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County Of Los Angeles

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9  
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF LOS ANGELES

12 BC 538770

13 ROBERT M. MALLANO, INDIVIDUALLY,  
and ON BEHALF OF A CLASS OF  
14 SIMILARLY SITUATED PERSONS,

15 Plaintiff,

16 v.

17 JOHN CHIANG,  
18 CONTROLLER OF THE STATE OF  
CALIFORNIA, THE JUDGES'  
19 RETIREMENT SYSTEM, Administered by  
the BOARD OF ADMINISTRATION OF  
20 THE PUBLIC EMPLOYEES RETIREMENT  
SYSTEM OF THE STATE OF  
CALIFORNIA, THE JUDGES'  
21 RETIREMENT SYSTEM II, Administered by  
the BOARD OF ADMINISTRATION OF  
22 THE PUBLIC EMPLOYEES RETIREMENT  
SYSTEM OF THE STATE OF CALIFORNIA  
23 AND DOES 1 THROUGH 100, INCLUSIVE,

24 Defendants.

CASE NO.: \_\_\_\_\_

CLASS ACTION

COMPLAINT FOR DECLARATORY  
RELIEF

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12  
13 ROBERT M. MALLANO, INDIVIDUALLY, )  
and ON BEHALF OF A CLASS OF )  
14 SIMILARLY SITUATED PERSONS, )  
15 Plaintiff, )  
16 v. )  
17 JOHN CHIANG, )  
CONTROLLER OF THE STATE OF )  
18 CALIFORNIA, THE JUDGES' )  
RETIREMENT SYSTEM, Administered by )  
19 the BOARD OF ADMINISTRATION OF )  
THE PUBLIC EMPLOYEES RETIREMENT )  
20 SYSTEM OF THE STATE OF )  
CALIFORNIA, THE JUDGES' )  
21 RETIREMENT SYSTEM II, Administered by )  
the BOARD OF ADMINISTRATION OF )  
22 THE PUBLIC EMPLOYEES RETIREMENT )  
SYSTEM OF THE STATE OF CALIFORNIA )  
23 AND DOES 1 THROUGH 100, INCLUSIVE, )  
24 Defendants. )

CASE NO.: \_\_\_\_\_  
CLASS ACTION  
COMPLAINT FOR DECLARATORY  
RELIEF

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1 Plaintiff, Robert M. Mallano ("Plaintiff") individually, and on behalf of all others similarly  
2 situated, alleges:

3 **NATURE OF THE ACTION**

4 1. Article III, Section 4 of the California Constitution vests in the Legislature the  
5 ability to increase judicial salary during a term of office. And, in Section 68203 of the California  
6 Government Code, the Legislature exercised its authority by providing that judicial salaries "shall  
7 be increased," on an annual basis, by the average percentage salary increase of state employees.  
8 The salary increases are mandatory and not contingent upon or subject to the discretion of any state  
9 official.

10 2. Under the Judges' Retirement System ("JRS1"), which applies to justices or judges  
11 appointed or elected before November 9, 1994, payments in each year to judicial retirees, judicial  
12 pension beneficiaries, and survivors—including the widows, widowers, and orphans of deceased  
13 justices and judges—are based on the salary of active justices and judges in that year. Thus, the  
14 mandatory judicial salary increase affects the amount of payments to judicial retirees, judicial  
15 pension beneficiaries, and survivors under JRS1.

16 3. Under the Judges' Retirement System II ("JRS2"), which applies to justices and  
17 judges appointed or elected on or after November 9, 1994, payments to judicial retirees, judicial  
18 pension beneficiaries, and survivors—including the widows, widowers, and orphans of deceased  
19 justices and judges—are based on the justice—or judge's final annual salary. Thus, the mandatory  
20 judicial salary increase affects the amount of payments to judicial retirees, judicial pension  
21 beneficiaries, and survivors for the group of JRS2 justices and judges whose final annual salary is  
22 subject to the mandatory increase.

23 4. Despite the mandatory provision, the State has refused to pay the full amount of the  
24 justices', judges', judicial retirees', judicial pension beneficiaries', and survivors' constitutionally  
25 and statutorily mandated judicial salaries and benefits.

26 5. Plaintiff, individually, and on behalf of a class of active justices and judges, judicial  
27 retirees, judicial pension beneficiaries, and survivors (collectively, "the Class Members") seeks a  
28 declaration of what the active judicial salary was during each year of underpayment.

**PARTIES**

1  
2           6.       Plaintiff, is a Justice of the California Court of Appeal who works and resides in Los  
3 Angeles county and is a citizen of the State of California. Plaintiff has filed an application for  
4 retirement with JRS1 to be effective February 28, 2014.

