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Electronically FILED by
Superior Court of California,
County of Los Angeles
1/10/2025 2:06 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By K. Valenzuela, Deputy Clerk

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CalHR And CalHR Director

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF LOS ANGELES**

14 MARYANNE G. GILLIARD, individually and
on behalf of a class of similarly situated
15 persons,

16 Plaintiff and Petitioner,

17 v.

18 CALIFORNIA DEPARTMENT OF HUMAN
RESOURCES, ERAINA ORTEGA, in her
19 official capacity AS THE DIRECTOR OF THE
CALIFORNIA DEPARTMENT OF HUMAN
20 RESOURCES, MALIA COHEN, in her official
capacity as the CONTROLLER OF THE
21 STATE OF CALIFORNIA, CALIFORNIA
PUBLIC EMPLOYEES' RETIREMENT
22 SYSTEM, the BOARD OF
ADMINISTRATION OF CALIFORNIA
23 PUBLIC EMPLOYEES' RETIREMENT
SYSTEM, in its official capacity as
24 Administrator of THE JUDGES'
RETIREMENT SYSTEM and THE JUDGES'
25 RETIREMENT SYSTEM II, THE JUDGES'
RETIREMENT SYSTEM, THE JUDGES'
26 RETIREMENT SYSTEM II, and DOES 1
THROUGH 100, INCLUSIVE,

27 Defendants and Respondents.
28

Case No: 24STCP02837

CLASS ACTION

**DEFENDANT CALIFORNIA DEPARTMENT
OF HUMAN RESOURCES AND DIRECTOR
ERAINA ORTEGA'S MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
OF DEMURRER TO PLAINTIFF'S
COMPLAINT**

Date: March 10, 2025

Time: 1:45 p.m.

Dept.: 7

Judge: Hon. Lawrence P. Riff

Complaint filed: September 3, 2024

Trial date: Not set

Exempt From Fees (Gov. Code, § 6103)

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1 **INTRODUCTION**

2 Plaintiff Maryanne G. Gilliard (Plaintiff) brings this class action complaint for declaratory
3 relief and a petition for writ of mandate (complaint) against the above-captioned state agencies,
4 officials, and boards alleging violations of Government Code section 68203¹ concerning the
5 calculation of salary increases and benefits for California justices and judges (collectively judges).
6 Defendant California Department of Human Resources (CalHR), and Respondent Eraina Ortega in
7 her official capacity as Director of CalHR (collectively CalHR or Defendants) hereby submit this
8 memorandum of points and authorities in support of their demurrer to the first and second causes of
9 action against CalHR, and request dismissal of the entire complaint as to CalHR.

10 Section 68203 contains the statutory authority for CalHR to calculate salary increases
11 applied to judges. Under this law, annual salary increases for judges are tied to the “average
12 percentage salary increase,”² if any, calculated by CalHR for California state employees. In
13 particular, the Legislature delegated to CalHR the duties of calculating the “average percentage
14 salary increase,” and reporting any such increase to Respondent State Controller in a CalHR-issued
15 pay letter. (Gov. Code, § 68203, subs. (a), (b)(1).) As set forth in the complaint, Plaintiff alleges
16 section 68203 mandates that CalHR must include in this calculation every conceivable category of
17 salary increase available to any and all state employees. However, CalHR asserts it has utilized an
18 appropriate methodology for computing judicial salaries under section 68203, by including all
19 general salary increases (GSI’s) received by state employees, and in some rare instances special
20 salary adjustments (SSA’s) when such increases have been received by all employees within a
21 bargaining unit.

22 CalHR hereby demurs to the complaint on the grounds that Plaintiff’s first and second
23 causes of action are time barred as a matter of law because Plaintiff failed to timely bring this action
24 within the one-year statute of limitations set forth in section 19815.8, which specifically applies to

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26 _____
27 ¹ All further statutory references are to the Government Code unless otherwise indicated.

28 ² For ease of reference, the term “average increase” will be used sometimes as shorthand for the phrase “average percentage salary increase.”

1 actions based upon or related to laws administered by CalHR. As set forth herein, section 68203
2 undeniably qualifies as a law administered by CalHR. In this case, the statute of limitations bar
3 appears on the face of the complaint because Plaintiff admits in her pleading that she discovered the
4 alleged misconduct over a year prior to filing the complaint. CalHR also demurs to the first and
5 second causes of action on the grounds that Plaintiff's claims are barred for failure to allege
6 compliance with the claims filing requirements of the Government Claims Act (Gov. Code, § 900 et
7 seq.). For the reasons set forth herein, Defendant respectfully requests this Court sustain its
8 demurrer, and dismiss the first and second causes of action, and therefore, the entire complaint,
9 without leave to amend.

