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COUNSEL FOR DEFENDANTS

MONTANA FIRST JUDICIAL DISTRICT COURT  
 LEWIS AND CLARK COUNTY

ASSOCIATION OF MONTANA RETIRED	)	Cause No. CDV-2013-788
PUBLIC EMPLOYEES, RUSSELL WRIGG,	)	
MARLYS HURLBERT, CAROLE CAREY,	)	<b>DEFENDANTS' RESPONSE</b>
I. EDWARD SONDEÑO,	)	<b>TO PLAINTIFFS' FIRST SET</b>
	)	<b>OF DISCOVERY REQUESTS</b>
Plaintiffs,	)	
v.	)	
STATE OF MONTANA, MONTANA PUBLIC	)	
EMPLOYEE RETIREMENT	)	
ADMINISTRATION, PUBLIC EMPLOYEE	)	
RETIREMENT BOARD, GOVERNOR	)	
STEVE BULLOCK, in his official capacity,	)	
Defendants.	)	

**REQUEST FOR ADMISSION NO. 1:** Please admit that HB 454 of the 2013  
 Legislative Session as originally introduced did not reduce the Guaranteed Annual  
 Benefit Adjustment (“GABA”).

**RESPONSE:** Admit.

**REQUEST FOR ADMISSION NO. 2:** Please admit that the fiscal note for HB 454 as originally introduced showed the Public Employee Retirement System defined benefit plan as codified in Title 19, Chapters 2 and 3 of the Montana Code Annotated ("PERS") amortizing in 36.7 years after being in effect for one year.

**RESPONSE:** Objection, the referenced fiscal note is not attached. Without waiving the objection, a fiscal note dated February 19, 2013 for HB 454 states that the "Unfunded Actuarial Accrued Liability (UAAL) of PERS is reduced from "Does Not Amortize" (DNA) to 36.7 years as a result of HB 454."

**REQUEST FOR ADMISSION NO. 3:** Please admit that the fiscal note for HB 454 as originally introduced showed PERS amortizing in under 30 years after being in effect for six years.

**RESPONSE:** Objection, the referenced fiscal note is not attached. Without waiving the objection, a fiscal note dated February 19, 2013 for HB 454 states "PERS is projected to become actuarial[sic] sound in the year 2019 when the unfunded liability would be paid within 28.1 years."

**REQUEST FOR ADMISSION NO. 4:** Please admit that the enactment of Section 5 of HB 454, as amended by the Senate Finance and Claims Committee on April 16, 2013, accounted for approximately 22.2 years reduction in the PERS amortization period.

**RESPONSE:** Objection, this request is vague because it does not specify what the "approximately 22.2 years reduction in the PERS amortization period" is to be compared to. Without waiving the objection, Defendants deny. The "Pension Fund

Fiscal Note” for the 2015 Biennium regarding HB 454, dated April 19, 2013, does not show a “reduction of 22.2 years. See referenced “Pension Fund Fiscal Note” on attached CD.

**REQUEST FOR ADMISSION NO. 5:** Please admit that the Senate Finance and Claims Committee April 16, 2013 amendments to HB 454 deliberately eliminated or omitted any "trigger" or event by which the retiree GABA would ever be returned to 3%, or increased above 1.5%, even if PERS was 100% funded.

**RESPONSE:** Objection, the amendments are not attached. Without waiving the objection, the State has insufficient information as to whether any specific change was “deliberate,” and therefore denies the same.

**REQUEST FOR ADMISSION NO. 6:** Please admit that the letter attached as Exhibit A is a true and correct copy of the letter sent to Plaintiff Russell Wrigg on behalf of Plaintiff Association of Montana Retired Public Employees from Defendant Governor Steve Bullock, in his official capacity.

**RESPONSE:** Admit.

**REQUEST FOR ADMISSION NO. 7:** Please admit that the letter identified in Request for Admission No. 4, the Defendant agrees that the GABA reduction contained in section 5 of HB 454 (2013) is “likely [an] unconstitutional amendment”.

**RESPONSE:** Deny. No letter is identified in RFP No. 4 and there are multiple defendants.

**REQUEST FOR ADMISSION NO. 8:** Please admit that the State of Montana had an ending fund balance, as described in Mont. Code Ann. § 17-7-131, on June 30,

2013 in excess of \$400 Million.

**RESPONSE:** Objection, “ending fund balance” is not defined. Without waiving the objection, Defendants admit the “unassigned general fund balance” at June 30, 2013 reported on SBHRS was in excess of \$400 million.

**REQUEST FOR ADMISSION NO. 9:** Please admit that a onetime lump sum of \$300 Million could have been contributed to PERS and the State would have still been in compliance with Mont. Code Ann. § 17-7-131.

**RESPONSE:** Objection. This request does not seek an admission within the scope of Mont. R. Civ. P. 36(a)(1), and any response requires Defendants to speculate.