5           7.       Plaintiff seeks to represent a class of persons ("the Class") defined as follows:  
6 All active JRS1 and JRS2 justices and judges, all retired JRS1 justices and judges, all JRS1  
7 judicial pension beneficiaries and survivors, all JRS2 justices and judges who retired after  
8 the beginning of the 2008-09 fiscal year, and all of the judicial pension beneficiaries and  
9 survivors of JRS2 justices and judges whose final salary was paid after the beginning of the  
10 2008-09 fiscal year.

11           8.       Defendant John Chiang is the Controller of the State of California and is the Chief  
12 Financial Officer of the State of California with statewide duties and responsibilities, including  
13 administration of the State's payroll system.

14           9.       Defendant Judges' Retirement System is the retirement system responsible for  
15 providing benefits in accordance with the provisions of the Constitution and Statutes of the State of  
16 California. The Board of Administration of the Public Employees Retirement System of the State  
17 of California (the "Board") administers JRS1 and has the duty to demand the Controller draw  
18 warrants for all payments from the Judges' Retirement Fund.

19           10.      Defendant Judges' Retirement System II is the retirement system responsible for  
20 providing benefits in accordance with the provisions of the Constitution and Statutes of the State of  
21 California. The Board administers JRS2 and has the duty to demand the Controller draw warrants  
22 for all payments from the Judges' Retirement System II Fund.

23           11.      Plaintiff is unaware of the true names or capacities of Defendants Does 1 through  
24 100, inclusive, and therefore sues these defendants, and each of them, by fictitious names. Plaintiff  
25 will seek leave of Court to amend this Complaint to allege the true names and capacities of  
26 Defendants Does 1 through 100 when those names and capacities have been ascertained. Plaintiff  
27 is informed and believes and thereon alleges that each of these fictitiously named defendants is  
28 responsible and liable in some manner for the claims, demands, losses, and acts alleged herein.

1 Each reference in this complaint to "defendant," "defendants," or a specifically named defendant  
2 refers also to all defendants sued under fictitious names.

3 12. Plaintiff is informed and believes and thereon alleges that at all times mentioned,  
4 each Defendant was the agent and employee of each remaining Defendant and, in doing the things  
5 hereinafter alleged, was acting within the course and scope of such agency.

6 13. All acts and omissions complained of herein were done, or not done, as the case  
7 may be, while the Defendants were acting under color of state law or local ordinance.

8 **JURISDICTION**

9 14. Jurisdiction is proper under California Code of Civil Procedure Section 88 because  
10 this case involves an action for declaratory relief that does not fall within California Code of Civil  
11 Procedure Section 86(a)(7).

12 15. This Court can hear this case under the rule of necessity because although "[i]t is  
13 immediately apparent that all California judges have at least an involuntary financial interest in this  
14 case[,] [t]o disqualify one would disqualify all, depriving them and their surviving spouses of  
15 opportunity to litigate their case. This [C]ourt as now constituted is qualified to hear and determine  
16 the issues before [the Court]." *Olson v. Cory* (1980) 27 Cal.3d 532, 537.

17 **VENUE**

18 16. Venue is appropriate in Los Angeles County because Plaintiff resides here.

19 **GENERAL FACTUAL ALLEGATIONS**

20 17. Article III, Section 4 of the California Constitution vests in the Legislature the  
21 ability to provide judicial salary increases during a term of office.

22 18. Section 68203 of the California Government Code provides, in relevant part, that on  
23 July 1<sup>st</sup> of each year the salary of each sitting justice and judge "shall be increased by the amount  
24 that is produced by multiplying the then current salary of each justice or judge by the average  
25 percentage salary increase for the current fiscal year for California State employees . . . ." Pursuant  
26 to this statutory structure, a fiscal year starts on July 1 of a year and runs until June 30 of the  
27 following year.

28 19. Defendants have no discretion regarding the duty to pay salary increases provided in

1 Section 68203.

2 20. The retirement benefits accorded to retired justices and judges and judicial pension  
3 beneficiaries and survivors paid under JRS1 are based on the salary paid to active justices and  
4 judges.

5 21. Defendants have no discretion regarding the duty to increase the payment to retired  
6 justices and judges and judicial pension beneficiaries and survivors under JRS1.

7 22. The retirement benefits accorded to retired justices and judges and judicial pension  
8 beneficiaries and survivors paid under JRS2 are based on the final salary of justices and judges  
9 when they retire.

10 23. Defendants have no discretion to calculate JRS2 retirement benefits based on a pay  
11 different than that authorized by statute.

