

**ATTORNEY GENERAL**  
**STATE OF MONTANA**

**Tim Fox**  
**Attorney General**



**Department of Justice**  
**215 North Sanders**  
**PO Box 201401**  
**Helena, MT 59620-1401**

December 2, 2015

Bill Gianoulis, Chief Defense Counsel  
Risk Management and Tort Defense Division  
Department of Administration  
P.O. Box 200124  
Helena, MT 59620-0124

Dear Bill:

This letter will notify you that on November 25, 2015, the Office of the Attorney General was served with a hand-delivered Summons and Complaint in the following. We are informed that no other agency was also served with copies of these documents.

GREG TADMAN, and all others similarly situated, plaintiffs, v. STATE OF MONTANA, defendant. Eighth Judicial District Court, Cascade County, Cause No. ADV 15-821.

Although the Attorney General is responsible for the supervision of all litigation to which the State is a party, this office does not directly handle every case involving the State. Only those agencies entering into a contract with the Agency Legal Services Bureau are directly represented by this office. However, the Attorney General's Office will provide assistance to your agency counsel if requested in connection with litigation.

If the State of Montana, as well as your agency, is named as a party, please be sure that the attorney representing the agency indicates in court documents that he or she also represents the State as a Special Assistant Attorney General.

I would also like to point out that because of the Attorney General's supervisory responsibility with respect to litigation in which the State is a party, this office reserves the right to intervene in such litigation in the event that intervention is appropriate.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Stuart Segrest".

J. STUART SEGREST  
Assistant Attorney General

jss/jym  
Encs.

c: Director, Department of Administration  
Melanie Symons, Department of Administration, w/encs.

**COPY  
TO BE SERVED AND LEFT  
WITH DEFENDANT**

**MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY**

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Greg Tadman, and all others similarly situated,	)	
	)	Cause No.: ADV-15-821
Plaintiffs,	)	
	)	Summons
v.s.	)	
	)	
State of Montana,	)	
	)	
Defendant.	)	

---

THE STATE OF MONTANA SENDS GREETINGS TO:  
State of Montana  
c/o Tim Fox, Montana Attorney General

You are hereby summoned to answer the Complaint in the action which is filed in the office of the Clerk of this Court, a copy of which is herewith served upon you, and to file your answer and serve a copy thereof upon the Plaintiff's attorney within forty-two (42) days after the service of this Summons, exclusive of the day of service; and, in case of your failure to appear or answer, judgment will be taken against you by default, for the relief demanded in the Complaint.

WITNESS my hand and the seal of said Court this 13 day of November 2015.

CLERK OF COURT  
(SEAL)



*Kathy Stein*

Lawrence A. Anderson  
 Attorney at Law, P.C.  
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 BY \_\_\_\_\_ DEPUTY

*Attorney for Plaintiffs*

**MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY**

Greg Tadman, and all others similarly situated, )  
 )  
 Plaintiffs, )  
 )  
 v.s. )  
 )  
 State of Montana, )  
 )  
 Defendant. )

Cause No.: **ADV-15- 821**  
 Complaint  
**Gregory G. Plnski**

For his complaint, plaintiff alleges and states as follows:

**PARTIES**

1. Plaintiff is a resident of Cascade County, Montana.
2. The Defendant State of Montana is a state under the Eleventh Amendment of the U.S. Constitution. See Fiftieth Congress, Sess. II, Ch.180 (1889).

**JURISDICTION AND VENUE**

3. Under Article VII, Section 4 of the Montana Constitution, district courts have original jurisdiction of all civil matters and cases of law and equity. Since this matter is a civil matter and a case of law and equity arising in Montana, this district court has jurisdiction over

**this action.**

**4. Under the provisions of §25-2-126(1), MCA, venue is properly laid in either Cascade County or Lewis & Clark County. Under the provisions of §25-2-115, MCA, where venue is properly laid in more than one county, an action in any proper county is proper.**

### **COMMON FACTUAL ALLEGATIONS**

**5. The State of Montana operates a public employee retirement system administered by a state agency entitled Montana Public Employee Retirement Administration (MPERA).**

