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13 Maryanne G. Gilliard, et al.

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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF LOS ANGELES**

17 MARYANNE G. GILLIARD, Individually
18 and On Behalf of a Class of Similarly
19 Situated Persons,

20 Plaintiff,

21 v.

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

Defendants.

CASE NO.: 24STCP02837

CLASS ACTION

**JOINT INITIAL STATUS
CONFERENCE STATEMENT**

Date: November 15, 2024
Time: 10:00 a.m.
Dept: 7
Judge: Hon. Lawrence P. Riff

Complaint filed: September 3, 2024
Trial date: Not Set

1 Plaintiff and Petitioner Maryanne G. Gilliard (“Plaintiff”), individually, and on behalf of a
2 putative class of California judges and justices, Defendant California Department of Human
3 Resources (“CalHR”), Respondent Eraina Ortega, CalHR’s Director (“Director”), Respondent Malia
4 Cohen, the Controller of the State of California (“Controller”), Respondent California Public
5 Employees’ Retirement System (“CalPERS”), Respondent the Board of Administration of CalPERS
6 (“CalPERS Board”), and Respondents the Judges’ Retirement System (“JRS”) and Judges’
7 Retirement System II (“JRS II”) submit this Joint Statement pursuant to the Court’s request in
8 advance of the Initial Status Conference scheduled for November 15, 2024.

9 **1. Are there any issues of judicial recusal or disqualification?**

10 Plaintiff’s Position

11 Plaintiff does not believe there are any issues of judicial recusal or disqualification.

12 CalHR Defendants’ Position

13 Defendant California Department of Human Resources and Respondent Eraina Ortega,
14 CalHR’s Director (collectively Defendant CalHR or CalHR) statement: Plaintiff acknowledges there
15 is a financial conflict for the Court in the complaint, but alleges the Court may proceed to adjudicate
16 this case under the “rule of necessity.” (Complaint, ¶ 40.) Under the “rule of necessity” a personal
17 financial interest does not disqualify a judge from adjudicating a case if there is no other court or
18 judge to hear and resolve the case. (*Olson v. Cory* (1980) 27 Cal.3d 532, 537.) Defendant CalHR is
19 aware of cases where courts have applied the “rule of necessity” in similar types of cases as the
20 present case, but CalHR respectfully inquires of the Court as to whether it is aware of any special
21 procedure that could be used in this case that would alleviate the financial conflict.

22 **2. The case type.**

23 Plaintiff’s Position

24 The case is an action brought by Plaintiff, individually, and on behalf of a putative class of
25 California judges and justices similarly situated, based on Defendant CalHR’s alleged repeated
26 miscalculation of judicial salaries under Section 68203 of the Government Code.

27 Plaintiff’s First Cause of Action is asserted against Defendant CalHR and seeks a declaration
28 that, when calculating the “average percentage salary increase” pursuant to Section 68203, CalHR

1 must include *all* categories of salary increases—not *only* general salary increases.

2 Plaintiff's Second Cause of Action is asserted against Respondents Director, Controller,
3 CalPERS, CalPERS Board, JRS, as well as JRS II, and seeks writs of mandate that each Respondent
4 must take certain actions that will result in the payment of properly calculated salaries (or benefits
5 based on properly calculated salaries) to Plaintiff and Class Members.

6 CalHR Defendants' Position

7 Defendant CalHR asserts that consistent with its salary setting authority and practice, CalHR
8 has properly calculated state employee average salary increases under Government Code section
9 68203, and this statute does not require the inclusion of “all categories of salary increases” when
10 calculating state employee average salary increases. Therefore, CalHR contends that its calculations
11 are correct and denies all wrongdoing. CalHR intends to raise all available defenses to the complaint,
12 including but not limited to a statute of limitations bar.

13 Controller and CalPERS Defendants' Position

14 Respondents Controller, CalPERS, CalPERS Board, JRS, and JRS II (Controller and
15 CalPERS respondents) intend to assert any defenses in a responsive pleading or motion.