10 **SUMMARY OF ALLEGATIONS INCLUDED WITHIN VERIFIED COMPLAINT**

11 Since 1998, Plaintiff has served as a superior court judge in California. (Complaint, ¶¶ 26,
12 27; Declaration of Ronald Pearson (Pearson Decl.) in support of Defendants' Demurrer and Request
13 for Judicial Notice (RJN), Exh. A.) According to the complaint, CalHR is the state agency
14 "responsible for all issues related to the salaries of California state employees, including active
15 jurists." (Complaint, ¶ 1; see also ¶ 30.) The complaint alleges that under section 68203 the
16 "average percentage salary increases for California state employees' are to be 'those increases as
17 reported by [CalHR] to the State Controller in a pay letter.'" (Complaint, ¶ 11; see also ¶¶ 23, 89,
18 93.) The complaint also alleges that CalHR "is responsible for calculating the 'average percentage
19 salary increase' under Section 68203 of the Government Code" and that CalHR's Director "has the
20 duty to report the 'average percentage salary increase' to Respondent Controller." (Complaint, ¶¶
21 30, 32; see also ¶¶ 13, 19, 21, 23, 62, 67, 69, 71, 75, 83, 89, 93.) Based on the average increase
22 reported by CalHR in the pay letter, Respondent State Controller then "issues payment" to each
23 judge. (Complaint, ¶ 11.)

24 The types of salary increases that state employees can receive include GSI's, SSA's, and
25 "increases authorized to meet recruiting challenges, increases to obtain qualified employees,
26 increases to correct salary inequities, and increases to give credit for prior state service."
27 (Complaint, ¶¶ 14, 15, 16, 19.) After section 68203 was enacted and up to the 2006-07 fiscal year,
28 CalHR included GSI's and SSA's when calculating the average percentage salary increase.

1 (Complaint, ¶¶ 13, 57, 58.) However, after the 2006-07 fiscal year, CalHR omitted SSA’s from the
2 annual calculation and only used GSI’s when calculating the average increase. (Complaint, ¶¶ 19,
3 58.) Plaintiff alleges that CalHR’s exclusion of SSA’s from its calculation of the average increases
4 that it reports to the State Controller has resulted in judges receiving less pay. (Complaint, ¶¶ 2,
5 20.)

6 Plaintiff indicates that she has been unable to determine exactly when CalHR made the
7 decision to exclude SSA’s from the calculation. (Complaint, ¶ 59.) However, Plaintiff admits that
8 “*In August 2023, Plaintiff first became aware that Defendant CalHR may have miscalculated the*
9 *‘average percentage salary increase’ under Section 68203.*” (Complaint, ¶ 67 [emphasis added].)
10 Similarly, Plaintiff concedes that class members, did not discover “*until in or around August*
11 *2023*”, that CalHR had stopped including SSA’s in the calculation of “*average percentage salary*
12 *increase.*” (Complaint, ¶ 68 [emphasis added].) Thereafter, on August 7, 2024, CalHR’s Director
13 reaffirmed that CalHR has used an appropriate methodology for computing judicial salaries under
14 section 68203 by including GSI’s and omitting SSA’s. (Complaint, ¶ 75.) On September 3, 2024,
15 Plaintiff filed the instant class action complaint on behalf of herself, active and retired judges, and
16 their survivors and beneficiaries. (Complaint, ¶ 29.)

17 LEGAL STANDARD

18 A party may demur to a cause of action on the grounds that the court has no jurisdiction over
19 the cause of action alleged in the pleading, or that the pleading does not state facts sufficient to state
20 a cause of action. (Code Civ. Proc., § 430.10, subs. (a), (e).) In determining the merits of a
21 demurrer, the court may consider both facts appearing on the face of the complaint and matters of
22 which the court is required to, or may, take judicial notice. (Code Civ. Proc., § 430.30, subd. (a);
23 *Rodas v. Spiegel* (2001) 87 Cal.App.4th 513, 518.) The reviewing court gives the complaint a
24 reasonable interpretation and treats the demurrer as admitting all material facts properly pleaded,
25 but not the truth of contentions, deductions, or conclusions of law. (*Aubry v. Tri-City Hospital Dist.*
26 (1992) 2 Cal.4th 962, 966-967; *Young v. Gannon* (2002) 97 Cal.App.4th 209, 220.) Moreover,
27 “[d]oubt in the complaint may be resolved against plaintiff and facts not alleged are presumed not to

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1 exist.” (*Kramer v. Intuit Inc.* (2004) 121 Cal.App.4th 574, 578 [internal quotation and citations
2 omitted].)