12 24. Currently, Plaintiff is the Presiding Justice of Division 1, Second District of the  
13 California Court of Appeal.

14 25. During the past thirty-five years, Plaintiff has served as a justice or judge on the  
15 South Bay Municipal Court, the Los Angeles Superior Court, and the California Court of Appeal.

16 26. Plaintiff has filed an application for retirement with JRS1 to be effective February  
17 28, 2014.

18 27. Upon retirement, Plaintiff will receive benefits pursuant to JRS1.

19 28. From September 2009 to June 2010, Plaintiff was requested to and did forego  
20 4.62% of his salary to aid the State in dealing with its budget deficit.

21 29. Plaintiff is informed and believes and thereon alleges that in the 2008-09 fiscal year,  
22 the average percentage salary increase for California State employees was at least 0.97% relative to  
23 the salaries in the 2007-08 fiscal year.

24 30. Plaintiff is informed and believes and thereon alleges that in the 2009-10 and 2010-  
25 11 fiscal years, the average percentage salary increase for California State employees was at least  
26 0.21% relative to the salaries in the 2008-09 fiscal year.

27 31. Plaintiff is informed and believes and thereon alleges that in the 2013-14 fiscal year,  
28 the average percentage salary increase for California State employees was at least 0.22% relative to

1 the salaries in the 2012-13 fiscal year.

2 32. Plaintiff did not receive any salary increase in the 2008-09, 2009-10, 2010-11,  
3 2011-12 and 2012-13 fiscal years.

4 33. Plaintiff is informed and believes and thereon alleges that in the 2008-09, 2009-10,  
5 2010-11, 2011-12 and 2012-13, fiscal years, no Class Member received an increase in salary or  
6 benefits.

7 34. In November of 2013, Plaintiff and other Class Members were informed that they  
8 would receive a salary increase of 1.4%, retroactive to July 1, 2013; that JRS1 beneficiaries would  
9 be paid retroactive to July 1, 2013 as well; and that Defendants would not pay the statutorily  
10 mandated salary and benefits for the period prior to July 1, 2013.

11 35. Prior to November 2013, Plaintiff did not have notice that active justices and judges,  
12 retired justices and judges, and judicial pension beneficiaries and survivors would not be paid their  
13 full salaries and pension benefits.

14 36. On or about Tuesday, December 10, 2013, Plaintiff wrote to Defendant Chiang  
15 explaining that Defendants were obligated to comply with Section 68203(a) and demanding  
16 payment of the full judicial salary to which he was entitled under Section 68203(a).

17 37. Defendant Chiang has not answered, or even acknowledged, that demand.

18 **CLASS ACTION ALLEGATIONS**

19 38. Plaintiff brings this action as a class action pursuant to Section 382 of the California  
20 Code of Civil Procedure.

21 39. Numerosity: Plaintiff is informed and believes that there are at least 1,600 currently  
22 sitting Superior Court judges and Court of Appeal and Supreme Court justices. Plaintiff is further  
23 informed and believes that there are at least 1,800 people receiving benefits under JRS1 and JRS2.  
24 These judicial retirees, judicial pension beneficiaries, and survivors consist of Court of Appeal and  
25 Supreme Court justices and Municipal and Superior Court judges who retired prior to or during the  
26 aforementioned fiscal years, beneficiaries of judicial pensions, and survivors of deceased justices  
27 and judges—including widows, widowers, and their orphans.

28 40. Common Questions: There exist multiple questions of law and fact common to all

1 members of the Class which predominate over any questions pertaining to individual Class  
2 Members. Common legal and factual questions include, but are not limited to:

3 a. Whether each active justice and judge is entitled to a salary as mandated by  
4 and calculated pursuant to Section 68203(a) of the California Government Code in each of the  
5 fiscal years beginning with 2008-09 and continuing through 2013-14?

6 b. Whether each retired JRS1 justice and judge and each JRS1 judicial pension  
7 beneficiary and survivor is entitled to payment in each of the fiscal years beginning with 2008-09  
8 and continuing through 2013-14 based on an active judicial salary as calculated pursuant to  
9 Section 68203(a) of the California Government Code?

10 c. Whether each JRS2 justice and judge who retired on or after July 1, 2008  
11 and each of the judicial pension beneficiaries and survivors of JRS2 justices and judges whose final  
12 salaries were paid on or after July 1, 2008 is entitled to payment based on an active judicial salary  
13 as calculated pursuant to Section 68203(a) of the California Government Code?