16 **3. The status of service and notice(s) of appearance(s) by defendant(s)?**

17 On September 5, 2024, Plaintiff personally served the Summons, Civil Case Cover Sheet and
18 Addendum, Complaint, Notice of Case Assignment, and ADR Information Packet on Defendant
19 CalHR, in addition to Respondents Director, Controller, CalPERS, CalPERS Board, JRS, and JRS
20 II. Proofs of service for each Defendant/Respondent were filed on September 9, 2024.

21 On September 9, 2024, Plaintiff served the Minute Order and the Initial Status Conference
22 Order by U.S. mail on Defendant CalHR and Respondents Director, Controller, CalPERS, CalPERS
23 Board, JRS, and JRS II, in compliance with the Court's instructions in the Minute Order. A proof of
24 service for the Minute Order and Initial Status Conference Order was filed on the same date.

25 Pursuant to Section 955.4(a) of the Government Code, which requires that “[s]ervice of
26 summons in all actions on claims against the state shall be made on the Attorney General,” the
27 Summons, Civil Case Cover Sheet and Addendum, Complaint, Notice of Case Assignment, and
28 ADR Information Packet were personally served on the Attorney General on September 5 and

1 September 18, 2024, at the office locations in Los Angeles and Sacramento.

2 Notices of Appearances have been entered by each Defendant/Respondent.

3 **4. Whether any party intends to challenge jurisdiction.**

4 Defendant/Respondents do not intend to challenge jurisdiction at this time.

5 **5. The parties' selected e-service provider.**

6 The parties have selected File & ServeXpress.

7 **6. What provisions should be made for the preservation of evidence?**

8 The parties do not believe any provisions should be made at this time.

9 **7. What provisions should be made for electronically stored evidence?**

10 The parties will take necessary steps to ensure that any potentially relevant electronically
11 stored information ("ESI") is preserved. Any ESI will be collected, reviewed, and produced in
12 accordance with discovery obligations. Specifications for the production of ESI will be addressed
13 in the instructions to the parties' requests for production of documents. The parties will meet and
14 confer if any party believes that the specifications for ESI are overly burdensome.

15 **8. Do the parties need a limited- or non-dissemination protective order?**

16 The parties do not believe any protective order is necessary at this time.

17 **9. A proposed deadline for adding and serving any new parties.**

18 Plaintiff's Position

19 Plaintiff proposes that the deadline for adding and serving any new parties be governed by
20 the provisions set forth in Cal. Civ. Proc. Code §§ 472; 473.

21 Controller and CalPERS Defendants' Position

22 Controller and CalPERS defendants propose that the Court require plaintiffs to add new
23 parties by six months after the Court lifts the stay on discovery.

24 CalHR Defendants' Position

25 CalHR also proposes that the deadline for Plaintiff to add new parties should be six months
26 from the date when the Court lifts the stay on discovery.

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1 **10. Should either or both the pleading and discovery stay be lifted and, if so, when and**
2 **for what purposes?**

3 Plaintiff's Position

4 Based on Plaintiff's meet and confer with Defendants, and Defendants' positions on
5 scheduling stated herein, Plaintiff is amenable to Defendants' proposal regarding the pleading stay
6 and to the briefing schedule for motions challenging the pleading.

7 However, the parties are at an impasse regarding the discovery stay, which Plaintiff proposes
8 should be lifted at the conclusion of the Initial Status Conference so as to permit the litigation to
9 proceed.

10 Plaintiff believes that the discovery stay should be lifted to allow Plaintiff to serve limited
11 requests for production, special interrogatories, and requests for admission on Defendant CalHR
12 regarding topics that are critical to the resolution of this matter. Plaintiff's proposal is consistent
13 with the Civil Discovery Act, which authorizes plaintiffs to serve such discovery 10 days after service
14 of the summons. *See* Cal. Civ. Proc. Code §§ 2030.020; 2031.020; 2033.020. Defendants have not
15 articulated a reason why this case should proceed differently with respect to discovery from any other
16 civil action.