3 A demurrer to a complaint must be sustained without leave to amend if a plaintiff fails to
4 show there is a “reasonable possibility” that the defect can be cured by amendment. (*Blank v.*
5 *Kirwan* (1985) 39 Cal.3d 311, 318.) Where the dates alleged in the complaint show the cause of
6 action is barred by the statute of limitations, a general demurrer lies. (*Iverson, Yoakum, Papiano &*
7 *Hatch v. Berwald* (1999) 76 Cal.App.4th 990, 995; *Basin Construction Corp. v. Department of*
8 *Water & Power* (1988) 199 Cal.App.3d 819, 823.) In addition, class action suits are likewise
9 subject to demurrer. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 440.)

10 ARGUMENT

11 I. THE STATUTE OF LIMITATIONS IN SECTION 19815.8 APPLIES TO ALL OF 12 THE COMPLAINT’S CLAIMS AGAINST CALHR.

13 The limitations period applicable to a legal cause of action depends on the nature, or
14 gravamen, of the legal obligation sought to be enforced. (*E-Fab, Inc. v. Accountants, Inc. Services*
15 (2007) 153 Cal.App.4th 1308, 1316.) “[T]he nature of the right sued upon and not the form of
16 action nor the relief demanded determines the applicability of the statute of limitations under our
17 code.” (*Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 23, quoting *Maguire v. Hibernia Savings*
18 *& Loan Society* (1944) 23 Cal.2d 719, 733 (*Maguire*)). The applicability of the statute of
19 limitations based on the nature of the right sued upon extends to actions for declaratory relief and
20 writ of mandate. (*Maguire, supra*, at p. 734; *Ragan v. City of Hawthorne* (1989) 212 Cal.App.3d
21 1361, 1367.)

22 The one-year statute of limitations created by the Legislature in section 19815.8 specifically
23 applies to legal claims arising under CalHR-administered laws. (Gov. Code, § 19815.8; see *Shah v.*
24 *Department of Human Resources* (2023) 92 Cal.App.5th 590, 593-594; *Bath v. State of California*
25 (2024) 105 Cal.App.5th 1184, 1208.) Section 19815.8 states in relevant part:

- 26 (a) No action or proceeding shall be brought by any person having or
27 claiming to have a cause of action or complaint or ground for
28 issuance of any complaint or legal remedy for wrongs or
grievances based on or related to any law administered by the
Department of Human Resources unless the action or proceeding

1 *is commenced and served within one year after the cause of action*
2 *or complaint or ground for issuance of any writ or legal remedy*
3 *first arose. Such a person shall not be compensated for the time*
4 *subsequent to the date when the cause or ground arose unless the*
5 *action or proceeding is filed and served within 90 days after the*
6 *cause or ground arose. . . .*

7 (Emphasis added; Gov. Code, § 19815.8, subd. (a).)

8 Thus, pursuant to section 19815.8, no cause of action “based on or related to any law
9 administered by [CalHR]” shall be brought unless the action or proceeding is commenced “within
10 one year” after the cause of action first arose. To “administer” is a broad term which means “to
11 manage or supervise the execution, use, or conduct of.” (www.merriam-webster.com; see also *Gilb*
12 *v. Chiang* (2010) 186 Cal.App.4th 444, 467 [same definition applied by court to CalHR’s
13 predecessor’s administration of salaries under then existing section 19816].) As set forth herein,
14 section 68203 by its plain terms is “based on or related to” a law administered by CalHR, and as
15 pled, the nature of Plaintiff’s causes of action directly concerns CalHR’s alleged failure to perform
16 its statutory duties imposed by section 68203. Thus, the limitations period in section 19815.8,
17 subdivision (a) applies to the complaint.

