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SUPERIOR COURT
OF CALIFORNIA
SACRAMENTO COUNTY

**SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO**

NANCY MICHAELS,

Plaintiff,

v.

CALIFORNIA PUBLIC EMPLOYEES
RETIREMENT SYSTEM (CALPERS);
MELINDA LORENZ-ANDERSON (née
LORENZ), an individual; DOE 1 AKA STATE
PERSONNEL BOARD; and DOES 2 through
100, inclusive,

Defendants.

) Case No. 34-2017-00223756

) Complaint Filed: December 13, 2017

) **SECOND AMENDED COMPLAINT FOR
DAMAGES AND EQUITABLE RELIEF;
REQUEST FOR JURY TRIAL:**

-) (1) VIOLATION OF STATUTE;
) (2) AGE DISCRIMINATION IN
) VIOLATION OF GOVERNMENT
) CODE § 12940(a);
) (3) INVASION OF PRIVACY;
) (4) NEGLIGENCE;
) (5) INTENTIONAL INFLICTION OF
) EMOTIONAL DISTRESS; AND
) (6) NEGLIGENT INFLICTION OF
) EMOTIONAL DISTRESS

COMES NOW PLAINTIFF NANCY MICHAELS, who alleges as follows:

PARTIES

1. Plaintiff NANCY MICHAELS (hereafter "Michaels" or "Plaintiff") is a fifty-nine (59) year old woman who has been employed in State service for approximately forty (40) years. Michaels has a

1 husband, Richard Reed (hereafter "Reed"), who is a labor consultant and representative for California
2 firefighters. Michaels and Reed have seven (7) children.

3 2. Defendant CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM (hereafter
4 "CalPERS") is an agency in the California executive branch that manages pension and health benefits
5 for California public employees and retirees. CalPERS manages the largest public pension fund in the
6 United States, with approximately \$359 billion in assets, and is located at 400 Q Street in Sacramento,
7 California. At all times relevant herein, the Department of Human Resources has had a delegation
8 agreement with CalPERS whereby it has delegated unlawful appointment authority to CalPERS.

9 3. Defendant MELINDA LORENZ-ANDERSON (née Lorenz) (hereafter "Lorenz") is sued in her
10 individual capacity. On information and belief, and at all relevant times hereto, Lorenz has resided in
11 Folsom, California. From approximately the Fall of 2011 through February of 2016 when she went out
12 on extended leave, Lorenz held a Staff Services Manager I position in CalPERS IT HR and a Staff
13 Information Systems Analyst position in CalPERS IT.

14 4. Defendant DOE 1 AKA STATE PERSONNEL BOARD (hereafter the "SPB") is a California
15 agency responsible for administration of the merit-based civil service employment system for California
16 state agencies. The SPB provides direction to departments through simplifying civil service laws, rules,
17 and policy. The SPB also investigates and adjudicates alleged violations of civil service law which are
18 filed by employees, applicants, and members of the public. The SPB is located at 801 Capitol Mall in
19 Sacramento, California. At all times relevant herein, the Executive Officer of the SPB has been, and
20 currently is, Suzanne M. Ambrose.

21 5. The true names and capacities of Defendants DOES 2 through 100, inclusive, are unknown to
22 Plaintiff at this time and, thus, these Defendants are sued as DOES herein. Plaintiff is informed and
23 believes, and alleges herein based upon such information and belief, that each DOE Defendant is, and
24 was at all relevant times, acting as an individual or the principal, agent, master, servant, employer,
25 employee, officer, representative, joint venturer, alter ego, partner, associate, assignee, successor-in-
26 interest or such similar capacity of one or more of the Defendants herein, and was acting within the
27 course, scope and authority of such relationship, or alternatively, acted in such a manner that they are
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1 responsible in some manner for the acts, wrongs, omissions and damages suffered by Plaintiff and
2 thereby proximately caused injuries and damages to Plaintiff as alleged herein. Plaintiff will amend this
3 Complaint to the true names of each DOE Defendant when ascertained. Each of the causes of action
4 alleged herein is alleged against each DOE Defendant, jointly and severally.

5 6. As used herein, the term "Defendants" shall refer to all the Defendants in the action collectively
6 unless otherwise specifically set forth in the allegation.

7 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

8 7. Michaels has exhausted her administrative remedies as required under the Fair Employment and
9 Housing Act (hereafter "FEHA") by timely filing her charges of discrimination with the Department of
10 Fair Employment and Housing (hereafter "DFEH") and obtaining her Private Right to Sue Letter from
11 the DFEH. **Plaintiff's DFEH Complaint with her Right to Sue letter dated September 7, 2017, is**
12 **appended hereto as Attachment "1" and is incorporated herein by reference.** Michaels has timely
13 filed suit thereon within one year from the issuance of the Right to Sue letter pursuant to California
14 Government § 12965(b).

15 8. Michaels has exhausted any applicable remedies she was required to exhaust with the California
16 Labor Commissioner prior to the institution of this action.

17 9. Michaels has timely filed this action with respect to each cause of action alleged herein.

18 **COMPLIANCE WITH CLAIMS PRESENTATION REQUIREMENT OF CALIFORNIA** 19 **GOVERNMENT TORT CLAIMS ACT**

20 10. The primary function of the California Government Tort Claims Act is to apprise the
21 governmental body of imminent legal action so that it may investigate and evaluate the claim(s) and
22 where appropriate, avoid litigation by settling meritorious claims. (*Elias v. San Bernardino County*
23 *Flood Control Dist.* (1977) 68 Cal.App.3d 70, 74.) The act should not be applied to snare the unwary
24 where its purpose has been satisfied. (*Ibid.*) Consequently, a test of substantial rather than strict
25 compliance should be employed in evaluating whether a plaintiff has met the demands of the act, and if
26 the claim satisfies the purpose of the act without prejudice to the government, substantial compliance
27 with be found. (*Ibid.*)

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1 11. Pursuant to the California Government Tort Claims Act, on or about June 8, 2017, Michaels filed
2 claims against Defendants CalPERS and Lorenz for wrongful termination, wrongful termination in
3 violation of public policy, retaliation, age discrimination, whistleblower retaliation, violation of due
4 process, invasion of privacy, negligence, defamation per se, defamation per quod, intentional infliction
5 of emotional distress, and negligent infliction of emotional distress. Michaels attached 230 pages of
6 documentation to her Government Tort Claim to detail the specific acts and/or omissions giving rise to
7 Defendants CalPERS and Lorenz's liability.

8 12. On or about June 14, 2017, the California Department of General Services notified Michaels that
9 it was rejecting her claims due to Michaels' claims involving complex issues beyond the scope of
10 analysis and legal interpretation typically undertaken by the Government Claims Program and advising
11 Michaels that she had the right to initiate court action to further pursue these claims. **The Government**
12 **Claims Program's June 14, 2017, rejection of Michaels' claims is appended hereto as Attachment**
13 **"2" and is incorporated herein by reference.** Michaels has timely filed suit thereon within six (6)
14 months from the issuance of the Government Claims Program's rejection notice pursuant to California
15 Government Code § 945.6.

16 13. On or about July 3, 2018, Michaels timely filed a Government Claim Form against the SPB for
17 its March 8, 2018, decision to uphold CalPERS' May 4, 2017, voiding of Michaels' May 3, 2016,
18 appointment to the Data Processing Manager II classification. The Government Tort Claim included
19 over 200 pages of attachments documenting in detail the specific acts and/or omissions giving rise to the
20 SPB's liability.

21 14. On or about August 8, 2018, the California Department of General Services notified Michaels
22 that it was rejecting her claims due to Michaels' claims involving complex issues beyond the scope of
23 analysis and legal interpretation typically undertaken by the Government Claims Program and advising
24 Michaels that she had the right to initiate court action to further pursue these claims. **The Government**
25 **Claims Program's August 8, 2018, rejection of Michaels' claims is appended hereto as Attachment**
26 **"3" and hereby incorporated by reference.** Michaels has timely filed suit thereon within six (6)
27 months from the issuance of the Government Claims Program's rejection notice pursuant to California
28 Government Code § 945.6.

1 15. Michaels has complied with the claims-presentation requirements of the California Government
2 Tort Claims Act for all causes of action alleged herein.

3 **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

4 16. Michaels began her career at CalPERS in December 1980, working as a Legislative Analyst in
5 the Office of Government Affairs. After a brief stint working for the California State Employees'
6 Association from 2002 to 2008, Michaels returned to CalPERS in the spring of 2008. Michaels worked
7 in the employment classification of a Staff Services Manager (hereafter "SSM") I from September 1,
8 2009, through February 26, 2016, in various CalPERS divisions.

9 17. In September 2014, Michaels was offered and accepted an out-of-class assignment as a Data
10 Processing Manager (hereafter "DPM") II in the CalPERS Information Technology Services Branch.
11 This out-of-class assignment was initially scheduled to last from September 19, 2014, through February
12 1, 2015, but was ultimately extended through February 8, 2015.

13 18. After Michaels' out-of-class assignment formally ended on February 8, 2015, Michaels
14 continued working out-of-class as a DPM II by performing the same workload, duties, and staff
15 management. She also acquired additional managerial duties, additional assignments, and staff.

16 19. In February 2016, CalPERS requested that Michaels formally apply for the permanent DPM II
17 classification.

18 20. Michaels took the civil service exam for the classifications of both DPM I and DPM II on
19 February 24, 2016, and passed both with a score of ninety-five percent (95%).

20 21. Michaels submitted her application for the DPM II classification to CalPERS via email on
21 February 26, 2016. Due to technical difficulties CalPERS was experiencing on February 26, 2016, the
22 state Examination and Certification Online System (hereafter "ECOS") was prevented from receiving
23 Michaels' application until February 29, 2016. Despite the February 26, 2016, deadline for application
24 submissions, CalPERS confirmed with Michaels that her application for the DPM II classification was
25 timely filed as Michaels had actually submitted her application on February 26, 2016.

26 22. In February 2016, Defendant Lorenz went out on an extended approved leave.

27 23. On March 24, 2016, CalPERS notified Michaels that the experience reflected on her application
28 did not meet the minimum qualifications for the DPM II classification. CalPERS requested that

1 Michaels submit additional information concerning her professional experience to the CalPERS Exams
2 Unit for review. Michaels timely complied with CalPERS' request.

3 24. On April 18, 2016, CalPERS Information Technology Manager Brenda Bridges-Cruz conducted
4 a review of Michaels' qualifications for the DPM II classification and concluded that, based on
5 Michaels' experience as the Manager of CalPERS' Document Distribution Center, Operations Support
6 Services Division, Michaels' duties of "direct oversight of 1 supervisor with 23 subordinate staff and 5
7 direct report analys[ts]" satisfied the minimum qualifications for the DPM II classification if that
8 experience had been for at least one year. Michaels held these duties for three-and-a-half years.

9 25. On April 19, 2016, CalPERS issued a second letter notifying Michaels that "[a]fter re-review, it
10 has been determined that you do meet the Minimum Qualifications for the classification of Data
11 Processing Manager II exam based on the additional information provided."

12 26. Also contained within CalPERS' April 19, 2016, correspondence was an instruction that
13 Michaels should disregard CalPERS' previous letter. Based on the information and documents that
14 Michaels received at the time, it was unclear what CalPERS meant by "the previous letter." A year later,
15 in response to a request for documents under the Public Records Act, CalPERS produced a letter to
16 Michaels dated April 13, 2016, stating that the department had made a final determination that the
17 additional information Michaels submitted was insufficient to qualify her for the DPM II classification
18 and that CalPERS was withholding her from eligibility. However, CalPERS never served the April 13,
19 2016, letter on Michaels during the hiring process for the DPM II classification, and Michaels never
20 received it.

21 27. On information and belief, the April 13, 2016, letter is the letter CalPERS was referring to in its
22 April 19, 2016, letter.

23 28. On May 2, 2016, Jeannette Brazil (hereafter "Brazil"), the head of the CalPERS Information
24 Technology Performance and Accountability division and a DPM IV, called Michaels and tentatively
25 offered her the DPM II position. During this telephone call, Michaels verbally accepted the DPM II
26 position.

27 29. On May 3, 2016, CalPERS, in good faith, formally offered, and Michaels, in good faith, formally
28 accepted, in writing, the appointment to the DPM II classification.

1 30. California Government Code § 18525 defines the term “appointment” and explicitly provides
2 that “[a]ppointment” means the offer to and acceptance by a person of a position in the State civil
3 service in accordance with this part.”

4 31. Based on Government Code § 18525, Michaels’ official date of appointment to the DPM II
5 classification was May 3, 2016. Because Michaels was already performing the duties of a DPM II at the
6 time of her appointment, there was no noticeable or physical transition to the position. Despite
7 Michaels’ May 3, 2016, acceptance of CalPERS’ offer for the DPM II position, Michaels’ “start” date
8 for the DPM II classification was improperly recorded by CalPERS as May 5, 2016.