**REQUEST FOR ADMISSION NO. 10:** Please admit that no lump sum amount of money was contributed to PERS by the 2013 Legislature.

**RESPONSE:** Deny. The 2013 Legislature allocated coal severance tax funds to PERS as a “lump sum.”

**REQUEST FOR ADMISSION NO. 11:** Please admit that the fiscal note for Chapter 396, 2013 Laws of Montana calculated that State of Montana will see a reduction in revenue of between approximately \$5.2 Million and \$14.4 Million over the next four years due to a reduction of the business equipment tax.

**RESPONSE:** Objection, the fiscal note is not attached. Without waiving the objection, the fiscal note dated June 28, 2013 for SB 96, states that the bill will have a “net impact” to the “general fund balance” of less \$5.2 million in FY 2014, less \$14.4 million in FY 2015, less \$ 11.4 million in FY 2016, and less \$ 11.6 million in FY 2017.

**REQUEST FOR ADMISSION NO. 12:** Please admit that House Bill 632 did not pass the 2011 Legislature.

**RESPONSE:** Admit.

**REQUEST FOR ADMISSION NO. 13:** Please admit that House Bill 382 did not pass the 2013 Legislature.

**RESPONSE:** Admit.

**REQUEST FOR ADMISSION NO. 14:** Please admit that at various times from 2001 to 2013 the Montana Public Employee Retirement Administration ("MPERA") and its employees through retirement trainings, helplines, benefit estimates, employee handbooks, among other things, informed PERS members and retirees that were employed prior to June 30, 2007, that they would receive a 3% GABA.

**RESPONSE:** Admit.

**REQUEST FOR ADMISSION NO. 15:** Please admit that at various times from 2001 to 2013 the Montana Public Employee Retirement Board ("PERB") and its employees through retirement trainings, helplines, benefit estimates, employee handbooks, among other things, informed PERS members and retirees that were employed prior to June 30, 2007, that they would receive a 3% GABA.

**RESPONSE:** Admit, with qualifications. PERB does not directly put on retirement trainings, etc., but MPERA has informed members they would receive a 3% adjustment on behalf of PERB.

**REQUEST FOR ADMISSION NO. 16:** Please admit that the GABA contained in Mont. Code Ann. § 19-3-1605 is part of a member – employee's contract with the State.

**RESPONSE:** Deny. Mont. Code Ann. § 19-2-502(2) applies to “benefits and refunds.” The “benefits” are set forth in Mont. Code Ann. § 19-3-904. Mont. Code Ann. § 19-3-1605 adjusts those benefits, but is not the benefit itself.

**REQUEST FOR ADMISSION NO. 17:** Please admit that with the exception of the provisions specifically governing the PERS defined contribution plan the contract of employment for members of PERS described in Mont. Code Ann. § 19-2-502 consists of all provisions of Mont. Code Ann. Title 19, chapters 2 and 3.

**RESPONSE:** Deny. Mont. Code Ann. § 19-2-502(2) applies only to “benefits and refunds [payable] to eligible recipients.”

**REQUEST FOR ADMISSION NO. 18:** Please admit that when Mont. Code Ann. § 19-3-1605(2)(a) references “recipient’s benefit payable during the preceding January”, that benefit amount includes any GABA which the recipient was paid during the preceding January, assuming that the recipient had been retired for more than twelve months.

**RESPONSE:** Deny. The “recipient’s benefit” discussed in Mont. Code Ann. § 19-3-1605(2)(a) references “the permanent monthly benefit” addressed in -1605(1). This benefit is set forth in Mont. Code Ann. § 19-3-904. Mont. Code Ann. § 19-3-1605 adjusts those benefits, but is not the benefit itself.

**REQUEST FOR ADMISSION NO. 19:** Please admit that Mont. Code Ann. § 19-2-502 as it was in effect both before and after the 2013 Legislature, does not make any reference or allowance that the contract may be reduced or impaired in any way.

**RESPONSE:** Deny. The last sentence of the statute states “Unless specifically provided for by statute, the contract does not contain revisions to statutes after the time of retirement or termination of membership.” Thus statutory revisions apply to all current members, and also apply to all retirees if “specifically provided for” in the statute.

**REQUEST FOR ADMISSION NO. 20:** Please admit that, under Montana law, a nonexempt state, county or city employee is required to become a member of the PERS defined benefit plan on the first day of service unless the employee opts to become a member of the PERS defined contribution plan.

**RESPONSE:** Deny. Many state and local employees are not ever members of PERS, for example employees of political subdivisions that have not contracted for PERS coverage under Mont. Code Ann. § 19-3-201, or employees covered by other Montana public retirement systems including Judges, Montana Highway Patrol Troopers, Firefighters, etc. Admit as to employees in a “covered position,” as defined at Mont. Code Ann. § 19-2-303(14).