**6. MPERA administers seven retirement plans prescribed by Montana Law. Those plans are:**

**a) Plan A, established under §19-3 of the Statute, is a tax qualified multi-employer defined benefit plan that provides retirement, disability, and death benefits to eligible employees of the State, the State university system, local governments, and certain school districts within the State. Membership in the plan is mandatory and a condition of employment for eligible employees.**

**b) Plan B, established under §19-5 of the Statute, is a tax qualified defined benefit plan that provides retirement, disability, and death benefits to all State district court judges, justices of the State Supreme Court, and the associate water judges and their beneficiaries. Membership in the plan is mandatory and a condition of employment for eligible employees.**

**c) Plan C, established under §19-6 of the Statute, is a tax qualified defined benefit plan that provides retirement, disability, and death benefits to all State Highway Patrol personnel and their beneficiaries. Membership in the plan is mandatory and a condition of employment for eligible employees.**

d) **Plan D, established under §19-7 of the Statute, is a tax qualified multiple-employer defined benefit plan that provides retirement, disability, and death benefits to criminal investigators, detention, and all State sheriffs and their beneficiaries.**

**Membership in the plan is mandatory and a condition of employment.**

e) **Plan E, established under the provisions of §19-8 of the Statute, is a tax qualified multiple-employer defined benefit plan that provides retirement, disability, and death benefits to all persons employed as peace officers. Membership in the plan is mandatory and a condition of employment as long as the person is employed as a peace officer.**

f) **Plan F, established under the provisions of §19-9 of the Statute, is a tax qualified multiple-employer defined benefit plan that provides retirement, disability, and death benefits to eligible police officers employed by first and second class cities, and other cities that adopt Plan F. Membership in the plan is mandatory and a condition of employment.**

g) **Plan G, established under the provisions of §19-13 of the Statute, is a tax qualified multiple-employer defined benefit plan that provides retirement, disability, and death benefits to firefighters employed by first and second class cities, and other cities that adopt Plan G. Membership in the plan is mandatory and a condition of employment.**

7. **MPERA administers each of the plans described in the preceding paragraph and is an agent of the governmental employers of the Plaintiff and all others similarly situated.**

8. **Plaintiff was employed in the Cascade County Sheriff's Office; and as such was enrolled in Plan D above.**

9. **On May 7, 2002, Plaintiff suffered an on the job injury that required his retirement as a sheriff's deputy and entitled him to disability benefits under the terms of Plan D.**

10. In or about September 2006, Plaintiff began receiving disability benefits under the terms of Plan D.

11. Under the terms of Plaintiff's Plan D, MPERA had a duty to pay Plaintiff a monthly benefit of \$1604.99. This monthly benefit has periodically increased based on cost of living increases prescribe by the Plan.

12. Contrary to the terms of the MPERA Plan, MPERA failed to pay Plaintiff the monthly benefit to which he was entitled.

13. Instead of paying the monthly benefit of \$1604.99 to which Plaintiff was entitled, MPERA reduced the monthly benefit by an amount it paid to the IRS and the Montana Department of Revenue for federal and state income taxes.

14. In or about January 2007, MPERA provided Plaintiff with an IRS Form 1099-R, a copy of which it also provided to the IRS and the State of Montana Department of Revenue. This Form 1099-R reported to the IRS and the State of Montana Department of Revenue the gross amount of annual disability benefit paid to the Plaintiff.

15. Under the IRS 1099Rs sent to Plaintiff, at box 2b, Defendants marked "Taxable Amount Undetermined." Yet, it took Federal and State taxes from the Plaintiff's disability benefits.

16. From 2006 through December 2014, MPERA provided Plaintiff with the IRS Form 1099-R, a copy of which it also provided to the IRS and the State of Montana Department of Revenue. These Form 1099-Rs reported to the IRS and the State of Montana Department of Revenue the gross amount of annual disability benefit paid to the Plaintiff. (Copies of these Form 1099-Rs from 2006 to 2014, with appropriate redactions, are attached and marked as

Exhibit I. Exhibit I is filed under seal.)