14 41. Typicality: Plaintiff's claims are typical of the claims of the Class inasmuch as all  
15 such claims arise out of the statutory obligation under Section 68203(a) of the California  
16 Government Code to provide active justices and judges with a salary increase in the fiscal years  
17 beginning with 2008-09 and continuing through 2013-14 in the "amount that is produced by  
18 multiplying the then current salary of each justice or judge by the average percentage salary  
19 increase for the current fiscal year for California state employees." Cal. Gov. Code Section  
20 68203(a). Payouts to retired justices and judges and judicial pension beneficiaries and survivors  
21 are derived from the statutory salary of active justices and judges or from the retired justice's or  
22 judge's final annual salary.

23 42. Adequacy of Representation: Plaintiff will fairly and adequately protect the  
24 interests of the Class. Plaintiff has no interests that conflict with the Class and has retained  
25 attorneys who are experienced in complex class action litigation.

26 43. Community of Interest: Questions of law or fact common to the Class predominate  
27 over any questions affecting only individual members. The issues raised in this action involve:  
28 whether each Class Member is entitled to a salary or pension benefit based on the amount that is



1 produced by multiplying the then-current salary of each justice or judge by the average percentage  
2 salary increase for California State employees in fiscal years beginning with 2008-09 and  
3 continuing through 2013-14.

4 44. Superiority of the Class Action Procedure: Class treatment of the claims asserted by  
5 Plaintiff is superior to other methods of adjudicating claims of the Class in that:

6 a. The prosecution of separate outcomes by individual members of the Class  
7 would create a foreseeable risk of inconsistent or varying adjudications, which would establish  
8 incompatible results and standards of conduct for Defendant;

9 b. Class action treatment avoids the waste and duplication inherent in  
10 hundreds, or even over a thousand, individual actions and conserves the resources of the courts;

11 c. Plaintiff is unaware of any litigation that has been commenced by or against  
12 members of the Class relating to the issues addressed in this litigation;

13 d. There are no difficulties that arise from the concentration of the claims  
14 asserted herein in a single forum and there are considerable economies in such concentration;

15 e. There are no difficulties in managing this action because of the virtual  
16 identity of legal and factual issues required to be resolved for Plaintiff and the Class. Accordingly,  
17 this case should be maintained as a class action.

18 **FIRST CAUSE OF ACTION**

19 **(Declaratory Relief)**

20 45. Plaintiff incorporates herein by reference all of the allegations in the preceding  
21 paragraphs of this Complaint.

22 46. A dispute has arisen between Plaintiff and the Class, on the one hand, and  
23 Defendants, on the other, as to whether Section 68203(a) of the California Government Code  
24 allows Defendants to pay Plaintiff and the Class a salary other than the salary the Plaintiff and the  
25 Class are mandated by statute.

26 47. A dispute has arisen between Plaintiff and the Class, on the one hand, and  
27 Defendants, on the other, as to whether Section 68203(a) of the California Government Code  
28 allows Defendants to pay retirement benefits to members of the Class based on a salary other than

1 the salary mandated by statute.

2 48. A declaration of the parties' rights on a class basis is necessary to avoid time,  
3 expense, and potential risk of inconsistent or varying adjudications if the parties' dispute were  
4 resolved through individual actions.

5 **PRAYER FOR RELIEF**

6 Wherefore, Plaintiff prays judgment as follows:

7 1. For a declaration that the salary of each judicial officer in the 2008-09 fiscal year  
8 was the salary provided pursuant to Section 68203.

9 2. For a declaration that the salary of each judicial officer in the 2009-10 fiscal year  
10 was the salary provided pursuant to Section 68203.

11 3. For a declaration that the salary of each judicial officer in the 2010-11 fiscal year  
12 was the salary provided pursuant to Section 68203.

13 4. For a declaration that the salary of each judicial officer in the 2011-12 fiscal year  
14 was the salary provided pursuant to Section 68203.

15 5. For a declaration that the salary of each judicial officer in the 2012-13 fiscal year  
16 was the salary provided pursuant to Section 68203.

17 6. For a declaration that the salary of each judicial officer in the 2013-14 fiscal year  
18 was the salary provided pursuant to Section 68203.

19 7. For a declaration that the salary increases provided for in Section 68203 are  
20 mandatory and not subject to the discretion or authorization of any state official.

21 8. For a declaration that the pension benefits due to retired justices and judges and  
22 judicial pension beneficiaries and survivors in JRS1 are based on the judicial salaries calculated  
23 according to Section 68203.

24 9. For a declaration that the pension benefits due to retired justices and judges and  
25 judicial pension beneficiaries and survivors in JRS2 are based on the final judicial salaries  
26 calculated according to Section 68203.

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10. For an award of Plaintiff's attorneys' fees and costs in this action; and

11. For such other relief as the Court deems just and proper.

DATED: January 31, 2014

SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP

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