratory Relief
5. Breach of Contract
6. Promissory Estoppel
7. Retaliation in Violation of FEHA
(Cal. Gov. Code § 12940 *et seq.*)
8. Retaliation in Violation of Cal. Lab.
Code § 1102.5
9. Violation of UCL (Cal. Bus. & Prof.
Code § 17200 *et seq.*)
10. Wrongful Termination in Violation of
Public Policy

21
22 **CELONIS, INC., a Delaware corporation;**
and DOES 1 through 20, inclusive,

23
24 Defendants.

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1 **I. INTRODUCTION**

2 1. In 2018, Celonis, Inc. (“Celonis” or “the Company”) initiated efforts to recruit
3 Shawn O’Connell away from a lucrative position with Salesforce where he had enjoyed great
4 success. Unable to match the salary Mr. O’Connell earned at Salesforce, Celonis instead offered
5 him a significant equity grant of 3,000 restricted stock units (“RSUs”). Celonis made this offer
6 after multiple verbal and written negotiations regarding the terms of Mr. O’Connell’s
7 compensation at the Company. Celonis communicated to Mr. O’Connell that the Company,
8 whose shares were then valued at approximately \$70, anticipated growing in value significantly,
9 and that this was Mr. O’Connell’s opportunity to get in on the ground floor. Mr. O’Connell would
10 never have left his lucrative position at Salesforce were it not for this equity grant offer, which is
11 written into the body of his Offer Letter.

12 2. Soon after starting with Celonis, and repeatedly for nearly two years, Mr.
13 O’Connell sought basic information and documents about the equity program the Company
14 purportedly offered to all employees, and for a statement of his equity position specifically. For
15 example, Mr. O’Connell asked multiple times for the “Celonis 2018 Restricted Stock Unit Plan”
16 referenced in his Offer Letter. But Celonis consistently evaded his inquiries, punting to personnel
17 in various departments and at different levels, but never providing him a response to even the
18 most basic foundational questions.

19 3. On June 2, 2021, frustrated with the Celonis’ lack of transparency, Mr. O’Connell
20 escalated his concerns to Celonis’ co-CEO, Bastian Nominacher. A week later on June 9, 2021,
21 Celonis communicated to Mr. O’Connell – for the first time – that rather than the 3,000 RSUs
22 explicitly granted to him in his Offer Letter, the Company (relying on a bad faith interpretation of
23 a footnote) took the position it only gave him 300 RSUs upon hire. Uncoincidentally, by the time
24 Celonis communicated its untenable position to Ms. O’Connell, Celonis’ share value had
25 increased more than 500% since his onboarding. Celonis’ post hoc interpretation divested Mr.
26 O’Connell of significant equity and value.

27 4. It turns out Celonis’ employee stock program never actually existed. In violation of
28 federal securities law (described below), the “Celonis 2018 Restricted Stock Unit Plan” Celonis

1 referenced in Mr. O’Connell’s employment Offer Letter (and communicated with the aim of
2 recruiting him) did not exist when he was hired. It may not even have existed when it wrongfully
3 terminated him. Highlighting the manipulative nature of Celonis’ actions, however, the Company
4 did for a short time offer to “permit” him to sell back a portion of his “shares” – conditioned,
5 unsurprisingly, on him executing a complete release of his claims against Celonis.

6 5. Celonis’ conduct as a purported “stock administrator” was deceptive, fraudulent,
7 and intentionally designed to lure Mr. O’Connell away from Salesforce with a promise of equity
8 that Celonis had no intention of honoring.

9 6. Running parallel to the events described above, Mr. O’Connell learned of and
10 opposed Celonis’ business practices he believed were unlawful, and designed to falsely inflate
11 revenue in violation of federal securities laws. Specifically, Celonis conducted business
12 transactions during late 2020 and 2021 requiring a given client to spend millions in “annual
13 recurring revenue” for the opportunity to invest millions of dollars in the Company ahead of its
14 anticipated Initial Public Offering (“IPO”). This tactic was designed to create the illusion of
15 hyper-growth and distort Celonis’ valuation to, among others, the investing public. Mr.
16 O’Connell’s opposition to this practice risked the Company’s bottom line, and more importantly,
17 could attract legal regulatory scrutiny and hinder the Company’s IPO.

18 7. Separately, in April 2021, Celonis’ outside legal counsel interviewed Mr.
19 O’Connell as part of the Company’s investigation of an alleged sexual assault. The victim was
20 Mr. O’Connell’s direct report. In response to the investigator’s questions, Mr. O’Connell offered
21 truthful information and a perspective that Celonis knew would be damaging in any eventual
22 litigation on the sexual assault claims. Celonis terminated the victim in May. On June 4, 2021,
23 Celonis’ Legal Director contacted Mr. O’Connell regarding the resulting sexual assault case,
24 seeking evidence to corroborate Celonis’ defense. But Mr. O’Connell again refused to tow the
25 company line, providing documentation and statements that were generally adverse to the
26 Company’s position in the case. Mr. O’Connell was one of few people who had first-hand
27 knowledge of material information that appeared to corroborate the victim’s allegations.

28

1 8. In June 2021, Celonis swiftly carried out a series of retaliatory actions culminating
2 in Mr. O’Connell’s termination. In a June 9 phone call, Celonis Chief Revenue Officer, Miguel
3 Milano, baselessly admonished Mr. O’Connell, bizarrely asked him how many Celonis shares he
4 owned, and told him he had “better stay” at Celonis if he wants to continue vesting shares. On
5 June 15, Mr. Milano and Celonis Human Resources representative, Alexandra Brunetti, informed
6 Mr. O’Connell that he had received negative “feedback” (from undisclosed sources and about
7 unspecified events). They informed Mr. O’Connell that, due to this feedback, he could “choose”
8 to either be placed on a performance improvement plan overseen by the overtly hostile Mr.
9 Milano, or be terminated with a severance package requiring a full release of claims against the
10 Company and an airtight non-disclosure agreement.

11 9. Mr. O’Connell asked for more time to consider this career-changing and
12 oppressive choice. Eleven days later, on July 26, 2021, Celonis terminated him.

13 **II. JURISDICTION AND VENUE**

14 10. This Court has subject matter jurisdiction over all causes of action asserted herein,
15 and the amount in controversy exceeds the jurisdictional minimum of this Court.

16 11. Defendants, and each of them, are subject to the jurisdiction of this Court by virtue
17 of their dealings and transactions in San Francisco County and by having caused injuries through
18 their acts and omissions within this County to render the exercise of jurisdiction by this Court
19 permissible under traditional notions of fair play and substantial justice.

20 12. Venue is proper in San Francisco County because Celonis is a corporation or
21 association, the contract at issue here was made or was to be performed in this County and the
22 obligation or liability arose in this County.

23 **III. CONDITIONS PRECEDENT TO FILING ACTION**

24 13. On August 20, 2021, Mr. O’Connell filed a complaint of discrimination with the
25 Department of Fair Employment and Housing.

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1 **IV. THE PARTIES**

2 **A. Plaintiff**

3 14. Plaintiff Shawn O’Connell is a San Francisco Bay Area native, and has lived in
4 Danville, California with his wife and three children for the past 18 years.

5 15. Mr. O’Connell has a well-established upward trajectory of success in the sales
6 industry. After spending a decade at EMC Corporation, he held regional sales manager positions
7 at Trace3, and BMC Software, where he led a team of Strategic Global Account managers. He
8 ultimately landed at Salesforce in a role as VP of Sales for over four years, again, marked by
9 upward success. Mr. O’Connell was a member of Salesforce’s President’s Club the year he left,
10 consistently exceeded his sales quotas, and thoroughly enjoyed his role. The position also
11 provided substantial compensation and security that Mr. O’Connell – as the sole breadwinner –
12 relied on to support his wife and three children. Mr. O’Connell was diagnosed with diabetes in
13 1999 and has relied on employer-sponsored healthcare to provide health insurance for him and his
14 dependents.

15 **B. Defendant**

16 16. Defendant Celonis is a software company founded in Munich, Germany, with its
17 United States headquarters in New York. Celonis claims it “provides companies a modern way to
18 run their business processes entirely on data and intelligence. [Celonis] pioneered the process
19 mining category 10 years ago when [it] first developed the ability to automatically X-ray
20 processes and find inefficiencies.”¹

21 17. Celonis employs around 1,100 people across 12 locations. Celonis recently raised
22 \$1 billion in funding and is valued at \$11 billion. Celonis has repeatedly represented – to the
23 public and to its employees – that it plans to conduct an IPO in the very near future. For example,
24 Celonis conducted all-hands, company-wide calls in 2020 and early 2021 detailing the equity
25 program, estimated stock values, and plans for a future IPO.