17. Under the provisions of Internal Revenue Code Section 104(a) and Treasury Regulation Section 1.104-1 and various cases interpreting this section dating back to 1947, duty related disability benefits are non-taxable for income taxation purposes.

18. On October 29, 2013, MPERA sent Plaintiff a letter explaining that it had received a Private Letter Ruling from the IRS stating that Plaintiff's disability benefits are not subject to income taxation and that it would no longer withhold state and federal income taxes on Plaintiff's disability benefits.

19. This IRS Private Letter Ruling also stated that Plaintiff's disability benefits under his Plan would become taxable income when his disability benefits become service based retirement payments.

20. Under Plaintiff's Plan, even after Plaintiff becomes eligible for service-based retirement, his benefits will be based on Plaintiff's disability benefits.

21. MPERA's Request for a Private Letter Ruling failed to recognize applicable 9<sup>th</sup> Circuit precedent in *Picard v. Commissioner*, 165 F.3d 744 (9<sup>th</sup> Cir. 1999), that when a taxpayer's disability retirement pension is converted to a service-based retirement pension, the payments continue to be non-taxable pursuant to I.R.C. §104(a)(1) so long as the amount of the service-based retirement payments are determined according to disability retirement statutes.

### **COUNT NO. 1**

#### **DECLARATORY JUDGMENT ACTION NO. 1**

22. Plaintiff re-alleges and incorporates herein Paragraphs 1 through 21 above.

23. Defendant has declined to reimburse or restore the wrongfully withheld disability payments to the Plaintiff, and all others similarly situated.

24. As for the Plaintiff, as of December 31, 2014, Defendant had taken at least \$17,028.10 in state federal and state taxes from his disability payments.

25. An actual controversy exists between Plaintiff and Defendant regarding Plaintiff's rights and remedies to the disability benefits that have been wrongfully withheld from the Plaintiff, and all others similarly situated.

26. Plaintiff brings this action under the provisions of §27-8-101 through §27-8-313 MCA. for himself and all others similarly situated, to determine the following legal and factual issues:

- a) Whether Defendant's taking of taxes from Plaintiff's, and all others similarly situated, from disability benefits constitutes a taking of private property in violation of Article II, Section 29 of the Montana Constitution;
- b) Whether Defendant breached its contract with the Plaintiff, and others similarly situated, by reducing their disability benefits by state and federal income tax payments that were not owed to either the state or federal government.
- c) Whether Defendant has a fiduciary duty to the Plaintiff, and all others similarly situated, to properly report to taxing authorities the correct tax status of Plaintiff and all others similarly situated disability benefits.
- d) Whether the Defendant should be required to account for, reimburse, or restore the disability benefits it improperly withheld from the Plaintiff, and others similarly situated.

### COUNT NO. 2

#### ARTICLE II, SECTION 29, TAKINGS CLAIM

27. Plaintiff re-alleges and incorporates herein Paragraphs 1 through 25 above.

28. Plaintiff's disability benefits are private property.

29. Defendant's periodic taking from Plaintiff's, and all others similarly situated, disability benefits income taxes for which no taxes are or were due and owing constitutes a taking in violation of Article II, Section 29 of the Montana Constitution.

30. As a result of the Defendant's taking from Plaintiff's, and all others similarly situated, disability benefits income taxes for which no income taxes are or due and owing, Plaintiff, and all others similarly situated, have suffered damages.

### **COUNT NO. 3**

#### **BREACH OF CONTRACT**

31. Plaintiff re-alleges and incorporates herein Paragraphs 1 through 30 above.

32. Plaintiff and Defendant have a contractual relationship with one another. During his work life, Plaintiff provided services to Cascade County in exchange for wages and benefits, including disability benefits prescribed here in.

33. Defendant has a duty to pay Plaintiff, and all others similarly situated, the disability benefits to which he is entitled under his MPERA Plan.

34. By improperly withholding state and federal income taxes from Plaintiff's disability payments, Defendant has breached it contract with the Plaintiff, and all others similarly situated.

