

DISTRICT COURT, CITY AND COUNTY OF DENVER,
COLORADO

Court Address: 1437 Bannock Street
Denver, Colorado 80202

Plaintiffs:

GARY R. JUSTUS, KATHLEEN HOPKINS, EUGENE HALAAS and LISA SILVA-DEROU, on behalf of Themselves and those similarly situated

v.

Defendants:

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

▲ COURT USE ONLY ▲

Case No. 2010 CV 1589

Division/Courtroom: 6
Judge Robert S. Hyatt

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SUBPOENA DUCES TECUM TO SavePERACOLA

**To: Richard Horace Allen, Jr., Registered Agent
SavePERACOLA
3241 S. Josephine St.
Denver, CO 80210**

YOU ARE HEREBY ORDERED, pursuant to C.R.C.P. 45, to produce or permit

inspection and copying of the documents in your custody and control described in Attachment A, attached hereto, on or before March 17, 2011 at 4:00 p.m. at the Office of the Attorney General,

by the date and time specified is permitted.

Dated this 25 day of February, 2011.



WILLIAM V. ALLEN, #26386*
Senior Assistant Attorney General
Civil Litigation and Employment Law Section
Attorneys for State Defendants
*Counsel of Record

DEFINITIONS

1. “**ARAA**” stands for “annual retirement allowance adjustment” and means a DPSRS retiree’s annual retirement benefits adjustment. DPSRS Retirement & Benefit Plan (2008) at ¶ 70.88.

2. “**Action or Lawsuit**” means the case currently in the District Court for the City and County of Denver, Colorado and styled, *Gary Justus, et. al. v. Colorado, et. al.*, Case No. 2010-CV-1589.

3. “**Communication**” and “**Communicate**” are used in their broadest sense and include, but are not limited to, any oral or written transmittal of information or request for information made from one Person to another, whether made in person, by telephone, by e-mail, or by any other means, or a Document made for the purpose of recording a transmittal, idea, statement, opinion, or belief.

4. “**Complaint**” refers to the First Amended Complaint filed in this action. If the Court enters Plaintiffs’ Second Amended Complaint these discovery responses will be deemed to apply to the governing Complaint.

5. “**Computer**” shall include any desktop, laptop, electronic notebook, PDA, tablet computer, and/or handheld computer such as a Blackberry, iPhone, Palm Pilot, or similar electronic device that is capable of storing data of any kind.

6. “**COLA**” stands for “cost of living adjustment” and means a PERA retiree’s annual retirement benefits adjustment as defined in C.R.S. § 24-51-1001

7. “**Contact**” is used in its broadest sense and includes, but is not limited to, any interaction or “Communication.”

8. “**Document**” is broadly defined and encompasses any writing, record, document (whether in hard copy or electronic format), or thing of every type and description, including copies, replicas, or other reproductions, that is in Your possession, custody, or control including, but not limited to: agreements, contracts, leases, memoranda, letters, information contained on website and blogs, and other communications/correspondence, data storage devices and magnetic or optical storage media (including hard disk drives, flash drives, zip drives, thumb drives, DAT, data cartridges, backup tapes, floppy disks, hard disks, compact disks (CD’s), writable digital video disks (DVD’s), MP3 players, and any and all other data storage media that are capable of connecting to any other device by way of a connection or link of any type), cablegrams, radiograms, telegrams, computer disks, hard drives, printouts, spreadsheets, audio tapes, video tapes, data compilation tapes, e-mails, e-mail messages and instant messages (including attachments, message content, header information, and logs of system usage), facsimiles, summaries, minutes, records/notes of telephone conversations, records/notes of meetings or conferences, summaries and records of personal conversations or interviews, books, manuals,

publications, diaries, planners, charts, financial records (including summaries), photographs, reports and/or summaries of investigations and/or surveys, opinions and reports of consultants, reports and summaries of negotiations, notes taken on any other document, drafts of documents, materials deleted from documents, and any other paper or physical thing containing writing, data, or information, including copies or replicas, or other reproductions where the copy, replica, or reproduction contains any commentary or notation whatsoever that does not appear on the original.

9. “DPSRS” means the Denver Public Schools Retirement System.

10. “Identify” shall have the following meanings:

a. When Identifying a Document:

- i. State the author, any and all recipients, and the name of the Person who signed the Document;
- ii. State its title, number, file designation, code or other identifying date (or Litigation System Reference if one has been adopted by Your counsel);
- iii. State the number of pages, if the Document contains more than one page;
- iv. Describe any attachments or supplemental items incorporated within the Document;
- v. State the date on which the Document was prepared or, if not known, the approximate date;
- vi. State the date appearing on the Document;
- vii. State the transaction, act or occurrence to which each Document relates and the substance of the Document;
- viii. State a general description of the Document;
- ix. If the Document was, but no longer is, in Your possession or subject to Your control, state what disposition was made of it; and
- x. Identify the present or last known custodian and location of the Document.

b. When Identifying any other tangible or intangible thing:

- i. Provide as much information as You can about the subject matter of the inquiry based on any information in Your possession, custody, or control, or reasonably available to You.