18 **A. Section 68203 is a Law Administered by CalHR.**

19 Section 68203 contains the requirements prescribed by the Legislature for calculating salary
20 increases for judges and imposes statutory duties on CalHR. Section 68203 provides in relevant
21 part:

22 (a) [O]n July 1 of each year . . . the salary of each justice and judge . .
23 . shall be increased by the amount that is produced by multiplying the
24 then current salary of each justice or judge by the average percentage
25 salary increase for the current fiscal year for California state
26 employees; . . .

27 (b)(1) For the purposes of this section, average percentage salary
28 increases for California state employees *shall be those increases as*
reported by the Department of Human Resources to the State
Controller in a pay letter.

(Emphasis added; Gov. Code, § 68203.)

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1 Under this statute, salary increases for judges are produced “by multiplying the then current
2 salary of each justice or judge by the average percentage salary increase for the current fiscal year³
3 for California state employees.” (Gov. Code, § 68203, subd. (a).) This statute further provides the
4 average increase for state employees used for judicial salary increases “shall be” the increase “as
5 reported by CalHR.” (Gov. Code, § 68203, subd. (b)(1).) Here, the Legislature has charged CalHR
6 with the obligation to both calculate the “average percentage salary increase” that is used for
7 determining judicial salary increases, and to report any increase to Respondent State Controller in a
8 pay letter. (Gov. Code, § 68203, subd. (b)(1).)

9 CalHR’s administration of section 68203 is consistent with CalHR’s salary-setting authority
10 for state employees. “In general, [CalHR] has jurisdiction over the state’s financial relationship
11 with its employees, including matters of salary, layoffs, and nondisciplinary demotions.” (*Gilb v.*
12 *Chiang, supra*, 186 Cal.App.4th at p. 465; *Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1322.)⁴
13 The Legislature delegated to CalHR express authority to set the wages of employees in state
14 government. (*Stoetzl v. Department of Human Resources* (2019) 7 Cal.5th 718, 727 [citing §§
15 19826, 19843, 19844, 19845, 19849].) CalHR serves as the Governor’s representative for purposes
16 of collective bargaining with recognized employee organizations concerning wages, hours, and
17 other terms and conditions of employment. (Gov. Code, §§ 3517, 19815.4, subd. (g); *California*
18 *Statewide Law Enforcement Assn. v. Department of Personnel Administration* (2011) 192
19 Cal.App.4th 1, 14; see Complaint, ¶ 30.) CalHR also has delegated authority “to set salaries for
20 state employees excluded from collective bargaining.” (*California Assn. of Professional Scientists*
21 *v. Department of Finance* (2011) 195 Cal.App.4th 1228, 1232.) Thus, it cannot reasonably be
22 disputed that CalHR maintains jurisdiction over state employee salaries, and that section 68203 is a
23 law explicitly administered by CalHR.

24 Plaintiff also repeatedly concedes in her pleading that section 68203 is administered by
25 CalHR. The complaint alleges that under section 68203 the “average percentage salary increases

26 ///

27 ³ A fiscal year commences on the first day of July. (Gov. Code, § 13290.)

28 ⁴ CalHR succeeded to and is vested with all the powers and duties exercised by the
Department of Personnel Administration (DPA). (Gov. Code, § 18502.)

1 for California state employees’ are to be ‘those increases as reported by [CalHR] to the State
2 Controller in a pay letter.’” (Complaint, ¶ 11; see also ¶¶ 23, 89, 93.) The complaint also alleges
3 that CalHR “is responsible for calculating the ‘average percentage salary increase’ under Section
4 68203 of the Government Code” and that CalHR’s Director “has the duty to report the ‘average
5 percentage salary increase’ to Respondent Controller.” (Complaint, ¶¶ 30, 32; see also ¶¶ 13, 19,
6 21, 23, 62, 67, 69, 71, 75, 83, 89, 93.) The complaint further alleges that CalHR has calculated the
7 “average percentage salary increase” under section 68203 at least since 2006-07. (Complaint, ¶¶
8 19, 58.) The complaint also alleges CalHR “is responsible for all issues related to the salaries of
9 California state employees, including active jurists.” (Complaint, ¶ 1.) Accordingly, section 68203
10 by its plain terms and as supported by the complaint’s allegations is a law administered by CalHR.