35. As a result of Defendant's breach of contract with the Plaintiff, and all others similarly situated, Plaintiff, and all others similarly situated, have suffered damages.

### **COUNT NO. 4**

#### **BREACH OF FIDUCIARY DUTY**

36. Plaintiff re-alleges and incorporates herein Paragraphs 1 through 35 above.

37. During his work with the Cascade County Sheriff's Department, Plaintiff and his employer properly paid into the MPERA Plan described above.

38. As the administrator of the MPERA Plan, in which it takes in money from employers and employees such as the Plaintiff, and comingles, invests and manages such money for the benefit of people such as the Plaintiff, it has a fiduciary duty to the Plaintiff, and all others similarly situated, to properly investigate and evaluate the taxability of the funds it pays out to beneficiaries such as the Plaintiff.

39. As a fiduciary, Defendant had a duty to timely evaluate whether Plaintiff's, and all others similarly situated, disability benefits were subject to state and federal income tax, before withholding such taxes from Plaintiff's benefits.

40. As a fiduciary, if Defendant had any question about whether Plaintiff's, and all others similarly situated, disability benefits were subject to state and federal income tax, it had a duty to timely resolve those questions before withholding such taxes from Plaintiff's benefits.

41. Defendant has breached fiduciary duties described above.

42. As a result of Defendant's breach of its fiduciary duties described above, Plaintiff, and all others similarly situated, have suffered damages.

#### **COUNT NO. 5**

#### **CLASS CLAIM**

43. Plaintiff re-alleges and incorporates herein Paragraphs 1 through 42 above.

44. Plaintiff brings this action pursuant to the provisions of Rule 23(a) and Rule 23(b)(2) and/or (3), and/or 23(c)(4) of the Montana Rules of Civil Procedure as a class action for himself and as a representative of and on behalf of all other persons similarly situated, namely: All beneficiaries of the MPERA Plans described in ¶6: 1) who either receive disability benefits

under one of the MPERA Plans who had income taxes improperly withheld from their benefits; or 2) who were originally receiving disability benefits under MPERA Plan who have had their disability benefits converted to a service-based retirement pension in which the amount of the service-based retirement payments are nevertheless determined according to disability retirement statutes.

45. Plaintiff is informed and believes, and on that basis, alleges that the Class consists of hundreds of Montana citizens and is so numerous that joinder of all members of the Class would be impractical. The exact size of the Class, and the identity of its members are ascertainable from the business records of MPERA.

46. Questions of law and fact common to the Class exist, namely:

a) Whether Defendant has or had a business practice of wrongfully withholding federal and state income taxes on class member's disability payments.

b) Whether Defendant breached its contract with the Plaintiff, and others similarly situated, by reducing their disability benefits by state and federal income tax payments that were not owed to either the state or federal government.

c) Whether Defendant has a fiduciary duty to the Plaintiff, and all others similarly situated, to properly report to taxing authorities the correct tax status of Plaintiff and all others similarly situated disability benefits.

d) Whether the Defendant should be required to account for, reimburse, or restore the disability benefits it improperly withheld from the Plaintiff, and others similarly situated.

47. Claims asserted by Plaintiff are typical of the claims of the members of the Class, in that federal and state income taxes were improperly withheld and future benefits that will be

converted to retirement benefits will be improperly subjected to state and federal income tax withholding.

48. Plaintiff will fairly and adequately protect the interests of the Class as Class Representative. He has retained counsel competent and experienced in complex class action and employee benefits litigation. Neither Plaintiff nor his counsel has interests in conflict with the members of the Class.

49. Defendant has acted on grounds that are generally applicable to the class, thereby making appropriate injunctive or corresponding declaratory relief with respect to the Class as a whole.

50. In the alternative, questions of law or fact, common to the members of the Class, predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

#### **COUNT NO. 6**

#### **PRIVATE ATTORNEY GENERAL AND COMMON FUND ALLEGATIONS**

51. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 50 above as though fully set forth therein.

52. As a result of the efforts of Plaintiff, a common fund will be created whereby all members in the class will share in any common fund obtained in this matter and all such class members should bear a proportionate share of the litigation costs, including attorney's fees and costs incurred herein.

