

1 FROLAN R. AGUILING
Chief Counsel, Bar No. 235874
2 SANDRA L. LUSICH
Deputy Chief Counsel, Bar No. 195995
3 CHRISTOPHER E. THOMAS
Assistant Chief Counsel, Bar No. 186075
4 RONALD R. PEARSON
Labor Relations Counsel, Bar No. 241952
5 ALLISON B. MANN
Labor Relations Counsel, Bar No. 353541
6 California Department of Human Resources
State of California
7 1515 S Street, North Building, Suite 500
Sacramento, CA 95811-7258
8 Telephone: (916) 909-3706
Facsimile: (916) 323-4723
9 E-mail: ronald.pearson@calhr.ca.gov

10 Attorneys for Defendant/Respondent
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

Electronically FILED by
Superior Court of California,
County of Los Angeles
2/18/2025 2:22 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By G. Cordon, Deputy Clerk

Case No: 24STCP02837

CLASS ACTION

**DEFENDANT CALIFORNIA DEPARTMENT
OF HUMAN RESOURCES AND DIRECTOR
ERAINA ORTEGA'S REPLY TO
PLAINTIFF'S OPPOSITION TO
DEMURRER AND MOTION TO STRIKE**

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 Defendant California Department of Human Resources (CalHR) and Respondent
3 Eraina Ortega in her official capacity as Director of CalHR (collectively Defendants or CalHR)
4 filed a demurrer and motion to strike Plaintiff Maryanne G. Gilliard’s Verified Complaint for
5 Declaratory Relief and Verified Petition for Writ of Mandate (Complaint) on the grounds that
6 Plaintiff failed to timely bring this action within the one-year statute of limitations set forth in
7 Government Code section 19815.8.¹ The limitations period specifically applies to actions based
8 upon or related to laws administered by CalHR, including section 68203. CalHR also asserts that
9 Plaintiff’s claims are similarly barred for Plaintiff’s failure to comply with the claims presentation
10 requirements of the Government Claims Act (Gov. Code, § 900 et seq.). Plaintiff opposes CalHR’s
11 grounds for demurrer and motion to strike² arguing CalHR’s statute of limitations in section
12 19815.8 does not apply to Plaintiff’s causes of action because section 68203 is not a law
13 “administered” by CalHR. Plaintiff also contends the claims presentation procedures under the
14 Government Claims Act do not apply to Plaintiff’s causes of action.

15 Plaintiff’s opposition arguments are without merit. Importantly, Plaintiff necessarily
16 concedes that if the Court finds that CalHR’s statute of limitations in section 19815.8 *does* apply,
17 then the Complaint is time-barred and must be dismissed. Moreover, as demonstrated in CalHR’s
18 demurrer, motion to strike, and herein, section 68203 constitutes a law administered by CalHR
19 based on the plain language of the statute which expressly charges CalHR with an integral role in
20 judicial salary calculations. Moreover, Plaintiff has also failed to show that the Government Claims
21 Act does not apply in this case. Plaintiff claims she does not seek money damages in this case – a
22 position belied by Plaintiff’s Complaint which seeks substantial “damages” going back
23 approximately nine years, as well as prospective salary increases. Plaintiff’s failure to present a
24 claim as required under the Act is therefore fatal to the Complaint.

25
26 ¹ All statutory references are to the Government Code unless otherwise indicated.

27 ² CalHR filed separate motions and memorandum of points and authorities (MPAs) in
28 support of its demurrer and motion to strike. Plaintiff’s opposition to CalHR’s demurrer and motion
to strike have been combined in one document. For efficiency, CalHR’s reply to Plaintiff’s
opposition to the demurrer and motion to strike is also combined in a single document.

1 Accordingly, the Court should sustain CalHR’s demurrer and dismiss the Complaint in its
2 entirety without leave to amend. Alternatively, the Court should grant CalHR’s motion to strike and
3 strike those paragraphs that fall outside the applicable statute of limitations.

