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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF LOS ANGELES**

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

17 Plaintiff and Petitioner,

18 v.

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

28 Defendants and Respondents.

Case No: 24STCP02837

**CLASS ACTION**

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

Date: March 10, 2025

Time: 1:45 p.m.

Dept.: 1

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 68203<sup>1</sup> concerning the  
5 calculation of salary increases and benefits for California justices and judges (collectively judges).  
6 Section 68203 contains the statutory authority for the California Department of Human Resources  
7 (CalHR) to calculate salary increases applied to judges. Under this law, annual salary increases for  
8 judges are tied to the “average percentage salary increase,” if any, calculated by CalHR for  
9 California state employees. In particular, the Legislature delegated to CalHR the duties of  
10 calculating the “average percentage salary increase,” and reporting any such increase to Respondent  
11 State Controller in a CalHR-issued pay letter. (Gov. Code, § 68203, subs. (a), (b)(1).) As set forth  
12 in the complaint, Plaintiff alleges that CalHR has miscalculated the “average percentage salary  
13 increase” for multiple years by not including every conceivable category of salary increase available  
14 to any and all state employees in the calculation, which has allegedly led to underpayments in  
15 salaries to judges.

16 Defendant CalHR and Respondent Eraina Ortega in her official capacity as Director of  
17 CalHR (collectively CalHR or Defendants) are simultaneously filing a motion to strike and a  
18 demurrer to the complaint. The separately filed demurrer is brought on the grounds that the  
19 complaint is time-barred by the one-year statute of limitations in section 19815.8, which specifically  
20 applies to actions “based on or related to” laws administered by CalHR. As set forth in the  
21 demurrer papers and herein, section 68203 undeniably qualifies as a law administered by CalHR.  
22 Defendants vigorously dispute that Plaintiff’s causes of action are timely and contend that the entire  
23 action must be dismissed. However, in the event the Court finds the demurrer does not dispose of  
24 the first and/or second causes of action in their entirety, Defendants alternatively bring this motion  
25 to strike portions of the complaint that are not drawn or filed in conformity with the laws of the state  
26 because they request relief based on alleged unlawful conduct by CalHR that falls outside the one-

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28 <sup>1</sup> All further statutory references are to the Government Code unless otherwise indicated.

1 year limitations period. For the reasons discussed herein, CalHR requests the court grant the motion  
2 to strike, and order Plaintiff to amend the stricken paragraphs to conform with the applicable statute  
3 of limitations.

#### 4 5 **SUMMARY OF ALLEGATIONS INCLUDED WITHIN VERIFIED COMPLAINT**

6 Since 1998, Plaintiff has served as a superior court judge in California. (Complaint, ¶¶ 26,  
7 27; Declaration of Ronald Pearson (Pearson Decl.) in support of Defendants’ Request for Judicial  
8 Notice (RJN), Exh. A.) According to the complaint, CalHR is the state agency “responsible for all  
9 issues related to the salaries of California state employees, including active jurists.” (Complaint, ¶  
10 1; see also ¶ 30.) The complaint alleges that under section 68203 the “‘average percentage salary  
11 increases for California state employees’ are to be ‘those increases as reported by [CalHR] to the  
12 State Controller in a pay letter.’” (Complaint, ¶ 11; see also ¶¶ 23, 89, 93.) The complaint also  
13 alleges that CalHR “is responsible for calculating the ‘average percentage salary increase’ under  
14 Section 68203 of the Government Code” and that CalHR’s Director “has the duty to report the  
15 ‘average percentage salary increase’ to Respondent Controller.” (Complaint, ¶¶ 30, 32; see also ¶¶  
16 13, 19, 21, 23, 62, 67, 69, 71, 75, 83, 89, 93.) Based on the average increase reported by CalHR in  
17 the pay letter, Respondent State Controller then “issues payment” to each judge. (Complaint, ¶ 11.)  
18 The types of salary increases that state employees can receive include GSI’s, SSA’s, and “increases  
19 authorized to meet recruiting challenges, increases to obtain qualified employees, increases to  
20 correct salary inequities, and increases to give credit for prior state service.” (Complaint, ¶¶ 15, 16,  
21 19.) After section 68203 was enacted and up to the 2006-07 fiscal year, CalHR included GSI’s and  
22 SSA’s when calculating the average percentage salary increase. (Complaint, ¶¶ 13, 57, 58.)  
23 However, after the 2006-07 fiscal year, CalHR omitted SSA’s from the annual calculation and only  
24 used GSI’s when calculating the average increase. (Complaint, ¶¶ 19, 58.) Plaintiff alleges that  
25 CalHR’s exclusion of SSA’s from its calculation of the average increases that it reports to the State  
26 Controller has resulted in judges receiving less pay. (Complaint, ¶¶ 2, 20.)