17 Plaintiff seeks to serve requests for production of documents that will allow Plaintiff to:
18 (1) calculate the "average percentage salary increase" attributable to special salary adjustments
19 ("SSAs") during the current fiscal year; (2) understand what categories of salary increases have been
20 included (or excluded) from CalHR's calculation of the "average percentage salary increase" since
21 1980; and (3) documents that reflect the reasoning and basis for why various categories of salary
22 increase have been included or excluded in various fiscal years.

23 Plaintiff also seeks to serve special interrogatories to: (1) identify any changes, proposed or
24 actual, to the methodology by which judicial salaries have been calculated since 1980; (2) identify
25 other types of salary increases besides general salary increases and SSAs; and (3) have CalHR set
26 forth whether and why certain types of salary increases have not been included in the calculation.

27 Plaintiff further seeks to serve requests for admission to confirm that CalHR conducted a
28 diligent search and reasonable inquiry in producing all non-privileged documents responsive to

1 Plaintiff's request under the Public Records Act, dated June 21, 2024, consistent with Defendants'
2 obligations under California law, had these requests been served as civil discovery requests in this
3 litigation. Plaintiff notes that none of the requests for production or special interrogatories prepared
4 for this litigation are duplicative of Plaintiff's request previously made under the Public Records Act.

5 Defendants' anticipated pleadings challenge, as discussed by counsel at the meet and confer,
6 will have no effect on the core issue giving rise to Plaintiff's claims, and therefore would not narrow
7 the scope of permissible discovery. CalHR states below that its intended pleadings challenge "will
8 seek to dismiss the entire action and/or . . . will drastically reduce the scope of the action." CalHR,
9 however, has yet to identify any such basis which might result in dismissal of the Complaint. Thus,
10 the expected demurrer is not a basis for deferring discovery regarding the above-referenced topics.
11 Moreover, the discovery sought here remains obtainable from CalHR, pursuant to a Public Records
12 Act request. However, to promote efficiency, Plaintiff requests the ability to timely seek such
13 information pursuant to the instant litigation. Plaintiff has shared her requests for production, special
14 interrogatories, and requests for admission with Defendant/Respondents and will meet and confer
15 regarding any objections and responses in accordance with Cal. Civ. Proc. Code § 2030.300. In
16 short, the anticipated narrow pleadings challenge identified at this time by Defendant/Respondents
17 is no basis for discovery to be paused indefinitely.

18 Lifting the discovery stay to permit the production of this information will facilitate the
19 efficient and orderly exchange of this information within the context of this litigation. Obtaining this
20 information early on in the course of the proceedings will materially advance the litigation. .

21 CalHR Defendants' Position

22 Defendant CalHR proposes the pleading stay be lifted and a briefing schedule set for filing
23 of demurrers/motions to strike. CalHR proposes the following briefing schedule.

24 Demurrers/motions to strike due January 10, 2025.

25 Opposition due February 7, 2025.

26 Reply due February 17, 2025.

27 CalHR suggests the discovery stay remain in place until such time as any pleading challenges
28 are settled and/or answers filed. The parties should be permitted to efficiently use their time to

1 research and prepare its response to the complaint without having also to respond to discovery
2 requests. CalHR intends to raise pleadings challenges that will seek to dismiss the entire action
3 and/or which will drastically reduce the scope of the action, and which therefore could render some
4 or all of Plaintiff's discovery requests obsolete. While Plaintiff contends the discovery it intends to
5 propound is limited and Defendants have not articulated a reason why discovery should not be
6 allowed to proceed, Plaintiff has not justified an urgent need for discovery or explained why
7 discovery must be conducted while pleadings challenges are pending.