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¹ See *Our Company, We’re Celonis*, available at <https://www.celonis.com/company/>

1 **V. FACTUAL BACKGROUND**

2 **A. Celonis Recruits Mr. O’Connell Away from His Secure and Lucrative**
3 **Position with Salesforce**

4 18. In early July 2018, Celonis began focused efforts to recruit Mr. O’Connell away
5 from his secure and lucrative Salesforce position to join its ranks. Celonis and its retained
6 professional recruiting firm solicited Mr. O’Connell directly, first via LinkedIn direct messaging
7 and then via email. Hesitant to potentially jeopardize his position with Salesforce, Mr. O’Connell
8 was initially reluctant to entertain the pitch. But Celonis portrayed itself as an exciting up-and-
9 coming company that Mr. O’Connell could expect to grow significantly in the future. During his
10 application process, several Celonis representatives and recruiters explicitly promised that if
11 hired, he would be granted a generous equity stake in the Company which he could expect to
12 appreciate significantly over time.

13 19. Celonis’ promise of equity was also based on the fact that Celonis was unable to
14 pay Mr. O’Connell base salary commensurate with what he received at Salesforce. The equity
15 upside, according to Celonis, more than made up for it – particularly considering Celonis’
16 expected growth and anticipated future public offering.

17 20. Based on these representations from various Celonis personnel, Mr. O’Connell
18 engaged in Celonis’ recruitment efforts and agreed to apply for a sales role at the Company.

19 **B. Celonis Offers Mr. O’Connell Employment and 3,000 Restricted Stock Units**
20 **Upon Hire**

21 21. On October 26, 2018, Celonis presented Mr. O’Connell with a formal offer setting
22 forth the terms of employment with Celonis (“Offer Letter”). A copy of the offer is attached
23 hereto as **Exhibit 1**. The offer included \$200,000 in annual base salary and \$200,000 in annual
24 target commissions, and granted Mr. O’Connell 3,000 Restricted Stock Units (“RSUs”), each
25 corresponding to one share of Celonis stock and “subject to the terms and conditions set forth in
26 the Celonis 2018 Restricted Stock Unit Plan and the standard form of Restricted Stock Unit
27 Agreement thereunder.”²

28 ² The 3,000 RSUs were subject to a customary 1-year vesting “cliff” and vested quarterly thereafter. *See* Ex. 1.

1 22. As is common in onboarding discussions of this type, there was some back and
2 forth negotiation between Celonis and Mr. O’Connell about the quantity of RSUs (i.e., Celonis
3 initially offered Mr. O’Connell an onboarding grant of 1,500 RSUs, which it increased later to
4 3,000). The parties’ discussions were often memorialized in email correspondence. Ultimately,
5 Mr. O’Connell accepted Celonis’ offer of 3,000 RSUs, which on information and belief was
6 authorized by the Company. This agreement was written and memorialized in the Offer Letter
7 that Mr. O’Connell signed. *See* **Ex. 1**.

8 23. At the time the final Offer Letter was ultimately transmitted to Mr. O’Connell and
9 throughout the recruitment process, Celonis, its outside recruiter, and other agents including Chris
10 Bernhoft, Mr. O’Connell’s hiring manager affirmed, orally and in writing, that Celonis was
11 granting Mr. O’Connell 3,000 RSUs upon employment. When Mr. O’Connell received the
12 finalized Offer Letter, he recognized it as consistent with each of these prior assurances and
13 signed it on that basis.

14 **C. Mr. O’Connell Establishes Himself as a Top Performer at Celonis**

15 24. Immediately and for nearly three years at Celonis, Mr. O’Connell was a strong
16 performer. He exceeded revenue and profit goals and partner sales development, recruited and
17 retained strong sales talent, and implemented “go to market” strategies that enhanced customer
18 success and produced sustainable growth.

19 25. He was a top performer locally, and in his first full quarter Mr. O’Connell closed a
20 significant deal with Ingram Micro, Celonis’ largest SaaS order in the West at that point, bringing
21 in \$680,000 per year in annual recurring revenue (“ARR”). Within his first year, he was rewarded
22 with a performance-based pay increase, and he closed an account that promised Celonis \$1.3
23 million in ARR, taking the West Hi-Tech business from zero ARR in 2018 to approximately \$5
24 million in 2021.

25 26. Mr. O’Connell was also an excellent leader: he is well-liked by his colleagues, and
26 to his delight, one of his direct reports was inducted into Celonis’ President’s Club under his
27 supervision. There can be no reasonable dispute about Mr. O’Connell’s strong performance at the
28 Company before he was wrongfully terminated.

1 **D. Mr. O’Connell Repeatedly Requests Documentation of His Equity Position,**
2 **and Celonis Ignores or Rejects His Requests**

3 27. Almost immediately after beginning work at Celonis and multiple times between
4 2019 and 2021, Mr. O’Connell requested (orally and in writing) the underlying “Celonis 2018
5 Restricted Stock Unit Plan and standard form of Restricted Stock Unit Agreement” expressly
6 referenced in his Offer Letter, and which the Company had not provided to him. *See Ex. 1.* He
7 also asked for formal documentation reflecting his 3,000 RSUs, his vesting schedule, or any other
8 foundational documents reflecting his equity position. Celonis never answered his questions or
9 provided him with documents responsive to his requests.

10 28. For example, on February 4, 2020, Mr. O’Connell emailed his primary Human
11 Resources lead, Laura Coluccio, who forwarded his inquiry to Celonis’ then-Senior Vice
12 President of Finance, Fabian Veit, asking for the 2018 stock agreement referenced in his Offer
13 Letter. Mr. O’Connell received no response from any of these individuals, or anyone else at
14 Celonis. Still seeking these foundational documents, Mr. O’Connell asked his manager Chris
15 Bernhoft, who had handled Mr. O’Connell’s hiring and was certainly aware of the specific RSU
16 grant offered to him. Mr. Bernhoft similarly could not provide a substantive response, but
17 forwarded the request to then-CFO Guido Torrini for assistance.

18 29. On March 17, 2021, Mr. O’Connell wrote to the head of North American Human
19 Resources, Alexandra Brunetti, hoping that she could lend clarity and closure to his circuitous
20 quest for information. Ms. Brunetti responded that she “did not know about any employee RSU
21 program,” and could not answer his questions, but vaguely promised to contact Celonis’ “Equity
22 Rewards team” on his behalf. Given that Ms. Brunetti was Celonis’ HR representative for an
23 entire continent of Celonis’ employees, this response was deeply troubling.

24 30. And nearly three months later, on June 2, 2021, still having heard nothing from
25 anyone at Celonis, Mr. O’Connell emailed the head of the Equity Rewards Program, Ekaterina
26 Potter, detailing his multiple unsuccessful requests for basic documentation over nearly two years,
27 asking one more time for a response, and to be included in the June tender offer. That same day,
28 on June 2, 2021, Mr. O’Connell elevated his requests and report one more time – notifying

1 Celonis’ co-CEO Bastian Nominacher of the Company’s utter failure to provide documentation
2 reflecting Mr. O’Connell’s equity. As set forth below, this June 2 report came in striking temporal
3 proximity to Celonis’ wrongful termination of Mr. O’Connell.

4 31. From early 2019 to present, Celonis has never responded to Mr. O’Connell’s
5 requests for the 2018 stock agreement referenced in his Offer Letter, or any other foundational
6 documents required under federal laws. That is because, on information and belief, these
7 documents do not exist. Celonis’ “employee equity program” was a sham – intentionally designed
8 to lure talented employees away from their jobs, so Celonis could benefit from the fruits of their
9 labor without any intention of honoring the promises of equity it explicitly made to them. *Not*
10 *only* did Celonis fail to respond to Mr. O’Connell’s seriatim requests for information, *no one ever*
11 *told him that the documents he was requesting did not exist.* Celonis’ conduct was deceptive,
12 fraudulent, and in violation of laws governing employer-administered stock plans.

13 **E. Mr. O’Connell Again Seeks Clarification on His RSUs, and Celonis Finally**
14 **Informs Him That It Would Only Honor 1/10th of What It Promised Him**

15 32. On June 9, 2021, for the first time since his employment in November 2018,
16 Celonis shared with Mr. O’Connell that, based on its untenable post-hoc reading of the Offer
17 Letter, it actually gave him only 300, rather than 3,000 RSUs at the time of hiring.

18 33. Mr. O’Connell only learned of Celonis’ position because in June 2021, Celonis
19 announced a “tender offer” to all employees permitting them to sell 15% of their vested shares. It
20 was then that Mr. O’Connell also learned (also for the first time), that he was one of just four
21 employees who were granted RSUs rather than stock options, through an inexplicable (and
22 apparently not documented) covert arrangement.

23 34. According to Celonis, relying on a footnote in Mr. O’Connell’s Offer Letter, it
24 only ever gave Mr. O’Connell 1/10th of what it promised in (1) the body of the Offer Letter, (2)
25 repeated oral representations from Celonis representatives and recruiters leading up to the
26 execution of the offer letter, (3) written emails before and after signing the Offer Letter.

27 35. The footnote upon which Celonis relied for its untenable interpretation states that
28 “the number of RSUs specified assumes the completion of the *currently executed* 1-for-10

1 forward stock split.” (emphasis added). See Ex. 1.

