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**FILED JAN 27 2014**  
SHIRLEY E. FAUST CLERK  
By Andrew L. Eiriksson  
Deputy

9 MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

10 MAUREEN GARY, Individually and as )  
Personal Representative of THE )  
11 ESTATE OF DONALD JOE )  
BEDUNAH, Deceased, )

Dept. No. 4 Karen S. Townsend  
Cause No. DV-14-119

12 Plaintiff,

**COMPLAINT AND  
DEMAND FOR JURY TRIAL**

13 -vs-

14 MONTANA PUBLIC EMPLOYEE  
15 RETIREMENT ADMINISTRATION,  
and MONTANA PUBLIC  
16 EMPLOYEES' RETIREMENT  
BOARD, GREAT WEST  
17 RETIREMENT SERVICES, AND  
DOES I-V,

18 Defendants.  
19

20 COME NOW Plaintiff, by and through undersigned counsel of record,  
21 and hereby make the following claims against Defendants:

22 **PARTIES**

23 1. Donald Joe Bedunah ("Don") died on January 28, 2012, at the  
24 age of 59 years. At the time of death, the decedent was domiciled in  
25 Missoula County, Montana.

COPY



1 Code. Ann. (2013).

2 **FACTS COMMON TO ALL COUNTS**

3 11. Plaintiff re-alleges the allegations of Paragraphs 1 through 10  
4 above as if fully incorporated herein.

5 12. Don was previously married to Jamie Small.

6 13. The marriage between Don and Jamie was dissolved on April  
7 6, 1993.

8 14. Prior to the dissolution, on or about September 1, 1992, Don  
9 designated Jamie as the beneficiary of his Deferred Compensation Plan,  
10 stemming from his employment with the University of Montana, with  
11 participant ID 862827 and plan number 98469-01 (the "Account").

12 15. The Account is administered by the MPERA and the MPERB  
13 through Great West.

14 16. Don did not update the previous beneficiary designation on the  
15 Account. At the time of his death, Jamie was still named beneficiary of the  
16 Account.

17 17. In 1997, Don and Maureen were married, and their marriage  
18 continued until Don's death on January 28, 2012.

19 18. Don's Last Will and Testament named Maureen as the sole  
20 beneficiary of the Estate.

21 19. From about 2004 until Don's death, monthly account  
22 statements relating to the Account were sent to Don, stating that no  
23 beneficiary was designated with regard to the Account.

24 20. The Account provides that if no beneficiary is named, the funds  
25 will go to the account holder's estate.



1 Montana.

2 27. Great West, as service manager, is a plan administrator with  
3 duties delegated by MPERB, and has fiduciary responsibilities with respect  
4 to those duties.

5 28. The Defendants had a fiduciary duty to the Plaintiffs, as  
6 represented Beneficiaries of the Deferred Compensation Plan, to  
7 administer the Account in the best interest and exclusive benefit of plan  
8 participants and beneficiaries.

9 29. Defendants breached their duty when they provided false,  
10 inaccurate, and misleading information to Plaintiff regarding the beneficiary  
11 designation related to the Account.

12 30. Defendants' breach of their fiduciary duty, by failing to manage  
13 and administer the Account information to pay benefits in the manner in  
14 which Plaintiffs were both represented to be entitled to, has injured  
15 Plaintiff.

16 31. Plaintiff has incurred damage as a result of Defendants' breach  
17 of fiduciary duty in amounts to be proven at trial.

18 **COUNT II**

19 **Constructive Fraud**

20 32. Plaintiffs re-allege the allegations of Paragraphs 1 through 31  
21 above as if fully incorporated herein.

22 33. Defendants committed constructive fraud as defined by Mont.  
23 Code Ann. § 28-2-406 (2013) by misleading the Plaintiffs in their  
24 representation of the beneficiary designation on the Account.

25 34. As a result of Defendants' actions, Defendants gained an

1 advantage to the detriment of the Plaintiffs by misleading Plaintiffs to their  
2 prejudice.

3 35. As a direct and proximate result of Defendants' constructive  
4 fraud, Plaintiffs have suffered damages in amounts to be proven at trial.

5 **COUNT III**

6 **Negligent Misrepresentation**

7 36. Plaintiffs re-allege the allegations of Paragraphs 1 through 35  
8 above as if fully incorporated herein.

9 37. Defendants supplied false information to the Plaintiffs as to the  
10 beneficiary designation on the Account.

11 38. Defendants, as administrators and trustee of the Account,  
12 made the conflicting representations without any reasonable grounds for  
13 believing such representations to be true.

14 39. Defendants' misrepresentations were made to induce Plaintiffs'  
15 reliance.

16 40. Plaintiffs were unaware that Defendants' representations were  
17 false.

18 41. Plaintiffs acted in reliance on the truth of Defendants'  
19 representations as to whom would be entitled to the Account funds upon  
20 Don's death.

21 42. Plaintiffs were justified in relying upon Defendants'  
22 representations because Defendant MPERA is an agency of state  
23 government, Defendant MPERB is an administrative board of a state  
24 government agency authorized to act as the fiduciary of the Deferred  
25 Compensation Plan participants and beneficiaries in Montana, and

1 Defendant Great West was delegated duties by MPERB and expected to  
2 act as a fiduciary in accordance with those duties.

3 43. Defendants' misrepresentations caused Plaintiffs to suffer  
4 damages, and Defendants are liable to Plaintiffs for all damages caused  
5 thereby and in amounts to be proven at trial.

6 WHEREFORE, Plaintiffs respectfully pray for relief as follows:

7 1. For general and compensatory damages suffered by Maureen  
8 individually and as Personal Representative of the Estate, as a result of  
9 Defendants' breach of fiduciary duty, constructive fraud and/or negligent  
10 misrepresentation, in amounts to be proven at trial;

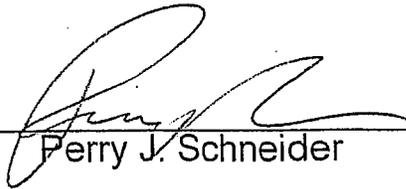
11 2. For an award of interest due on all amounts due and owing;

12 3. For attorney's fees and costs of suit; and

13 4. For such other and further relief that this Court deems just and  
14 proper.

15 DATED this 26 day of January, 2014.

16 MILODRAGOVICH, DALE  
17 & STEINBRENNER, P.C.  
18 *Attorneys for Plaintiffs*

19 By:   
20 Perry J. Schneider

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1 **DEMAND FOR JURY TRIAL**

2 COME NOW Plaintiffs and demand a jury trial on all issues of fact in  
3 the above case.

4 DATED this 20<sup>th</sup> day of January, 2014.

5 MILODRAGOVICH, DALE  
6 & STEINBRENNER, P.C.  
7 *Attorneys for Plaintiffs*

8 By:   
9 Perry J. Schneider

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