**REQUEST FOR ADMISSION NO. 21:** Please admit that, under Montana law, a nonexempt state, county or city employee is required to contribute a percentage of their pay to PERS.

**RESPONSE:** Deny. See above and also those in defined contribution plans do not contribute any of their pay to the PERS defined benefit retirement plan. Admit as to

members of the defined benefit retirement plan.

**REQUEST FOR ADMISSION NO. 22:** Please admit that Plaintiff I. Edward Sondeno paid the full actuarial cost to receive a 3% GABA.

**RESPONSE:** Admit that the purchase price for service credit assumed a 3% annual adjustment.

**REQUEST FOR ADMISSION NO. 23:** Please admit that any PERS member who purchased additional service credit pursuant to Mont. Code Ann. § 19-3-513 from July 1, 2001 through June 30, 2013, paid the full actuarial cost to receive a 3% GABA.

**RESPONSE:** Deny. If hired on or after July 1, 2007, the purchase price for service credit assumed a 1.5% annual adjustment. It is also unclear what you mean by “the full actuarial cost to receive a 3% GABA.”

**REQUEST FOR ADMISSION NO. 24:** Please admit that the “Statement of Intent” of HB 170 of the Session Laws of 1997, which initially implemented GABA, states “the bill provides that the GABA be substituted for other benefits in cases in which the GABA is as valuable or more valuable to members”.

**RESPONSE:** Admit.

**REQUEST FOR ADMISSION NO. 25:** Please admit that Mont. Code Ann. § 19-3-2106 expressly states that members of the defined contribution plan or the university system retirement program do not have a contract right to the specific terms and conditions specified in statute on the date the employee's choice of retirement system becomes effective.

**RESPONSE:** Admit that Mont. Code Ann. § 19-3-2106 states “[e]mployees choosing the defined contribution plan or the university system retirement program pursuant to this part do not have a contract right to the specific terms and conditions specified in statute on the date the employee's choice becomes effective.”

**REQUEST FOR ADMISSION NO. 26:** Please admit the Montana Legislature has not limited the contract rights of members of the defined benefit plan as it has for others in Mont. Code Ann. § 19-3-2106.

**RESPONSE:** Objection, the phrase “limited the contract rights” is vague and ambiguous. Without waving the objection, deny.

**REQUEST FOR ADMISSION NO. 27:** Please admit that the Legislature could have enacted a similar limited contract right as it did in Mont. Code Ann. § 19-3-2106 applicable to the members of the defined benefit PERS plan, but has not done so.

**RESPONSE:** Objection, vague and ambiguous and calls for speculation. Without waving the objection, deny.

**REQUEST FOR ADMISSION NO. 28:** Please admit the information in the Affidavit of I. Edward Sondeno, attached as Exhibit B, is true, accurate, and correct.

**RESPONSE:** The State admits the facts set forth in paragraphs 1, 2, 3, 4, 5, 7 and 10 of the Affidavit.

As to paragraph 6 of the Affidavit, the State has insufficient information to determine what “became obvious” to Mr. Sondeno, and therefore denies the same. The State admits the remainder of paragraph 6 of the Affidavit.

As to paragraphs 8 and 9 of the Affidavit, the State has insufficient information as to why Mr. Sondeno took the action he did or what his thoughts were regarding those actions, and therefore denies the same.

**INTERROGATORY NO. 1:** Is it your contention that any of the statements and information in the Affidavit of I. Edward Sondeno, attached as Exhibit B, is not true, accurate and correct? If so, please identify specifically each statement or item of information that you contend is not true, accurate and correct and set forth all facts supporting your contention that the statement or information is not true, correct and accurate.

**ANSWER:** See response to Request for Admission No. 28.

**REQUEST FOR ADMISSION NO. 29:** Please admit the information in the Affidavit of Marlys Hurlbert, attached as Exhibit C, is true, accurate, and correct.

**RESPONSE:** The State admits the facts set forth in in paragraphs 1 to 5 of the Affidavit.

As to paragraph 6 of the Affidavit, the State admits Ms. Hurlbert stayed on the State health insurance plan after retirement. The State does not know the initial cost of that insurance and therefore denies same. The State denies that the cost of state health insurance to Ms. Hurlbert is now \$762.90 a month. That was the amount deducted for Ms. Hurlbert's insurance premium for November 2013. However, effective December 2013, Central Payroll notified MPERA that at Ms. Hurlbert's direction, insurance premiums should are no longer deducted from Ms. Hurlbert's retirement benefit.