2 36. On June 9, 2021, Ms. Brunetti told Mr. O’Connell that because the 1-for-10
3 forward stock split referenced in the footnote apparently “never happened,” Mr. O’Connell only
4 received 300 RSUs at the time of hiring, not the 3,000 explicitly stated in the body of the letter.
5 After a 20:1 stock split on January 28, 2020, Celonis therefore calculated that Mr. O’Connell
6 owned only 6,000 RSUs, rather than the 60,000 he was led by Celonis, up to that point, to believe
7 he held.³

8 37. Ms. Brunetti informed Mr. O’Connell that he was permitted to participate in the
9 Company-wide tender offer to sell 15% of his vested shares back to the Company for cash.
10 However, according to Celonis’ interpretation of his total shares, she told him that he had vested
11 approximately 56% (or 3,375) of his 6,000 total shares as of June 9, 2021 and Celonis would
12 therefore permit him to sell 506 of them back to the Company.

13 38. Based on Celonis’ tender offer to Mr. O’Connell, it is undisputed that as of June 9,
14 2021, he had vested 56% of his shares. However, Mr. O’Connell disagreed strongly with Celonis’
15 interpretation of his *total* RSUs which were ten times less than what it gave him, to leave
16 Salesforce.

17 39. Moreover, in order for Mr. O’Connell to participate in the tender offer, Celonis
18 required him to “relinquish[] any claim you may have against the Company or its affiliates in
19 relation to the Surrendered RSUs.” That is, Celonis attempted to force Mr. O’Connell to release
20 claims against the Company in order to receive the benefit of the tender offer, which was offered
21 to all other Celonis employees.

22 ///

23 ///

24 ³ Celonis also contends that the vesting of Mr. O’Connell’s RSUs was contingent on a 1) service-
25 based requirement (which it is undisputed that he met), and 2) a liquidity event of some kind.
26 Similarly, the Offer Letter grants Mr. O’Connell his RSUs “subject to the terms and conditions set
27 forth in the Celonis 2018 Restricted Stock Unit Plan and the standard form of Restricted Stock
28 Unit Agreement thereunder.” As noted, Celonis did not provide any 2018 stock agreements at the
time of hiring, and has consistently rejected numerous attempts by Mr. O’Connell to obtain the
underlying stock agreement or other documents. Any reliance by Celonis on rights contained in a
stock agreement that either did not exist, or that it refused to provide to Mr. O’Connell, highlights
its bad faith.

1 **F. Celonis CRO Miguel Milano Confronts Mr. O’Connell with Unfounded**
2 **Accusations**

3 40. The same day he learned of Celonis’ position regarding his RSUs, June 9, 2021,
4 Mr. O’Connell held a call with Celonis’ CRO and Co-owner, Miguel Milano, to discuss several
5 matters.

6 41. The call began productively, as the two discussed upcoming plans for the team.
7 Then, in an abrupt about-face, Mr. Milano deployed a barrage of accusations, first bizarrely
8 telling Mr. O’Connell: “I believe you hate me.” Confused, Mr. O’Connell did not respond and
9 attempted to refocus the conversation on other neutral matters. Undeterred, Mr. Milano followed
10 up by saying: “your team hates you, and they’re celebrating that you’re changing roles,” and
11 repeatedly asking him: “Who on your team hates you?” Oddly, Mr. Milano concluded this part of
12 the conversation – after claiming to know the sentiments held by Mr. O’Connell’s team – by
13 asking for the names of the people on his team. Mr. O’Connell understood these accusations to be
14 baseless but was genuinely perplexed by this exchange.

15 42. Mr. Milano then asked Mr. O’Connell how many options he had in the Company.
16 Mr. O’Connell stated he had RSUs, and not options, and Mr. Milano responded with surprise,
17 telling Mr. O’Connell his “RSUs are worth a lot of money” and that he had “better stay” at
18 Celonis if he wants to continue vesting. Mr. O’Connell interpreted these comments as a warning.

19 **G. While Repeatedly Raising Issues About His Compensation, Mr. O’Connell**
20 **Also Refuses to Testify in Celonis’ Favor in a Sexual Assault Case Against the**
21 **Company**

22 43. Running parallel to the foregoing circumstances, earlier in 2021 a Celonis sales
23 employee and direct report of Mr. O’Connell (referred to herein anonymously as “X”), notified
24 the Company that they were a victim of sexual assault at the hands of another Celonis employee
25 at a company event. Mr. O’Connell was X’s direct supervisor.

26 44. On April 7, 2021, Ms. Brunetti contacted Mr. O’Connell, informing him that
27 Celonis wished to interview him in connection with its investigation into X’s sexual harassment
28 or assault claims. The next day, Mr. O’Connell sat for an interview in response to questions posed
by Celonis’ outside investigator, from Fisher & Phillips, about his supervision of X. Among other

1 things, Mr. O’Connell expressed that X was generally a positive performer, and that after the
2 alleged sexual assault, they returned to work virtually a “different person” emotionally and
3 mentally, and with noticeable effects to their demeanor. In other words, Mr. O’Connell
4 corroborated X’s version of events and provided a perspective that could be damaging if offered
5 in any eventual litigation of X’s claims.

6 45. On June 4, 2021, Celonis Legal Director, Ron Katcher, contacted Mr. O’Connell to
7 inform him that there was an active investigation into X’s claims, and to seek any documentation,
8 including emails, in Mr. O’Connell’s possession concerning X. Specifically, Mr. Katcher sought
9 support such as negative performance reviews that could be used to justify Celonis’ decision to
10 terminate X, notwithstanding X’s sex assault claims. Mr. O’Connell *again* provided feedback that
11 did not support Celonis’ defense in X’s case. Celonis terminated X.

12 46. As one of the only remaining employees with any personal knowledge of X’s
13 performance (and the employee who directly supervised him), the Company needed Mr.
14 O’Connell’s testimony to support its defense, if X were to bring a future legal case against the
15 Company.

16 **H. Mr. O’Connell Internally Reports His Concerns Regarding Celonis’ Business**
17 **Practices Designed to Falsely Inflate Revenues in Advance of an IPO**

18 47. Separate from the foregoing events, Mr. O’Connell learned the Company was
19 engaging in what he reasonably believed were serious securities violations in connection with its
20 potential IPO and other stock offerings, including violations of Rule 10b-5 of the Securities
21 Exchange Act which prohibits the employment of manipulative or deceptive practices in
22 connection with the purchase or sale of any security. 17 C.F.R. § 240.10b-5. Specifically, Mr.
23 O’Connell learned that Celonis conducted business transactions that closed in late 2020 and 2021
24 that require a client to agree to spend millions in “annual recurring revenue” (“ARR”).

25 48. In return for several clients’ increased ARR commitment, Celonis “allowed” the
26 client to invest millions of dollars in the company ahead of its IPO. This activity creates the false
27 illusion of hyper-growth, raises demand for Celonis products, artificially inflates revenues, and
28

1 ultimately overstates Celonis’ valuation in advance of its forthcoming IPO and tender offer,⁴ in
2 violation of SEC regulations. Celonis undertook this scheme specifically to falsely (and
3 deceptively) increase the perceived value of its worth in advance of an upcoming IPO, to drive
4 stock value and shareholder demand.

5 49. Repeatedly during his employment, and as recently as March 2021 Mr. O’Connell
6 reported his belief that Celonis’ conduct violated various securities laws requiring truthful
7 disclosures to potential investors. He repeatedly shared his views with his supervisor Chris
8 Bernhoft, and others, which was problematic for Celonis in light of the Company’s well-
9 publicized anticipated upcoming IPO.

10 50. Indeed, the Company made several written and oral representations about its
11 anticipated IPO in the near term. It told employees clearly that they should continue working at
12 the Company to “reap the benefits” of working at a pre-IPO company; that Celonis was increasing
13 in value every day; and that the IPO would be an enormous source of wealth for anyone
14 participating in Celonis’ “employee stock plan.” Celonis told Mr. O’Connell and others directly
15 that it expected its stock to “double in value” between June and when it expected to conduct an
16 IPO in early 2022. In an all-hands meeting around April 2021, Celonis announced that all eligible
17 employees would be made a tender offer of \$369 per share to sell up to 15% of vested equity in
18 exchange for cash compensation (as described above).

19 **I. Celonis Forces Mr. O’Connell Out of the Company, Fashioning Its**
20 **Termination as a “Choice”**

21 **1. Celonis Lays the Groundwork for a Pretextual Performance**
22 **Improvement Plan**

23 51. Approximately a week after learning Celonis took the position that it granted him
24 only 300 RSUs (and just 11 days after Mr. O’Connell refused to provide favorable testimony in
25 Celonis’ investigation of X’s sex assault claims), on June 15, 2021, Mr. O’Connell unexpectedly
26 received a calendar invite titled “feedback” from Mr. Milano. When he called in, Celonis HR

27 ⁴ Section 14(e) of the Securities Exchange Act of 1934 provides: “It shall be unlawful for any
28 person to make any untrue statement of a material fact or omit to state any material fact necessary
in order to make the statements made, in the light of the circumstances under which they are
made, not misleading, or to engage in any fraudulent, deceptive, or manipulative acts or practices,
in connection with any tender offer” 15 USC § 78n(e).