27 Plaintiff indicates that she has been unable to determine exactly when CalHR made the  
28 decision to exclude SSA’s from the calculation. (Complaint, ¶ 59.) However, Plaintiff admits that

1 “In August 2023, Plaintiff first became aware that Defendant CalHR may have miscalculated the  
2 ‘average percentage salary increase’ under Section 68203.” (Complaint, ¶ 67 [emphasis added].)  
3 Similarly, Plaintiff concedes that class members, did not discover “until in or around August  
4 2023”, that CalHR had stopped including SSA’s in the calculation of the “average percentage salary  
5 increase.” (Complaint, ¶ 68 [emphasis added].) Thereafter, on August 7, 2024, CalHR’s Director  
6 reaffirmed that CalHR has used an appropriate methodology for computing judicial salaries under  
7 section 68203 by including GSI’s and omitting SSA’s. (Complaint, ¶ 75.) On September 3, 2024,  
8 Plaintiff filed the instant class action complaint on behalf of herself, active and retired judges, and  
9 their survivors and beneficiaries. (Complaint, ¶ 29; Pearson Decl. Exh. A, p. 1.)

### 10 11 **LEGAL STANDARD**

12 The court may, upon a motion made pursuant to Code of Civil Procedure Section 435, or at  
13 any time in its discretion, and upon terms it deems proper, strike out any irrelevant, false, or  
14 improper matter inserted in any pleading, or strike out any part of the pleading not drawn or filed in  
15 conformity with the laws of this state. (Code Civ. Proc., § 436.) A motion to strike is the  
16 appropriate procedural device for challenging a portion of a cause of action seeking an improper  
17 remedy. (*Brown v. Ralphs Grocery Co.* (2008) 28 Cal.App.5th 824, 844, quoting *Caliber*  
18 *Bodyworks, Inc. v. Superior Court* (2005) 134 Cal.App.4th 365, 385, disapproved in part on other  
19 grounds by *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175.) “[W]hen a substantive defect is clear  
20 from the face of a complaint, such as a violation of the applicable statute of limitations or a  
21 purported claim of right which is legally invalid, a defendant may attack that portion of the cause of  
22 action by filing a motion to strike.” (*PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680,  
23 1682-1683.) As with demurrers, the grounds for a motion to strike must appear on the face of the  
24 pleading under attack or from facts subject to judicial notice. (Code Civ. Proc., § 437.) Where  
25 there are grounds both for demurring and moving to strike, the two documents may be filed together  
26 and noticed for the same hearing. (Code Civ. Proc., § 435, subd. (d); Cal. Rules of Court, rule  
27 3.1322(b).)

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**ARGUMENT**

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

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

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

- (a) No action or proceeding shall be brought by any person having or claiming to have a cause of action or complaint or ground for 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 is commenced and served within one year after the cause of action or complaint or ground for issuance of any writ or legal remedy first arose*. Such a person shall not be compensated for the time subsequent to the date when the cause or ground arose unless the action or proceeding is filed and served within 90 days after the cause or ground arose. . . .