As to paragraph 7 of the Affidavit, the State admits that Ms. Hurlbert's initial benefit adjustment was approximately \$60 a month. The State denies that State health insurance premiums for retirees have increased by \$50 to \$60 per month. Instead the increases for a retiree only on the Choice/Capitol Plan are as follows:

2003	335	
2004	352	17
2005	412	60
2006	459	47
2007	508	49
2008	466	-42
2009	552	86
2010	624	72
2011	691	67
2012	691	0
2013	726	35
2014	734	8

As to paragraphs 8, 9 and 10 of the Affidavit, the State has no information regarding Ms. Hulbert's current financial or medical issues and therefore denies the same.

**INTERROGATORY NO 2:** Is it your contention that any of the statements and information in the Affidavit of Marlys Hurlbert, attached as Exhibit C, is not true, accurate and correct? If so, please identify specifically each statement or item of information that you contend is not true, accurate and correct and set forth all facts supporting your contention that the statement or information is not true, correct and accurate.

**ANSWER:** See response to Request for Admission No. 29.

**REQUEST FOR ADMISSION NO. 30:** Please admit that the information in the Affidavit of Carole Carey, attached as Exhibit D, is true, accurate, and correct.

**RESPONSE:** The State admits the facts set forth in paragraphs 1, 2, 4, 5, 6.

As to paragraph 3, the State admits Ms. Carey was a member of PERS for 36 years, but has insufficient information regarding her specific service for Carter County.

As to paragraph 7 of the Affidavit, the State objects to the request as calling for speculation and a legal conclusion.

With respect to paragraphs 8 to 12 of the Affidavit, the State has no knowledge of what was clear to Ms. Carey or the nature of her personal and financial status and decisions and therefore denies the same.

**INTERROGATORY NO 3:** Is it your contention that any of the statements and information in the Affidavit of Carole Carey, attached as Exhibit D, is not true, accurate and correct? If so, please identify specifically each statement or item of information that you contend is not true, accurate and correct and set forth all facts supporting your contention that the statement or information is not true, correct and accurate.

**ANSWER:** See response to request for admission #30.

**REQUEST FOR ADMISSION NO. 31:** Please admit that the information in the Affidavit of Michael O'Connor, attached as Exhibit E is true, accurate, and correct.

**RESPONSE:** The State admits the facts set forth in paragraphs 1, 2, 3 (per the 2013 CAFR) and 4 to 8.

As to paragraph 10 of the Affidavit, the State admits contribution rates were increased by .2% and that previous ad hoc adjustments were terminated, but denies that the 1.5% annual adjustment or the ad hoc adjustments are a "benefit."

As to paragraph 9 of the Affidavit, the State denies that the annual adjustment applied to all retirees. At that time retirees had to be retired 3 full years before receiving the adjustment. The State admits the remainder of the paragraph.

As to paragraph 11 of the Affidavit, the State admits that the cost of purchasing military service changed from being based on the member's 11th, 12th, 13th, 14th and 15th years of salary to being the actuarial cost. The State objects to admitting whether the suggested costs for service are correct because this would require actuarial analysis and is therefore overly burdensome.

The State denies paragraph 12 of the Affidavit as it calls for speculation.

As to paragraphs 13 to 16 of the Affidavit and the accompanying charts the State objects to admitting whether the hypothetical charts are correct because this calls for speculation, and is overly burdensome because it would require expert actuarial analysis. Mr. O'Connor is not an actuary.

**INTERROGATORY NO 4:** Is it your contention that any of the statements and information in the Affidavit of Michael O'Connor, attached as Exhibit E, is not true, accurate and correct? If so, please identify specifically each statement or item of information that you contend is not true, accurate and correct and set forth all facts supporting your contention that the statement or information is not true, correct and accurate.

**ANSWER:** See response to request for admission No. 31.

**REQUEST FOR ADMISSION NO. 32:** Please admit that the information in the Affidavit of Terry W. Johnson, attached as Exhibit F, is true, accurate, and correct.

**RESPONSE:** As to paragraphs 1 to 2 of the Affidavit, Defendants have insufficient knowledge and therefore denies the same.

As to paragraph 3 of the Affidavit, Defendants admit that Mr. Johnson worked for the State for 39 years, including with the Governor's Budget Office and as the principal fiscal analyst for Legislative Services, but has insufficient knowledge of the specific details of his career.

As to paragraph 4 of the Affidavit, Defendants admit that the principal fiscal analyst is generally required to perform the listed duties.

As to paragraph 5 of the Affidavit, Defendants admit that Mr. Johnson's duties required working knowledge of SABHRS, and that the system is the State's primary accounting software, but deny that SABHRS "records and maintains all financial transactions for state government entities" as overly broad.

As to paragraph 6 of the Affidavit, Defendants have insufficient knowledge to determine whether Mr. Johnson prepared the Exhibit A or how he did so and therefore deny the same.