9 32. On information and belief, at the time of Michaels’ appointment, Michaels was never presented
10 with or requested to sign a Notice of Personnel Action for her appointment to the DPM II classification.
11 On information and belief, Michaels has never signed a Notice of Personnel Action for her May 2016
12 appointment to the DPM II classification.

13 33. Michaels received exemplary performance evaluations throughout her probation. She easily
14 completed her one-year probationary period based on the number of hours actually worked because
15 Michaels consistently worked between ten (10) to fourteen (14) hours each workday. CalPERS’ practice
16 has been to allow a probationary employee to qualify based on the number of hours worked, including
17 after business hours and weekends and holidays.

18 34. On information and belief, Defendant Lorenz was determined to have completed her
19 probationary period based upon the “hours” she worked rather than the actual six month probationary
20 period. According to Section 321 in Title 2 of the California Code of Regulations, the probationary
21 period can be properly satisfied based upon the following hourly guidelines: “... until the probationer has
22 worked the required number of hours or 1680 [hours] if serving a one year probationary period.”
23 Michaels has computed that she worked approximately 2450 hours during her year in the DPM II
24 position.

25 35. Regardless of the number of hours she actually worked, Michaels also completed 367 days as a
26 DPM II from the time of her May 3, 2016, appointment through when she was notified that her
27 appointment was unlawful on May 4, 2017, and thus passed probation by the twelve (12) month marker
28 as well.

1 36. As of May 4, 2017, Michaels was a permanent employee and had a vested property interest in
2 her continued employment as a DPM II.

3 37. In 2014, 2015, and 2016, various CalPERS employees filed claims against Defendant Lorenz for
4 hostile behavior and bullying in the workplace. Michaels was compelled by CalPERS, CalPERS' Legal
5 Office (hereafter "LEGO"), CalPERS Human Resources Department, the Equal Employment
6 Opportunity Office, and the Attorney General's office to cooperate with their investigations, answer
7 questions, and give testimony regarding these numerous investigations into Defendant Lorenz. Michaels
8 complied with the instruction she was given and cooperated accordingly.

9 38. Michaels did not know Lorenz personally, did not work with Lorenz on a regular basis, and has
10 had no communications or interactions with Lorenz following January 2016. In May of 2016, when
11 Lorenz was out on extended leave, Michaels was compelled to attend an interview with a Worker's
12 Compensation investigator regarding a Worker's Compensation stress claim filed by Defendant Lorenz.
13 During this interview, Michaels was largely asked questions pertaining to Lorenz's workplace
14 behaviors, how Lorenz treated her subordinate employees, and Michaels's personal observations of
15 Lorenz's workplace behavior.

16 39. In 2016, on a date prior to September 19, 2016, Lorenz, in violation of numerous statutes and
17 CalPERS' policies and procedures, and in conscious disregard of Michaels' rights and with the wrongful
18 intent of injuring Michaels, maliciously invaded Michaels' privacy by unlawfully accessing and copying
19 Michaels' confidential personnel records for retaliatory purposes.

20 40. Following Lorenz's unlawful accessing and copying of Michaels' confidential personnel records,
21 on or about September 19, 2016, Lorenz dissemination Michaels' confidential records to the Secretary
22 of Government Operations Agency and to members of the California State Legislature alleging that
23 Michaels did not meet the minimum qualifications for the DPM II classification, that Michaels had
24 admitted to being complicit in being "pre-selected" and "a blatant illegal hire," that a manager in the
25 Human Resources Recruitment Section stated that Michaels was "not qualified," for the DPM II
26 position, and cited confidential information that Lorenz unlawfully obtained from Michaels' official
27 personnel file and CalPERS' confidential records and databases to support her accusations against
28 Michaels (the "Lorenz Accusation"). Defendant Lorenz was not authorized to access, copy, or use

1 Michaels' confidential personnel information and should have been restricted from accessing this
2 information within the CalPERS records and databases. On information and belief, the Lorenz
3 Accusation consisted of two (2) pages with five (5) attachments and an additional 182 pages of largely
4 confidential documentation about Michaels in general. Michaels was not notified that the Lorenz
5 Accusation had been filed or that it contained confidential personnel information pertaining to Michaels'
6 employment. Michaels did not learn of the existence of the Lorenz Accusation until over six (6) months
7 later in or about April of 2017. Michaels has been unable to obtain a complete, unredacted copy of the
8 Lorenz Accusation despite multiple attempts and Public Records Act requests for such information.

9 41. On October 13, 2016, Louisa Doi (hereafter "Doi") with the SPB emailed Tina Campbell, Chief
10 of the CalPERS Human Resources Division (hereafter "Campbell") to notify Campbell of the Lorenz
11 Accusation and that the SPB's Compliance Review Unit had been tasked to perform a special review
12 pursuant to Article VII, § 3 of the California Constitution and Government Code § 18661 with respect to
13 "filling of CalPERS appointments for 1) Ms. Nancy Michaels, DPM II *hired May 4, 2016* [emphasis
14 added]." Campbell did not notify Michaels that any such investigation was taking place or that the
15 Lorenz Accusation had been filed against her. Campbell also failed to correct Luisa Doi as to the official
16 date of Michaels' appointment.

17 42. As of no later than October 13, 2016, Defendants CalPERS (through Campbell) and the SPB had
18 actual knowledge that Defendant Lorenz had unlawfully obtained, copied, and subsequently
19 disseminated Michaels' confidential personnel information yet intentionally or negligently failed to take
20 any action to determine how Defendant Lorenz obtained the confidential personnel information
21 contained within the Lorenz Accusation. CalPERS and the SPB both intentionally or negligently failed
22 to notify Michaels of the breach of her confidential personnel information. CalPERS and the SPB
23 intentionally or negligently failed to take any action to protect Michaels from any further unlawful
24 accessing or distribution of her [Michaels's] confidential personnel information. Despite actual
25 knowledge of the confidential records breach, neither CalPERS nor the SPB notified law enforcement of
26 the breach of Michaels' confidential personnel information.

27 43. California state agencies are required by law to report certain computer crimes to the California
28 Highway Patrol (the "CHP") including, but not limited to, when a person knowingly accesses and

1 without permissions takes, copies, or makes use of any data from a computer, computer system, or
2 computer network, or takes or copies any supporting documentation, whether existing or residing
3 internal or external to a computer, computer system, or computer network. As of no later than October
4 13, 2016, CalPERS and the SPB had actual knowledge that Michaels' confidential personnel records had
5 been breached, copied, and disseminated by a CalPERS employee yet CalPERS and the SPB failed to
6 report this computer crime to the CHP.

7 44. In November 2016, while Defendant Lorenz was still out on extended leave, Lorenz filed a
8 workplace violence claim against Michaels, Christian Farland (hereafter "Farland"), and two other
9 CalPERS employees, Lori Kemp (hereafter "Kemp") and Lena Webb (hereafter "Webb"). Kemp and
10 Webb were both Michaels' subordinate employees at the time Lorenz filed the claim against them. The
11 specific claims set forth by Lorenz against Michaels were never disclosed to Michaels.

12 45. On information and belief, Kemp had previously been a subordinate employee of Lorenz back in
13 early 2014 and was one of the employees who filed a workplace violence/hostile work environment
14 claim against Lorenz due to Lorenz's considerable bullying of Kemp during the time Kemp was one of
15 Lorenz's subordinates.

16 46. As was required by Michaels' managerial position and duties, Michaels filed a workplace
17 violence claim against Defendant Lorenz on Kemp's behalf on August 28, 2015. In addition to the
18 workplace violation/hostile work environment claims filed by (or on behalf of) Kemp, CalPERS
19 employee Terrie Wilson (hereafter "Wilson") also filed a hostile workplace claim against Lorenz in
20 April of 2015 for Lorenz's bullying of Wilson and Lorenz's violation of Wilson's private HIPPA
21 information. Four other CalPERS employees also filed workplace violence complaints against Lorenz
22 (as well as against two other CalPERS employees, including Farland) in October of 2015 for
23 participating in or allowing bullying and hostile behavior to continue in the workplace, along with
24 unlawful hiring practices. Michaels was not one of the four employees who made these claims, however,
25 she, along with various other employees, was called upon to give testimony as a witness.

26 47. In February 2017, Michaels was interviewed by two attorneys from the Attorney General's
27 office (one of whom was Susan Slager) in regard to the workplace violence claim Lorenz had filed
28 against her. Michaels was represented by Richard Reed (hereafter "Reed"), her labor representative,

1 during this interview. The interview was audio recorded. During the February 2017 interview, Michaels
2 was questioned about her observations of Lorenz's behavior in the workplace.

3 48. On April 7, 2017, Michaels received a Merit Salary Adjustment for successfully performing in
4 her DPM II appointment.

5 49. On April 13, 2017, Doi contacted Michaels by telephone. Doi notified Michaels that she was
6 conducting an investigation and asked Michaels whether she [Michaels] had ever been promised
7 promotions at CalPERS. Michaels confirmed she had never been promised any promotions and that she
8 had always been promoted through the formal interview and merit process. Doi also asked Michaels if
9 she had ever talked to a State Compensation Insurance Fund (hereafter "SCIF") investigator. At no point
10 during their communication did Doi notify Michaels that she was investigating Michaels' May 2016
11 appointment to the DPM II classification.

12 50. Until Michaels received an "Initial Notification of Potential Unlawful Appointment" from
13 Campbell on April 14, 2017, Michaels had no idea that her minimum qualifications for the DPM II
14 classification were under investigation or that Defendant Lorenz had unlawfully accessed and copied her
15 [Michaels'] confidential personnel records and disseminated them along with allegations questioning
16 Michaels' professional reputation and employment.

17 51. The April 14, 2017, "Initial Notification of Potential Unlawful Appointment" informed Michaels
18 that she had until April 28, 2017, to submit all necessary documentation to the SPB to evidence that she
19 did in fact meet the minimum qualifications for the DPM II classification. This April 28, 2017, deadline
20 was later extended through May 1, 2017.

21 52. On April 17, 2017, the Attorney General's office (via attorney Susan Slager) confirmed via
22 telephone call to Reed that Lorenz's November 2016 workplace violence claim against Michaels was
23 unfounded.

24 53. On April 18, 2017, four days after receiving Campbell's email memorandum that alerted
25 Michaels to the existence of the Lorenz Accusation, Michaels submitted a Public Records Act request to
26 the SPB for a copy of the Lorenz Accusation. Michaels received a redacted copy of the Lorenz
27 Accusation from the SPB on April 27, 2017.

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1 54. On April 24, 2017, Michaels and Reed met with the Division Chief of the Technology Business
2 Management Division, Farland, to obtain further information regarding the April 14, 2017, "Initial
3 Notification of Potential Unlawful Appointment" Michaels had received from Campbell. In response to
4 Michaels' questions, Farland replied that "we thought you were going to retire." Michaels understood
5 Farland's comment to be a direct reference to her age and a stated intention for CalPERS to hire younger
6 employees.

7 55. CalPERS conducted a "subject matter expert review" ("SME") of Michaels' qualifications for
8 the DPM II classification in April 2017. According to CalPERS, Michaels' resume was submitted for
9 the SME review with her name, employer, and dates of service redacted, so that the SME would be
10 "blind," that is, so the expert would not know the identity of the employee whose materials were being
11 reviewed.

12 56. The SME expert submitted a report, dated April 27, 2017, which Michaels received in response
13 to a request for her "hiring package" relating to the DPM II appointment. The signature was redacted on
14 the copy that was produced to Michaels. In the report, the SME expert concluded that, after reviewing
15 Michaels's application materials and discussing the matter with CalPERS Human Resources team
16 leaders, Michaels met the minimum qualifications for the DPM II classification at the time she was
17 appointed on May 3, 2016.

18 57. When Michaels received the redacted Lorenz Accusation on April 27, 2017, Michaels learned
19 that Defendant Lorenz had unlawfully accessed and copied confidential records from Michaels'
20 personnel file and from CalPERS' confidential records and databases.

21 58. Defendant Lorenz could only have obtained substantial portions of the information contained in
22 the Lorenz Accusation by unlawfully accessing Michaels' OPF and/or CalPERS' confidential records
23 and databases. On information and belief, these breaches occurred in 2016 when Lorenz was on leave
24 and not authorized to be in the building.

25 59. Also on April 27, 2017, April Nielsen from CalPERS' Human Resources and Examination,
26 Classification & Outreach division confirmed via email to Michaels' representative that "Human
27 Resources has been able to finalize the review with the IT SME to re-validate and document in more

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1 detail how Ms. Michaels meets the minimum MQ's for the DPMII. The attached documents have been
2 provided to SPB in support of Ms. Michaels appointment to the DPMII."