1 representative Ms. Brunetti was surprisingly in attendance. Mr. Milano informed Mr. O’Connell
2 he had “violated company policy” for being “insubordinate” – without identifying any specifics.

3 52. Having received *zero* negative feedback from *anyone* at Celonis in over two years
4 of employment, Mr. O’Connell was genuinely confused by this news.⁵

5 53. Celonis then told Mr. O’Connell he had two “options”: *First*, Mr. O’Connell could
6 be immediately placed on a 30-day Performance Improvement Plan (“PIP”) premised on his
7 purported (and vague) “subordination.” Mr. Milano (who had just launched baseless allegations
8 against and senselessly berated him) would “oversee” Mr. O’Connell’s performance on the PIP
9 and determine his compliance with its terms. Mr. Milano told Mr. O’Connell if he did not comply
10 with the PIP in any way, he would be terminated with no severance and no benefits.

11 54. Aside from being pretextual, Mr. O’Connell understood this “PIP” to be illusory:
12 he knew that if he accepted it, Celonis would terminate him (likely before the end of the 30-day
13 period), regardless of his actual performance, and with no health insurance or severance. In that
14 scenario, Mr. O’Connell would be out of a job, with no income, and with a termination on his
15 record while he scrambled to find a replacement position.

16 55. Celonis knew in presenting these options that Mr. O’Connell relied strongly on his
17 employment income, and that he was the sole breadwinner supporting his wife and three children.
18 Celonis also knew that at that time, Mr. O’Connell was diabetic and required Celonis’ employer-
19 sponsored healthcare coverage for his ongoing medical treatment.

20 56. The *second* “option” presented by Celonis was for Mr. O’Connell to “accept”
21 termination, in exchange for signing a full release of claims and non-disclosure agreement, and
22 “continued vesting” of his unvested shares until September 15. Celonis refused to provide the
23 amount of the severance offer. However, Celonis maintained its view that he was only entitled to
24 1/10th of his actual equity granted to him under the plain terms of his offer letter (6,000 rather than
25 the 60,000 RSUs.)

26
27 ⁵ Mr. O’Connell also asked whether the call was being recorded. Mr. Milano’s bizarre response
28 was that a recording was not necessary because he [Milano] was Ms. Brunetti’s witness, and Ms.
Brunetti was his. When Mr. O’Connell asked whether he could have a witness present, neither
individual responded.

1 57. Celonis’ absurd proposal was transparently aimed at forcing Mr. O’Connell out of
2 the Company immediately, obtaining a release of claims and a binding NDA from him, with the
3 hope that doing so would deter him from providing favorable testimony to X in any upcoming
4 litigation of X’s case, or sharing with the public or regulatory agencies the securities violations
5 that Celonis knew Mr. O’Connell witnessed, including with its own employee stock plan. Celonis
6 sought to secure Mr. O’Connell’s silence regarding the Company’s violations of federal securities
7 laws – which Mr. O’Connell was one of the last remaining employees to personally witness.
8 Celonis likewise sought to avoid its obligation to grant Mr. O’Connell the RSUs it promised him
9 explicitly in his Offer Letter, while forcing him to release any future claims to the equity (or other
10 compensation) he was entitled to.

11 58. Mr. O’Connell was perplexed by these “options.” On the one hand, Celonis was
12 relaying to him that he had committed a “terminable offense” without providing any details. On
13 the other hand, it was offering him a severance package, despite his purported terminable offense.
14 In Mr. O’Connell’s mind, Celonis’ statements could not be reconciled.

15 59. Mr. O’Connell understood Celonis’ “proposal” as a no-win situation. Celonis
16 presented these options to him over the phone but refused to provide them in writing. It forced
17 him to respond within four days of that call, later agreeing to give him four additional days.

18 **2. Celonis Issues the Pretextual Written PIP**

19 60. Two days after the above-described meeting, on June 17, Ms. Brunetti provided
20 Mr. O’Connell a written PIP, reflecting similarly vague accusations as mentioned in the June 15
21 call.

22 61. While the PIP concerned Mr. O’Connell’s 2021 sales performance, it was prepared
23 with more than three months remaining in fiscal year 2021, and therefore failed to capture his
24 performance. It is well-known in the sales industry that the majority of business closes at the end
25 of a fiscal (or calendar) year. And Mr. O’Connell was being evaluated (and criticized) using sales
26 metrics for those in management positions, but at that point in time he was in an individual sales
27 role.

28

1 62. Notably, the PIP also claimed Mr. O’Connell “show[ed] insubordination towards
2 [his] managers” or otherwise “undermin[ed] them.” No specific event, time, or behavior are
3 identified, but Mr. O’Connell understood this “insubordination” allegation to refer to his refusal
4 to provide favorable testimony to the Company concerning X, and his repeated questioning to the
5 Company about his equity position.

6 63. And the PIP closed with a threat that Mr. O’Connell’s failure to meet its
7 requirements “w[ould] result in further disciplinary action up to and including termination,” as
8 supervised by Mr. Milano, the same manager who had recently baselessly attacked Mr. O’Connell
9 for the first time. The customary purposes of a PIP were conspicuously absent: there was no
10 action plan intended to foster Mr. O’Connell’s continued success at the Company.

11 **3. Celonis Constructively Terminates Mr. O’Connell by Forcing Him to**
12 **Choose Either to be Placed on a PIP, or Accept Termination and a**
13 **Release of Claims.**

14 64. Compounding the pretextual nature of the two “options” presented by Celonis, the
15 Company forced Mr. O’Connell to “choose” between “accepting” the PIP or termination pursuant
16 to the severance terms by June 21, 2021 (six days later), without even providing him any formal
17 severance terms in writing. It was impossible to evaluate such a decision without knowing what
18 he was being offered.

19 65. While Ms. Brunetti sent Mr. O’Connell an email on June 17 paraphrasing a few of
20 Celonis’ proposed severance terms, it was not until the afternoon of June 21 – i.e., Celonis’
21 deadline for Mr. O’Connell to decide – that Ms. Brunetti provided a draft severance agreement
(backdated to June 18) for Mr. O’Connell’s review.

22 66. On July 26, 2021, when Mr. O’Connell had not accepted either of the two
23 “options,” Celonis terminated him.

24 **VI. CAUSES OF ACTION**

25 **FIRST CAUSE OF ACTION**
26 **INTENTIONAL MISREPRESENTATION**

27 67. Mr. O’Connell incorporates by reference each and every allegation in this
28 complaint as though fully set forth herein.

1 68. Celonis made various representations to Mr. O’Connell as alleged herein,
2 including without limitation that:

- 3 a. It was administering a legitimate, approved employee stock plan, referred
4 to by Celonis as the “Celonis 2018 Restricted Stock Unit Plan”;
- 5 b. There was an underlying legitimate and finalized stock agreement, the
6 terms of which governed the “Celonis 2018 Restricted Stock Unit Plan”;
7 according to Celonis, this document was entitled “standard form of
8 Restricted Stock Unit Agreement” or “applicable RSU agreement”;
- 9 c. The 1-for-10 forward stock split referenced in the footnote of Mr.
10 O’Connell’s Offer Letter had already happened, or was close to being
11 completed, at the time he accepted Celonis’ offer of employment;
- 12 d. Celonis would grant Mr. O’Connell 3,000 RSUs upon his acceptance of the
13 Offer;
- 14 e. Celonis, as a legitimate stock plan administrator, would respond to
15 reasonable requests for information and documents; and
- 16 f. Mr. O’Connell and other employees would earn significant income through
17 Celonis’ stock value increases, if they continued their employment at the
18 Company.

19 69. Each of these representations was false.

20 70. Celonis did not intend to grant Mr. O’Connell 3,000 RSUs, and knew that the
21 foregoing representations were false when they were made, and/or Celonis made the
22 representations recklessly and without regard for their truth. This is evident considering the
23 Company, *inter alia*, (a) never responded to Mr. O’Connell’s reasonable requests for information
24 about his equity; (b) never provided any underlying stock documents referenced in the Offer
25 Letter at Mr. O’Connell’s request; (c) has repeatedly changed its position on the nature of his
26 vested or unvested shares (and the attendant triggering events required for that vesting), and
27 whether the Offer Letter did, or did not, grant Mr. O’Connell shares; and (d) had not “executed” a
28 1-for-10 stock split prior to extending the Offer Letter to Mr. O’Connell.

1 71. On information and belief, either the 2018 Stock Agreement referenced in Celonis’
2 offer letter does not exist, or Celonis is intentionally concealing it from Mr. O’Connell. Either
3 way, Celonis had no intention to honor the grant of 3,000 RSUs in its Offer Letter to grant Mr.
4 O’Connell 3,000 RSUs upon employment.