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

Thus, pursuant to section 19815.8, subdivision (a), no cause of action “based on or related to any law administered by [CalHR]” shall be brought unless the action or proceeding is commenced “within one year” after the cause of action first arose. To “administer” is a broad term which means “to manage or supervise the execution, use, or conduct of.” ([www.merriam-webster.com](http://www.merriam-webster.com); see also

1 *Gilb v. Chiang* (2010) 186 Cal.App.4th 444, 467 [same definition applied by court to CalHR’s  
2 predecessor’s administration of salaries under then existing section 19816].) As set forth herein,  
3 section 68203 by its plain terms is “based on or related to” a law administered by CalHR, and as  
4 pled, the nature of Plaintiff’s causes of action directly concerns CalHR’s alleged failure to perform  
5 its statutory duties imposed by section 68203. Thus, the limitations period in section 19815.8,  
6 subdivision (a) applies to the complaint.

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

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

11 (a) [O]n July 1 of each year . . . the salary of each justice and judge . .  
12 . shall be increased by the amount that is produced by multiplying the  
13 then current salary of each justice or judge by the average percentage  
14 salary increase for the current fiscal year for California state  
15 employees; . . .

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

20 (Emphasis added; Gov. Code, § 68203.)

21 Under this statute, salary increases for judges are produced “by multiplying the then current  
22 salary of each justice or judge by the average percentage salary increase for the current fiscal year<sup>2</sup>  
23 for California state employees.” (Gov. Code, § 68203, subd. (a).) This statute further provides the  
24 average increase for state employees used for judicial salary increases “shall be” the increase “as  
25 reported by CalHR.” (Gov. Code, § 68203, subd. (b)(1).) Here, the Legislature has charged CalHR  
26 with the obligation to both calculate the “average percentage salary increase” that is used for  
27 determining judicial salary increases, and to report any increase to Respondent State Controller in a  
28 pay letter. (Gov. Code, § 68203, subd. (b)(1).)

CalHR’s administration of section 68203 is consistent with CalHR’s salary-setting authority  
for state employees. “In general, [CalHR] has jurisdiction over the state’s financial relationship

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<sup>2</sup> A fiscal year commences on the first day of July. (Gov. Code, § 13290.)

1 with its employees, including matters of salary, layoffs, and nondisciplinary demotions.” (*Gilb v.*  
2 *Chiang, supra*, 186 Cal.App.4th at p. 465; *Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1322.)<sup>3</sup>  
3 The Legislature delegated to CalHR express authority to set the wages of employees in state  
4 government. (*Stoetzl v. Department of Human Resources* (2019) 7 Cal.5th 718, 727 [citing §§  
5 19826, 19843, 19844, 19845, 19849].) CalHR serves as the Governor’s representative for purposes  
6 of collective bargaining with recognized employee organizations concerning wages, hours, and  
7 other terms and conditions of employment. (Gov. Code, §§ 3517, 19815.4, subd. (g); *California*  
8 *Statewide Law Enforcement Assn. v. Department of Personnel Administration* (2011) 192  
9 Cal.App.4th 1, 14; see Complaint, ¶ 30.) CalHR also has delegated authority “to set salaries for  
10 state employees excluded from collective bargaining.” (*California Assn. of Professional Scientists*  
11 *v. Department of Finance* (2011) 195 Cal.App.4th 1228, 1232.) Thus, it cannot reasonably be  
12 disputed that CalHR maintains jurisdiction over state employee salaries, and that section 68203 is a  
13 law explicitly administered by CalHR.

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

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28 <sup>3</sup> CalHR succeeded to and is vested with all the powers and duties exercised by the  
Department of Personnel Administration (DPA). (Gov. Code, § 18502.)