4 **ARGUMENT**

5 **I. PLAINTIFF’S ARGUMENTS THAT CALHR’S STATUTE OF LIMITATIONS IN**
6 **SECTION 19815.8 DOES NOT APPLY TO PLAINTIFF’S SECTION 68203 CLAIMS**
7 **ARE WITHOUT MERIT.**

8 **A. The Text of Section 68203 Demonstrates That Plaintiff’s Complaint is “Based on or**
9 **Related to” Laws “Administered” by CalHR.**

10 Plaintiff asserts that the Legislature has not delegated any authority to CalHR to
11 “administer” section 68203. Plaintiff’s argument ignores the reality that the Legislature has
12 delegated such authority in the plain language of section 68203 itself. “Because the statutory
13 language is generally the most reliable indicator of legislative intent, we first examine the words
14 themselves, giving them their usual and ordinary meaning and construing them in context. [Citation
15 omitted.] When statutory language is clear and unambiguous, there is no need for construction and
16 courts should not indulge in it. [Citation omitted.]” (*Esberg v. Union Oil Co.* (2002) 28 Cal.4th
17 262, 268.) Plaintiff’s argument also ignores the fact that its Complaint is related to other laws
18 administered by CalHR besides section 68203.

19 Notwithstanding Plaintiff’s narrow focus on the term “administer,” section 19815.8 broadly
20 applies to all legal actions and remedies “*based on or related to any law*” administered by CalHR.
21 (Emphasis added; Gov. Code, § 19815.8, subd. (a).) As an initial matter, Plaintiff concedes the fact
22 that CalHR’s authority to calculate the “average percentage salary increase” under section 68203
23 that is used to set judicial salary increases derives directly from its unquestioned authority over state
24 employee salaries. (Plaintiff’s Points and Authorities in Opposition to Demurrer (Opposition), pp.
25 12-13; see e.g., Gov. Code, §§ 19825, 19826, 19829, 19836, 19849, 19851.) Therefore, at the very
26 least, Plaintiff’s complaint “is related to” numerous statutory provisions administered by CalHR,
27 separate and apart from section 68203, which allow CalHR to set such salaries.

28 Further, and most fundamentally, section 68203 itself constitutes a law administered by
CalHR. There is no dispute that under section 68203, CalHR is expressly authorized to calculate

1 the “average percentage increase” for state employees, and then to direct the State Controller to
2 increase judicial pay by the calculated amount. (Gov. Code, § 68203, subs. (a), (b)(1), (c).)
3 Moreover, as detailed in its demurrer, CalHR’s statutory authority to issue pay letters exists
4 independently of section 68203. (See CalHR’s MPA’s in Support of Demurrer (Demurrer), pp. 13-
5 14; see also Gov. Code, § 19815.4; *Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1322, 1341;
6 *Gilb v. Chiang* (2010) 186 Cal.App.4th 444, 451-452, 457, 469-472.) Here, Plaintiff’s writ of
7 mandate challenges the pay letters issued by CalHR over the past several years, which allegedly
8 resulted in the underpayment of salaries to judges. (Complaint, ¶¶ 24, 82.b, 93.) Thus, Plaintiff’s
9 Complaint is also “based on or related to” the general laws administered by CalHR which authorize
10 it to issue pay letters.

11 In addition, subdivision (b)(2) of section 68203 provides that the “average percentage salary
12 increase” that is calculated for state employees in the current fiscal year “shall be reduced by the
13 average percentage salary decrease resulting from the furlough or enrollment in a personal leave
14 program of California state employees in that current fiscal year, *as determined by the Department*
15 *of Human Resources, in consultation with the Department of Finance.*” (Emphasis added.) Thus,
16 CalHR is specifically authorized by section 68203 to make determinations “in consultation” with
17 the Department of Finance regarding the implementation of furloughs and personnel leave
18 programs, and in conjunction with its other duties under section 68203. Given the plain language of
19 the statute empowering CalHR to calculate pay increases, to issue pay letters, and to make related
20 determinations on furloughs and personal leave programs, it defies logic for Plaintiff to argue that
21 CalHR does not administer section 68203.

22
23 **B. Application of Section 19815.8 is Not Limited to Discretionary Functions
Performed by CalHR.**

24 According to Plaintiff, however, CalHR does not administer section 68203 because its duties
25 to calculate the “average percentage salary increase” and report the average to the State Controller
26 are purportedly mere ministerial duties. (Opposition, pp. 7, 11-13.) As an initial matter, CalHR
27 disagrees that it lacks discretion with regard to determining precisely how to calculate the “average
28 percentage salary increase.” However, even assuming arguendo that Plaintiff is correct about this,

1 Plaintiff has proffered no legal authority to support its claim that section 19815.8 applies only to
2 laws “administered” by CalHR that are discretionary in nature. In fact, there is no such limitation
3 imposed in section 19815.8, which by its clear terms is broad in scope and applies to all legal
4 actions “based on or related to any law administered by” CalHR.