3 60. On May 1, 2017, Michaels submitted additional documentation as requested to evidence that she
4 properly met the minimum qualifications for the DPM II classification at the time of her appointment on
5 May 3, 2016.

6 61. California Code of Regulations, Title 2, section 266(a)¹ provides that "[n]o corrective action
7 shall be taken on any appointment which has been in effect for one year or longer if both the
8 appointment power and the employee acted in good faith." Pursuant to California Code of Regulations,
9 Title 2, § 266(a) and Government Code § 18525, May 2, 2017, was the last date that Michaels'
10 appointment to the DPM II classification could have been lawfully voided since both parties were found
11 to have acted in good faith with respect to Michaels' appointment.

12 62. On May 3, 2017, Michaels's supervisor completed and signed off on Michaels' "Report of
13 Performance for Probationary Employee" for the DPM II position. Michaels received an overall rating
14 of "outstanding" on this report, the highest overall rating possible. In the "Comments to Employee"
15 section in this report, Michaels' supervisor commented that she "want[s] to congratulate you [Michaels]
16 on passing your final probation as a DPM II." Jeanette Brazil, the head of the Information Technology
17 Performance and Accountability division and a DPM IV, signed off on Michaels' "Report of
18 Performance for Probationary Employee" on May 3, 2017, as the "Reviewing Officer" for the Report.
19 Michaels also signed off on her probationary report on May 3, 2017.

20 63. On May 3, 2017, Campbell sent an email to Lori Gillihan at the SPB stating that she [Campbell]
21 had not yet received the SPB's findings [regarding whether Michaels did or did not meet the minimum
22 qualifications for the DPM II classification]. Because CalPERS and the SPB did not finalize or serve
23 Michaels with the "Unlawful Appointment Final Decision" until May 4, 2017, CalPERS and the SPB
24 violated the strict timeline imposed by California Code of Regulations, Title 2, § 266(a) for the voiding
25 of unlawful appointments.

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27 _____
28 ¹ Revised April 2, 2018 [operative July 1, 2018], now Code of Regulations, title 2, § 243.2(a)

64. On May 4, 2017, 367 days *after* Michaels's appointment to the DPM II position, Campbell notified Michaels of CalPERS' "Unlawful Appointment Final Decision" concerning such appointment.² The "Unlawful Appointment Final Decision" stated that, "[a]fter further review of your appointment, it has been determined the appointment was, in fact, unlawful" due to Michaels allegedly not meeting the minimum qualifications for the DPM II classification at the time of Michaels' appointment and that "[t]herefore, your [Michaels's] appointment to a DPM II cannot be permitted to stand, as you did not have eligibility to be appointed to the DPM II classification on May 5, 2016."

65. The May 4, 2017, "Unlawful Appointment Final Decision" inaccurately stated that the date of Michaels' appointment to the DPM II classification was May 5, 2016, despite the CalPERS Exam and Certification Online System ("ECOS") "Job Offer Report" and Michaels' Certified Appointment Report expressly providing that Michaels was offered and accepted the DPM II classification on May 3, 2016. The "Unlawful Appointment Final Decision" expressly stated that there was no evidence that Michaels had acted in anything other than good faith in accepting her appointment to the DPM II classification.

66. During Michaels's May 4, 2017, meeting with the Chief of the CalPERS Human Resources Division [Campbell], Campbell indicated that Michaels had not completed her probationary period for the DPM II classification. Michaels specifically refuted this and informed Campbell that her probationary period for the DPM II position had officially ended on May 2, 2017. Campbell responded by attempting to bully Michaels and behaved in an unprofessional manner toward Michaels throughout the meeting. When Michaels questioned Campbell as to the lost future wages Michaels would suffer as a result of being demoted from the DPM II classification, Campbell responded to the general effect of, "Christian [Farland] told me you were going to retire. I thought you were going to retire so future earnings are not an issue." Michaels again understood this comment to be a direct reference to her age and a stated intention for CalPERS to hire younger employees.

67. On May 16, 2017, Michaels conducted a review of her entire OPF.

68. On May 19, 2017, Michaels filed two (2) reports with CalPERS' Information Technology Services Branch (hereafter "ITSB") Information Security Office (hereafter "ISOF"). The first report

² At all times relevant herein, the Department of Human Resources has had a delegation agreement with CalPERS whereby it has delegated unlawful appointment authority to CalPERS.

1 Michaels filed was entitled "Information Security Incident Report for Physical Assets" and the second
2 was entitled "Information Security Incident Report for Non-Physical Assets." On May 22, 2017, Nestor
3 Sanchez from CalPERS' ISOF confirmed that both of Michaels's reports had been received and that
4 investigations were being initiated.

5 69. On May 23, 2017, Campbell emailed Michaels offering to assign Michaels "to the position of the
6 Data Processing Manager II for an Out-of-Class assignment in the Technology Business Management
7 Division (TBMD). This Out-of-Class assignment is for a period of up to one year, effective May 4,
8 2017, and may be terminated prior to May 3, 2018." Michaels declined to accept this out-of-class
9 assignment on the basis that she met the minimum qualifications for the DPM II position at the time of
10 her appointment on May 3, 2016; that she had already completed a year in the position; and that she had
11 a right to continue working in such position without being placed in such position as an "Out-of-Class
12 assignment."

13 70. On May 26, 2017, Michaels picked up a copy of her OPF and noticed substantial differences
14 between the documentation contained in the file she picked up on May 26, 2017, and the OPF she
15 reviewed on May 16, 2017. The OPF that Michaels received a copy of on May 26, 2017, was at least
16 one inch thicker than the file made available for Michaels' review on May 16, 2017, but was notably
17 missing Michaels' unsigned Notice of Personnel Action for the DPM II position as well as Michaels'
18 third and final probationary report approving Michaels' completion of probation for the DPM II
19 classification, both of which had been present when Michaels reviewed her OPF on May 16, 2017.

20 71. At all relevant times herein, CalPERS has refused or been unable to produce a signed copy of
21 Michaels' Notice of Personnel Action for the DPM II position.

22 72. On May 29, 2017, Michaels filed an "Ethics Report" via telephone regarding the actions of
23 Defendant Lorenz and Chief Campbell and the unlawful accessing and dissemination of information
24 from Michaels's OPF and CalPERS' confidential records and databases.

25 73. On May 31, 2017, Chief Campbell notified Michaels that, effective June 1, 2017, Michaels was
26 being demoted to the Staff Services Manager (hereafter "SSM") I vacancy in the Health Plan Funded
27 Services and Procurement Services Section in the Health Plan Administration Division. This Section is
28 extremely isolated from the rest of CalPERS and is often used to "warehouse" unwanted employees.

1 74. On June 2, 2017, Michaels submitted an appeal to the SPB regarding CalPERS' improper
2 finding that her May 3, 2016, appointment to the DPM II classification was an unlawful appointment.

3 75. On June 5, 2017, Michaels reported to the Health Plan Administration Division for her first day
4 of work as an SSM I in the Health Plan Funded Services and Procurement Services Section. Michaels
5 was assigned absolutely no work to perform and had no computer or necessary tools available to her that
6 would allow her to complete any work. Michaels was not provided with necessary badge accesses for
7 her position.

8 76. On June 7, 2017, Michaels contacted CalPERS' ISOF to obtain a status on the Incident Reports
9 she had previously filed. On June 8, 2017, Christopher Alexander from the ISOF responded to Michaels
10 that ISOF had spoken with LEGO (specifically Eric Asai and Kristi Griffiths) on May 31, 2017,
11 regarding the Incident Reports Michaels had filed and that LEGO directed ISOF to discontinue any
12 investigations with regard to Michaels's reports. Christopher Alexander also provided Michaels with the
13 "Case Notes" for ISOF's investigation into Michaels's reports which confirmed LEGO's direction to
14 ISOF to discontinue its investigations into Michaels's Incident Reports. Michaels understood this to
15 mean that CalPERS was refusing to conduct a good faith investigation into the breaches of her personnel
16 file as well as failing to properly protect her personal information from unauthorized access and/or
17 disclosure as required by California state law.

18 77. Also on June 7, 2017, Michaels received a notification from CalPERS investigator, Tara Moore
19 (hereafter "Moore"), that LEGO was "initiating an investigation into allegations reported to the Human
20 Resources Division involving alleged conduct that may be inconsistent with the CalPERS Workplace
21 Violence Prevention Policy, Employee Confidentiality Policy, Privacy Policy, Official Personnel File
22 Guidelines as well as CalPERS Core Values." Michaels was named as the complainant to the allegations
23 and was informed that she was scheduled to be interviewed regarding this investigation.

24 78. On June 9, 2017, more than one month after CalPERS voided Michaels' appointment, the SPB
25 sent a letter addressed to Campbell stating that Michaels' appointment to the DPM II classification must
26 be voided because Michaels did not meet the minimum qualifications for the classification. This
27 document was never provided to Michaels despite her Public Records Act requests and Michaels was

28 /////

1 not aware of its existence until CalPERS attached it as an exhibit to its September 2017 response to
2 Michaels' SPM appeal.

3 79. On June 13, 2017, Moore interviewed Michaels regarding Michaels's Incident Reports that her
4 [Michaels's] OPF had been unlawfully accessed and her personal information disseminated.

5 80. On or around June 14, 2017, Defendant Lorenz contacted CalPERS, specifically Sue Swenson,
6 to obtain information regarding Michaels's current position and placement in CalPERS.

7 81. On June 27, 2017, Michaels met with the Chief of the Health Plan Administration Division,
8 Kathy Donneson (hereafter "Donneson"), as part of a "meet and greet" following Michaels's demotion
9 to the SSM I position. During this meeting, Donneson explicitly told Michaels, "I was forced by Tina
10 Campbell to take you but I really don't want you here because you are not qualified for this job and
11 don't know anything about the area. I guess it's something that Tina [Campbell] and Liana cooked up.
12 But I'm guessing I didn't have a choice." Donneson also asked Michaels "how long it would take to get
13 this mess resolved" and "well, why don't you [Michaels] just retire?" Michaels understood this
14 comment to be a direct reference to her age and a stated intention for CalPERS to hire younger
15 employees.

16 82. Also, on June 27, 2017, Michaels provided Moore with additional information requested by
17 Moore, including: (1) the May 3, 2017, Report of Performance for Probationary Employee showing
18 Michaels's probation report was completed and signed on May 3, 2017; (2) the Certified Appointment
19 Report evidencing that Michaels was offered and accepted the DPM II position on May 3, 2016; (3) the
20 May 24, 2017, email from Chief Campbell to Michaels's representative at 9:45 p.m. requiring Michaels
21 to notify Campbell by May 29, 2017 [Memorial Day], regarding whether or not she wanted to be
22 appointed to an out of class assignment to the DPM II position; (4) Michaels's and her representative's
23 email correspondence with Campbell following Campbell's May 24, 2017, email; (5) email
24 correspondence between Michaels and ISOF regarding the Incident Report Michaels's filed on May 19,
25 2017, and ISOF's response that ISOF was directed to discontinue any investigations by LEGO on May
26 31, 2017, (6) an audio recording of the April 13, 2017, voicemail that Michaels received from Louisa
27 Doi with the SPB; and (7) Michaels's contemporaneous notes taken during her April 13, 2017,
28 telephone call with Louisa Doi.

1 83. Defendant Lorenz retired from CalPERS on or around August 2, 2017.

2 84. On August 16, 2017, Michaels filed a Public Records Act request with CalHR requesting “any
3 and all information, facts, and relevant transactions specific to Ms. Michaels and pertinent to her job
4 application for the Data Processing Manager II position at CalPERS . . .”

5 85. On August 23, 2017, Michaels emailed investigator Moore regarding the status of CalPERS’
6 investigation into the Incident Reports Michaels had filed three months earlier. Moore responded to
7 Michaels’s inquiry on August 25, 2017, that she had completed her investigation and provided her report
8 to CalPERS management.

9 86. On September 5, 2017, Michaels went out on an extended medical leave in order to undergo and
10 recover from a long-planned for surgery on her ankle.

11 87. On August 31, 2017, CalHR responded to Michaels’s Public Records Act request that CalHR
12 had only two documents responsive to Michaels’s request: “(1) an ‘Audit History’ based on the relevant
13 Job Application Record; and (2) a ‘Job Offer Report’ based on the relevant Job Application Record.”
14 The “Audit History” confirmed that Michaels had been determined to meet the criteria for the DPM II
15 classification on April 22, 2016, and the “Job Offer Report” confirmed that Michaels was appointed to
16 the DPM II classification on May 3, 2016, pursuant to California Government Code § 18525.