11. **“PERA”** means the Public Employees’ Retirement Association.

12. **“Person”** means any natural person, firm, association, organization, partnership, business joint venture, corporation, trust or any other legal form of business or organizational entity.

13. **“Refers to,” “Relates to,” “Concerning,” and similar phrases** when used herein means reflecting, containing, identifying, pertaining, indicating, showing, describing, evidencing, constituting, discussing, or mentioning.

14. **“PERA”** means Public Employees’ Retirement Association of Colorado.

15. **“You”** means the Colorado nonprofit corporation Protect PERA Retirees and shall include all agents, attorneys, representatives and any person acting or purporting to act on behalf on Your behalf. The term **“Your”** is understood to mean the possessive of **“You.”**

GENERAL INSTRUCTIONS

1. Please state any objections to a discovery request with specificity.

2. In answering the discovery requests, please furnish all information available to You and known by You, including any non-privileged information in Your possession or in the possession of Your agents and/or attorneys.

3. If any Document was, but no longer is, in Your possession, custody, or control, state whether it has been lost, destroyed, transferred or is missing or has otherwise been disposed of, and in each instance, explain the circumstances surrounding the disposition thereof and the date it occurred.

4. If any Document is produced in response to a discovery request below, identify the Document(s) by Bates number in Your response to the discovery request.

5. For Documents produced in response to the requests, please produce either: (a) in the order in which they are kept in the ordinary course of business; or, (b) as organized in accordance with and by reference to the request number to which the Document responds.

6. If a Document was in Your possession, custody, or control and would be responsive to one of the below discovery requests but has been deleted or otherwise destroyed, please (a) describe the Document; (b) state the date(s) on which such item was deleted and/or

destroyed; (c) Identify the Person who deleted or destroyed the item; and (d) describe the means, manner, and/or action taken to delete or destroy the item.

7. If You find the meaning of any term in these discovery requests to be unclear, then You should assume a reasonable meaning, state what that assumed meaning is, and answer the discovery request on the basis of that assumed meaning.

8. The singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun and vice versa.

9. As used herein, the term “or” shall be understood to include “and” whenever such construction would make a phrase more, rather than less, inclusive and vice versa.

10. Regardless of the tense employed, all verbs shall be read as applying to past, present and future as is necessary to make any phrase more, rather than less, inclusive.

11. If all or any part of any discovery request is objected to as seeking privileged information, for each such objection provide the following information:

- (a) the nature of the privilege asserted;
- (b) the type of Document or Communication (*e.g.*, letter, memorandum, notes of meeting, conversations, etc.) and its title (if any);
- (c) the date said Document or Communication was created or occurred;
- (d) the length of the Document (in pages);
- (e) the author or speaker;
- (f) the job title and business addresses of the author and all recipients; and
- (g) the subject matter of the Document.

12. If You contend that any discovery request calls for confidential information please so indicate in Your response.

13. These discovery requests are continuing in nature and require supplemental answers in accordance with C.R.C.P. 26(e) in the event You or other persons acting on Your behalf become aware of additional information or Documents between the time Your answers are given and the time of trial that renders Your answers no longer correct, accurate, or complete.

DOCUMENT REQUESTS

REQUEST NO. 1:

All Documents including e-mails, letters, flyers, phone records, notes, notes of phone calls, phone calls, scripts, advertisements, solicitations, which constitute or relate to a Communication of any kind between or among You and any Person (including attorneys, Plaintiffs, or potential class members), concerning the Action or its subject matter, including all Communications disagreeing with Your assertions posted on the website.

REQUEST NO. 2:

All Documents related to (both supporting or contradicting) Your assertions made on protectperaretirees.com as to the current financial state of the PERA pension funds, the causes for the current financial state of the PERA pension funds, and possible options to improve the current financial state of the PERA pension funds in the future.

REQUEST NO. 3:

All Communications related to COLA and/or ARAA benefits for retirees, or other topics related to the Action, including letters, e-mails, notes, minutes, recordings between or among You and any organization, including any union, retiree organization, PERA, DPSRS, or the General Assembly (or its members).

REQUEST NO. 4:

All current and prior web page snapshots, postings and replies, letters, articles, press releases, reports, or other information currently or previously displayed at protectperaretirees.com.

REQUEST NO.5:

All Documents reflecting the identity of subscribers to Protect PERA Retirees.

REQUEST NO. 6:

All Documents relating to Your solicitations and receipt of funds for the Action.

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of February, 2011, a true and correct copy of the foregoing SUBPOENA DUCES TECUM TO SavePERACOLA was served by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, as indicated to the following:

Richard Rosenblatt
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8085 E. Prentice Ave.
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