5 Also, section 19815.8 expressly applies to writs, which is the typical legal vehicle used to
6 compel the performance of a ministerial duty. (Gov. Code, § 19815.8, subd. (a) [action must be
7 commenced within one-year after the “ground for issuance of any *writ* or legal remedy first arose”];
8 Code Civ. Proc., § 1085; *Rodriguez v. Solis* (1991) 1 Cal.App.4th 495, 501 [Generally, traditional
9 mandamus may only be used to compel performance of a ministerial duty].) Thus, section 19815.8
10 by its plain terms is *not* limited to discretionary functions, but rather applies to any laws concerning
11 CalHR’s duties, responsibilities, and jurisdiction, including those arising under section 68203.

12
13 **C. CalHR Has Not Argued That the Legislature Has Delegated All its Authority to Set
Judicial Salaries to CalHR.**

14 Plaintiff also asserts that there is no statute which delegates to CalHR “the authority over
15 judicial salaries,” as it is the Legislature alone that sets judicial salaries. (Opposition pp. 10, 12.)
16 This assertion appears to stem from CalHR’s statement in the demurrer that its “administration of
17 section 68203 is consistent with CalHR’s salary-setting authority for state employees.” (Demurrer,
18 p. 12.) However, CalHR has never asserted that the Legislature has delegated all of its authority
19 with respect to judicial salaries to CalHR. What CalHR has asserted is that through section 68203
20 the Legislature has imposed various statutory duties on CalHR, including to calculate the “average
21 percentage salary increases” for state employees which is used to set judicial officer salaries
22 through CalHR’s issuance of a pay letter to the State Controller’s Office. The fact that CalHR does
23 not control all facets of judicial pay does not diminish its clear role in administering section 68203
24 and thereby triggering CalHR’s one-year statute of limitations provision.³

25
26 ³ Plaintiff also asserts that the Legislature is capable of indicating when a statute is
27 “administered” by CalHR, and cites examples of specific sections where it references CalHR
28 “administering” various statutes (Opposition, p. 11, fn. 6), seemingly to infer that the absence of the
word “administer” in section 68203 establishes it is not administered by CalHR. However, this
argument fails because there are a number of statutes administered by CalHR that do not contain the
word “administer.” (See e.g., Gov. Code, §§ 19822.5, 19825, 19826, 19839, 19843, 19845.)

1 Moreover, CalHR detailed its traditional salary-setting authority and functions to
2 demonstrate that this statute implicates traditional CalHR authority and responsibilities, and to
3 explain why the Legislature likely delegated to CalHR the administration of section 68203 in the
4 first instance. Indeed, Plaintiff concedes this latter point in its opposition brief. (Opposition, pp.
5 11-12.) Therefore, the fact that CalHR maintains authority over state employee salaries ultimately
6 supports CalHR’s assertion that this action “is related to” numerous laws administered by CalHR.

7 **II. CALHR’S DEMURRER SHOULD BE SUSTAINED BECAUSE PLAINTIFF’S**
8 **CAUSES OF ACTION ARE PRIMARILY PECUNIARY IN NATURE AND ARE**
9 **NOT EXEMPTED FROM THE GOVERNMENT CLAIMS ACT.**

10 Plaintiff does not dispute that she did not comply with the presentation requirements of the
11 Government Claims Act (Act; Gov. Code, § 900 et seq.) prior to filing this lawsuit. Thus, if the
12 Court finds that Plaintiff’s causes of action are not exempted from the Act, CalHR’s demurrer must
13 be sustained and Plaintiff’s Complaint must be dismissed without leave to amend.

14 **A. The Primary Relief Sought by Plaintiff’s Causes of Action is for Monetary**
15 **Compensation.**

16 Plaintiff first asserts the Act’s presentation requirements apply only to “claims for money or
17 damages,” which Plaintiff claims not to seek in Plaintiff’s claims for declaratory relief and writ of
18 mandate. (Opposition, pp. 15-16.) Plaintiff asserts that Defendant’s “efforts to characterize the
19 requested relief as ‘pecuniary in nature’” cannot alter the fact that Plaintiff primarily seeks non-
20 monetary relief. (Opposition, p. 16.) Plaintiff’s arguments lack merit and, in fact, it is difficult to
21 imagine a legal action that could be more about “money or damages” than the instant matter. At its
22 core, this case presents the issue of judicial salaries – i.e., quite literally, how much “money” judges
23 should be paid – and the action also seeks to compel CalHR to issue a “pay letter” in order to secure
24 any relief awarded by the court. As explained in Defendant’s demurrer, Plaintiff’s causes of action
25 are rooted in a claim for not only prospective pay, but also retroactive pay dating back nearly a
26 decade and measuring an untold amount in financial damages. (Demurrer, pp. 19-20.) Plaintiff
27 asserts that CalHR’s argument regarding the declaratory relief claim is not well-taken because
28 CalHR has not provided authority where the courts look to potential future monetary relief to
analyze whether such declaratory relief actions constitute claims for “money or damages.”