As to paragraphs 7, 8, and 9 and Exhibit A of the Affidavit, Defendants deny the allegations because the term "surplus" is inappropriately applied by the affiant and Defendants specifically deny the amount of any alleged "surplus." The term "surplus" suggests that the State has this amount "free" for use, and fails to take into account present law obligations, potential supplemental funds, etc. Additionally, to deduct Mont. Code Ann. § 17-7-140 required fund balance from an unencumbered fund balance further confuses the issue.

As to Exhibit B of the Affidavit, Defendants admit the accuracy of these fund balances for FY 2012 and 2013.

**INTERROGATORY NO 5:** Is it your contention that any of the statements and information in the Affidavit of Terry W. Johnson, attached as Exhibit F, is not true, accurate and correct? If so, please identify specifically each statement or item of information that you contend is not true, accurate and correct and set forth all facts supporting your contention that the statement or information is not true, correct and accurate.

**ANSWER:** See response to Request for Admission No. 32.

**REQUEST FOR ADMISSION NO. 33:** Please admit that the information in the Affidavit of Patricia J. Davis, attached as Exhibit G, is true, accurate, and correct.

**RESPONSE:** The State admits the facts set forth in the Affidavit.

**INTERROGATORY NO 6:** Is it your contention that any of the statements and information in the Affidavit of Patricia R. Davis, attached as Exhibit G, is not true, accurate and correct? If so, please identify specifically each statement or item of information that you contend is not true, accurate and correct and set forth all facts supporting your contention that the statement or information is not true, correct and accurate.

**ANSWER:** See response to Request for Admission No. 33.

**REQUEST FOR ADMISSION NO. 34:** Please admit that the information in the Affidavit of June Dosier, attached as Exhibit H, is true, accurate, and correct.

**RESPONSE:** The State admits the facts set forth in the Affidavit.

**INTERROGATORY NO 7:** Is it your contention that any of the statements and information in the Affidavit of June Dosier, attached as Exhibit H, is not true, accurate and correct? If so, please identify specifically each statement or item of information that you contend is not true, accurate and correct and set forth all facts supporting your contention that the statement or information is not true, correct and accurate.

**ANSWER:** See response to Request for Admission No. 34.

**INTERROGATORY NO. 8:** Please state the full name, address, and title of each person responding to these requests or participating in preparing these responses, on behalf of Defendants.

**ANSWER:** Attorney General's Office (215 N. Sanders, Helena MT):  
Stuart Segrest and Mike Black, Assistant Attorneys General.

MPERA (100 N Park, STE 200, Helena MT): Melanie Symons, MPERA Chief Legal Counsel; Patricia J. Davis, MPERA Membership Services Bureau Chief; Barbara Quinn, MPERA Fiscal Services Bureau Chief; Jennifer Harnden, MPERA Benefit Analysts; Phyllis Meierhenry, IT contractor for MPERA; Joel Thompson, MPERA Education and Training Specialist.

Governor's Office (PO Box 200801, Helena MT 59620-0801): Andy Huff, Chief Legal Counsel; Dan Villa, Budget Director; Ryan Evans, Assistant Budget Director.

**REQUEST FOR PRODUCTION NO. 1:** Please produce all documents, specifically including but not limited to actuarial valuations, projections, and reports, concerning or relating to the actuarial soundness of the PERS defined benefit plan covering the time period from July 1, 2011 to present.

**RESPONSE:** See attached CD.

**INTERROGATORY NO. 9:** Please provide the current amortization period, funded ratio, and unfunded actuarial accrued liability of PERS since the valuation ending June 30, 2013.

**ANSWER:** MPERA does not have “current” information as requested, but only the information provided in the June 30, 2013 actuarial valuation report. A new actuarial valuation will be available in early fall of 2014, based on June 30, 2014 data, and this response will be supplemented.

**REQUEST FOR PRODUCTION NO. 2:** Please produce all documents supporting or analyzing the information contained in your response to Interrogatory No. 9.

**RESPONSE:** See June 30, 2013 actuarial valuation report (Cheiron, October 2013), available at <http://mpera.mt.gov/actuarialvaluations.shtml>.

**INTERROGATORY NO. 10:** Please provide the trending for the PERS amortization period, funded ratio, and unfunded actuarial accrued liability over the past twelve (12) months.

**ANSWER:** Objection, “trending information” is not defined. Without waiving the objection, Defendants do not have responsive materials in their possession, custody, or control. MPERA does not prepare or compile “trending” information, other than commissioning yearly actuarial valuations and comparing information from year to year within the CAFR.

**REQUEST FOR PRODUCTION NO. 3:** Please produce all documents reflecting the information stated in your answer to Interrogatory No. 10.

**RESPONSE:** Without waving the objection, see actuarial valuation reports for June 30, 2012 (Cheiron, September 2012) and June 30, 2013 (Cheiron, October 2013), available at <http://mpera.mt.gov/actuarialvaluations.shtml> and yearly CAFRS, available at <http://mpera.mt.gov/annualReports.shtml>.