8 Controller and CalPERS Defendants' Position

9 Controller and CalPERS defendants believe that the pleading stay should be lifted and a
10 demurrer briefing schedule set. Controller and CalPERS defendants propose the following briefing
11 schedule:

12 Demurrers/Motions to Strike due January 10, 2025

13 Opposition due February 7, 2025

14 Reply due February 17, 2025

15 This schedule sets the demurrer deadline fewer than two months after the initial conference, even
16 though those two months contain several state and federal holidays, and absences by counsel.

17 As to the discovery deadline, Controller and CalPERS defendants believe that the Court
18 should stay discovery until it resolves challenges to the pleadings. Parties can seek discovery into
19 relevant materials within the scope of their suit, and the Court's resolution of pleadings challenges
20 will clarify that suit's scope, including possibly by limiting the years for which plaintiffs can seek
21 relief, the causes of action on which they can proceed, and the defendants they can sue.

22 Additionally, staying discovery until the pleadings are settled will conserve resources that
23 may not otherwise need to be expended. This case's complex designation suggests that the scope of
24 discovery responses requested by plaintiffs may be broad. Plaintiffs' proposed discovery, although
25 cast as "limited" above, seeks voluminous information stretching back almost a half century. The
26 proposed discovery also seeks bodies of information—like "documents that reflect the reasoning and
27 basis for" various government decisions or information concerning all "California state
28 employees"—that could sweep so broadly as to encompass significant volumes of responsive

1 materials. Finally, plaintiffs note that they could seek this information by making a Public Records
2 Act request. Without opining whether that is true, Controller and CalPERS defendants note that
3 CPRA requests are not equivalent to party discovery—a CPRA requestor must pay the reasonable
4 costs of providing the records sought. In any event, an alternative means of obtaining the desired
5 materials cuts *against* lifting the stay of discovery.

6 **11. The identification of any “related case.”**

7 The parties do not believe there are any “related cases.”

8 **12. A service list identifying all primary and secondary counsel along with their firm**
9 **names, addresses, telephone numbers, and email addresses.**

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23 For Defendant CalHR and Respondent Director:

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For Respondents Controller, CalPERS, CalPERS Board, JRS, and JRS II:

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13. Recommended orders to be made at the ISC.

Plaintiff's Position

Plaintiff recommends the Court enter an order lifting the discovery stay.

CalHR Defendants' Position

Defendant CalHR recommends the Court enter an order lifting the pleading stay and set a briefing schedule as described above. CalHR also recommends the discovery stay remain in place until all pleading challenges are resolved.

Controller and CalPERS Defendants' Position

Controller and CalPERS defendants recommend that the Court enter orders setting the demurrer briefing schedule described above, and staying discovery until the resolution of pleadings challenges.

14. Recommended date for the next status conference.

The parties will meet and confer to recommend a date for the next status conference after the Court has determined whether the pleading and discovery stay should be lifted.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, Brigitte Travaglini, declare that I am over the age of 18 and not a party to this action. I am employed by Skadden, Arps, Slate, Meagher & Flom LLP. My business address is 200 Avenue of the Stars, Suite 200N, Los Angeles, California 90067; and my email address is brigitte.travaglini@skadden.com.

On November 7, 2024, I served a copy of the following document(s) described as **JOINT 6 INITIAL STATUS CONFERENCE STATEMENT** on the interested parties as follows:

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ALLISON B. MANN
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Attorneys for Defendants, Malia Cohen, in her
Official Capacity; California Public
Employees' Retirement System; the Board of
Administration of California Public
Employees' Retirement System, in its Official
Capacity; the Judges' Retirement System; the
Judges' Retirement System II

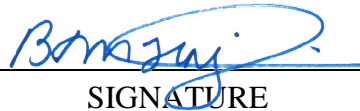
(BY ELECTRONIC SERVICE) I caused the above-entitled document to be served through One Legal addressed to all parties appearing on the One Legal electronic service list for the above-entitled case.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 7, 2024, at Los Angeles, California.

Brigitte Travaglini

PRINT NAME



SIGNATURE