17 88. On September 7, 2017, Michaels filed her claims of discrimination with the California
18 Department of Fair Employment and Housing and was immediately issued a Right to Sue Notice.

19 89. On September 12, 2017, LEGO’s Supervising Investigator, Sean Espley (hereafter “Espley”)
20 sent Michaels an “Investigation Findings Memorandum.” This Memorandum expressly stated that,
21 “[t]he LEGO Investigations Unit conducted a thorough investigation including witness interviews and a
22 review of all documentation available surrounding these allegations. Based on all available evidence,
23 ***CalPERS substantiated the allegation that a drive containing personnel documents was improperly***
24 ***accessed without authorization.*** The remaining allegations were unsubstantiated [emphasis added].”

25 90. On September 13, 2017, Moore sent Michaels another Investigation Notice with the same form
26 language as the June 7, 2017, Investigation Notice. The September 13, 2017, Investigation Notice,
27 however, was with respect to the complaint Michaels filed with the California Department of Fair
28 Employment and Housing on September 7, 2017.

1 91. On September 18, 2017, CalPERS filed its response to Michaels' appeal to the SPB regarding
2 the voiding of her DPM II appointment. CalPERS alleged in its response that it voided Michaels's
3 appointment to the DPM II classification at the direction of the SPB following a special investigation by
4 the SPB's Policy and Compliance Review Division. CalPERS acknowledged within its response that
5 Michaels was offered the DPM II appointment on May 3, 2016, but unilaterally states that the
6 appointment did not become effective until May 5, 2016. As evidence, CalPERS attached the ECOS
7 "Job Offer Report" and the Notice of Personnel Action relating to Michaels' appointment to the DPM II
8 position. The "Job Offer Report" expressly states that the DPM II position was offered to and accepted
9 by Michaels on May 3, 2016, with a start date set for May 5, 2016. All three of these dates [offer,
10 acceptance, and start date] are reflected as being entered into the ECOS system on May 4, 2016. The
11 Notice of Personnel Action for Michaels' appointment to the DPM II classification lists May 5, 2016,
12 Michaels' start date. The Notice of Personnel Action was never signed by Michaels and was not
13 provided to Michaels until May of 2017 when she inspected her OPF.

14 92. On October 6, 2017, Michaels submitted a Declaration along with the documents she received
15 from CalHR in response to her Public Records Act request on August 31, 2017, to the State Personnel
16 Board as further information to be considered in her appeal against CalPERS' improper finding that her
17 May 3, 2016, appointment to the DPM II classification was unlawful.

18 93. On March 8, 2018, the SPB denied Michaels' appeal from her voided appointment (the "SPB
19 Ruling"). The SPB found that Michaels' appointment date was May 5, 2016, and that because her
20 appointment was voided on May 4, 2017, it was voided narrowly within the one year requirement. The
21 SPB's ruling expressly stated that "the State Controller's Office record, and her [Michaels'] signed
22 appointment papers, reflect Appellant's appointment date was May 5, 2016. Thus her official
23 appointment date was May 5, 2016." CalPERS did not produce any of Michaels' "signed appointment
24 papers" or the State Controller's Office record allegedly reflecting an appointment date of May 5, 2016.

25 **FIRST CAUSE OF ACTION**

26 **VIOLATION OF STATUTE**

27 **[Plaintiff v. CalPERS and SPB]**

28 94. Plaintiff realleges and incorporates each of the preceding paragraphs herein as though set forth in full.

1 95. Government Code § 18502 creates the Department of Human Resources and vests it with those
2 powers, duties, and authorities necessary to operate the state civil service system. At all times relevant
3 herein, the Department of Human Resources has had a delegation agreement with CalPERS whereby it
4 has delegated unlawful appointment authority to CalPERS.

5 96. The SPB is established by the California State Constitution and is charged with overseeing the
6 merit-based, job-related recruitment and selection process for the hiring of state employees. The SPB is
7 also tasked with providing direction to departments through simplifying civil service laws, rules, and
8 policy and for auditing departments for merit system compliance.

9 **Violation of Government Code § 19051**

10 97. Government Code § 19051 requires that “[c]ivil service appointments shall only be made to a
11 class that is appropriate for the duties, functions, and responsibilities that will be performed.”

12 98. Prior to her appointment as a DPM II, Michaels served in an SSM I classification. During this
13 time, Michaels was approved and certified to work in an out-of-class assignment as a DPM II from
14 September 19, 2014, to February 8, 2015.

15 99. From February 9, 2015, when Michaels’ certification for the out-of-class DPM II assignment
16 ended until May 3, 2016, when Michaels was formally appointed to the DPM II classification, Michaels
17 did not have a certified out-of-class assignment and was officially appointed to the SSM I classification.

18 100. During this time period, Michaels continued to perform the same out-of-class duties, functions,
19 and responsibilities that she performed throughout her out-of-class assignment as a DPM II.

20 101. As the appointing power, CalPERS is required by Government Code § 19051 to ensure that
21 each appointee performs only those duties, functions, and responsibilities that are properly assigned to
22 the appointee’s classification. CalPERS failed to discharge this statutorily imposed mandatory duty by
23 requiring Michaels to continue performing the duties, functions, and responsibilities assigned to a DPM
24 II despite her lower classification as an SSM I.

25 **Date of Appointment**

26 102. On May 3, 2016, CalPERS, in good faith, formally offered Michaels the DPM II classification,
27 and Michaels, in good faith, formally accepted such position, in writing. CalPERS’ ECOS “Job Offer
28 Report” for Michaels’ appointment to the DPM II classification, as well as Michaels’ Confidential

1 Certification Appointment Report for the DPM II position, both explicitly confirm that Michaels was
2 offered and accepted the DPM II position on May 3, 2016.

3 103. California Government Code § 18525 defines the term “appointment” and explicitly provides
4 that “[a]ppointment” means the offer to and acceptance by a person of a position in the State civil
5 service in accordance with this part.”

6 104. Pursuant to Government Code § 18525, the date of Michaels’ appointment was May 3, 2016.

7 **Violation of State Civil Service Act**

8 105. Government Code § 19050 provides, in relevant part, that “[t]he appointing power in all cases
9 not excepted or exempted by virtue of Article VII of the Constitution shall fill positions by appointment,
10 including cases of transfers, reinstatements, promotions, and demotions, *in strict accordance with this*
11 *part and the rules prescribed from time to time under this part*, and not otherwise [emphasis added].”

12 106. Article VII, section 1(b), of the California Constitution requires that all civil service permanent
13 appointments and promotions be made under a general system based on merit as ascertained by
14 competitive examination. The State Civil Service Act set forth in Government Code §§ 18500 et seq.
15 provides the implementing guidelines for this mandate to ensure that all appointments for the State civil
16 service are based upon merit and fitness as ascertained through practical and competitive examination.
17 Government Code § 18931 specifically requires the SBP to establish minimum qualifications as
18 mandatory evaluation criteria for each classification.

19 107. As an appointing power, CalPERS is required by the State Civil Service Act [Government Code
20 §§ 18500 et seq.] to make appointments in strict accordance with the State civil service statutes. In its
21 March 8, 2018, decision on Michaels’s appeal from voided appointment, the SPB ruled that Michaels
22 did not meet the minimum qualifications for her May 3, 2016, appointment to the DPM II classification.

23 108. Pursuant to the State Personnel Board’s March 8, 2018, decision, CalPERS failed to discharge
24 the mandatory duties set forth in the State Civil Service Act of a delegated appointment authority when
25 it appointed Michaels to the DPM II classification on May 3, 2016.

26 **Violation of California Code of Regulations, Title 2, § 266(a)**

27 109. On May 4, 2017, CalPERS, using its delegated unlawful appointment authority from the
28 Department of Human Resources, voided Michaels’ DPM II appointment in violation of California State

1 law and assigned Michaels to work in the lower SSM I classification within the less desirable Health
2 Plan Administration Division.

3 110. The May 4, 2017, official memorandum setting forth Michaels's "Unlawful Appointment Final
4 Decision" was on CalPERS letterhead, was signed by Tina Campbell as Chief of the CalPERS Human
5 Resources Division, and expressly stated that "[t]he California Public Employees' Retirement System,
6 Human Resources Division, initiated an investigation into your [Michaels's] possible unlawful
7 appointment on April 14, 2017" and that "it has been determined the appointment was, in fact,
8 unlawful."

9 111. The SPB was referenced within CalPERS' May 4, 2017, "Unlawful Appointment Final
10 Decision" memorandum to Michaels only as the proper venue for any appeal Michaels may decide to
11 file against CalPERS' "Unlawful Appointment Final Decision."

12 112. California Code of Regulations, Title 2, § 266(a) provides that:

13 When the Department [California Department of Human Resources] determines
14 that an appointment is unlawful, the Department shall determine the good faith
15 of the appointing power and the employee under section 249 and shall take
corrective action up to and including voiding the appointment, provided that:

16 (a) *No corrective action shall be taken on any appointment which has been*
17 *in effect for one year or longer* if both the appointing power and the
employee acted in good faith [emphasis added].

18 113. Section 266(a) of the California Code of Regulations, Title 2, expressly imposes a mandatory
19 duty on CalPERS, as the Department of Human Resources' delegated authority for unlawful
20 appointments, by explicitly requiring that no corrective action be taken on any appointment more than
21 one (1) year after the date that appointment was made if both CalPERS and the appointee acted in good
22 faith.

23 114. Because Michaels was appointed to the DPM II classification on May 3, 2016, CalPERS was
24 required by statute not to take any corrective action against Michaels' DPM II appointment subsequent
25 to May 2, 2017, unless CalPERS and/or Michaels acted in other than good faith with regard to her
26 appointment.

27 115. Michaels accepted the DPM II position in good faith. In CalPERS' May 4, 2017, "Unlawful
28 Appointment Final Decision" regarding Michaels's appointment to the DPM II classification, CalPERS

1 expressly stated that, “there is no evidence of other than good faith on your part . . .” The SPB explicitly
2 acknowledged in its SPB Ruling that CalPERS failed to properly discharge its mandatory duties under
3 the State civil service statutes to Michaels’ detriment, but ruled that both CalPERS and Michaels acted
4 in good faith with respect to her DPM II appointment.

5 In regards to CalPERS, it conducted no less than three MQ evaluations of
6 Appellant’s qualifications. It is clear that it attempted to ensure that Appellant
7 met the MQ’s for the DPM II. However, it is unknown why CalPERS allegedly
8 had Appellant execute the same DPM II job duties after her OOC [out-of-class
9 certification] expired, instead of returning her to her former SSM I duties. By
10 virtue of offering an OOC assignment, it can be reasonably concluded that
11 CalPERS was aware the position at hand required a DPM II and not a SSM I.
This action circumvents position allocation rules. While CalPERS’ actions are
arguably not in line with established policy or practice, and in fact, harmful to
Appellant, the AD determined the evidence does not support any purposeful
wrongdoing or fraudulent acts on behalf of CalPERS. (SPB Ruling, page 13.)

12 116. After unlawfully voiding Michaels’s appointment to the DPM II classification on May 4, 2017,
13 for failing to meet the minimum qualifications for such classification, CalPERS offered Michaels
14 another out-of-class assignment for a DPM II on May 23, 2017.

15 117. On May 17, 2017, CalPERS prepared a Notice of Personnel Action Report of Separation for
16 Michaels’ DPM II appointment which backdated the voiding of Michaels’ DPM II appointment from
17 May 4, 2017, to May 3, 2017.

18 **SPB Ruling**

19 118. California Government Code § 18701 provides:

20 The board [State Personnel Board] shall prescribe, amend, and repeal rules in
21 accordance with law for the administration and enforcement of this part and
22 other sections of this code over which the board is specifically assigned
23 jurisdiction. Due notice of the contents of the rules shall be given to appointing
24 powers and employees. Within a reasonable time after adoption, such rules and
amendments shall be published in such manner as the board determines, and
distributed free or at a reasonable cost.

25 119. Pursuant to Government Code § 18701, and as the Constitutionally-created entity charged with
26 enforcing the State civil service statutes, the SPB is under a mandatory duty to enforce Section 266(a) of
27 the California Code of Regulations, Title 2, and Government Code § 18525. Code of Regulations, Title
28 2, § 266(a) explicitly requires that no corrective action be taken on any appointment more than one (1)

1 year after the date that appointment was made if both the appointing power and the appointee acted in
2 good faith. Government Code §18525 expressly sets forth the definition for the date of appointment.