**REQUEST FOR PRODUCTION NO. 4:** Please produce all documents provided by Cherion to Defendants regarding the actuarial valuation or amortization period of PERS subsequent to the June 30, 2013 actuarial valuation.

**RESPONSE:** See attached CD.

**REQUEST FOR PRODUCTION NO. 5:** Please produce all documents and analysis completed by Defendants' actuary related in any way to HB 122 from the 2011 Legislative Session.

**RESPONSE:** See attached CD.

**REQUEST FOR PRODUCTION NO. 6:** Please produce all documents, emails, and analysis completed by Defendants' in preparation for presentations made on the "Governor's Plan" to fix the retirement systems by the Governor's Office to the State Administration and Veterans Affairs Interim Committee and the Legislative Finance Committee during the 2011-2012 interim.

**RESPONSE:** See attached CD.

**REQUEST FOR PRODUCTION NO. 7:** Please produce all diagrams, charts or other documents, which Plaintiff intends to rely on as exhibits at trial.

**RESPONSE:** Defendants are unsure what documents Plaintiff intends to rely on at trial.

**INTERROGATORY NO. 11:** Please identify each member of PERS who retired after July 1, 2001.

**ANSWER:** Objection, Montana Code Annotated § 2-6-109(1)(a) prohibits an agency from distributing a mailing list without obtaining the permission of those on the list. The requested information is therefore being provided without a specific address. See attached CD. Plaintiffs and plaintiffs' counsel should be aware that section 2-6-109(1)(b) prohibits the use of this information as a mailing list absent permission of all those on the list.

MPERA does not have telephone numbers or job titles for these retirees. As to the identification of the retirees names and their last known job title and employer (under "Employer Table"), see list in Excel on the attached CD.

**INTERROGATORY NO. 12:** Have you calculated the effects on the actuarial valuation of PERS, including the amortization period, funded ratio, and unfunded actuarial accrued liability, of the State contributing additional funds to PERS? If so, please provide all results and actuary reports pursuant to the Request for Production below. If not, please state the reasons for not doing so.

**ANSWER:** The effects of the State contributing additional funds to PERS was calculated for the 2005 special session and the 2013 session. Pursuant to the Board's funding policy, actuarial reports are generally not conducted unless or until draft legislation requiring analysis is introduced.

**REQUEST FOR PRODUCTION NO. 8:** Please produce all documents related to your answer to Interrogatory No. 12.

**RESPONSE:** See attached CD.

**INTERROGATORY NO. 13:** Please identify all PERS members that are eligible as of the date these requests were served to purchase "1 for 5" service credit pursuant to Mont. Code Ann. § 19-3-513.

**ANSWER:** Objection, Montana Code Annotated § 2-6-109(1)(a) prohibits an agency from distributing a mailing list without obtaining the permission of those on the list. The requested information is therefore being provided without a specific address. Additionally, MPERA only has 1 for 5 service credit eligibility information for active and inactive PERS members. Service purchase eligibility is stripped from MPERA's system when a member retires. *See* spreadsheet on attached CD. Plaintiffs and plaintiffs' counsel should be aware that section 2-6-109(1)(b) prohibits the use of this information as a mailing list absent permission of all those on the list.

**INTERROGATORY NO. 14:** Please identify all PERS members that purchased "1 for 5" service credit pursuant to Mont. Code Ann. § 19-3-513 after June 30, 1997.

**ANSWER:** Objection, PERB policy prohibits the release of service purchase information as private funds are used to make the purchase, not public funds. The Board determined at its June 12, 2014 meeting to only release the number of individuals who have purchased 1 for 5 service, not the identify of those individuals. The number of current active and inactive PERS members who have purchased 1 for 5 service since 1997 is 849. MPERA only has 1 for 5 service purchase information for active and

inactive PERS members. Service purchase information is stripped from MPERA's system when a member retires.

**INTERROGATORY NO. 15:** Please identify each person whom you expect to call as an expert witness at trial and, for each such person, state:

- (a) The subject matter on which that person is expected to testify;
- (b) The substance of the facts and opinions to which the expert is expected to testify; and
- (c) Set forth a summary of the grounds for each opinion.

**ANSWER:** Defendants have yet to identify any expert witness who may testify at trial and will supplement.

**INTERROGATORY NO. 16:** Please identify each person whom you expect to call as a witness at trial, and for each such person, state:

- (a) The subject matter on which that person is expected to testify; and
- (b) The substance of the facts and opinions to which the person is expected to testify.

**ANSWER:** Defendants have yet to determine who it will call as witnesses at trial and will supplement.

**REQUEST FOR PRODUCTION NO. 9:** For each expert witness identified in your responses to Plaintiffs' Interrogatories, please produce all documents upon which each witness may rely or refer to in testifying at the trial of this matter.