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

2           The complaint’s causes of action are clearly “based on or related to” section 68203, a law  
3 administered by CalHR. In its first cause of action for declaratory relief, the complaint seeks an  
4 interpretation of section 68203 by this Court that would require CalHR to include all categories of  
5 salary items when calculating the “average percentage salary increase.” (Complaint, ¶ 89; see also  
6 ¶¶ 82.a., 85.) The complaint’s second cause of action likewise seeks a writ of mandate requiring  
7 CalHR’s Director to perform a “ministerial duty” pursuant to section 68203 to issue amended pay  
8 letters to Respondent State Controller for each fiscal year from 2016-17 to the present, and to  
9 correct the alleged underpayment in salaries for judges because of CalHR’s alleged miscalculations  
10 of the “average percentage salary increase.” (Complaint, ¶¶ 93, 97.)<sup>4</sup>

11           Notably, in addition to the express requirement in section 68203 for CalHR to report average  
12 increases in pay letters, CalHR also maintains statutory authority to issue pay letters independent of  
13 section 68203. A pay letter is the mechanism that CalHR uses to implement adjustments in salary  
14 and benefits for state employees. (See *Gilb v. Chiang, supra*, 186 Cal.App.4th at p. 454, fn. 6.)  
15 Further, CalHR has a direct and immediate interest in the legality and enforcement of the pay letters  
16 it issues by virtue of its statutorily vested authority to administer and enforce the laws pertaining to  
17 personnel. (Gov. Code, § 19815.4; see *Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1322, 1341;  
18 *Gilb v. Chiang, supra*, 186 Cal.App.4th at pp. 451-452, 457, 469-472 [DPA’s pay letter directing  
19 the state controller to defer salary payments in the absence of a budget was within its statutory  
20 authority to issue, and the state controller was required to follow the pay letter where DPA was  
21 acting within its legislative-delegated authority].) Thus, Plaintiff’s second cause of action for writ  
22 of mandate is “based on or related to” section 68203, as well as other laws administered by CalHR.

23           Finally, to the extent Plaintiff intends to argue that a different statute of limitations should  
24 apply instead (e.g., the generic three-year statute of limitations for statutory claims set forth in Code  
25 of Civil Procedure section 338), this claim lacks merit. There is a well-settled rule in the subject

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27           <sup>4</sup> 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 area of limitations periods that, when multiple statute of limitations may apply to a claim, “a  
2 specific statute of limitations takes precedence over a general one, even though the latter would be  
3 broad enough to include the subject to which the more particular provision relates.” (*Barker v.*  
4 *Garza* (2013) 218 Cal.App.4th 1449, 1456-1457; see *David M. v. Beverly Hospital* (2005) 131  
5 Cal.App.4th 1272, 1279 [applying another more specific statute of limitations over the more general  
6 provisions of section Code of Civil Procedure section 338].) Moreover, another well-settled rule  
7 with respect to competing statutes of limitation is that “as a general principle, if two different  
8 statutes of limitation apply to a particular claim, then the shorter period controls over the longer  
9 one, unless the statutes can be harmonized.” (*1305 Ingraham, LLC v. City of Los Angeles* (2019) 32  
10 Cal.App.5th 1253, 1266, citing *Royalty Carpet Mills, Inc. v. City of Irvine* (2005) 125 Cal.App.4th  
11 1110, 1114.) These two maxims further favor the application of section 19815.8 in this case because  
12 it constitutes the shorter statute of limitations period, and because it is more specific as to claims  
13 based on or related to laws administered by CalHR.

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

17  
18 **II. IF THE COURT DETERMINES THE COMPLAINT IS TIMELY FILED, THE**  
19 **COMPLAINT’S ALLEGATIONS OF WRONGFUL CONDUCT BY CALHR FOR**  
20 **WHICH PLAINTIFF SEEKS RELIEF THAT FALL OUTSIDE THE ONE-YEAR**  
21 **STATUTE OF LIMITATIONS MUST BE STRICKEN FROM THE COMPLAINT**  
22 **AS UNTIMELY.**