1 (Opposition, pp. 15-16.) However, Plaintiff does not dispute that it seeks through its declaratory
2 relief action an increase in salaries for judges, both prospectively and retrospectively. (See e.g.,
3 *Hart v. Alameda County* (1999) 76 Cal.App.4th 766, 782 [declaratory relief action that is incidental
4 to monetary relief sought is subject to the Act].) Plaintiff also does not dispute that Plaintiff seeks
5 amended pay letters going back for many years to correct alleged underpayments to judges.
6 (Complaint, ¶¶ 82.b, 93; Prayer, ¶ 2.) Under these circumstances, Plaintiff’s argument that this
7 action does not involve money lacks all credibility.

8 Indeed, concessions in Plaintiff’s own opposition lay bare the fact that Plaintiff’s lawsuit is
9 primarily one for “money or damages.” In detailing its discussions with CalHR in an attempt to
10 demonstrate that Plaintiff has substantially complied with the Act, Plaintiff notes that her legal
11 counsel sent two separate written requests to CalHR’s Director for “information that would allow
12 Plaintiff and the Class Members to estimate the *amount of damages*.” (Emphasis added;
13 Opposition, pp. 19-20, fn. 10.) This is further proof the “non-monetary” forms of relief Plaintiff
14 requests are ultimately ancillary to the compensation Plaintiff seeks. Thus, Plaintiff’s claims remain
15 primarily for monetary relief to which the Act’s claim presentation requirements apply.

16 The relevant case law supports CalHR’s position on this issue. In fact, while invoking the
17 line of authority excepting certain claims such as for mandamus or declaratory relief from the Act
18 (Opposition, pp. 15-17), Plaintiff ultimately recognizes case authority, like *Loehr v. Ventura County*
19 *Community College Dist.* (1983) 147 Cal.App.3d 1071, 1081), where courts have rejected the
20 argument that the technical label placed on the types of claims raised by Plaintiff are dispositive,
21 and instead courts look to whether the primary relief sought is “pecuniary” or monetary in nature to
22 determine whether compliance with the Act is required. Plaintiff attempts to distinguish the facts
23 from *Loehr* as being “far afield” from the present case, by asserting that the causes of action in
24 *Loehr* sought monetary recovery for various alleged injuries such as for emotional distress and pain
25 and suffering, where here Plaintiff is supposedly only seeking a declaration of the parties’ rights and
26 the issuance of amended pay letters under section 68203. (Opposition, p. 17.)

27 However, in substance, there really is no difference from the relief sought in *Loehr* and by
28 Plaintiff, where the monetary relief sought by Plaintiff is not merely incidental to Plaintiff’s claims

1 for declaratory and mandamus relief. In contrast, this is not a situation similar to *Eureka Teacher's*
2 *Ass'n v. Board of Education* (1988) 202 Cal.App.3d 469, 474-476, where the court found plaintiff's
3 claim for backpay and fringe benefits was incidental to her request for reemployment and thus was
4 not a claim for money or damages within the scope of the Government Claims Act. The monetary
5 relief sought in the present case is clearly not incidental to the statutory claims Plaintiff raises but,
6 rather, the fundamental basis for the entire action.

7 **B. Plaintiff's Claims for Monetary Relief are Subject to the Government Claims Act.**

8 Plaintiff alleges that even if Plaintiff's claims are for "money or damages," the "money or
9 damages" Plaintiff seeks do not fall within the categories in section 905.2, subdivision (b)(3) for
10 which the Government Claims Act applies, because Plaintiff's claims are not based on an "express
11 contract" or an "injury." (Opposition, pp. 17-18.) Plaintiff bases her argument on the language of
12 section 905.2 requiring presentation of claims "For money or damages on express contract, or for an
13 injury for which the state is liable." (Gov. Code, § 905.2, subd. (b)(3).) In particular, Plaintiff
14 contends she does not allege an "injury," as that term is defined in section 810.8 to be subject to the
15 Act. That definition states: "Injury" means death, injury to a person, damage to or loss of property,
16 or any other injury that a person may suffer to his person, reputation, character, feelings or estate, of
17 such nature that it would be actionable if inflicted by a private person." (Gov. Code, § 810.8.)
18 Relatedly, Plaintiff also argues that because Plaintiff's claims are based on section 68203, this is not
19 a case that "could exist in an action between private persons" to come within the meaning of
20 "injury" in section 810.8. (Opposition, p. 18.) These arguments are not well-taken.