**RESPONSE:** N/A. Defendants have yet to identify any expert witness who may testify at trial, but these documents may include the actuarial reports and analysis

produced herein, and legislative history. Defendants will supplement.

**REQUEST FOR PRODUCTION NO. 10:** For each expert witness you retain in this case, please produce any written report they have authored containing the information subject to discovery pursuant to Rule 26(b)(4)(A)(1) of the Montana Rules of Civil Procedure.

**RESPONSE:** N/A. Defendants have yet to identify any expert witness who may testify at trial, but will supplement if and when an expert report is produced.

**REQUEST FOR PRODUCTION NO. 11:** For each expert witness you retain in this case, please produce a detailed resume of that expert's qualifications, training, publications, awards/honors received, and practical experience. As part of the resume, please include a listing of all matters on which the expert has testified (including by deposition) as an expert witness in any other case, which list should include the following:

- (a) The dates and places of testifying;
- (b) The case caption, docket number, and venue;
- (c) The party for whom the expert testified and whether such party was plaintiff or defendant;
- (d) The name, address, and telephone number of the attorney whom retained the expert; and
- (e) A brief summary of the testimony given by the expert.

**RESPONSE:** N/A. Defendants have yet to identify any expert witness who may testify at trial and will supplement to the extent any responsive document comes within

Defendants possession custody or control.

**REQUEST FOR PRODUCTION NO. 12:** Please produce all documents provided by you or any other person to each expert as a consequence of his/her involvement in this lawsuit, and for each such document, identify the expert to whom it was provided.

**RESPONSE:** N/A. Defendants have yet to identify any expert witness who may testify at trial and will supplement to the degree any responsive document comes within Defendants possession custody or control that does not constitute privileged communication.

**REQUEST FOR PRODUCTION NO. 13:** Please produce all documents authored by or received from each expert as a consequence of his/her involvement in this lawsuit, including the expert's work file, notes, file memoranda, reports, correspondence and all other documents.

**RESPONSE:** N/A. Defendants have yet to identify any expert witness who may testify at trial and will supplement to the degree any responsive document comes within Defendants possession custody or control that does not constitute privileged communication.

**REQUEST FOR PRODUCTION NO. 14:** Please produce all documents wholly or partially relied upon by each expert in the formation of the expert's opinions or testimony in this matter.

**RESPONSE:** N/A. Defendants have yet to identify any expert witness who may testify at trial and will supplement to the degree any responsive document comes within

Defendants possession custody or control that does not constitute privileged communication.

**INTERROGATORY NO. 17:** Please provide a detailed narrative, including all facts supporting your defense that “Plaintiffs lack standing to assert the causes of action of which they complain.”

**ANSWER:** As to non-retired plaintiffs, they have suffered no injury, and thus lack standing, until they retire.

**INTERROGATORY NO. 18:** Please provide a detailed narrative, including all facts supporting your defense that “Plaintiffs causes of action are not ripe.”

**ANSWER:** As to non-retired plaintiffs, they have suffered no injury, and thus their claim is unripe, until they retire.

**INTERROGATORY NO. 19:** Please provide a detailed narrative, including all facts supporting your defense that “Plaintiffs causes of action may be rendered moot by future actuarial valuations or legislative action.”

**ANSWER:** Objection, this requires Defendants to speculate. Without waiving the objection, future valuations or legislative changes may alter the annual adjustment calculation and thus again provide for pre-2013 adjustment levels or higher.

**INTERROGATORY NO. 20:** Please provide a detailed narrative, including all facts supporting your defense that “Plaintiffs cause of action is barred by failure to exhaust administrative remedies.”

**ANSWER:** Failed to bring an administrative action before MPERA or PERB under Mont. Code Ann. §§ 19-2-403((4), (6), (13) and (14); ARM 2.43.1501 to .1503.

**INTERROGATORY NO. 21:** Considering that Mont. Const. Art. VIII, Sec. 15, provides that "Public retirement system assets ... shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses", is it your contention that the GABA provided for in Mont. Code Ann. § 19-3-1605 is not a benefit to PERS retirees? If so, please explain in a detailed narrative.

**ANSWER:** Yes, the adjustment provided for in Mont. Code Ann. § 19-3-1605 is a yearly adjustment to the benefit, not the benefit itself. The "service retirement benefit payable following retirement to a member" is set forth in Mont. Code Ann. § 19-3-904.

**INTERROGATORY NO. 22:** If you answer any of Plaintiffs' Requests for Admission with a response other than an unqualified admission, please set forth fully for each request and with specificity the factual basis for your refusal to unqualifiedly admit the request.

**ANSWER:** Objection. Plaintiffs to date have propounded 34 requests for admission and 26 interrogatories, and therefore this interrogatory may violate Mont. R. Civ. P. 33(a)(1). Without waiving this objection, see responses to each request for admission.