23 As noted above, Plaintiff admits that “*In August 2023*, Plaintiff first became aware that  
24 Defendant CalHR may have miscalculated the ‘average percentage salary increase’ under Section  
25 68203.” (Complaint, ¶ 67 [emphasis added].) Similarly, Plaintiff concedes that class members, did  
26 not discover “*until in or around August 2023*”, that CalHR had stopped including SSA’s in the  
27 calculation of the “average percentage salary increase.” (Complaint, ¶ 68 [emphasis added].) On  
28 September 3, 2024, Plaintiff filed the instant class action complaint on behalf of herself, active and  
retired judges, and their survivors and beneficiaries. (Complaint, ¶ 29; Pearson Decl. Exh A, p. 1.)  
In the event the court finds on some yet undetermined grounds that the complaint was timely filed

1 on September 3, 2024, and denies Defendant’s demurrer, the court should grant the motion to strike  
2 those paragraphs alleging CalHR’s breach of its statutory duties under section 68203 occurring  
3 more than one year before Plaintiff’s filing of the complaint, as the allegations are not pled in  
4 conformity with California law.

5 The complaint alleges that as early as 2006, CalHR breached its statutory duties under  
6 section 68203 by only including GSI’s and omitting SSA’s and other categories of salary increases  
7 when calculating annually the “average percentage salary increase”. (See Complaint, ¶¶ 19, 58; see  
8 also ¶¶ 20, 21, 59, 82.a, 88, 89.) The complaint further alleges that CalHR’s exclusion of all  
9 categories of salary increases other than GSI when performing this calculation “has resulted in  
10 miscalculated increases being reported to Respondent Controller which has caused judges and  
11 justices to be paid less than they are entitled to under California law.” (Complaint, ¶ 20; see also ¶¶  
12 23, 82.b, 91, 93, 97.) In addition to its declaratory relief action involving this alleged ongoing  
13 statutory breach by CalHR spanning approximately 18 years, Plaintiff seeks a writ of mandate  
14 requiring CalHR to issue amended pay letters to the State Controller for each year of underpayment  
15 to judges from 2016-17 to the present, due to CalHR’s alleged miscalculation of the “average  
16 percentage salary increase” under section 68203. (See Complaint, ¶¶ 21, 23, 29, 61, 82.b, 83, 85,  
17 93, 97.) The fiscal years for which Plaintiff’s writ seeks amended pay letters include 2016-17,  
18 2017-18, 2018-19, 2019-20, 2020-21, 2021-22, 2022-23, and 2023-24. (See Prayer for Relief, ¶ 2.)

19 However, as explained thoroughly herein, such claims for relief under section 68203 are  
20 subject to the one-year statute of limitations in section 19815.8 and therefore are untimely.  
21 Nonetheless, if the Court denies Defendant’s demurrer in this case and finds that the complaint is  
22 somehow timely filed, then any relief or remedy sought by Plaintiff due to CalHR’s alleged  
23 unlawful conduct may still only go back one-year from the filing date of September 3, 2024. As  
24 Plaintiff inexplicably seeks relief based on allegations of unlawful conduct by CalHR dating back  
25 approximately eight years, to 2016, these allegations must be stricken from the complaint as not  
26 being pled in conformity with the applicable statute of limitations. (Code Civ. Proc., § 436; *PH II*,  
27 *Inc. v. Superior Court*, *supra*, 33 Cal.App.4th at pp. 1682-1683.) Those paragraphs subject to the  
28 motion to strike in the complaint all involve some variation of judges allegedly receiving

1 underpayments or the receipt of salary increases “from 2016-17 to present.”<sup>5</sup> In particular, the  
2 paragraphs containing these references are identified in Defendants’ motion to strike, and herein,  
3 and include the following paragraphs of the complaint: **paragraphs 23, 24, 25, 29, 82.b, 82.c, 82.d,**  
4 **83, 85, 93, 94, 95, 96, 97, and paragraphs 2, 3, 4, and 5 of the prayer for relief.** Further, in the  
5 event Plaintiff is granted leave to amend these complaint allegations, any amendment must conform  
6 with the applicable statute of limitations in section 19815.8.