53. The Defendant, as a governmental entity, has violated Article II, Section 29 of the Montana Constitution that is a matter of public importance that will be vindicated by this litigation, and private enforcement is necessary as there is no other means of redress, and

Plaintiff and the class members have been substantially burdened, and the number of people to benefit from the vindication of their Constitutional rights is substantial.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for relief as follows:

1. As for Count 1, entry of declaratory judgment that Plaintiff, and all others similarly situated, are entitled to just compensation to the full extent of their loss, including attorneys' fees and costs of suit, when their private property, namely portions of their disability benefits, were taken in violation of Article II, Section 29 of the Montana Constitution.
2. As for Count 1, entry of declaratory judgment that Defendant breached its contract with the Plaintiff, and others similarly situated, by reducing their disability benefits by state and federal income tax payments that were not owed to either the state and federal government.
3. As for Count 1, entry of declaratory judgment that Defendant has a fiduciary duty to the Plaintiff, and all others similarly situated, to properly report to taxing authorities the correct tax status of Plaintiff and all others similarly situated disability benefits.
4. As for Count 1, entry of declaratory judgment that Defendant should be required to account for, reimburse, or restore the disability benefits it improperly withheld from the Plaintiff, and others similarly situated.
5. As for Count 2, for the Court to enter judgment against the Defendant for damages to Plaintiff, and all others similarly situated, to the full extent of their losses for the taking of private property in violation of Article II, Section 29 of the Montana Constitution.
6. As for Count 3, for the Court to determine Defendant breached its contract.
7. As for Count 3, for the Court to enter judgment against the Defendant on behalf of

**the Plaintiff, and all others similarly situated, for damages for Defendant's breach of contract.**

**8. As for Count 4, for the Court to determine Defendant breached its fiduciary duties to Plaintiff.**

**9. As for Count 4, for the Court to enter judgment against the Defendant on behalf of the Plaintiff, and all others similarly situated, requiring the Defendant to account for, reimburse, and restore the unlawful deductions Defendant has taken from Plaintiff's, and all others similarly situated, disability payments.**

**10. As for Count 5, for the Court to certify this matter as a class action under either Rule 23(b)(2), or 23(b)(3), or 23(c)(4), naming the Plaintiff as representative of the Class, wherein the class is defined as All beneficiaries of the MPERA Plans described in ¶6: 1) who receive disability benefits under one of the MPERA Plans who had income taxes improperly withheld from their benefits; and 2) who were originally receiving disability benefits under MPERA Plan who have had their disability benefits converted to a service-based retirement pension in which the amount of the service-based retirement payments are nevertheless determined according to disability retirement statutes.**

**11. As for Count 6, for the Court to allow the Plaintiff to prosecute this action as a private attorney general.**

**12. For the Court to require the Defendant to account for, disgorge, and restore the disability benefits it continues to withhold from the Plaintiff, and all others similarly situated.**

**13. For the Court to enter an order requiring the Defendant to comply with tax law not to withhold income taxes when disability benefits are converted to a service-based retirement pension in which the amount of the service-based retirement payments are nevertheless determined according to disability retirement statutes.**

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CLERK OF DISTRICT COURT  
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FILED

BY \_\_\_\_\_  
DEPUTY

*Attorneys for Defendant*

MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

TADMAN, GREG, and all others  
similarly situated,

Plaintiffs,

v.

STATE OF MONTANA,

Defendant.

CAUSE NO. ADV 15-821

**ANSWER TO COMPLAINT**

Defendant, STATE OF MONTANA ("Montana Public Employee Retirement Administration, 'MPERA'"), by and through its counsel of record, Church, Harris, Johnson & Williams, P.C., responds to Plaintiffs' Complaint as follows:

1. Admits ¶¶1, 2, 3, 4, and 5.
2. The chapters 3, 5, 6, 7, 8, 9, and 13 of Title 19 of the Montana Code Annotated referred to in ¶6(a)-(g) speak for themselves. Defendant affirmatively avers that it administers seven defined benefit plans referred to in ¶6(a)-(g).