5 72. Mr. O’Connell reasonably relied on Celonis’ representation that he would receive
6 3,000 RSUs upon hire. Mr. O’Connell had no reason to doubt (a) that Celonis was administering a
7 legitimate, lawful, and compliant employee stock plan, (b) that Celonis was offering 3,000 RSUs
8 in good faith, or (c) that the “currently executed” stock split referenced in the Offer Letter had
9 already occurred.

10 73. Mr. O’Connell has been harmed as alleged herein, including in that he did not
11 receive 3,000 RSUs, which would have become 60,000 RSUs following a 20:1 split in Celonis’
12 share price. Instead, Celonis falsely claims that Mr. O’Connell was entitled to only 300 RSUs
13 upon hire, which became 6,000 RSUs after the 20:1 stock split.

14 74. Additionally, Mr. O’Connell has been harmed by Celonis’ misrepresentations
15 alleged herein in that Mr. O’Connell accepted the position with Celonis, leaving behind his
16 lucrative and secure role at Salesforce, based on these misrepresentations. Mr. O’Connell worked
17 for more than two years at Celonis operating under the false premise that he was continually
18 vesting shares consistent with an initial grant of 3,000 RSUs. Had he learned at any time before
19 his termination that these representations were false, he never would have stayed at the Company.

20 75. Mr. O’Connell’s reliance on Celonis’ misrepresentations was a substantial factor in
21 causing his harm. He never would have accepted his employment offer if no (or only 300) RSUs
22 were offered: it would not have been worthwhile for him to leave his secure position at Salesforce
23 to do so.

24 76. As a direct and consequential result of Celonis’ actions, Mr. O’Connell has
25 suffered extensive monetary harm, and emotional distress.

26 77. In making the misrepresentations alleged herein, Celonis acted with malice,
27 oppression, and/or fraud. As described herein, those at the highest level of Celonis, including co-
28 CEO Bastian Nominacher, were aware that the company had failed to provide Mr. O’Connell

1 with documents referenced in his equity grant, and knew that such documents did not exist. Mr.
2 O'Connell is therefore entitled to punitive damages under the California Civil Code.

3 **SECOND CAUSE OF ACTION**
4 **FALSE PROMISE**

5 78. Mr. O'Connell incorporates by reference each and every allegation in this
6 complaint as though fully set forth herein.

7 79. Celonis promised Mr. O'Connell, among others promises described herein, that it
8 would grant Mr. O'Connell 3,000 RSUs following his execution of the Offer Letter.

9 80. Celonis knew that this promise was falsely made, as it did not have the intention of
10 performing its obligations in the Offer Letter. On information and belief, either the 2018 Stock
11 Agreement referenced in Celonis' offer letter did not exist, or Celonis intentionally concealed it
12 from Mr. O'Connell. Either way, Celonis had no intention to honor the grant of 3,000 RSUs in its
13 Offer Letter to grant Mr. O'Connell 3,000 RSUs upon employment. According to the Company's
14 later representations, it had not "executed" a 1-for-10 stock split prior to extending the Offer
15 Letter to Mr. O'Connell.

16 81. Despite Celonis' lack of intent to perform its obligations under the Offer Letter,
17 Celonis accepted the benefits Mr. O'Connell conferred upon the Company through performing his
18 job duties.

19 82. Mr. O'Connell reasonably relied on Celonis' promises, taking Celonis' promise at
20 face value – i.e., that he would receive 3,000 RSUs, pursuant to the plain terms of the Offer
21 Letter. At the time Mr. O'Connell accepted Celonis' terms in the Offer Letter, Mr. O'Connell was
22 ignorant of Celonis' secret intention not to perform. Mr. O'Connell could not, in the exercise of
23 reasonable diligence, have discovered Celonis' secret intention. In reliance on Celonis' promises,
24 Mr. O'Connell accepted a position in Celonis' sales department in which he delivered strong
25 performance as described herein.

26 83. Celonis did not perform the promised acts as alleged herein, including by failing to
27 convey 3,000 RSUs to Mr. O'Connell upon the start of his employment.
28

1 84. Mr. O’Connell has been harmed as alleged herein, including in that he did not
2 receive 3,000 RSUs, which would have become 60,000 RSUs following a 20:1 split in Celonis’
3 share price. Instead, Celonis falsely claims that Mr. O’Connell was entitled to only 300 RSUs
4 upon hire, which became 6,000 RSUs after the 20:1 stock split.

5 85. Additionally, Mr. O’Connell has been harmed by Celonis’ misrepresentations
6 alleged herein in that Mr. O’Connell accepted the position with Celonis, leaving behind his
7 lucrative and secure role at Salesforce, based on this representation. Mr. O’Connell worked for
8 more than two years at Celonis operating under the false premise that he was continually vesting
9 shares consistent with an initial grant of 3,000 RSUs. Had he learned at any time before his
10 termination that these representations were false, he never would have stayed at the Company.

11 86. Mr. O’Connell’s reliance on Celonis’ promises was a substantial factor in causing
12 his harm. He never would have accepted his employment offer if no (or only 300) RSUs were
13 offered: it would not have been worthwhile for him to leave his secure position at Salesforce to do
14 so.

15 87. As a direct and consequential result of Celonis’ actions, Mr. O’Connell has
16 suffered emotional distress.

17 88. In making the false promises alleged herein, Celonis acted with malice,
18 oppression, and/or fraud. As described herein, those at the highest level of Celonis, including co-
19 CEO Bastian Nominacher, were aware that the company had failed to provide Mr. O’Connell
20 with documents referenced in his equity grant, and knew that such documents did not exist. Mr.
21 O’Connell is therefore entitled to punitive damages under the California Civil Code.

22
23 **THIRD CAUSE OF ACTION**
NEGLIGENT MISREPRESENTATION

24 89. Mr. O’Connell incorporates by reference each and every allegation in this
25 complaint as though fully set forth herein.

26 90. Celonis made various representations to Mr. O’Connell as alleged herein,
27 including without limitation that:
28

- 1 a. It was administering a legitimate, approved employee stock plan, referred to by
2 Celonis as the “Celonis 2018 Restricted Stock Unit Plan”;
- 3 b. There was an underlying legitimate and finalized stock agreement, the terms of
4 which governed the “Celonis 2018 Restricted Stock Unit Plan”; according to
5 Celonis, this document was entitled “standard form of Restricted Stock Unit
6 Agreement” or “applicable RSU agreement”;
- 7 c. The 1-for-10 forward stock split referenced in the footnote of Mr. O’Connell’s
8 Offer Letter had already happened, or was close to being completed, at the time he
9 accepted Celonis’ offer of employment;
- 10 d. Celonis would grant Mr. O’Connell 3,000 RSUs upon his acceptance of the Offer;
- 11 e. Celonis, as a legitimate stock plan administrator, would respond to reasonable
12 requests for information and documents; and
- 13 f. Mr. O’Connell and other employees would earn significant income through
14 Celonis’ stock value increases, if they continued their employment at the
15 Company.
- 16 91. Each of these representations was false.
- 17 92. Celonis had no reasonable grounds for believing these representations were true
18 when they were made. The Company, *inter alia*, (a) never responded to Mr. O’Connell’s
19 reasonable requests for information about his equity; (b) never provided any underlying stock
20 documents referenced in the Offer Letter at Mr. O’Connell’s request; (c) has repeatedly changed
21 its position on the nature of his vested or unvested shares (and the attendant triggering events
22 required for that vesting), and whether the Offer Letter did, or did not, grant Mr. O’Connell
23 shares; and (d) had not “executed” a 1-for-10 stock split prior to extending the Offer Letter to Mr.
24 O’Connell.
- 25 93. On information and belief, either the 2018 Stock Agreement referenced in Celonis’
26 offer letter does not exist, or Celonis is intentionally concealing it from Mr. O’Connell. Either
27 way, Celonis had no intention to honor the grant of 3,000 RSUs in its Offer Letter to grant Mr.
28 O’Connell 3,000 RSUs upon employment.

1 94. Mr. O’Connell reasonably relied on Celonis’ representation that he would receive
2 3,000 RSUs upon hire. Mr. O’Connell had no reason to doubt (a) that Celonis was administering a
3 legitimate, lawful, and compliant employee stock plan, (b) that Celonis was offering 3,000 RSUs
4 in good faith, or (c) that the “currently executed” stock split referenced in the Offer Letter had
5 already occurred.

6 95. Mr. O’Connell has been harmed as alleged herein, including in that he did not
7 receive 3,000 RSUs, which would have become 60,000 RSUs following a 20:1 split in Celonis’
8 share price. Instead, Celonis falsely claims that Mr. O’Connell was entitled to only 300 RSUs
9 upon hire, which became 6,000 RSUs after the 20:1 stock split.