7 In the event Plaintiff contends that the motion to strike should be denied because the delayed  
8 discovery rule applies (Complaint, ¶ 68.) and somehow tolls the statute of limitations permitting  
9 Plaintiff to seek relief dating back approximately eight years, this contention is without merit. The  
10 statute of limitations begins to run under the discovery rule when the plaintiff suspects or should  
11 suspect that the injury was caused by wrongdoing. (*Vaca v. Wachovia Mortgage Corp.* (2011) 198  
12 Cal.App.4th 737, 743.) However, in this case, the expiration of the one-year statute of limitations  
13 occurred after Plaintiff first became “aware” of the alleged statutory breach in August 2023. Thus,  
14 the delayed discovery rule does not apply here because the Plaintiff concedes she learned of the  
15 alleged breach more than one year before filing the complaint. (Complaint, ¶¶ 67, 68.)

16 Accordingly, Defendants respectfully requests the court grant the motion to strike and strike  
17 the above-referenced paragraphs of the complaint.

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22 <sup>5</sup> While the motion to strike is primarily directed to those portions of the allegations and  
23 requests for relief which are time-barred, Defendants seek to strike the entire paragraphs because  
24 only excising portions thereof will not cure the pleading defects. For instance, paragraph 93 alleges  
25 that “Respondent Director has a clear, present, and ministerial duty to report the properly calculated  
26 ‘average percentage salary increase,’ including SSAs, to Respondent Controller in an amended pay  
27 letter for each fiscal year of underpayment, from 2016-17 to present, pursuant to Section  
28 68203(b)(1).” (Emphasis added.) Only deleting the language relevant to the statute of limitations  
issue, i.e., “from 2016-17 to present,” does not limit the causes of action to matters occurring one-  
year prior to the filing of the complaint, but instead would eliminate any time limitation with regard  
to the relief sought by Plaintiff. Thus, it is necessary that the entire at-issue paragraphs be stricken,  
and if Plaintiff is granted leave to amend the complaint, then the complaint must be amended to  
conform with the applicable statute of limitations.

1 **III. ALTERNATIVELY, IF THE COURT DETERMINES CODE OF CIVIL**  
2 **PROCEDURE SECTION 338 APPLIES TO THE COMPLAINT, DEFENDANTS’**  
3 **MOTION TO STRIKE SHOULD STILL BE GRANTED AND PLAINTIFF**  
4 **ORDERED TO AMEND THE COMPLAINT TO CONFORM WITH THIS**  
5 **LIMITATIONS PERIOD.**

6 Code of Civil Procedure section 338 applies to “an action upon a liability created by statute”  
7 and only permits commencement of an action for violations that occur up to three years before a  
8 complaint is filed. (Code Civ. Proc., § 338.) As demonstrated by the legal authorities identified  
9 herein and the pleading allegations, it is clear section 68203 is a law administered by CalHR and the  
10 one-year statute of limitations in section 19815.8 applies to the complaint. In particular, as  
11 indicated previously, section 19815.8 applies over Code of Civil Procedure section 338 under the  
12 general rule that “a specific statute of limitations takes precedence over a general one, even though  
13 the latter would be broad enough to include the subject to which the more particular provision  
14 relates.” (*Barker v. Garza, supra*, 218 Cal.App.4th at pp. 1456-1457.) However, in the event the  
15 court determines that the three-year statute of limitations period of Code of Civil Procedure section  
16 338 applies instead, the motion to strike would still be viable as to those events and requests for  
17 relief that would be untimely under even this three-year statute of limitations, and Plaintiff should  
18 be required to amend the complaint to conform with this limitations period.

17 **CONCLUSION**

18 For all the aforementioned reasons, Defendants respectfully request this Court grant  
19 Defendants’ motion to strike. In particular, Defendants request that this court strike paragraphs 23,  
20 24, 25, 29, 82.b, 82.c, 82.d, 83, 85, 93, 94, 95, 96, 97, and paragraphs 2, 3, 4, and 5 of the prayer for  
21 relief in Plaintiff’s complaint, in their entirety.

22 Dated: January 10, 2025

Respectfully submitted,

23  
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