3. Admits ¶¶7 and 8.

4. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations of ¶9 and therefore denies the same.

5. Admits ¶10.

6. In responding to ¶11, Defendant admits it has a duty to pay benefits under and in accordance with Plan D. The plan speaks for itself. All remaining allegations contained in ¶11 not specifically admitted to are denied.

7. Denies ¶12.

8. In responding to ¶13, Defendant denies that it paid less to Plaintiff than the full amount of benefits payable to him under Plan D. Defendant affirmatively avers that it withheld taxes according to Plaintiff's certificate of withholding he provided to MPERA and in conformance with Plan D provisions. All remaining allegations contained in ¶13 not specifically admitted to are denied.

9. Defendant admits ¶14 and affirmatively avers that Defendant's actions comply with Plan D provisions, and state and federal law requirements.

10. In responding to ¶15, Defendant admits the allegations contained in the first sentence as to tax years 2006, 2007, and 2008. As to the remaining allegations, Defendant admits that it withheld federal and state taxes from Plaintiff's disability benefits and that the withholding corresponded to and conformed to Plaintiff's Certificate of Withholding election. All remaining allegations contained in ¶15 not specifically admitted to are denied.

11. Defendant admits ¶16 and affirmatively avers that Defendant's actions comply with Plan D provisions, and state and federal law requirements to report the amount paid to individuals receiving benefits from MPERA. Defendant affirmatively avers that Defendant provided Plaintiff with a corrected Form 1099-R for year 2010, a copy of which was not attached to Plaintiff's Complaint, as well as a corrected Form 1099-R for years 2011 and 2012 that are attached as exhibits to Plaintiff's Complaint.

12. ¶17 states a legal conclusion and argument to which no response is required. To the extent an affirmative response to the same is required, the same is denied.

13. In responding to ¶18, Defendant admits that it sent a letter to Plaintiff on October 29, 2013 that discussed a Private Letter Ruling from the IRS. The October 29, 2013 letter addressed to Plaintiff speaks for itself, and Defendant denies Plaintiff's representations of the letter. All remaining allegations contained in ¶18 not specifically admitted to are denied.

14. In responding to ¶19, the IRS Private Letter Ruling speaks for itself.

15. ¶20 contains a legal argument to which no response is required. To the extent an affirmative response to the same is required and any factual allegations set forth, the same is denied. Defendant affirmatively avers that Plaintiff's disability benefits are converted to a service retirement benefit upon reaching the retirement age specified in Plan D.

16. ¶21 states a legal conclusion and argument to which no response is required. To the extent an affirmative response to the same is required, the same is denied.

17. In responding to ¶22, Defendant realleges ¶¶ 1 through 16 inclusive, as set forth above.

18. ¶23, sets forth a legal argument to which no response is required. To the extent an affirmative response to the same is required, the same is denied.

19. Denies ¶ 24.

20. ¶¶ 25 and 26 are legal arguments to which no response is required. To the extent affirmative responses to the same are required, the same are denied.

21. In responding to ¶27, Defendant realleges ¶¶1 through 18 inclusive, as set forth above.

22. ¶28 states a legal conclusion and argument to which no response is required. To the extent an affirmative response to the same is required, the same is denied.

23. ¶29 states a legal argument and conclusion to which no response is required. To the extent an affirmative response to the same is required, the same is denied.

24. ¶30 states a legal argument and conclusion to which no response is required. To the extent an affirmative response to the same is required, the same is denied. Defendant denies that Plaintiff has suffered any damage.

25. Defendant realleges ¶¶1 through 22 inclusive, as set forth above.

26. In responding to ¶32, Defendant admits it administers a contract between Plaintiff and his former employer, per Montana statute and the Plan D language.

Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations that Plaintiff provided services to Cascade County, and therefore denies the same.

27. ¶33 states a legal conclusion to which no response is required. To the extent an affirmative response to the same is required, the same is denied. Defendant affirmatively avers that the payment of any benefits to Plaintiff under Plan D are subject to the Plan's language, Plaintiff's Certificate of Withholding, and state and federal law.