3 120. Because Michaels was offered and accepted the DPM II position on May 3, 2016, the SPB was
4 under a mandatory duty, pursuant to Government Code §18525, to determine that Michaels' date of
5 appointment to the DPM II classification was May 3, 2016. The SPB also had a mandatory duty to
6 enforce Code of Regulations, Title 2, § 266(a) and not take any corrective action against Michaels' DPM
7 II appointment subsequent to May 2, 2017, unless CalPERS and/or Michaels acted in other than good
8 faith with regard to her appointment.

9 121. Michaels accepted the DPM II position in good faith. In CalPERS' May 4, 2017, "Unlawful
10 Appointment Final Decision" regarding Michaels's appointment to the DPM II classification, CalPERS
11 expressly stated that, "there is no evidence of other than good faith on your part . . ." The SPB also
12 expressly recognized in its SPB Ruling that both CalPERS and Michaels acted in good faith with respect
13 to her DPM II appointment.

14 122. The SPB violated its mandatory duties set forth above when it denied Michaels' appeal from
15 voided appointment on March 8, 2018.

16 123. California Government Code § 18654.5 provides that "[t]he executive officer shall administer
17 the civil service statutes and rules subject to the right of appeal to the board." Government Code § 18525
18 and § 266(a) of the California Code of Regulations, Title 2, are civil service statutes that the executive
19 officer of the SPB is under a mandatory duty to enforce. The executive officer failed to perform this
20 mandatory duty when she executed the SPB Resolution and Order denying Michaels' appeal from
21 voided appointment.

22 **Liability under Government Code § 815.6**

23 124. Government Code § 815.6 provides for government liability when the government fails to
24 perform a mandatory duty and states that "[w]here a public entity is under a mandatory duty imposed by
25 an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is
26 liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public
27 entity establishes that it exercised reasonable diligence to discharge the duty."

28 /////

1 125. The State Civil Service Act, including but not limited to Government Code §§ 18654.5, 18931,
2 19050, and 19051, was designed to promote efficiency and economy in State government and to ensure
3 that all appointments and promotions within the State civil service are made based upon the merit
4 principle. Government Code §18500 expressly sets forth the purpose of the State Civil Service Act and
5 provides, in part, that “[i]t is the purpose of this part: (a) To facilitate the operation of Article VII of the
6 Constitution. (b) To promote and increase efficiency in the state service. (c) To provide a comprehensive
7 personnel system for the state civil service, in which . . .”

8 126. Article VII of the California Constitution expressly provides that the SPB “shall enforce the
9 civil service statutes and, by majority vote of all its members, shall prescribe probationary periods and
10 classifications, adopt other rules authorized by statute, and review disciplinary action” and that the
11 executive officer of the SPB “shall administer the civil service statutes under rules of the [SPB].”
12 (California Constitution, Article VII, Section 3.)

13 127. California Code of Regulations, Title 2, § 266(a) was designed to protect civil service
14 employees’ whose property interest in their employment has vested after the one-year probationary
15 period and to ensure that the Department of Human Resources, or their delegated authorities, do not
16 exceed their statutory authority set forth in Government Code § 19257.5.

17 128. The legislative intent behind section 266(a) was to protect State civil service employees who
18 acted in good faith from having untimely corrective action taken against a subsequently deemed
19 unlawful appointment at any point in the future regardless of the length of time served in that
20 appointment. This one-year time period aligns with the standard one-year probationary period most State
21 civil service employees must undergo prior to becoming a permanent employee of the State with a
22 vested interest in their employment.

23 129. CalPERS’ unlawful demotion of Michaels from the DPM II classification, and the SPB Ruling
24 upholding that unlawful demotion, caused Michaels substantial harm because she has suffered past and
25 future wage loss, loss of benefits, damage to her reputation, and severe humiliation and emotional
26 distress.

27 WHEREFOR, Plaintiff prays for relief as set forth below.

28 /////

SECOND CAUSE OF ACTION
AGE DISCRIMINATION IN VIOLATION OF GOVERNMENT CODE §12940(a)
[Plaintiff v. CalPERS]

130. Plaintiff realleges and incorporates each of the preceding paragraphs herein as though set forth in full.

131. CalPERS is an agency in the California executive branch and employs over 2,600 employees. At all times relevant herein, Michaels has been an employee of CalPERS.

132. On May 4, 2017, CalPERS unlawfully demoted Michaels in violation of California Code of Regulations, Title 2, § 266(a) and Government Code § 19257.5. The May 4, 2017, official memorandum setting forth Michaels's "Unlawful Appointment Final Decision" was on CalPERS letterhead, was signed by Tina Campbell as Chief of the CalPERS Human Resources Division, and expressly stated that "[t]he California Public Employees' Retirement System, Human Resources Division, initiated an investigation into your [Michaels's] possible unlawful appointment on April 14, 2017" and that "it has been determined the appointment was, in fact, unlawful." Nowhere within CalPERS' May 4, 2017, "Unlawful Appointment Final Decision" memorandum to Michaels was the State Personnel Board referred to other than as the proper venue for any appeal Michaels may decide to file as to CalPERS' "Unlawful Appointment Final Decision."

133. Following Michaels's unlawful demotion, and after she refused to accept an out-of-class assignment to the DPM II classification (the same classification she had just been removed from) due to Michaels's confirmed understanding that she was properly qualified for such classification, CalPERS assigned Michaels to the lower classification of SSM I within the CalPERS Health Plan Administration Division. The Health Plan Administration Division is extremely isolated from the rest of CalPERS and is often used to "warehouse" unwanted employees that CalPERS cannot simply terminate.

134. At the time Michaels was wrongfully demoted and removed from her DPM II position, she was fifty-nine (59) years old.

135. California Government Code §12940(a) provides:

It is an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

1 (a) For an employer, because of the race, religious creed, color, national
2 origin, ancestry, physical disability, mental disability, medical condition,
3 genetic information, marital status, sex, gender, gender identity, gender
4 expression, *age*, sexual orientation, or military and veteran status of any
5 person, to refuse to hire or employ the person or to refuse to select the person
6 for a training program leading to employment, or to bar or to discharge the
7 person from employment or from a training program leading to employment,
8 or to discriminate against the person in compensation or in terms, conditions,
9 or privileges of employment [emphasis added].

10 136. Prior to CalPERS unlawfully demoting Michaels to the SSM I position in the Health Plan
11 Administration Division, Michaels was repeatedly asked by her supervisors, including Farland,
12 Donneson, and Campbell, words to the effect of “aren’t [you] going to retire soon?” Despite having
13 never indicated to her supervisors or coworkers that she was planning to retire anytime soon, Michaels’s
14 supervisors continued to ask her to confirm that she would be retiring in the near future, which Michaels
15 understood to be a clear reference to her age and CalPERS’ stated goal to hire younger workers.

16 137. Michaels’s age was a substantial motivating reason behind CalPERS’ decision to unlawfully
17 demote Michaels and “warehouse” her to the Health Plan Administration Division because CalPERS
18 was impatient with waiting for Michaels to retire and sought to escape liability for its other unlawful
19 conduct by pressuring Michaels to retire as evidenced by CalPERS personnel’s numerous statements to
20 Michaels urging Michaels to retire.

21 138. On June 9, 2018, over one (1) month *after* CalPERS unlawfully voided Michaels’s appointment
22 on May 4, 2018, the State Personnel Board sent Tina Campbell as Chief of CalPERS Human Resources,
23 correspondence summarizing the State Personnel Board Compliance Review Unit’s (“CRU”)
24 investigation and findings into whether CalPERS committed improper hiring practices as alleged in the
25 Lorenz Statement. This correspondence stated that Michaels did not meet the minimum qualifications
26 for the DPM II appointment and that it was necessary to void her appointment.

27 139. The SPB and CalPERS are required to strictly comply with the State Civil Service Act.
28 Michaels’s demotion from the DPM II classification was not required by law because it was in direct
violation of California Code of Regulations, Title 2, § 266(a) and Government Code § 18525.

140. Michaels was harmed as a result of CalPERS’ conduct because she has suffered past and future
wage loss, loss of benefits, damage to her reputation, and was wrongfully removed and demoted from
her DPM II classification and appointment.

1 WHEREFOR, Plaintiff prays for relief as set forth below.

2 **THIRD CAUSE OF ACTION**
3 **INVASION OF PRIVACY**
4 **[Plaintiff v. Defendants CalPERS and Lorenz]**

5 141. Plaintiff realleges and incorporates each of the preceding paragraphs herein as though set forth
6 in full.

7 142. Privacy is a guaranteed constitutional right. Article I, § 1, of the California Constitution
8 expressly provides that:

9 All people are by nature free and independent and have inalienable rights.
10 *Among these are enjoying and defending* life and liberty, acquiring, possessing,
11 and protecting property, and pursuing and obtaining safety, happiness, *and*
12 *privacy* [emphasis added].

13 Because privacy is a guaranteed constitutional right, invasion of privacy can never be defended as an
14 exercise of free speech or participation in the public process.

15 143. A person has a private right of action for invasion of privacy if (1) the Defendant engaged in
16 conduct violating privacy interests; (2) the plaintiff had a reasonable expectation of privacy as to the
17 interests invaded; (3) the invasion was serious; and (4) the invasion caused injury, suffering, or harm.

18 144. California Government Code § 11015.5(b) provides, in pertinent part, that “[a] state agency
19 shall not distribute or sell any electronically collected personal information about users to any third party
20 without prior written permission from the user. . .”

21 145. California Civil Code § 1798.81.5(b) provides that:

22 A business that owns, licenses, or maintains personal information about a
23 California resident shall implement and maintain reasonable security procedures
24 and practices appropriate to the nature of the information, to protect the personal
25 information from unauthorized access, destruction, use, modification, or
26 disclosure.

27 146. California Civil Code § 1798.82(b) provides that:

28 A person or business that maintains computerized data that includes personal
information that the person or business does not own shall notify the owner or
licensee of the information of the breach of the security of the data immediately
following discovery, if the personal information was, or is reasonably believed
to have been, acquired by an unauthorized person.

////

1 147. California Government Code § 18934(a)(1) provides that:

2 Every applicant for examination shall file an application with the department or
3 a designated appointing power as directed in the examination announcement.
4 Applications shall be accepted free of any charge to the applicant. *Filed*
5 *applications and all other examination materials, including examination*
6 *questions and any written material, are the property of the department and are*
7 *confidential records not open to inspection except as provided by law*
8 [emphasis added].

9 148. California Government Code § 6254(c) and (g) provide that:

10 Except as provided in Sections 6254.7 and 6254.13, this chapter does not require
11 the disclosure of any of the following records:

12 . . .

13 (c) *Personnel, medical, or similar files, the disclosure of which would*
14 *constitute an unwarranted invasion of personal privacy* [emphasis added]. . . .

15 (g) Test questions, scoring keys, and other examination data used to administer a
16 licensing examination, examination for employment, or academic examination
17 except as provided for in Chapter 3 (commencing with Section 99150) of Part
18 65 of Division 14 of Title 3 of the Education Code.

19 149. California Code of Regulations, Title 2, § 249.6 provides that:

20 (a) During the hiring process, the appointing power shall ensure that all
21 confidential information on candidate related documentation, including
22 applications, resumes, and forms, is redacted or removed before providing
23 copies to any person who is not assigned to work in the appointing power's
24 human resources or personnel unit, including the hiring manager, any employee
25 in the hiring manager's unit or division, any member of the interview panel, any
26 employee who acts as a human resources or personnel liaison, or any other
27 person, including employees with the authority to approve the appointment.
28 Confidential information includes, but is not limited to, social security numbers,
marital status, date of birth, equal employment opportunity data, list eligibility
as covered under section 249.7, or any other information considered confidential
under law or regulation.

(b) Nothing herein shall be construed to relieve appointing powers from the
duties and obligations of other laws, regulations, or policies related to privacy
and confidentiality.

150. California Penal Code §§ 502 et seq. expand the degree of protection afforded to individuals,
businesses, and governmental agencies from tampering, interference, damage, and unauthorized access
to lawfully created computer data and computer systems. “. . . The Legislature further finds and declares
that the protection of the integrity of all types and forms of lawfully created computers, computer

1 systems, and computer data *is vital to the protection of the privacy of individuals* . . . and others within
2 this state that lawfully utilize those computers, computer systems, and data.” (California Penal Code §
3 502(a), emphasis added.)

4 151. Pursuant to the above-cited statutes and the California Constitution, Michaels had a reasonable
5 expectation that her private personnel records and information including, but not limited to, her
6 application and all other examination materials for the DPM II position would be kept private and
7 confidential and that such records and information would only be accessed by CalPERS for lawful and
8 proper reasons by individuals with actual authority to access such records and information.

9 152. Michaels also had a reasonable expectation that her private personnel records and information
10 would not be copied by unauthorized individuals without her knowledge and consent.