11 **B. The Complaint’s Causes of Action are “based on or related to” Section 68203.**

12 The complaint’s causes of action are clearly “based on or related to” section 68203, a law
13 administered by CalHR. In its first cause of action for declaratory relief, the complaint seeks an
14 interpretation of section 68203 by this Court that would require CalHR to include all categories of
15 salary items when calculating the “average percentage salary increase.” (Complaint, ¶ 89; see also
16 ¶¶ 82.a., 85.) The complaint’s second cause of action likewise seeks a writ of mandate requiring
17 CalHR’s Director to perform a “ministerial duty” pursuant to section 68203 to issue amended pay
18 letters to Respondent State Controller for each fiscal year from 2016-17 to the present, and to
19 correct the alleged underpayment in salaries for judges because of CalHR’s alleged miscalculations
20 of the “average percentage salary increase.” (Complaint, ¶¶ 93, 97.)⁵

21 Notably, in addition to the express requirement in section 68203 for CalHR to report average
22 increases in pay letters, CalHR also maintains statutory authority to issue pay letters independent of
23 section 68203. A pay letter is the mechanism that CalHR uses to implement adjustments in salary
24 and benefits for state employees. (See *Gilb v. Chiang, supra*, 186 Cal.App.4th at p. 454, fn. 6.)

25 Further, CalHR has a direct and immediate interest in the legality and enforcement of the pay letters

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27 ⁵ In a more practical and fundamental sense, the fact that Plaintiff brings this lawsuit against
28 CalHR regarding its obligations under section 68203 confirms that the statute is “based on or related
to” laws administered by CalHR. If not, then there are no legal bases for Plaintiff to maintain this
lawsuit against CalHR, and thus, the complaint should be dismissed outright.

1 it issues by virtue of its statutorily vested authority to administer and enforce the laws pertaining to
2 personnel. (Gov. Code, § 19815.4; see *Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1322, 1341;
3 *Gilb v. Chiang, supra*, 186 Cal.App.4th at pp. 451-452, 457, 469-472 [DPA’s pay letter directing
4 the state controller to defer salary payments in the absence of a budget was within its statutory
5 authority to issue, and the state controller was required to follow the pay letter where DPA was
6 acting within its legislative-delegated authority].) Thus, Plaintiff’s second cause of action for writ
7 of mandate is “based on or related to” section 68203, as well as other laws administered by CalHR.

8
9 **C. The General Statute of Limitations in Civil Code of Procedure Section 338 does not
Apply to This Matter.**

10 To the extent Plaintiff intends to argue that a different statute of limitations should apply
11 instead (e.g., the generic three-year statute of limitations for statutory claims set forth in Code of
12 Civil Procedure section 338), this claim lacks merit. There is a well-settled rule in the subject area
13 of limitations periods that, when multiple statute of limitations may apply to a claim, “a specific
14 statute of limitations takes precedence over a general one, even though the latter would be broad
15 enough to include the subject to which the more particular provision relates.” (*Barker v. Garza*
16 (2013) 218 Cal.App.4th 1449, 1456-1457; see *David M. v. Beverly Hospital* (2005) 131
17 Cal.App.4th 1272, 1279 [applying another more specific statute of limitations over the more general
18 provisions of Code of Civil Procedure section 338].) Moreover, another well-settled rule with
19 respect to competing statutes of limitation is that “as a general principle, if two different statutes of
20 limitation apply to a particular claim, then the shorter period controls over the longer one, unless the
21 statutes can be harmonized.” (*1305 Ingraham, LLC v. City of Los Angeles* (2019) 32 Cal.App.5th
22 1253, 1266, citing *Royalty Carpet Mills, Inc. v. City of Irvine* (2005) 125 Cal.App.4th 1110, 1114.)
23 These two maxims further favor the application of section 19815.8 in this case because it constitutes
24 the shorter statute of limitations period, and because it is more specific as to claims based on or
25 related to laws administered by CalHR.

26 For these reasons, because Plaintiff’s first and second causes of action are “based on or
27 related to” section 68203, a law administered by CalHR, section 19815.8, subdivision (a)’s one-year
28 statute of limitations applies to the complaint.