10 96. Additionally, Mr. O’Connell has been harmed by Celonis’ misrepresentations
11 alleged herein in that Mr. O’Connell accepted the position with Celonis, leaving behind his
12 lucrative and secure role at Salesforce, based on this representation. Mr. O’Connell worked for
13 more than two years at Celonis operating under the false premise that he was continually vesting
14 shares consistent with an initial grant of 3,000 RSUs. Had he learned at any time before his
15 termination that these representations were false, he never would have stayed at the Company.

16 97. Mr. O’Connell’s reliance on Celonis’ representation was a substantial factor in
17 causing his harm. He never would have accepted his employment offer if no (or only 300) RSUs
18 were offered: it would not have been worthwhile for him to leave his secure position at Salesforce
19 to do so.

20 98. As a direct and consequential result of Celonis’ actions, Mr. O’Connell has
21 suffered emotional distress.

22 **FOURTH CAUSE OF ACTION**
23 **DECLARATORY RELIEF**

24 99. Mr. O’Connell incorporates by reference each and every allegation in this
25 complaint as though fully set forth herein.

26 100. An actual controversy exists between Mr. O’Connell and Celonis in that, among
27 other things alleged herein, Celonis has violated and continues to violate the terms of the Offer
28

1 Letter because the Company has failed to convey to Mr. O’Connell RSUs consistent with a grant
2 of 3,000 RSUs upon his hiring.

3 101. Because a controversy exists among the parties, a declaration of the rights and
4 responsibilities of the parties with respect to the correct interpretation of the terms of the Offer
5 Letter is necessary.

6 102. Mr. O’Connell seeks a declaration from this Court that Celonis was obligated to
7 convey 3,000 RSUs to Mr. O’Connell upon the start of his employment with the Company.

8 **FIFTH CAUSE OF ACTION**
9 **BREACH OF CONTRACT**

10 103. Mr. O’Connell incorporates by reference each and every allegation in this
11 complaint as though fully set forth herein.

12 104. On October 26, 2018, Mr. O’Connell signed an Offer Letter Celonis presented to
13 him.

14 105. The Offer Letter provides, among other things, that: “Subject to the approval of
15 Celonis’ Board, you will be granted 3,000 restricted stock units (RSUs), each representing the
16 right to receive one ordinary share of Celonis.” **Ex. 1 ¶ 4.**

17 106. Mr. O’Connell performed all of the material requirements that the Offer Letter
18 imposed on him and all conditions precedent to Celonis’ obligation to grant Mr. O’Connell 3,000
19 RSUs, including providing continuous service to Celonis from his start date in November 2018,
20 until Celonis wrongfully terminated him as set forth herein, on or around June 18, 2021.

21 107. While the Offer Letter purports to condition Mr. O’Connell’s grant of RSUs on
22 “the terms and conditions” of the “Restricted Stock Unit Agreement” referenced in the Offer
23 Letter; a “service-based requirement” subject to a one-year cliff teed off Mr. O’Connell’s start
24 date of December 3, 2018; and “a requirement that the Company complete either an initial public
25 offering or a sale event prior to expiration of the RSUs, as described in more detail in the
26
27
28

1 applicable RSU agreement.”⁶ However, Celonis agreed orally and in writing that Mr. O’Connell
2 had vested over half of his RSUs. (See Section V.E).

3 108. Celonis breached its obligation in paragraph 4 of the Offer Letter, by failing to
4 grant Mr. O’Connell 3,000 RSUs per the terms of that provision.

5 109. The conditions set forth above have either been met or are waived and/or excused.

6 110. The document(s) purportedly incorporated by reference in this Agreement were
7 intentionally withheld by Celonis, despite Mr. O’Connell’s frequent requests. For over two years,
8 Celonis refused to provide Mr. O’Connell with information regarding his equity position, or
9 describing the purported liquidity event “requirement,” or the terms governing expiration of his
10 shares.

11 111. Similarly, even if Celonis claimed a liquidity event was required before Mr.
12 O’Connell’s shares fully vested, this would not change the number or amount of total unvested
13 shares it offered him in the Offer Letter (3,000), it would only affect the extent to which he was
14 able to sell them.

15 112. And Celonis nonetheless breached its contract with Mr. O’Connell, by refusing to
16 permit him to take full advantage of the Tender Offer made available to all other employees,
17 because it only permitted him to sell 506 of his shares, only if he executed a complete release of
18 claims, despite the fact that he had far more than that to sell based on Celonis’ promises.

19 113. As of June 9, 2021, Celonis took the position that the Company granted Mr.
20 O’Connell only 300 RSUs after he started with the company.

21 114. Mr. O’Connell was harmed by Celonis’ breach. Mr. O’Connell accepted the
22 position with Celonis, leaving behind his lucrative and secure role at Salesforce, based on
23 Celonis’ promise that he would receive 3,000 RSUs. Mr. O’Connell worked for more than two
24 years at Celonis operating under the false premise that he was continually vesting shares
25 consistent with an initial grant of 3,000 RSUs.

26 _____
27 ⁶ While Celonis has (nearly three years after entering into the Offer Letter agreement with Mr.
28 O’Connell) claimed that the “currently executed 1-for-10 forward stock split” was a condition
precedent to the issuance of his shares, Mr. O’Connell disputes Celonis’ proffered definition of
the term “currently executed.” Among other reasons, Celonis falsely represented that this
purported condition either had or would soon occur.

1 115. Mr. O’Connell never would have accepted Celonis’ offer of employment, had
2 Celonis been transparent about its view that it was only granting him 300 shares to begin work
3 there.

4 116. And Celonis’ ongoing representations to Mr. O’Connell and other employees that
5 their ongoing employment would culminate in enormous value through realized gains of their
6 equity kept Mr. O’Connell in his position for over two years.

7 117. Celonis’ breach was a substantial factor in causing Mr. O’Connell’s harm. Mr.
8 O’Connell never would have accepted his employment offer if no (or only 300) RSUs were
9 offered: it would not have been worthwhile for him to leave his secure position at Salesforce to do
10 so.

11 **SIXTH CAUSE OF ACTION**
12 **PROMISSORY ESTOPPEL**

13 118. Mr. O’Connell incorporates by reference each and every allegation in this
14 complaint as though fully set forth herein.

15 119. Celonis promised Mr. O’Connell that it would grant him 3,000 RSUs through oral
16 and written representations as alleged herein, including but not limited to, in his Offer Letter.

17 120. Mr. O’Connell reasonably relied on Celonis’ representation that he would receive
18 3,000 RSUs upon hire. Mr. O’Connell had no reason to doubt (a) that Celonis was offering 3,000
19 RSUs in good faith, or (b) that the “currently executed” stock split referenced in the Offer Letter
20 had already occurred.

21 121. Mr. O’Connell’s reliance was foreseeable to Celonis because Celonis’ promise of
22 3,000 RSUs significantly raised the value of Celonis’ offer to Mr. O’Connell.

23 122. Mr. O’Connell was harmed by Celonis’ representation that he would receive 3,000
24 RSUs upon hire in that: (a) Celonis has not conveyed RSUs to Mr. O’Connell consistent with an
25 initial grant of 3,000 RSUs; and (b) Mr. O’Connell accepted the position with Celonis, leaving
26 behind his lucrative and secure role at Salesforce based on this representation; Mr. O’Connell
27 worked for more than two years at Celonis operating under the false premise that he was
28 continually vesting shares consistent with an initial grant of 3,000 RSUs.

SEVENTH CAUSE OF ACTION
RETALIATION IN VIOLATION OF FEHA
CAL. GOV. CODE § 12940 *ET SEQ.*

123. Mr. O’Connell incorporates by reference each and every allegation in this complaint as though fully set forth herein.

124. California law prohibits any employer from discharging or otherwise discriminating against any person because he has opposed any practices forbidden under California’s Fair Employment and Housing Act (“FEHA”). *See* Gov. Code Section 12940(h).

125. Mr. O’Connell engaged in protected activity by providing truthful testimony in a sexual assault investigation, including through following:

- a. On April 8, 2021, Mr. O’Connell was interviewed in connection with an investigation into alleged Company misconduct. He did not provide statements favorable to Celonis’ defense in a sexual harassment case involving an individual, X, who reported to Mr. O’Connell at Celonis.
- b. On June 4, 2021, the Company gave Mr. O’Connell a second chance to demonstrate his support for Celonis when its legal director Ron Katcher solicited documentation that would corroborate the Company’s position. Again, Mr. O’Connell did not provide statements or evidence that would be favorable to Celonis.

126. Approximately eleven days later, Celonis began its efforts to force him out of the Company.

127. Celonis terminated Mr. O’Connell, causing him to lose salary, commissions, equity, and benefits, among other compensation.

128. Mr. O’Connell’s truthful testimony was a substantial motivating factor in Celonis putting him on a Performance Improvement Plan and pressuring him to resign, then terminating him; Mr. O’Connell was among the only remaining employees with personal knowledge of facts relevant to X’s case, X’s performance at Celonis, and X’s credibility generally.