11 153. As of February of 2016, Defendant Lorenz was on an approved extended leave and was no
12 longer working in the Human Resources division. Lorenz was not authorized to access confidential
13 personnel files or information maintained by Human Resources on CalPERS’ employees.

14 154. CalPERS failed to revoke or suspend Lorenz’s authorization and ability to access confidential
15 Human Resources files and information until after October of 2016 in violation of CalPERS’ policies
16 and procedures and State law.

17 155. At various times from October 2014 through September 2016, Lorenz, in conscious disregard
18 of Michaels’ rights and with the wrongful intent of injuring Michaels, intentionally invaded Michaels’
19 privacy by unlawfully accessing and copying Michaels’ confidential personnel files for retaliatory
20 purposes and in violation of California’s privacy statutes. Lorenz then distributed the Lorenz Accusation
21 to the Secretary of Government Operations Agency and to members of the California State Legislature
22 along with confidential information that Lorenz could only have unlawfully obtained from Michaels’
23 official personnel file and/or confidential CalPERS’ records and databases. On information and belief,
24 the confidential documents unlawfully obtained by Defendant Lorenz and subsequently disclosed in the
25 Lorenz Accusation contained Michaels’ social security number, personal address, marital status,
26 employment and promotion applications, examination results and materials, performance reports, and
27 other private personnel information. CalPERS and the SPB failed to notify Michaels that her
28 confidential and private

1 personnel information had been breached and disseminated or that the Lorenz Accusation had been filed
2 against her until over six (6) months later.

3 156. Lorenz previously worked in Human Resources and was issued access credentials by CalPERS
4 to view the Human Resources files of CalPERS employees. Lorenz violated Michaels' privacy when she
5 [Lorenz] accessed, copied, and used Michaels' confidential personnel information for retaliatory
6 reasons. CalPERS is vicariously liable for Lorenz's conduct because it occurred in the workplace
7 through use of Lorenz's access credentials.

8 157. A reasonable person would be highly offended by, and Michaels' was and is highly offended
9 by, Lorenz's intrusion, through use of her [Lorenz's] CalPERS' access credentials into Michaels'
10 confidential personnel files and Lorenz's viewing, copying, and use of that confidential information for
11 retaliatory purposes

12 158. Tina Campbell and Defendants CalPERS and the SPB had actual knowledge that Michaels's
13 personnel files had been unlawfully accessed and distributed in or around October of 2016 but failed to
14 notify Michaels of the breach of security despite CalPERS' and Campbell's knowledge that Lorenz was
15 not authorized to access Michaels personnel files and that Lorenz had in fact unlawfully distributed
16 information from Michaels' personnel files to multiple third parties.

17 159. On information and belief, neither CalPERS nor Campbell took any action to determine how
18 Defendant Lorenz obtained the confidential personnel information contained within the Lorenz
19 Statement. On information and belief, CalPERS and Campbell also failed to take any action to prevent
20 such a breach from happening again or to rectify the damage caused to Michaels by the unlawful breach
21 and dissemination. CalPERS, Campbell, and the SPB failed to notify Michaels that such breach and
22 distribution had occurred until April of 2017.

23 160. CalPERS' and Lorenz seriously breached Michaels's privacy interests by unlawfully accessing
24 and distributing it to third parties, failing to protect her confidential personnel information, and failing to
25 notify Michaels that her confidential information had been unlawfully accessed and distributed.

26 161. The SPB relied on the confidential personnel information that Lorenz unlawfully stole and
27 subsequently disclosed within the Lorenz Accusation when the SPB denied Michaels's appeal regarding
28 the voiding of her appointment to the DPM II classification.

1 162. Government Code § 815.6 provides for government liability when the government fails to
2 perform a mandatory duty and states that “[w]here a public entity is under a mandatory duty imposed by
3 an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is
4 liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public
5 entity establishes that it exercised reasonable diligence to discharge the duty.”

6 163. The privacy statutes cited above were designed to protect an individual’s constitutionally
7 protected and inalienable right to privacy and explicitly set forth certain information for which
8 individuals have a reasonable expectation of privacy as expressly provided for under these statutes.

9 164. CalPERS was required under the statutes cited herein to protect Michaels’s private and
10 confidential personnel information to which Michaels had a reasonable expectation of privacy. CalPERS
11 was under a mandatory duty to immediately notify Michaels that her private and confidential personnel
12 information had been unlawfully accessed and distributed to third parties. CalPERS was also required by
13 law to report the security breach to the CHP yet failed to do so.

14 165. Michaels suffered, and continues to suffer, harm to her business, trade, profession, and
15 occupation as a direct and proximate result of the unlawful access and dissemination of her private
16 personnel information because following Lorenz’s unauthorized access and distribution of such
17 information, Michaels was demoted from her DPM II classification, was “warehoused” into an
18 undesirable section of CalPERS, suffered a substantial decrease in her salary and retirement benefits,
19 and was determined to be unqualified for the position she had already worked in for over a year.

20 WHEREFOR, Plaintiff prays for relief as set forth below.

21 **FOURTH CAUSE OF ACTION**
22 **NEGLIGENCE**
23 **[Plaintiff v. All Defendants]**

24 166. Plaintiff realleges and incorporates each of the preceding paragraphs herein as though set forth
25 in full.

26 167. Defendant CalPERS had a duty to (a) accurately document Michaels’ personnel actions within
27 the CalPERS’ records and databases; (b) protect Michaels’ confidential personnel information from
28 unauthorized access and distribution as set forth more fully in the Third Cause of Action above; (c)

1 notify Michaels when her confidential personnel information was unlawfully accessed and distributed to
2 third parties; (d) report the security breach into Michaels' confidential personnel records to the CHP; (e)
3 to ensure that its appointees perform only those duties, functions, and responsibilities that are properly
4 assigned to the appointee's classification; and (f) make appointments in strict accordance with the State
5 civil service statutes.

6 168. CalPERS was negligent and breached these duties by (a) failing to use reasonable care to
7 properly document, and then refusing to correct, Michaels' official appointment date to the DPM II
8 classification to May 3, 2016, within the CalPERS' records and databases pursuant to California
9 Government Code § 18525; (b) failing to use reasonable care and take reasonable measures to ensure
10 the privacy of Michaels' confidential personnel information contained within her OPF and the
11 CalPERS' records and databases; (c) failing to notify Michaels when Defendant Lorenz unlawfully
12 accessed and distributed her confidential personnel information to third parties; (d) failing to report the
13 unlawful and unauthorized access into and copying of Michaels' confidential personnel information to
14 the CHP as required by law; (e) requiring Michaels to continue performing the duties, functions, and
15 responsibilities assigned to a DPM II while classified as an SSM I; and (f) as evidenced by the SPB
16 Ruling, appointing Michaels to the DPM II classification without ensuring Michaels met the minimum
17 qualifications for such classification.

18 169. In 2016, Defendant Lorenz was on an approved extended leave and had not been working in the
19 CalPERS IT Human Resources division since August of 2015. Lorenz was not authorized to use her
20 CalPERS access credentials to access confidential personnel files or information concerning CalPERS'
21 employees during this time.

22 170. In 2016, Lorenz's authorization to access electronic files as well as the CalPERS' physical
23 offices should have been suspended revoked by CalPERS. CalPERS is under a legal duty to maintain the
24 confidential personnel records of its employees. CalPERS violated this duty by failing, for several
25 months, to suspend or revoke Lorenz's authorization and ability to access confidential personnel files
26 and information in violation of CalPERS' policies and procedures and State law.

27 171. Tina Campbell and Defendant CalPERS had actual knowledge that Michaels' personnel files
28 had been unlawfully accessed and distributed in or around September of 2016 but failed to notify

1 Michaels of the security breach. CalPERS and Campbell knew that Lorenz was not authorized to access
2 Michaels' confidential personnel files and that Lorenz had in fact distributed confidential information
3 from Michaels' personnel files to multiple third parties.

4 172. On information and belief, neither CalPERS nor Campbell took any action to determine how
5 Defendant Lorenz obtained the confidential personnel information contained within the Lorenz
6 Accusation. On information and belief, CalPERS and Campbell also failed to take any action to prevent
7 such a breach from happening again or to rectify the damage caused to Michaels by the unlawful breach
8 and dissemination. CalPERS and Campbell failed to notify Michaels that such breach and distribution
9 had occurred until they inadvertently disclosed such information to Michaels in April of 2017.

10 173. CalPERS was required under the statutes cited herein to protect Michaels's private and
11 confidential personnel information to which Michaels had a reasonable expectation of privacy. CalPERS
12 was also under a mandatory duty to immediately notify Michaels that her private and confidential
13 personnel information had been unlawfully accessed and distributed to third parties.

14 174. CalPERS' failure to properly execute its administrative duties and its failure to protect
15 Michaels's confidential information from unlawful access and disclosure evinces a reckless disregard for
16 Michaels' safety and the protection of her confidential personnel information as well as a calculated and
17 conscious willingness to permit injury to Michaels.

18 175. CalPERS further had a duty imposed by law to report the security breach of Michaels'
19 confidential personnel records to the CHP but failed to do so. CalPERS' failure to properly execute the
20 mandatory duties imposed upon CalPERS by statute demonstrates a reckless disregard for the privacy
21 and protection of Michaels' and other CalPERS employees' confidential personnel information as well
22 as a conscious willingness to permit injury to Michaels.

23 176. Lorenz owed Michaels a duty of reasonable care and had a legal duty not to violate Michaels'
24 reasonable expectation of privacy. Michaels had a reasonable expectation of privacy in her private
25 confidential personnel information as explicitly provided for by the statutes cited in the Third Cause of
26 Action above. Lorenz breached these duties when she unlawfully accessed Michaels' confidential
27 personnel records and made copies of the confidential information contained therein. Lorenz's unlawful
28 accessing of Michaels' confidential personnel information shows a reckless disregard for Michaels'

1 safety and privacy interests as well as a calculated and conscious willingness to permit injury to
2 Michaels.

3 177. The SPB is under a duty to enforce the civil service statutes of the State of California including,
4 but not limited to, California Code of Regulations, Title 2, § 266(a) and Government Code § 18525. The
5 SPB breached its duty when, in violation of Government Code § 18525, it found the date of Michaels’
6 appointment to be May 5, 2016, and when, in violation of California Code of Regulations, Title 2, §
7 266(a), it upheld the unlawful voiding of Michaels’ DPM II appointment more than one year after the
8 date of her appointment. The SPB also failed perform its statutorily required duty to notify the CHP of
9 the breach of Michaels’ confidential personnel records.

10 178. Michaels was harmed by Defendants’ negligence because Michaels was unlawfully demoted
11 from her DPM II classification after working in such classification for over one year and suffered, and
12 continues to suffer, harm to her business, trade, profession, and occupation as a direct and proximate
13 result of the unlawful access of her confidential personnel information because, following the
14 unauthorized access of such information, Michaels was demoted from her DPM II classification, was
15 “warehoused” into an undesirable section of CalPERS, suffered a substantial decrease in her salary and
16 retirement benefits, and was determined to be unqualified for the position she had already worked in for
17 over a year.

18 WHEREFOR, Plaintiff prays for relief as set forth below.

19 **FIFTH CAUSE OF ACTION**
20 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
21 **[Plaintiff v. CalPERS and Lorenz]**

22 179. Plaintiff realleges and incorporates each of the preceding paragraphs herein as though set forth
23 in full.

24 180. Conduct may be considered outrageous if a defendant (a) abused a position of authority or a
25 relationship giving defendant real or apparent power to affect the plaintiff’s interests, (b) knew the
26 plaintiff was susceptible to injuries through mental distress, or (c) knew that defendant’s conduct would
27 likely result in harm to plaintiff due to mental distress. (*Molko v. Holy Spirit Ass’n* (1988) 46 Cal.3d
28 1092, 1122.) Employer-employee relationships have specifically been recognized as significantly

1 contributing to the conclusion that particular conduct is outrageous. (*Alcorn v. Anbro Engineering, Inc.*
2 (1970) 2 Cal.3d 493, 498, fn.2.)