1 **II. CALHR’S DEMURRER TO THE COMPLAINT SHOULD BE SUSTAINED**
2 **WITHOUT LEAVE TO AMEND BECAUSE THE COMPLAINT IS TIME-BARRED.**

3 **A. The Complaint’s First Cause of Action for Declaratory Relief Against CalHR is**
4 **Barred by the One-Year Statute of Limitations of Section 19815.8.**

5 Plaintiff failed to file the first cause of action for declaratory relief within the one-year
6 statute of limitations of section 19815.8. “An action for declaratory relief lies when the parties are
7 in fundamental disagreement over the construction of particular legislation, or they dispute whether
8 a public entity has engaged in conduct or established policies in violation of applicable law.
9 [Citations.]” (*Alameda County Land Use Assn. v. City of Hayward* (1995) 38 Cal.App.4th 1716,
10 1723.) Although a general demurrer is typically not appropriate for testing the merits of a
11 declaratory relief action, a trial court may properly sustain a general demurrer to a declaratory relief
12 action without leave to amend when the controversy presented can be determined as matter of law.
13 (*Childhelp, Inc. v. City of Los Angeles* (2023) 91 Cal.App.5th 224, 236.) Significantly, the
14 California Supreme Court has determined that, where a plaintiff contends that an obligation has
15 already been breached, “the period of limitations applicable to ordinary actions at law and suits in
16 equity should be applied in like manner to claims of declaratory relief.” (*Maguire, supra*, 23 Cal.2d
17 at p. 734.) Thus, “[I]f declaratory relief is sought with reference to an obligation which has been
18 breached and the right to commence an action for ‘coercive’ relief upon the cause of action arising
19 therefrom is barred by the statute, the right to declaratory relief is likewise barred.” (*Ibid.*; *Snyder v.*
20 *California Ins. Guarantee Assn.* (2014) 229 Cal.App.4th 1196, 1208.) “It is the general rule that a
21 cause of action accrues when a suit may be maintained thereon, and the statute of limitations then
22 begins to run.” (*Maguire, supra*, at p. 733.) As Plaintiff seeks coercive relief in this action, a
23 limitations bar therefore may be raised to Plaintiff’s first cause of action.

24 As alleged in the complaint, Plaintiff’s first cause of action for declaratory relief accrued in
25 August 2023. (Complaint, ¶¶ 67, 88, 89.) Plaintiff admits that “*In August 2023*, Plaintiff first
26 became aware that Defendant CalHR may have miscalculated the ‘average percentage salary
27 increase’ under Section 68203.” (Complaint, ¶ 67 [emphasis added].) Similarly, Plaintiff concedes
28 that class members, did not discover “*until in or around August 2023*”, that CalHR had stopped
including SSA’s in the calculation of “average percentage salary increase.” (Complaint, ¶¶ 68

1 [emphasis added].) Thus, to be timely, Plaintiff was required to file this action sometime in August
2 2024 at the latest. However, as demonstrated in the Court’s docket and the face of the complaint,
3 the complaint was filed on September 3, 2024, more than one-year after Plaintiff’s discovery of
4 CalHR’s alleged miscalculations of the “average percentage salary increase” under section 68203.
5 (RJN; Pearson Decl. ¶ 3, Exh. A, p. 1.)

6 The complaint’s allegation that the delayed discovery rule should apply to toll the statute of
7 limitations is without merit. (Complaint, ¶ 68.) The statute of limitations begins to run under the
8 discovery rule when the plaintiff suspects or should suspect that the injury was caused by
9 wrongdoing. (*Vaca v. Wachovia Mortgage Corp.* (2011) 198 Cal.App.4th 737, 743.) However, in
10 this case, the expiration of the one-year statute of limitations occurred after Plaintiff first became
11 “aware” of the alleged statutory breach in August 2023. Thus, the delayed discovery rule does not
12 apply here because the Plaintiff concedes she learned of the alleged breach more than one year
13 before filing the complaint. (Complaint, ¶¶ 67, 68.) Accordingly, section 19815.8 bars Plaintiff’s
14 first cause of action for declaratory relief since Plaintiff’s complaint was not filed within one-year
15 of the accrual of the action.

16 **B. The Complaint’s Second Cause of Action for Writ of Mandate Against CalHR is**
17 **Barred by the One-Year Statute of Limitations of Section 19815.8.**

18 The complaint’s second cause of action seeks a writ of mandate requiring CalHR to perform
19 its duty “to report the properly calculated ‘average percentage salary increase,’ including [special
20 salary adjustments], to Respondent [State] Controller in an amended pay letter for each fiscal year
21 of underpayment, from 2016-17 to present, pursuant to section 68203(b)(1).” (Complaint, ¶ 93.)
22 For the same reasons addressed above, Plaintiff’s second cause of action is untimely and should be
23 dismissed without leave to amend.