129. Celonis sought to oust Mr. O’Connell for not toeing the Company line, or otherwise force him into a non-disclosure agreement for the risk he presented of giving

1 unfavorable testimony related to X in the future.

2 **EIGHTH CAUSE OF ACTION**
3 **RETALIATION IN VIOLATION OF CAL. LAB. CODE § 1102.5**

4 130. Mr. O’Connell incorporates by reference each and every allegation in this
5 complaint as though fully set forth herein.

6 131. California Labor Code section 1102.5 makes it unlawful for an employer to
7 retaliate against an employee for disclosing conduct that he reasonably believes is a violation of
8 the law and/or for his refusal to participate in such conduct.

9 132. At all relevant times, Celonis was Mr. O’Connell’s employer, and Mr. O’Connell
10 was Celonis’ employee as those terms are defined under the Labor Code.

11 133. Mr. O’Connell repeatedly made clear his opposition to conduct by Celonis he
12 reasonably believed to be unlawful, and in which he refused to participate. By way of example
13 only and as more fully set forth herein:

14 a. Beginning in late 2020, Mr. O’Connell reasonably believed the Company
15 was engaged in SEC violations by artificially inflating the value of its stock
16 and/or company to investors, prospective investors and the public at large,
17 as described in more detail above. Repeatedly during his employment, Mr.
18 O’Connell reported his belief that Celonis’ conduct violated various
19 securities laws requiring truthful disclosures to potential investors, thereby
20 engaging in protected activity. He shared his views multiple times with his
21 supervisor Chris Bernhoft, among others.

22 b. Mr. O’Connell reasonably believed Celonis’ requests of him concerning
23 X’s case in April and June 2021 were unlawful attempts to cover up the
24 Company’s civil or criminal liability. Mr. O’Connell refused to participate
25 in mounting Celonis’ defense and alleged misconduct, instead providing
26 truthful testimony in connection with the investigation.

27 c. Mr. O’Connell reasonably believed Celonis’ failure to grant him the RSUs
28 explicitly promised in his Offer Letter constituted a violation of SEC

1 regulations or otherwise constituted fraud. Mr. O’Connell reported his
2 belief to Celonis HR personnel that Celonis’ misrepresentations were
3 unlawful.

4 d. Mr. O’Connell reasonably believed Celonis was misrepresenting the nature
5 of his (and potentially other employees’) equity in the Company, in
6 violation of the California Labor Code among other laws. Mr. O’Connell
7 reported Celonis’ misrepresentations to his supervisor Chris Bernhoft.

8 134. Celonis terminated Mr. O’Connell. Celonis’ termination of Mr. O’Connell was
9 motivated by his refusal to participate, his reporting, or the risk that he would report the conduct
10 described above, which Mr. O’Connell reasonably believed to be unlawful. In close temporal
11 proximity to his reporting and/or his refusal to become complicit in what he perceived to be the
12 Company’s unlawful conduct, Mr. O’Connell was terminated.

13 135. Mr. O’Connell was harmed, *inter alia*, in that due to his termination he lost salary,
14 commissions, equity, and benefits, among other compensation.

15 **NINTH CAUSE OF ACTION**

16 **VIOLATION OF THE UNFAIR COMPETITION LAW,
17 CAL. BUS. & PROF. CODE § 17200 *ET SEQ.***

18 136. Mr. O’Connell incorporates by reference each and every allegation in this
19 complaint as though fully set forth herein.

20 137. Celonis is a “person” as defined by Cal. Bus. & Prof. Code § 17201.

21 138. Celonis engaged in unfair, unlawful, and fraudulent business practices within the
22 meaning of Cal. Bus. & Prof. Code § 17200, *et seq.*

23 139. Celonis engaged in “unlawful” business practices by violating multiple laws,
24 including the statutory and common law violations alleged herein.

25 140. In addition to the statutory and common law violations alleged above,
26 Celonis violated California Government Code section 12964.5, which makes it an unlawful
27 employment practice for an employer, in exchange for a raise or bonus to require an employee to
28 sign a release of a claim or right under this part.

1 141. Celonis violated Government Code section 12964.5 when, as described herein, the
2 Company conditioned Mr. O’Connell’s participation in a Company-wide tender offer (i.e., an
3 offer given to all other Celonis employees) on his releasing his claims to all the additional stock
4 Mr. O’Connell was entitled to pursuant to the terms of the Offer Letter. Specifically, to accept the
5 benefit of the tender offer, Celonis required Mr. O’Connell to “relinquish[] any claim you may
6 have against the Company or its affiliates in relation to the Surrendered RSUs.”

7 142. Similarly, restricted stock is akin to wages under the law, and “An employer shall
8 not require the execution of a release of a claim or right on account of wages due, or to become
9 due, or made as an advance on wages to be earned, unless payment of those wages has been
10 made. . . . Violation of this section by the employer is a misdemeanor.” (Lab. C. § 206.5(a))

11 143. Celonis sought to force Mr. O’Connell to release claims against the Company for
12 the stock he was rightfully owed, just for the opportunity to participate in a Company-wide tender
13 offer being made to all other employees. Such conduct is unlawful under state employment laws.

14 144. Celonis engaged in fraudulent and/or unfair business practices as alleged herein,
15 including without limitation:

- 16 a. Celonis falsely represented it was administering a legitimate, approved
17 employee stock plan, referred to by Celonis as the “Celonis 2018 Restricted
18 Stock Unit Plan”;
- 19 b. Celonis falsely represented there was an underlying legitimate and finalized
20 stock agreement, the terms of which governed the “Celonis 2018 Restricted
21 Stock Unit Plan”; according to Celonis, this document was entitled
22 “standard form of Restricted Stock Unit Agreement” or “applicable RSU
23 agreement”;
- 24 c. Celonis falsely represented the 1-for-10 forward stock split referenced in
25 the footnote of Mr. O’Connell’s Offer Letter had already happened, or was
26 close to being completed, at the time he accepted Celonis’ offer of
27 employment;

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- d. Celonis falsely represented the Company would grant Mr. O’Connell 3,000 RSUs upon his acceptance of the Offer;
- e. Celonis falsely represented that Celonis, as a legitimate stock plan administrator, would respond to reasonable requests for information and documents;
- f. Celonis falsely represented that Mr. O’Connell and other employees would earn significant income through Celonis’ stock value increases, if they continued their employment at the Company;
- g. Celonis never responded to Mr. O’Connell’s reasonable requests for information about his equity;
- h. Celonis never provided any underlying stock documents referenced in the Offer Letter at Mr. O’Connell’s request;
- i. Celonis has repeatedly changed its position on the nature of his vested or unvested shares (and the attendant triggering events required for that vesting), and whether the Offer Letter did, or did not, grant Mr. O’Connell shares;
- j. Celonis required Mr. O’Connell to choose either to be placed on a PIP or terminated with a full release of claims against Celonis and non-disclosure agreement in exchange for his severance package;
- k. Celonis required Mr. O’Connell to execute a complete release of his claims against the Company in exchange for the sale of a portion of his shares back to the Company in connection with Celonis’ 2021 tender offer;
- l. Celonis retaliated against Mr. O’Connell for providing truthful testimony in connection with a sexual harassment case against the Company, as described herein;
- m. Celonis retaliated against Mr. O’Connell for requesting the compensation the Company had promised him; and

1 n. Celonis retaliated against Mr. O’Connell for reporting and opposing its
2 violations of federal securities laws, as described herein.

3 145. Mr. O’Connell reserves the right to allege other unlawful, unfair, and/or fraudulent
4 business practices in which Celonis engaged.

5 146. Celonis’ representations and omissions were material because they were likely to
6 deceive, and did deceive, Mr. O’Connell as alleged herein.

7 147. Mr. O’Connell has suffered harm in that, *inter alia*:

8 a. Celonis failed to convey 3,000 RSUs consistent with terms of the Offer Letter;

9 b. Mr. O’Connell left his secure and lucrative position with Salesforce to join
10 Celonis as described herein; and

11 c. Celonis terminated Mr. O’Connell for unlawfully motivated reasons causing
12 him to lose salary, commissions, equity, and benefits, among other
13 compensation.

14 148. Mr. O’Connell seeks restitution and/or injunctive relief to redress the injuries
15 caused by Celonis’ violations.

16 **TENTH CAUSE OF ACTION**
17 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

18 149. Mr. O’Connell incorporates by reference each and every allegation in this
19 complaint as though fully set forth herein.

20 150. At all relevant times, Celonis was Mr. O’Connell’s employer, and Mr. O’Connell
21 was Celonis’ employee as those terms are defined under the Labor Code.

22 151. Celonis discharged Mr. O’Connell on July 26, 2021.