**INTERROGATORY NO. 23:** What alternatives were considered and rejected other than reducing the GABA in order to restore the actuarial soundness of PERS? For each, provide a detailed narrative identifying the alternative, when it was considered, and why it was not implemented.

**ANSWER:** Objection, this interrogatory is overly broad, vague, and unduly burdensome because it does not identify a subject that may have considered alternatives (alternatives considered by whom?) and does not contain a time period. Additionally why certain alternatives were not implemented, when ascertainable, is a matter of legislative record, as accessible to Plaintiffs as to Defendants, and are available to Plaintiffs pursuant to Mont. R. Civ. P. 33(d).

Without waiving the objection, potentially responsive bills and measures proposed in 2011 and 2013 offering alternatives include:

HB 383 (2013) and HB 632 (2011); HB 338 (2013); SB 333 (2013); HB 122 (2011).

**REQUEST FOR PRODUCTION NO. 15:** Please produce all training materials, emails, presentation outlines and documents of any kind including electronically stored information, where you represent that any state, county, or local government employee will be eligible to receive a 3% GABA.

**RESPONSE:** See MPERA documents referencing the 3% GABA on the attached CD and attached VHS Cassette. Emails are generally only retained by MPERA for 30 days. Most emails referencing a 3% GABA would be significantly older. Those that were located after a reasonable search was conducted are included on the CD.

**REQUEST FOR PRODUCTION NO. 16:** Please produce all records, and documents of any kind where you discuss in any manner a state, county, or local government employee being eligible to receive a 3% GABA.

**RESPONSE:** See documents on the attached CD and attached VHS Cassette.

**INTERROGATORY NO. 24:** Did you or any of your employee(s) or agent(s), conduct or present any training, presentations, orientation programs, employment interviews, informational seminars, or any similar type of communication where the receipt of the GABA at a 3% rate has been discussed? If so, please explain in detail the training, program, interviews or other communications, when they occurred, the persons involved and identify all documents in your possession, custody or control related to such communications.

**ANSWER:** Objection overly broad and unduly burdensome. Without waiving the objection, MPERA has conducted trainings and programs in which the 3% annual adjustment rate was discussed. The documents addressing a 3% annual adjustment are provided in the response to Request for Production No. 15.

**INTERROGATORY NO. 25:** Did you or any of your employee(s) or agent(s), ever represent to any state, county, or local government employee that they would be eligible to receive a 3% GABA? If so, please explain in detail the interaction, when it occurred, who was involved, and the circumstances surrounding the interaction, and identify all documents in your possession, custody or control related to such actions.

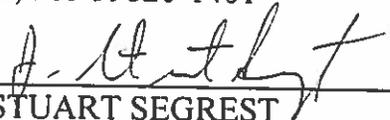
**ANSWER:** Objection overly broad and unduly burdensome. Without waiving the objection, while MPERA admits that it discussed eligibility for a 3% annual adjustment prior to the effective date of HB 454 with eligible employees, it is impossible to provide details of every interaction where this topic might have been discussed. The documents addressing a 3% annual adjustment are provided in the response to Request for Production No. 15.

**INTERROGAORTY NO. 26:** Please provide the spending fund authorizations of State's general fund monies for the 2012-2013 biennium and the 2014-2015 biennium.

**ANSWER:** See attached General Fund balance sheets on the CD.

DATED this 13th day of June, 2014.

TIMOTHY C. FOX  
Montana Attorney General  
215 North Sanders  
P.O. Box 201401  
Helena, MT 59620-1401

By:   
J. STUART SEGREST  
Assistant Attorney General  
As to Objections

**VERIFICATION**

Melanie Symons hereby declares under penalty of perjury that the following is true and correct:

That she is an authorized representative of the Montana Public Employee Retirement Administration in the above matter, that she has read the foregoing, and that the representations are true and correct to the best of her knowledge.

Dated this \_\_\_ day of June, 2014, at Helena, Montana.

\_\_\_\_\_  
MELANIE SYMONS  
MPERA Chief Legal Counsel

Dan Villa hereby declares under penalty of perjury that the following is true and correct:

That he is an authorized representative of the Montana Budget and Program Planning Office, that he has read the foregoing, and that the representations are true and correct to the best of his knowledge.

Dated this \_\_\_ day of June, 2014, at Helena, Montana.

\_\_\_\_\_  
DAN VILLA  
Budget Director

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and accurate copy of the foregoing document to be mailed to:

Mr. Leo Berry  
Mr. Chad E. Adams  
Mr. Jessie L. Luther  
Browning, Kaleczyc, Berry & Hoven, P.C.  
800 N. Last Chance Gulch, Suite 101  
P.O. Box 1697  
Helena, MT 59624-1697

DATED: \_\_\_\_\_