28. ¶34 states a legal argument and conclusion to which no response is required. To the extent an affirmative response to the same is required, the same is denied.

29. ¶35 states a legal conclusion to which no response is required. To the extent an affirmative response to the same is required, the same is denied.

30. In responding to ¶36 Defendant realleges ¶¶1 through 27 inclusive, as set forth above.

31. In responding to ¶37, Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

32. ¶38 states a legal argument and conclusion to which no response is required. To the extent an affirmative response to the same is required, the same is denied. Defendant denies Plaintiff's characterization of its administrative tasks, actions, and duties.

33. ¶39 states a legal conclusion to which no response is required. To the extent an affirmative response to the same is required, the same is denied.

34. ¶40 states a legal argument and conclusion to which no response is required. To the extent an affirmative response to the same is required, the same is denied.

35. ¶41 states a legal argument and conclusion to which no response is required. To the extent an affirmative response to the same is required, the same is denied.

36. ¶42 states a legal argument and conclusion to which no response is required. To the extent an affirmative response to the same is required, the same is denied. Defendant denies that Plaintiff has suffered damages.

37. In responding to ¶43, Defendant realleges ¶¶1 through 34 inclusive, as set forth above.

38. ¶44 contains legal arguments and conclusions, no response is required. To the extent an affirmative response to the same is required, the same is denied.

39. In responding to ¶45, Defendant lacks sufficient knowledge or information to form a belief as to the truth of the factual allegations and therefore denies the same. ¶45 states legal arguments and conclusions to which no response is required. To the extent an affirmative response to the same is required, the same is denied.

40. ¶46 states a legal argument and conclusion to which no response is required. To the extent an affirmative response to the same is required, the same is denied.

41. ¶47 states a legal argument and conclusion to which no response is required. To the extent an affirmative response to the same is required, the same is denied.

42. In responding to ¶48, Defendant lacks sufficient knowledge or information to form a belief as to the truth of the factual allegations contained in the first sentence and therefore denies the same. ¶48 states legal arguments and conclusions to which no response is required. To the extent an affirmative response to the same is required, the same is denied.

43. In responding to ¶49, Defendant lacks sufficient knowledge or information to form a belief as to the truth of the factual allegations contained in the first sentence and therefore denies the same. ¶49 states legal arguments and conclusions to which no response is required. To the extent an affirmative response to the same is required, the same is denied.

44. ¶50 states legal arguments and conclusions to which no response is required. To the extent an affirmative response to the same is required, the same is denied.

45. In responding to ¶51 Defendant realleges ¶¶ 1 through 42 inclusive, as set forth above.

46. ¶52 states a legal argument and conclusion to which no response is required. To the extent an affirmative response to the same is required, the same is denied.

47. ¶53 states a legal argument and conclusion to which no response is required. To the extent an affirmative response to the same is required, the same is denied.

48. Defendant denies every averment in the Complaint not expressly and specifically admitted herein.

#### **FIRST AFFIRMATIVE DEFENSE**

The Plaintiff's claims may be barred by the applicable statute or statutes of limitations.

#### **SECOND AFFIRMATIVE DEFENSE**

The Plaintiff's Complaint fails to state a claim upon which relief can be granted.

#### **THIRD AFFIRMATIVE DEFENSE**

Plaintiff's Complaint fails to state a claim for attorney fees upon which relief may be granted.

#### **FOURTH AFFIRMATIVE DEFENSE**

The doctrines of Estoppel, Waiver, Accord and Satisfaction, and Laches bar in part or in whole Plaintiff's claims.

#### **FIFTH AFFIRMATIVE DEFENSE**

Any actions taken by Defendant were in execution of public duty and/or are justified under state and federal law.

#### **SIXTH AFFIRMATIVE DEFENSE**

Plaintiff's acquiescence bars in whole or in part his claims.

**SEVENTH AFFIRMATIVE DEFENSE**

Defendant's actions conform with and follow state and federal law.

**EIGHTH AFFIRMATIVE DEFENSE**

Defendant did not materially breach the Plan.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred in whole or in part by a condition precedent, including failure to exhaust administrative remedies.