23 152. The following were substantial motivating reasons for Mr. O’Connell’s discharge:
24 (a) Mr. O’Connell reasonably believed Celonis’ requests of him concerning the X case were an
25 attempt at covering up potential civil or criminal liability held by the Company, and refused to
26 participate in the cover up; (b) Mr. O’Connell reasonably believed and reported that the Company
27 was engaged in SEC violations by artificially inflating the value of its stock and/or company to
28 investors, prospective investors and the public at large; (c) Mr. O’Connell reasonably believed

1 that Celonis' failure to grant him the RSUs explicitly promised in his Offer Letter constituted a
2 further violation of SEC regulations or were otherwise fraudulent; (d) Mr. O'Connell reasonably
3 believed and reported that the Company was misrepresenting the nature of his (and potentially
4 other employees') equity in the Company, in violation of the California Labor Code among other
5 laws; and (e) Mr. O'Connell requested the compensation the Company had promised him.

6 153. Mr. O'Connell was harmed by his discharge from Celonis, as he has lost salary,
7 commissions, equity, and benefits, among other compensation.

8 154. The discharge was a substantial factor in causing Mr. O'Connell's harm; because
9 of the discharge, Mr. O'Connell lost salary, commissions, equity, benefits, and other
10 compensation through his job with Celonis.

11 **VII. PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiffs prays for judgment against Defendants as follows:

- 13 1. For economic and non-economic damages according to proof;
- 14 2. For a constructive trust conveying equity in Celonis to Mr. O'Connell according to
15 proof;
- 16 3. For garden variety emotional distress damages;
- 17 4. For restitution;
- 18 5. For punitive damages, as provided for by California Civil Code Section 3294;
- 19 6. For appropriate injunctive and declaratory relief;
- 20 7. For an award of prejudgment and post-judgment interest;
- 21 8. For costs of suit herein;
- 22 9. For an award of reasonable attorneys' fees, as provided for by California
23 Government Code Sections 12940 *et seq.*, California Labor Code Section 1102.5;
24 15 U.S.C. § 78u-6(h)(1)(C), and any other applicable provision;
- 25 10. For any other relief the Court deems just and proper.

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1 **VIII. JURY DEMAND**

2 Plaintiff demand trial by jury on all issues so triable.

3 Dated: March 14, 2022

COTCHETT, PITRE & McCARTHY, LLP

4

By: 

5

TAMARAH P. PREVOST

6

KEVIN J. BOUTIN

7

Dated: March 14, 2022

THE ARNS LAW FIRM

8

9

By: /s/ Robert S. Arns

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ROBERT S. ARNS

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KATHERINE A. RABAGO

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Attorneys for Plaintiff

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Exhibit 1

CELONIS, INC.

1820 Avenue M Unit #544
Brooklyn, NY 11230

October 26, 2018

Shawn O'Connell
via DocuSign

Dear Shawn,

Celonis, Inc. (the "Company"), a wholly-owned subsidiary of Celonis SE ("Celonis"), is pleased to offer you employment on the following terms:

1. **Position.** Your initial title will be "Regional Director, High-Tech" in the department "Sales North America West", and you will initially report to Chris Bernhoft, VP Sales West, North America. This is a full-time position. While you render services to the Company, you will not engage in any other employment, consulting or other business activity (whether full-time or part-time) that would create a conflict of interest with the Company. By signing this letter agreement, you confirm to the Company that you have no contractual commitments or other legal obligations that would prohibit you from performing your duties for the Company.

2. **Cash Compensation.**

(a) **Base Salary.** The Company will pay you a starting salary at the rate of U.S.\$200,000 per year, payable in accordance with the Company's standard payroll schedule. This salary will be subject to adjustment pursuant to the Company's employee compensation policies in effect from time to time.

(b) **Commission Plan.** You will be eligible to participate in the Company's Commission Plan (the "Plan") pursuant to which you may earn commissions based upon achievement of certain goals set forth in your Individual Commission Plan (as defined in the Plan). Your Individual Compensation Plan will be established and approved annually by either Co-Chief Executive Officer of the Company (or, at such time as the Company has only a single Chief Executive Officer, such officer). The Company reserves the right to amend your Individual Commission Plan at any time. Your annual target commissions will be U.S. \$200,000. To the extent earned, commissions will be paid to you quarterly, by the 30th day after the end of the quarter to which the payments relate, provided that the Company reserves the right to delay payments in accordance with the Plan if such delay is necessary to determine revenue recognition matters. Following the start of your employment, the Company will provide you with the Plan and your Individual Compensation Plan, which you will be required to review and sign in order to begin earning commissions.

Notwithstanding the Plan, U.S.\$70,000 of your commission payments will be paid as a recoverable draw over your first 6 month of employment in equal installments (i.e. U.S.\$11,666.67 per month) in accordance with the Company's standard payroll schedule, subject to your continued employment through each payment date, and your future commission

payments (if any) earned will be reduced (not below U.S. \$0) by U.S. \$70,000 to recover this draw.

3. **Employee Benefits.** As a regular employee of the Company, you will be eligible to participate in a number of Company-sponsored benefits, as in effect from time to time. In addition, you will be entitled to paid vacation in accordance with the Company's vacation policy, as in effect from time to time.

4. **RSUs.** Subject to the approval of Celonis' Board, you will be granted 3,000¹ restricted stock units (RSUs), each representing the right to receive one ordinary share of Celonis. The RSUs shall be subject to the terms and conditions set forth in the Celonis 2018 Restricted Stock Unit Plan and the standard form of Restricted Stock Unit Agreement thereunder. The RSUs will be subject to two vesting conditions, both of which must be satisfied in order for the RSUs to vest: (1) a requirement that you provide service to the Company over approximately four years (the "service-based requirement"), and (2) a requirement that the Company complete either an initial public offering or a sale event prior to expiration of the RSUs, as described in more detail in the applicable RSU agreement. Satisfaction of the service-based requirement will be subject to a "cliff" which, subject to your continuous service, will be satisfied on the first company-wide quarterly vesting date occurring 12 months after your start date. Subject to your continuous service, the service-based requirement will be satisfied with respect to an additional 6.25% of the RSUs on each quarterly vesting date thereafter.

5. **Proprietary Information and Inventions Agreement.** Like all Company employees, you will be required, as a condition of your employment with the Company, to sign the Company's standard Proprietary Information and Inventions Agreement, a copy of which is attached hereto as **Exhibit A**.

6. **Employment Relationship.** Employment with the Company is for no specific period of time. Your employment with the Company will be "at will," meaning that either you or the Company may terminate your employment at any time and for any reason, with or without cause. Any contrary representations that may have been made to you are superseded by this letter agreement. This is the full and complete agreement between you and the Company on this term. Although your job duties, title, compensation and benefits, as well as the Company's personnel policies and procedures, may change from time to time, the "at will" nature of your employment may only be changed in an express written agreement signed by you and a duly authorized officer of the Company (other than you).

7. **Tax Matters.**

(a) **Withholding.** All forms of compensation referred to in this letter agreement are subject to reduction to reflect applicable withholding and payroll taxes and other deductions required by law.

(b) **Tax Advice.** You are encouraged to obtain your own tax advice regarding your compensation from the Company. You agree that the Company does not have a duty to

¹ The number of RSUs specified assumes the completion of the currently executed 1-for-10 forward stock split before the RSUs are granted.

design its compensation policies in a manner that minimizes your tax liabilities, and you will not make any claim against the Company or its Board of Directors related to tax liabilities arising from your compensation.

8. **Interpretation, Amendment and Enforcement.** This letter agreement and Exhibit A supersede and replace any prior agreements, representations or understandings (whether written, oral, implied or otherwise) between you and the Company and constitute the complete agreement between you and the Company regarding the subject matter set forth herein. This letter agreement may not be amended or modified, except by an express written agreement signed by both you and a duly authorized officer of the Company. The terms of this letter agreement and the resolution of any disputes as to the meaning, effect, performance or validity of this letter agreement or arising out of, related to, or in any way connected with, this letter agreement, your employment with the Company or any other relationship between you and the Company (the “Disputes”) will be governed by New York law, excluding laws relating to conflicts or choice of law. You and the Company submit to the exclusive personal jurisdiction of the federal and state courts located in New York in connection with any Dispute or any claim related to any Dispute.

* * * * *

We hope that you will accept our offer to join the Company. You may indicate your agreement with these terms and accept this offer by signing and dating both the enclosed duplicate original of this letter agreement and the enclosed Proprietary Information and Inventions Agreement and returning them to me. This offer, if not accepted, will expire at the close of business on October 30, 2018. As required by law, your employment with the Company is contingent upon your providing legal proof of your identity and authorization to work in the United States. Your employment is also contingent upon your starting work with the Company on December 3, 2018.

If you have any questions, please do not hesitate to contact us.

Very truly yours,

CELONIS, INC.

By: DocuSigned by:
Bastian Nominacher
33E7DFCA9F1542E...

Name: Bastian Nominacher

Title: CFO

I have read and accept this employment offer:

DocuSigned by:
[Signature]
9544F1E63EE648F...
Signature of Employee

Dated: 10/26/2018 | 07:29 PDT

Attachment

Exhibit A: Proprietary Information and Inventions Agreement