24 As alleged in the complaint, Plaintiff’s second cause of action for writ of mandate accrued in
25 August 2023. Again, the complaint alleges that “In August 2023, Plaintiff first became aware that
26 Defendant CalHR may have miscalculated the “average percentage salary increase” under Section
27 68203.” (Complaint, ¶¶ 67, 91.) The complaint also alleges that class members, did not discover
28 “until in or around August 2023”, that CalHR had stopped including SSA’s in the calculation of

1 “average percentage salary increase.” (Complaint, ¶¶ 68, 91.) Thus, under the complaint’s
2 allegations Plaintiff’s cause of action for writ of mandate accrued in August 2023, which makes the
3 Plaintiff’s request for writ of mandate untimely. To be timely, Plaintiff was required to file this
4 action sometime by August 2024 at the latest. However, as previously indicated, the complaint was
5 filed on September 3, 2024, more than one-year after Plaintiff’s acknowledged discovery of
6 CalHR’s alleged miscalculation of the “average percentage salary increase” under section 68203.

7 Accordingly, section 19815.8 bars Plaintiff’s second cause of action for writ of mandate
8 since Plaintiff’s complaint was not filed within one-year of the accrual of the action.

9 Finally, section 19815.8 contains an inner statute of limitations, which bars recovery of
10 compensation for a person “for the time subsequent to the date when the cause or ground arose
11 unless the action or proceeding is filed and served within 90 days after the cause or ground arose. . .
12 .” (Gov. Code, § 19815.8, subd. (a).) This inner statute of limitations is designed to “prevent[]
13 inflation of back pay claims through the medium of lawsuit delay” and “protects the public
14 pocketbook by minimizing claims for compensation accruing” following when the cause of action
15 first arose. (See *Ng v. State Personnel Bd.* (1977) 68 Cal.App.3d 600, 607 [interpreting analogous
16 statute, section 19630, administered by State Personnel Board].) It is clear from the complaint that
17 Plaintiff is seeking compensation through the writ of mandate by having CalHR issue amended pay
18 letters for fiscal years 2016-17 to the present, as a means to correct the alleged underpayment of
19 salaries to judges. (Complaint, ¶¶ 93-97; see Prayer ¶¶ 2-5.) Because Plaintiff is seeking
20 compensation for the time subsequent to the filing of the complaint, Plaintiff was required to file the
21 complaint within 90 days from August 2023, or by approximately November 2023. Because
22 Plaintiff failed to file the complaint within the 90-day period, any request for a writ of mandate after
23 August 2023 is also untimely and should be dismissed.

24
25 **III. THE COMPLAINT IS BARRED FOR PLAINTIFF’S FAILURE TO COMPLY
26 WITH THE GOVERNMENT CLAIMS ACT.**

27 Plaintiffs’ first cause of action seeks prospective larger salary increases for judges through
28 declaratory relief and the second cause of action seeks recovery of money damages against the state,
and therefore these actions fall within the type of claims covered by the Government Claims Act

1 (Act). (Gov. Code, § 905.2, subd. (b)(3).) The purpose of the Act is to permit a public entity to
2 avoid litigation by enabling it to conduct an early investigation and consider the benefits of settling
3 a claim. (*Alliance Financial v. City and County of San Francisco* (1998) 64 Cal.App.4th 635, 647.)
4 To achieve that purpose, the Government Claims Act sets forth conditions that must be satisfied
5 before filing suit against a public entity in Superior Court. (Gov. Code, § 900, et seq.) No suit for
6 money or damages may be brought against a public entity until the plaintiff has “presented” the
7 claim to the public entity. (Gov. Code, §§ 905, 945.4; see also *Alliance Financial, supra*, 64
8 Cal.App.4th at p. 640.) “The claim filing requirement has been held applicable to claims arising out
9 of negligence, nuisance, *breach of statutory duties*, intentional wrongs and contract. [Citation.] A
10 suit for ‘money or damages’ includes all actions where the plaintiff is seeking monetary relief,
11 regardless whether the action is founded in ‘tort, contract or some other theory.’” (*Bates v.*
12 *Franchise Tax Bd.* (2004) 124 Cal.App.4th 367, 382-383 [emphasis added]; *Loehr v. Ventura*
13 *County Community College Dist.* (1983) 147 Cal.App.3d 1071, 1079 [“Although this term [“money
14 or damages”] is not defined in the act, it is comprehensive in scope and includes tort claims arising
15 out of negligence, nuisance, breach of statutory duties, and intentional wrongs”].) Plaintiff’s claims
16 alleging breach of statutory duties by CalHR under section 68203 falls well within this broad
17 definition.

