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July 11, 2014

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JUL 14 2014
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J. Stuart Segrest
Assistant Attorney General
Michael G. Black
Assistant Attorney General
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Helena, MT 59620-1401

RE: ***State of Montana's Discovery Responses***

Dear Mr. Segrest and Mr. Black:

We reviewed your recent responses and objections to Plaintiffs' First Set of Discovery Requests. While we appreciate the information that has been provided, some of the responses are incomplete. We are writing pursuant to Mont. R. Civ. P. 37(a)(1) to urge you to reconsider your incomplete responses as outlined below and ask that within the next 30 days you supplement your responses to Plaintiffs' First Discovery Requests to Defendants, Including Requests for Admissions, in an effort to avoid motion practice.

As an initial matter, it is unclear from Defendants' documents production that you have provided documents from all of the named Defendants, and not just MPERA. The discovery requests are directed at all of the Defendants and should include email correspondence, written correspondence and documents in the possession, custody and control of all Defendants. Please certify that your responses do include all responsive documents and all responsive information from every Defendant, and not just MPERA.

Plaintiffs also seek some additional clarification and information related to some of the individual discovery requests identified below:

Interrogatories Nos. 17 and 18. Defendants' response to these interrogatories is purposefully evasive. Please supplement your responses to these interrogatories asking for a detailed narrative and facts supporting your lack of standing and ripeness defenses, as your responses appear to be based on the false assumption that one or more of the Plaintiffs is not retired. All named Plaintiffs in this matter are retired and the Association of Montana Retired Public Employees represents retired public employees' interests. If Defendants have good faith

information that any Plaintiff is not retired and that your responses would therefore have been provided in good faith, please explain what facts you have to support your answers. Otherwise, please supplement the answers to Interrogatories Nos. 17 and 18 to answer the questions asked, and if you have no arguable basis to support your standing and ripeness defenses, as it appears from your initial responses, we will seek to have those defenses stricken.

Interrogatory No. 23. Defendants object to this interrogatory which requests factual information regarding what alternatives to reducing the GABA were considered and rejected, and why. Defendants object on the basis that it is overly broad and does not specify who considered the alternatives or a timeframe. In *Richardson v. State,* 2006 MT 43, 331 Mont. 231, 130 P.3d 634, the court addressed the unreasonableness of the state's objections to discovery and held, "[w]hen an interrogatory can reasonably be interpreted, in the context of the claims at issue, as seeking discoverable information, the recipient of the interrogatory must interpret it that way rather than imputing some meaning to the request which would render it vague, ambiguous or objectionable in some other respect." *Id.* at ¶52. *Richardson* plainly emphasizes that the discovery rules in Montana are intended to require broad disclosure, not a game of hide the ball. While Plaintiffs believe it is clear what information is sought in Interrogatory No. 23, Plaintiffs provide some additional information here in an effort to resolve your objections. Please supplement your response to provide information about what alternatives to reducing the GABA were considered by the Defendants in this case (The State of Montana, MPERA, PERB and Governor Bullock). The timeframe for this request is intended to be inclusive and covers all time periods during which the 3% GABA has been in effect. This information is plainly relevant and should be responded to completely.

Request for Production No. 15. The Defendants' response to Request for Production No. 15 is insufficient. First, the request is directed at all Defendants and not just MPERA. If other Defendants have responsive documents, including emails, those should be provided. Additionally, it is an incredible claim that a state agency permanently deletes all of its emails after 30 days, especially in light of anticipated and/or pending litigation. Please describe what efforts you have taken to preserve emails regarding the subject of this litigation and what efforts were taken to retrieve email correspondence regarding the 3% GABA during the "reasonable search" discussed in your response. If additional documents from other Defendants than MPERA, and additional emails from MPERA exist, please supplement your response to RFP No. 15 to include those documents.

Thank you, and we look forward to your prompt response.

Sincerely,

BROWNING, KALECZYC, BERRY & HOVEN, P.C.

By _____
Jessie L. Luther

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