3 181. CalPERS engaged in outrageous conduct by (a) violating the law and intentionally failing to
4 protect Michaels' confidential personnel information from being unlawfully accessed in violation of
5 California's Constitution and privacy statutes; (b) intentionally failing to suspend or revoke Lorenz's
6 authorizations to access the confidential personnel records of CalPERS employees when Lorenz went
7 out on extended medical leave and was no longer working; (c) intentionally failing to immediately
8 notify Michaels that her confidential personnel information had been unlawfully accessed and
9 distributed in violation of California's privacy statutes; (d) intentionally failing to take corrective action
10 to protect Michaels' private personnel files after determining they were in fact unlawfully accessed in
11 violation of California's privacy statutes; (e) intentionally failing to conduct any reasonable or good
12 faith investigation into the unlawful accessing and distribution of Michaels' confidential personnel
13 information; (f) intentionally failing to report the unlawful accessing and copying of Michaels'
14 confidential personnel information to the CHP as explicitly required by law; (g) unlawfully demoting
15 Michaels from her DPM II position in violation of California Government Code §§ 18525, 18528, and
16 19170(a), and California Code of Regulations, Title 2, § 266(a); (h) refusing and failing to accurately
17 record and/or correct the effective date of Michaels's appointment to the DPM II classification as
18 specifically mandated by California Government Code § 18525, (i) purposefully failing to protect
19 Michaels from Lorenz's unlawful and retaliatory actions against Michaels, including the filing and
20 investigation into the Lorenz Accusation; (j) intentionally requiring Michaels to continue performing the
21 duties, functions, and responsibilities assigned to a DPM II while classified as an SSM I; and (k)
22 intentionally failing to ensure Michaels met the minimum qualifications for the DPM II classification
23 prior to appointing her to such classification.

24 182. Defendant CalPERS acted with the purpose of causing Michaels emotional distress because it
25 purposefully failed to take any action to protect Michaels' privacy interests after verifying that
26 Michaels' confidential personnel information had been unlawfully accessed and subsequently
27 disseminated and because, in addition to unlawfully demoting Michaels, CalPERS transferred Michaels
28 to another department that was known for "warehousing" unwanted employees.

1 183. CalPERS' conduct was unlawful and in violation of several California statutes. Unlawful
2 conduct is not a normal part of the employment relationship.

3 184. The Workers' Compensation Act provides that it shall be an employee's exclusive remedy
4 against an employer where certain conditions of compensation exist. California Labor Code § 3600(a)(2)
5 requires that one of these conditions is that at the time of the injury, the employee is performing service
6 growing out of and incidental to his or her employment and is acting within the course of his or her
7 employment. Labor Code §3600(a)(3) also requires that the employee's injury be proximately caused by
8 the employment, either with or without negligence. The workers' compensation exclusivity rule does not
9 apply to an injury that occurs when an employee is *not* performing services incidental to the
10 employment and which would not be viewed as a risk of the employment.

11 185. Michaels's injuries did not arise out of her performing services growing out of or incidental to
12 her employment with CalPERS and her injuries cannot reasonably be viewed as a risk of State
13 employment. Michaels's injuries were also not proximately caused by her employment with CalPERS.
14 Michaels' injuries were directly and proximately caused by Defendant CalPERS' failure to discharge
15 mandatory duties that it owes to the public as a whole as required by those statutes cited *supra*
16 including, but not limited to, California's privacy statutes.

17 186. Defendant Lorenz's conduct was outrageous because Lorenz unlawfully accessed Michaels'
18 confidential personnel information with her CalPERS issued credential with the express and malicious
19 intention of violating Michaels' privacy and for the direct purpose of causing Michaels to lose her DPM
20 II classification, retirement benefits, and suffer severe emotional distress in retaliation for Michaels
21 testifying against Lorenz in workplace violence investigations conducted by CalPERS and the Attorney
22 General's office.

23 187. Michaels's filing [on her subordinates' behalf] complaints against – and her cooperation and
24 participation with the Attorney General's investigations into – Lorenz for her bullying, violence, and
25 hostile behavior in the workplace were substantial motivating reasons for (a) Lorenz's unlawful use of
26 her CalPERS credentials to access Michaels's confidential personnel files in order to file the Lorenz
27 Accusation against Michaels for the direct purpose of causing the State Personnel Board to review
28 Michaels's DPM II appointment; (b) the State Personnel Board's review of Michaels's DPM II

1 appointment; (c) CalPERS' and Campbell's refusal and failure to correct the effective date of Michaels's
2 DPM II appointment to May 3, 2016, within all of the necessary CalPERS records and databases; (d)
3 CalPERS' failure to inform Michaels that her confidential personnel information had been unlawfully
4 accessed and distributed; (e) Lorenz's filing of a workplace violence complaint against Michaels; and (f)
5 CalPERS' subsequent unlawful demotion of Michaels from the DPM II appointment to the SSM I
6 position within the Health Plan Administration Division.

7 188. Michaels suffered severe emotional distress as a direct result of CalPERS' and Lorenz's
8 unlawful and intentional actions because she was unlawfully demoted from her DPM II position in
9 violation of California law, was transferred to a separate division of CalPERS where employees were
10 sent to be "warehoused," was traumatized by severe invasions of her privacy, and suffered such other
11 outrageous and offensive actions and behavior as set forth more fully hereinabove.

12 189. Defendants' conduct was a substantial factor in causing Michaels' severe emotional distress for
13 the reasons set forth *supra*.

14 WHEREFOR, Plaintiff prays for relief as set forth below.

15 **SIXTH CAUSE OF ACTION**
16 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**
17 **[Plaintiff v. CalPERS & Lorenz]**

18 190. Plaintiff realleges and incorporates each of the preceding paragraphs herein as though set forth
19 in full.

20 CalPERS was negligent because it breached its duties to Michaels by (a) abusing its position of authority
21 as a government State agency; (b) failing to suspend or revoke Lorenz's authorizations to access the
22 confidential personnel records of CalPERS employees when Lorenz went out on extended medical leave
23 and was no longer working; (c) failing to immediately notify Michaels that her confidential personnel
24 information had been unlawfully accessed and distributed in violation of California's privacy statutes;
25 (d) failing to take corrective action to protect Michaels's private personnel files after determining they
26 were in fact unlawfully accessed in violation of California's privacy statutes; (e) failing to conduct any
27 reasonable or good faith investigation into the unlawful accessing and distribution of Michaels's
28 confidential personnel information; (f) failing to report the unlawful accessing and copying of Michaels'

1 confidential personnel information to the CHP as explicitly required by law; (g) unlawfully demoting
2 Michaels from her DPM II position in violation of California Government Code §§ 18525, 18528, and
3 19170(a), and California Code of Regulations, Title 2, § 266(a); (h) refusing and failing to accurately
4 record and/or correct the effective date of Michaels' appointment to the DPM II classification as
5 specifically mandated by California Government Code § 18525, (i) failing to protect Michaels from
6 Lorenz's unlawful and retaliatory actions against Michaels, including the filing and investigation into
7 the Lorenz Accusation; (j) requiring Michaels to continue performing the duties, functions, and
8 responsibilities assigned to a DPM II while classified as an SSM I; and (k) appointing Michaels to the
9 DPM II classification without ensuring Michaels met the minimum qualifications for such classification.

10 191. CalPERS' conduct was unlawful and in violation of several California statutes. Unlawful
11 conduct is not a normal part of the employment relationship.

12 192. The Workers' Compensation Act provides that it shall be an employee's exclusive remedy
13 against an employer where certain conditions of compensation exist. California Labor Code § 3600(a)(2)
14 requires that one of these conditions is that at the time of the injury, the employee is performing service
15 growing out of and incidental to his or her employment and is acting within the course of his or her
16 employment. Labor Code §3600(a)(3) also requires that the employee's injury be proximately caused by
17 the employment, either with or without negligence. The workers' compensation exclusivity rule does not
18 apply to an injury that occurs when an employee is *not* performing services incidental to the
19 employment and which would not be viewed as a risk of the employment.

20 193. Michaels's injuries did not arise out of her performing services growing out of or incidental to
21 her employment with CalPERS and her injuries cannot reasonably be viewed as a risk of State
22 employment. Michaels's injuries were also not proximately caused by her employment with CalPERS.
23 Michaels's injuries were directly and proximately caused by Defendant CalPERS' failure to discharge
24 mandatory duties that it owes to the public as a whole as required by those statutes cited *supra*
25 including, but not limited to, California's privacy statutes.

26 194. Defendant Lorenz was negligent because she unlawfully accessed and made copies of
27 Michaels' confidential personnel information through use of her CalPERS' issued credentials.
28

1 195. Michaels suffered severe emotional distress as a direct result of CalPERS' and Lorenz's
2 negligence because she was unlawfully demoted from her DPM II position in violation of California
3 law, was transferred to a separate division of CalPERS where employees were sent to be "warehoused,"
4 was traumatized by severe invasions of her privacy, and suffered such other invasive and offensive
5 actions and behavior as set forth more fully hereinabove.

6 196. Defendants' negligence was a substantial factor in causing Michaels's severe emotional distress
7 for the reasons set forth *supra*.

8 THEREFOR, Plaintiff prays for relief as set forth below.

9 **PRAYER FOR RELIEF**

10 Plaintiff Michaels prays for relief against Defendants, and each of them, jointly and severally, as
11 follows:

12 1. For injunctive relief ordering Defendants:

13 (a) SPB to withdraw the SPB Ruling;

14 (b) CalPERS and SPB to correct any and all records to accurately reflect that Michaels
15 was appointed to the DPM II classification on May 3, 2016;

16 (c) CalPERS and SPB to rescind the May 4, 2017, Unlawful Appointment Final Decision
17 to void Michaels' appointment to the DPM II classification; and

18 (d) CalPERS and SPB to immediately reinstate Michaels to her position at CalPERS as a
19 Data Processing Manager II.

20 2. For back pay from May 3, 2017, plus interest, up through and including the date of entry of
21 judgment;

22 3. For past and future lost wages and benefits;

23 4. For reinstatement of benefits including her retirement credits;

24 5. For general and compensatory damages;

25 6. For statutory damages;

26 7. For punitive damages in the amount of five (5) million dollars or as according to proof
27 against those Defendants named in their individual capacities;
28

- 1 8. For an award of reasonable litigation expenses, including costs and attorneys' fees, according
2 to the Private Attorneys' General Act and/or other applicable statutes and/or contract; and
3 9. For such other and further relief as the Court deems proper.
4

5 Date: September 17, 2018

NEASHAM & KRAMER LLP

6
7 By: 
ERICA L. BRINITZER
8
9

10 **REQUEST FOR JURY TRIAL**

11 Plaintiff NANCY MICHAELS, individually requests a jury trial on all matters so triable.
12

13 Date: September 17, 2018

NEASHAM & KRAMER LLP

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15 By: 
ERICA L. BRINITZER
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ATTACHMENT “1”



STATE OF CALIFORNIA | Business, Consumer Services and Housing Agency

GOVERNOR EDMUND G. BROWN JR.

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 | TDD 800-700-2320
www.dfeh.ca.gov | email: contact.center@dfeh.ca.gov

DIRECTOR KEVIN KISH

September 07, 2017

RE: Notice of Filing of Discrimination Complaint

DFEH Matter Number: 953658-310235

Right to Sue: Michaels / California Public Employees' Retirement System (CalPERS)

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Department of Fair Employment and Housing (DFEH) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. This case is not being investigated by DFEH and is being closed immediately. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to DFEH is requested or required.

Sincerely,

Department of Fair Employment and Housing



STATE OF CALIFORNIA | Business, Consumer Services and Housing Agency

GOVERNOR EDMUND G. BROWN JR.

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

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800-884-1684 | TDD 800-700-2320
www.dfeh.ca.gov | email: contact.center@dfeh.ca.gov

DIRECTOR KEVIN KISH

September 07, 2017

Nancy Michaels
3717 Bridgeway Lakes
W. Sacramento, California 95691

RE: Notice of Case Closure and Right to Sue

DFEH Matter Number: 953658-310235

Right to Sue: Michaels / California Public Employees' Retirement System (CalPERS)

Dear Nancy Michaels,

This letter informs you that the above-referenced complaint was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective September 07, 2017 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must visit the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Department of Fair Employment and Housing



STATE OF CALIFORNIA | Business, Consumer Services and Housing Agency

GOVERNOR EDMUND G. BROWN JR.

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

DIRECTOR KEVIN KISH

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 | TDD 800-700-2320
www.dfeh.ca.gov | email: contact.center@dfef.ca.gov

Enclosures

cc: CalPERS Christina Campbell

CalPERS Christian Farland

1 COMPLAINT OF EMPLOYMENT DISCRIMINATION
2 BEFORE THE STATE OF CALIFORNIA
3 DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
4 Under the California Fair Employment and Housing Act
5 (Gov. Code, § 12900 et seq.)

6 In the Matter of the Complaint of
7 Nancy Michaels, Complainant.
8 3717 Bridgeway Lakes
9 W. Sacramento, California 95691

DFEH No. 953658-310235

10 vs.

11 California Public Employees' Retirement
12 System (CalPERS), Respondent.
13 400 Q Street
14 Sacramento, California 95811

15 Complainant alleges:

16 1. Respondent **California Public Employees' Retirement System (CalPERS)** is a
17 **State/Local Govt** subject to suit under the California Fair Employment and Housing
18 Act (FEHA) (Gov. Code, § 12900 et seq.). Complainant believes respondent is
19 subject to the FEHA.

