

DISTRICT COURT, DENVER COUNTY, COLORADO

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Plaintiff(s): GARY R. JUSTUS, KATHLEEN HOPKINS, EUGENE HALAAS and LISA SILVA-DEROU, on behalf of themselves and those similarly situated,

v.

Defendant(s): STATE OF COLORADO; PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION OF COLORADO; GOVERNOR BILL RITTER, MARK J. ANDERSON and SARA R. ALT, in their official capacities only.

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CO Denver County District Court 2nd JD

Filing Date: Feb 23 2011 3:17PM MST

Filing ID: 36107428

Review Clerk: Sean McGowan

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Case Number: 2010CV1589

Div. & Ctrm.: 6

**PLAINTIFFS' REVISED MOTION FOR LEAVE TO
FILE SECOND AMENDED COMPLAINT**

PLAINTIFFS GARY R. JUSTUS, KATHLEEN HOPKINS, EUGENE HALAAS and LISA SILVA-DEROU, on behalf of themselves and those similarly situated, by their undersigned counsel, respectfully move this Court for leave to file a Second Amended Complaint. As grounds for this motion, Plaintiffs state as follows:

Certification of Conference with Counsel: Pursuant to C.R.C.P. 121, §1-15(8), during the week of February 14, 2011, counsel for Plaintiffs conferred with counsel for Defendants regarding the filing of this motion. Defendants' counsel have informed Plaintiffs' counsel that they oppose the relief sought herein.

1. Plaintiffs filed an Unopposed Motion for Leave to File a Second Amended Complaint on November 19, 2010. This motion is still pending before the Court. This Revised Motion is intended to substitute for the November 19, 2010 motion, which can be denied as moot.

2. The proposed Second Amended Complaint, attached to this motion, makes the following substantive changes from the First Amended Complaint:

- a) it removes Kathleen Hopkins and Lisa Silva-Derou as a plaintiff and substitutes in their places John C. Fisher and Robert P. Laird Jr.;
- b) it removes Governor Bill Ritter as a defendant and substitutes in his place Governor John Hickenlooper;
- c) it removes Mark J. Anderson and Sara R. Alt and substitutes Carole Wright and Maryann Motza in their places;
- d) it adds PERA Executive Director Meredith Williams as a defendant, withdraws Count II of the First Amended Complaint; and

e) it removes 29 U.S.C. § 1983 as a basis for requesting damages from the individual defendants.

3. The substitution of Robert P. Laird Jr. for Lisa Silva-Derou is necessary because upon further investigation caused by Defendant's answer to the First Amended Complaint it was determined that Silva-Derou was not, as initially believed, an eligible class member who was working at the time of elimination of the increases but was eligible to retire. Laird is so eligible.

4. The substitution of John C. Fisher for Kathleen Hopkins is that Ms. Hopkins prefers to no longer serve as a class representative in this litigation.

5. John Hickenlooper is being substituted for Bill Ritter to reflect the fact that Mr. Hickenlooper is now the governor of Colorado.

6. Because Mark J. Anderson and Sara R. Alt are no longer the chair and vice chair, respectively, of the Board of Trustees of the Public Employees' Retirement Association of Colorado, Carole Wright and Maryann Motza, who currently hold these positions, are being substituted in their places.

7. The withdrawn Count II is necessary as a result of the Court's Order on Defendants' Motions to Dismiss.

8. No party is prejudiced by the filing of this Second Amended Complaint as it does not change any of the timing as required by the Rules.

Wherefore, for the reasons stated above, Plaintiffs move for leave to file a Second Amended Complaint.

Dated: February 18, 2011

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 23rd day of February, 2011, a true and correct copy of **PLAINTIFFS' REVISED MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT, SECOND AMENDED CLASS ACTION COMPLAINT and PROPOSED ORDER** was e-filed via LexisNexis™ File & Serve that will electronically notify and serve all registered, interested parties to the case including the following:

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