21 Section 905.2, provides in relevant part: "(b) There shall be presented . . . all claims for
22 money or damages against the state: . . . 3) . . . for an injury for which the state is liable." (Gov.
23 Code, § 905.2, subd. (b)(3).) Courts have broadly interpreted "money or damages" under this
24 provision as including all actions where the plaintiff is seeking monetary relief. (*Malear v. State*
25 (2023) 89 Cal.App.5th 213, 220; *Bates v. Franchise Tax Bd.* (2004) 124 Cal.App.4th 367, 383
26 (*Bates*); *Hart v. Alameda County, supra*, 76 Cal.App.4th at p. 778; see also Gov. Code, § 14659;
27 Cal. Code Reg., tit 2, § 631, subd. (h) ["There shall be presented to the Board all claims for money
28 or damages against the State: . . . (h) For any other injury for which the State is liable."].) Further,

1 the definition of “injury” in section 810.8 includes both “injury to a person” or “any other injury
2 that a person may suffer to his person . . . that would be actionable if inflicted by a private person.”
3 Thus, this definition of “injury” broadly covers an injury to a person.

4 Additionally, the Plaintiff’s argument that this action could not exist between “private
5 persons” so the Act does not apply fails as well. As noted in the California Law Revision
6 Commission Comment for section 810.8, “the purpose of the definition is to make clear that public
7 entities and public employees *may be held liable only for injuries* to the kind of interests that have
8 been protected by the courts in actions between private persons.” (Cal. Law Revision Com. com.,
9 West’s Ann. Gov. Code (2012 ed.) foll. § 810.8, p. 196; emphasis added; see also *Aubry v. Tri-City*
10 *Hospital District* (1992) 2 Cal.4th 962, 968 [“In defining ‘injury’ as it did, the Legislature set limits
11 on the injuries for which public bodies are liable.”]; *Delta Farms Reclamation Dist. v. Superior*
12 *Court* (1983) 33 Cal.3d 699, 710-711.) The purpose of the definition is therefore to limit public
13 entity liability, and not to operate as an exception to the claim filing requirements. For instance, in
14 *Bates*, several taxpayers brought suit against a tax board and other governmental entities for
15 damages resulting from alleged Information Practices Act (IPA) violations (i.e., another statutory
16 claim like this action), and the court required the plaintiffs to comply with the claim filing
17 requirements of Government Claims Act. (*Bates, supra*, 124 Cal.App.4th at pp. 373-374, 383, 387.)
18 Moreover, in *Malear v. State, supra*, 89 Cal.App.5th 213, the court ruled there was substantial
19 compliance with the Act in a putative class action where prisoners of a state correctional institution
20 claimed the state failed to reasonably provide medical care for them following an outbreak of
21 COVID at the prison. (*Id.* at pp. 218-219, 221.) It is highly doubtful that such legal actions could
22 be brought between private citizens either, and yet, the courts in both cases required the plaintiffs to
23 satisfy the claims presentation requirements under the Act.

24
25 **C. Plaintiff’s Correspondence to CalHR Regarding Section 68203 Does Not Excuse
26 Plaintiff from Complying with the Act.**

27 Plaintiff contends that in the event Plaintiff’s claims are subject to the Government Claims
28 Act, CalHR’s demurrer still should not be sustained because two letters Plaintiff’s counsel sent to
CalHR’s Director involving section 68203 calculations constitute “substantial compli[ance]” with