20 2. On or around **May 04, 2017**, complainant alleges that respondent took the
21 following adverse actions against complainant: **Discrimination, Harassment,**
22 **Retaliation Asked impermissible non-job-related questions, Demoted, Denied**
a work environment free of discrimination and/or retaliation, Denied equal pay,
Denied or forced to transfer, Denied reinstatement, . Complainant believes
respondent committed these actions because of their: **Age - 40 and over .**

3. Complainant **Nancy Michaels** resides in the City of **W. Sacramento**, State of
California. If complaint includes co-respondents please see below.

1
2 **Co-Respondents:**

3 CalPERS

4 Christina Campbell

5 400 Q Street

6 Sacramento California 95811

7 CalPERS

8 Christian Farland

9 400 Q Street

10 Sacramento California 95811

1
2 **Additional Complaint Details:**

3 I believe I was demoted, denied reinstatement, and forced to transfer from my DPM II
4 position to an inferior SSM I position with lesser pay, in part due to my age, because I
5 had been in my DPM II position for a year, was well-qualified, and had received
6 exemplary performance reviews for my work in that position. I was told that I should not
7 be upset about these adverse actions and was asked repeatedly when I was going to
8 retire. On information and belief, no other employees under the age of 40 were
9 terminated, demoted, denied reinstatement, or forced to transfer to an inferior position
10 with lesser pay when performing their job duties at or above a satisfactory level. I was
11 asked impermissible questions which were age-related, harassed, discriminated
12 against, and retaliated against due to my age because both the head of my previous
13 department, Christian Farland (Chief of the Technology Business Management
14 Division), and Christina Campbell (Chief of CalPERS Human Resources Division) asked
15 me on multiple occasions when I was going to retire, and the head of my current
16 department, Kathy Donneson (Chief of the Health Plan Administration Division), has told
17 me that she does not want me there.
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1 VERIFICATION

2 I, **Nancy Michaels**, am the Complainant in the above-entitled complaint. I have
3 read the foregoing complaint and know the contents thereof. The same is true of my
4 own knowledge, except as to those matters which are therein alleged on information
5 and belief, and as to those matters, I believe it to be true.

6 On September 07, 2017, I declare under penalty of perjury under the laws of the
7 State of California that the foregoing is true and correct.

8 **West Sacramento, California**
9 **Nancy Michaels**
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PROOF OF SERVICE

I, Katie A. Brand, declare that:

I am employed in the County of Sacramento, State of California. I am over the age of eighteen years, and am not a party to this action; my business address is 340 Palladio Parkway, Suite 535, Folsom, California 95630.

On September 7, 2017, I served a copy of the foregoing document(s) described herein as **NOTICE OF FILING OF DISCRIMINATION COMPLAINT; NOTICE OF CASE CLOSURE AND RIGHT TO SUE; COMPLAINT OF EMPLOYMENT DISCRIMINATION** on the interested party(ies) named below addressed as follows:

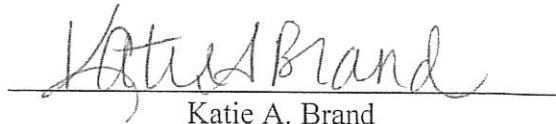
Matthew Jacobs, Esq.
CalPERS Legal Office
PO Box 942707
Sacramento, CA 94229

Christina Campbell
CalPERS
400 Q Street
Sacramento, CA 95811

Christian Farland
CalPERS
400 Q Street
Sacramento, CA 95811

(XX) (CERTIFIED MAIL; RETURN RECEIPT REQUESTED) I deposited a true and correct copy of these papers with the United States Postal Service, in a sealed envelope with postage fully prepaid. I used certified mail and requested return receipt.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on September 7, 2017, at Folsom, California.


Katie A. Brand

Michael

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY																
<ul style="list-style-type: none">■ Complete items 1, 2, and 3.■ Print your name and address on the reverse so that we can return the card to you.■ Attach this card to the back of the mailpiece, or on the front if space permits.	<p>A. Signature <u>[Signature]</u> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <u>B. Muzzola</u> C. Date of Delivery <u>9-8-17</u></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>																
<p>1. Article Addressed to:</p> <p><u>Christina Campbell</u> <u>CalPERS</u> <u>400 Q Street</u> <u>Sacramento, CA 95811</u></p> <p> 9590 9402 1714 6053 4285 40</p>	<p>3. Service Type</p> <table border="0"><tr><td><input type="checkbox"/> Adult Signature</td><td><input type="checkbox"/> Priority Mail Express®</td></tr><tr><td><input type="checkbox"/> Adult Signature Restricted Delivery</td><td><input type="checkbox"/> Registered Mail™</td></tr><tr><td><input checked="" type="checkbox"/> Certified Mail®</td><td><input type="checkbox"/> Registered Mail Restricted Delivery</td></tr><tr><td><input type="checkbox"/> Certified Mail Restricted Delivery</td><td><input type="checkbox"/> Return Receipt for Merchandise</td></tr><tr><td><input type="checkbox"/> Collect on Delivery</td><td><input type="checkbox"/> Signature Confirmation™</td></tr><tr><td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td><td><input type="checkbox"/> Signature Confirmation Restricted Delivery</td></tr><tr><td><input type="checkbox"/> Insured Mail</td><td></td></tr><tr><td><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</td><td></td></tr></table>	<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®	<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™	<input checked="" type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery	<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Return Receipt for Merchandise	<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™	<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery	<input type="checkbox"/> Insured Mail		<input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)	
<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®																
<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™																
<input checked="" type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery																
<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Return Receipt for Merchandise																
<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™																
<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery																
<input type="checkbox"/> Insured Mail																	
<input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)																	
<p>2. Article Number (Transfer from service label)</p> <p><u>7016 3010 0000 0330 3014</u></p>																	

PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt

4106 0330 0000 0106 9107

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com

OFFICIAL USE

Certified Mail Fee	\$ <u>3.35</u>
Extra Services & Fees (check box, add fee as appropriate)	
<input checked="" type="checkbox"/> Return Receipt (hardcopy)	\$ <u>2.75</u>
<input type="checkbox"/> Return Receipt (electronic)	\$
<input type="checkbox"/> Certified Mail Restricted Delivery	\$
<input type="checkbox"/> Adult Signature Required	\$
<input type="checkbox"/> Adult Signature Restricted Delivery	\$
Postage	\$ <u>0.67</u>
Total Postage and Fees	\$ <u>6.72</u>
Sent To	<u>Christina Campbell - Calpers</u>
Street and Apt. No., or PO Box No.	<u>400 Q Street</u>
City, State, ZIP+4®	<u>Sacramento, CA 95811</u>

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

Postmark: SEP-7 2017 06530

RECEIVED
SEP 11 2017
BY: _____

Michaels

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to:</p> <p>Christian Farland CalPERS 400 Q Street Sacramento, CA 95811</p>		<p>B. Received by (Printed Name) B. Mazzola</p> <p>C. Date of Delivery 9-8-17</p>	
<p>2. Article Number (Transfer from service label)</p> <p>7016 0750 0000 7990 9110</p>		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p>		<p><input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery</p>	



9590 9402 1714 6053 4285 57

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

7016 0750 0000 7990 9110

U.S. Postal Service™ CERTIFIED MAIL® RECEIPT Domestic Mail Only	
For delivery information, visit our website at www.usps.com ®.	
OFFICIAL USE	
Certified Mail Fee	\$ 3.35
Extra Services & Fees (check box, add fee as appropriate)	
<input checked="" type="checkbox"/> Return Receipt (hardcopy)	\$ 2.75
<input type="checkbox"/> Return Receipt (electronic)	\$
<input type="checkbox"/> Certified Mail Restricted Delivery	\$
<input type="checkbox"/> Adult Signature Required	\$
<input type="checkbox"/> Adult Signature Restricted Delivery	\$
Postage	\$ 1.67
Total Postage and Fees	\$ 6.72
Sent To: Christian Farland, CalPERS	
Street and Apt. No., or PO Box No. 400 Q Street	
City, State, ZIP+4® Sacramento, CA 95811	
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Matthew Jacobs, Esq.
CalPERS Legal Office
P.O. Box 942707
Sacramento, CA 94229



9590 9402 1714 6053 4285 64

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Certified Mail Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

**U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only**

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$ **3.35**

Extra Services & Fees (check box, add fee as appropriate)

- ☒ Return Receipt (hardcopy) \$ **2.45**
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ **0.67**

Total Postage and Fees

\$ **6.72**

Sent To

Matthew Jacobs - CalPERS Legal Office

Street and Apt. No., or PO Box No.

P.O. Box 942707

City, State, ZIP+4®

Sacramento, CA 94229

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

(Weight: 0.16 lb 1.50 oz)



ATTACHMENT “2”

06/14/2017

Patricia Kramer
Attorney at Law
340 Palladio Parkway, Suite 535
Folsom, CA 95630

RE: Claim 17005464 for Nancy Michaels against California Public Employees Retirement System (Calpers)

Dear Patricia Kramer,

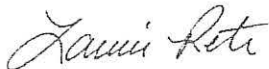
Government Claims Program (GCP) staff completed its investigation of your claim and rejected it for the following reasons.

The claim involves complex issues that are beyond the scope of analysis and legal interpretation typically undertaken by the GCP. Claims involving complex issues are best determined by the courts. Therefore, staff did not make a determination regarding the merit of the claim, and it is being rejected so you can initiate court action if you choose to pursue this matter further.

If you choose to pursue court action in this matter, it is not necessary or proper to include the GCP in your lawsuit unless the GCP was identified as a defendant in your original claim. Please consult Government Code section 955.4 regarding proper service of the summons.

If you have questions about this matter, please feel free to contact GCP by phone, mail, or email using the contact information below. Please remember to reference the assigned claim number (17005464) in your communication.

Sincerely,



Laurie Roth, Program Analyst
Government Claims Program
gcinfo@dgs.ca.gov

WARNING: Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim. See Government Code Section 945.6. You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

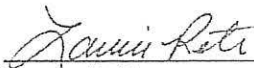
DECLARATION OF SERVICE BY U.S. MAIL

Name of Claimant: Nancy Michaels
GCP File no.: 17005464

I am employed by the Government Claims Program. I am 18 years of age or older. I am familiar with the business practice at the Government Claims Program for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Government Claims Program is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. On 06/14/2017, I served the attached letter by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Government Claims Program, located at 707 Third Street, West Sacramento, CA 95605, addressed as follows:

Patricia Kramer
Attorney at Law
340 Palladio Parkway, Suite 535
Folsom, CA 95630

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on 06/14/2017, at West Sacramento, California.



Laurie Roth

ATTACHMENT “3”

08/08/2018

Erica Brinitzer
Attorney at law
340 Palladio Parkway Suite 535
Folsom, CA 95630



RE: Claim 18006132 for Nancy Michaels against Personnel Board, State

Dear Erica Brinitzer,

Government Claims Program (GCP) staff completed its investigation of your claim and rejected it for the following reasons.

The claim involves complex issues that are beyond the scope of analysis and legal interpretation typically undertaken by the GCP. Claims involving complex issues are best determined by the courts. Therefore, staff did not make a determination regarding the merit of the claim, and it is being rejected so you can initiate court action if you choose to pursue this matter further.

If you choose to pursue court action in this matter, it is not necessary or proper to include the GCP in your lawsuit unless the GCP was identified as a defendant in your original claim. Please consult Government Code section 955.4 regarding proper service of the summons.

If you have questions about this matter, please feel free to contact GCP by phone, mail, or email using the contact information below. Please remember to reference the assigned claim number (18006132) in your communication.

Sincerely,

A handwritten signature in black ink, appearing to read "Balreet Bisla", written over a horizontal line.

Balreet Bisla
gcinfo@dgs.ca.gov

WARNING: Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim. See Government Code Section 945.6. You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

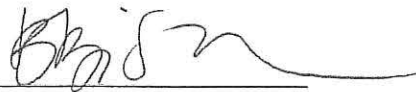
DECLARATION OF SERVICE BY U.S. MAIL

Name of Claimant: Nancy Michaels
GCP File no.: 18006132

I am employed by the Government Claims Program. I am 18 years of age or older. I am familiar with the business practice at the Government Claims Program for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Government Claims Program is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. On 08/08/2018, I served the attached letter by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Government Claims Program, located at 707 Third Street, West Sacramento, CA 95605, addressed as follows:

Erica Brinitzer
Attorney at law
340 Palladio Parkway Suite 535
Folsom, CA 95630

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on 08/08/2018, at West Sacramento, California.


Balreet Bisla