**TENTH AFFIRMATIVE DEFENSE**

Plaintiff is not entitled to disability benefits upon reaching retirement age under state law.

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims and any damages are the result of and caused by his actions.

**TWELFTH AFFIRMATIVE DEFENSE**

No act or omission of the Defendant is the actual or proximate cause of any injuries or damages to Plaintiff.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Plaintiff has failed to properly mitigate his damages and his claims must be offset and/or barred.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Payment to Plaintiff bars in part or in whole his claims, and Defendant has a right to offset.

#### **FIFTEENTH AFFIRMATIVE DEFENSE**

To the extent Plaintiff has received compensation for his damages from any source, Defendant is entitled to offset any damages Plaintiff may have suffered.

#### **SIXTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims fail because Defendant did not materially breach the Plan and any duty owed to Plaintiff.

#### **SEVENTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims fail because Plaintiff has suffered no damages caused by Defendant.

#### **EIGHTTEENTH AFFIRMATIVE DEFENSE**

Plaintiff is not entitled to a declaratory judgement as alleged in Plaintiff's Complaint.

#### **NINETEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims fail because Plaintiff elected and consented to Defendant withholding federal and state income tax from his disability payments.

#### **TWENTIETH AFFIRMATIVE DEFENSE**

Plaintiff's claims fail because he lacks standing to challenge the taxability of retirement benefits he is not yet eligible or entitled to receive.

#### **TWENTY-FIRST AFFIRMATIVE DEFENSE**

Plaintiff's claims for class certification, common fund and private attorney general, fail because Plaintiff is not a proper or adequate class representative.

## **TWENTY-SECOND AFFIRAMTIVE DEFENSE**

Plaintiff's claims for class certification, common fund and private attorney general, fail because individual differences between alleged potential class members prevent class certification.

## **TWENTY-THIRD AFFIRAMTIVE DEFENSE**

Plaintiff's claims for class certification, common fund and private attorney general, fail due to a lack of numerosity of the alleged potential class members.

## **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

Plaintiff's claims for class certification, common fund and private attorney general fail because Plaintiff's claims do not present genuine questions of law and fact common to the proposed class.

## **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's claims for class certification, common fund and private attorney general fail because Plaintiff's claims are not typical of the claims of the proposed class.

## **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

Plaintiff's claims for class certification, common fund and private attorney general fail because the Defendant possesses individualized defenses to Plaintiff's claims.

## **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims for class certification, common fund and private attorney general fail under Rule 23(b)(2) due to Plaintiff's other claims and prayer for relief of monetary damages, as well as that Plaintiff is not entitled to declaratory relief.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's claims for class certification, common fund and private attorney general fail under Rule 23(b)(3) due to the potential alleged class members' individual claims involving case-specific factual issues, and class certification is not predominant or superior.

**TWENTY-NINTH AFFIRMATIVE DEFENSE**

Plaintiff's claims for class certification, common fund and private attorney general fail because class certification will prevent due process.

**THIRTIETHTH AFFIRMATIVE DEFENSE**

Plaintiff's claims for class certification, common fund and private attorney general fail because Plaintiff cannot prove each and every element of his claims with respect to each and every potential alleged member of the class to establish liability.

**NON-WAIVER OF ADDITIONAL DEFENSES**

The Defendant reserves the right to withdraw or add to its affirmative defenses as discovery progresses in this action, and intends that any affirmative defenses set forth are plead against any class that may be certified.

WHEREFORE Defendant prays:

1. That the Plaintiff take nothing by his Complaint;
2. For its attorney fees and costs as allowed by applicable law; and
3. For such other relief as the Court deems appropriate.

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DATED this 25<sup>th</sup> day of January, 2016.

CHURCH, HARRIS, JOHNSON & WILLIAMS

By:   
ERIC B. BIEHL  
Attorneys for Defendant

**CERTIFICATE OF SERVICE**

I, the undersigned, do hereby certify that a copy of the foregoing document was mailed at Great Falls, Montana, on the 25<sup>th</sup> day of January, 2016, and directed to the following:

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