1 the Act. (Opposition, p. 19.) It is well-settled that exceptions to the Act must be narrowly
2 construed. “Exceptions to the filing requirement not specifically enumerated in the Government
3 Claims Act have occasionally been allowed, but only where the claim is based on a statute or
4 statutory scheme that includes a functionally equivalent claim process[.]” (*Lozado v. City and*
5 *County of San Francisco* (2006) 145 Cal.App.4th 1139, 1153, quoting *Gatto v. County of Sonoma*
6 (2002) 98 Cal.App.4th 744, 764.) Courts have generally held that compliance with the Government
7 Claims Act will only be excused where the nature and character of the alternative procedure
8 contains the same statutory protections found in the Act, including investigation, mediation, and
9 enforcement by a neutral third-party. (See, e.g., *Gatto v. County of Sonoma, supra*, 98 Cal.App.4th
10 at p. 764; *Bates, supra*, 124 Cal.App.4th at pp. 383-384.) The existence of an alternate statutory
11 exhaustion scheme is important because it serves as evidence of the Legislature’s intent to supplant
12 the Act. (See *Gehman v. Superior Court* (1979) 96 Cal.App.3d 257, 262 disapproved on different
13 grounds in *People ex rel. Dept. of Transportation v. Superior Court* (1980) 26 Cal.3d 744, 759, fn.
14 5 [“it is for the Legislature to decide what actions are exempt from the claims statutes.”].)

15 In this case, however, Plaintiff has failed to exhaust any legislatively authorized alternative
16 process to the claims presentation process under the Act. As apparent from the above authorities,
17 Plaintiff’s legal counsel writing a couple of letters to CalHR to address Plaintiff’s concerns over
18 CalHR’s calculation under section 68203 does not satisfy the high standard of demonstrating a
19 functionally equivalent claim process that would excuse Plaintiff’s compliance with the Act.
20 Accordingly, Plaintiff’s argument contending substantial compliance must be rejected.

21
22 **III. IN THE EVENT THE COURT FINDS THE COMPLAINT WAS TIMELY FILED,**
23 **DEFENDANT’S MOTION TO STRIKE SHOULD BE GRANTED AS TO THOSE**
24 **ALLEGATIONS THAT SEEK A REMEDY OUTSIDE THE APPLICABLE**
25 **STATUTE OF LIMITATIONS.**

26 As already addressed, the statute of limitations under section 19815.8 applies to the
27 Complaint, which is time-barred. However, in the event the Court finds that the Complaint is not
28 time-barred, Defendant’s motion to strike should be granted as to those paragraphs requesting relief
that fall outside of the applicable statute of limitations. For instance. Plaintiff argues that the three-
years statute of limitations in Code of Civil Procedure section 338, subdivision (a), applies to

1 Plaintiff's Complaint, and thus Plaintiff's claims are timely-filed within this statute of limitations.
2 (Opposition, pp. 7, 14.) As set forth in CalHR's prior briefing in this matter, CalHR disagrees and
3 urges the Court to find section 19815.8 to be the applicable limitations statute. (See CalHR's Points
4 and Authorities in Support of Motion to Strike, pp. 9-13.) Yet, even if the Court finds Plaintiff's
5 Complaint is timely filed because the more generic three-year statute of limitations somehow
6 applies, the Court should still grant CalHR's motion to strike and prevent Plaintiff from seeking any
7 relief which predates the three-year statutory period.⁴

8 Finally, as CalHR has argued, the delayed discovery rule does not apply here because
9 expiration of the one-year statute of limitations under section 19815.8 occurred after Plaintiff first
10 became "aware" of the alleged statutory breach in August 2023.

11 12 CONCLUSION

13 For all the aforementioned reasons, Defendants respectfully request the Court sustain
14 Defendants' demurrer and dismiss the Complaint in its entirety without leave to amend, or in the
15 alternative, grant Defendants' motion to strike.

16
17 Dated: February 18, 2025

Respectfully submitted,
18 FROLAN R. AGUILING
Chief Counsel

19 SANDRA L. LUSICH
Deputy Chief Counsel

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21 By: Ronald Pearson
22 RONALD R. PEARSON
23 Labor Relations Counsel
24 Attorneys for Defendants and Respondents

25
26 ⁴ Plaintiff falsely claims that CalHR has acknowledged that "Plaintiff did not discover 'until
27 in or around August 2023,' that CalHR had stopped including SSAs in the calculation of 'average
28 percentage salary increases.'" (Opposition, p. 14.) CalHR acknowledges no such thing. It is a
well-settled rule of law that the reviewing court treats a demurrer as admitting all material facts
properly pleaded, but not the truth of contentions, deductions, or conclusions of law. (*Aubry v. Tri-
City Hospital Dist.*, *supra*, 2 Cal.4th at pp. 966-967.) Thus, for purposes of this demurrer and
motion to strike only, CalHR assumes that Plaintiff's allegation is true.