18 Failure to allege facts demonstrating compliance, or excusing compliance with the Act, is
19 grounds for dismissal of an action for failure to state a cause of action. (*State of California v.*
20 *Superior Court (Bodde)* (2004) 32 Cal.4th 1234, 1243.) Filing a claim under the Government
21 Claims Act with the Department of General Services (DGS) is a required element of a cause of
22 action against a public entity. (*Id.* at p. 1239; Gov. Code, § 911.2.) In order to comply with the
23 Act, Plaintiff was required to file a claim with DGS within one year from the date when the cause of
24 action accrued. (Gov. Code, § 911.2.) Here, based on the pleadings Plaintiff’s first and second
25 causes of action accrued in August 2023, at the very latest, which is the date Plaintiff admits she
26 discovered the alleged miscalculation under section 68203. (Complaint, ¶¶ 67, 68, 91, 92.) (*Jolly v.*
27 *Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1113 [“it is the discovery of facts, not their legal

28 ///

1 significance, that starts the statute”].) Yet, the complaint fails to allege that Plaintiff filed a claim
2 with DGS within one year of that date, as required by the Act.

3 Plaintiff will likely contend that the claims raised in the complaint are exempt from the
4 presentation requirement of the Government Claims Act because it is an action for declaratory and
5 mandamus relief as opposed to a claim for monetary relief. However, courts have rejected the
6 argument that claims for mandamus or injunctive and declaratory relief are automatically exempt
7 from the provisions of the Government Claims Act. (*Loehr v. Ventura County Community College*
8 *Dist., supra*, 147 Cal.App.3d at p. 1081.) In cases seeking these types of relief, courts look to
9 whether the primary relief sought is “pecuniary” or monetary in nature to determine whether
10 compliance with the Act is required. (*Ibid.*) In *Loehr, supra*, the court held plaintiff’s “self-styled
11 causes of action for mandamus and injunctive relief” were primarily “pecuniary in nature.” (*Id.* at
12 pp. 1081-1082.) In that case, plaintiff alleged various causes of actions sounding in both tort and
13 contract. (*Id.* at p. 1079.) However, each of the various causes of action was aimed at recovering
14 monetary damages for acts and omissions allegedly committed by the defendants during the course
15 and scope of plaintiff’s employment. (*Id.* at p. 1080.) Under the circumstances, the court held that
16 the monetary relief sought was “anything but incidental or ancillary” to the primary purpose of the
17 complaint. (*Ibid.*)

18 Like the case in *Loehr*, Plaintiff’s causes of action are rooted in a claim for both prospective
19 and lost compensation. Here, the harm alleged in the complaint is that CalHR has miscalculated the
20 “average percentage salary increase” for state employees that is used for setting judges’ salaries,
21 which has resulted in judges receiving less salary since 2016. (Complaint, ¶¶ 1, 2, 7, 19, 20, 23, 30,
22 77, 82.b, 91, 93.) Plaintiff in the first cause of action requests an interpretation of section 68203 by
23 this court as requiring CalHR to include additional salary items in its calculations of the “average
24 percentage salary increase,” which will lead to greater annual salary increases for judges
25 prospectively. Plaintiff’s request for writ of mandate is also pecuniary in nature where Plaintiff
26 seeks an order from the Court that CalHR’s Director issue amended pay letters for each fiscal year
27 of *underpayment*, from 2016-17 to the present.” (Emphasis added; Complaint ¶ 93; see also ¶ 97
28 [request for writ of mandate directing CalHR’s Director, among others, to perform duty to

1 “*compensate* Plaintiff and Class Members for each fiscal year of *underpayment with properly*
2 *calculated salaries and benefits* based thereon from 2016-17 to present.”].) No other significant,
3 non-pecuniary remedy is mentioned in the request for writ of mandate. Accordingly, the first and
4 second causes of action primarily seek monetary relief, and Plaintiff therefor was required to satisfy
5 the provisions of the Government Claims Act. Because Plaintiff cannot show that she satisfied
6 these requirements, the complaint should be dismissed in its entirety.

7 **CONCLUSION**

8 For all the aforementioned reasons, Plaintiff’s entire complaint, including the first and
9 second causes of action, must be dismissed in its entirety without leave to amend.

10
11 Dated: January 10, 2025

Respectfully submitted,

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