UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

ROLAND HARTER Plaintiff, v. BONNER COUNTY, IDAHO, a political subdivision of the State of Idaho Defendant.	Case No. 2:16-cv-00546-DCN **MEMORANDUM DECISION AND ORDER**

I. INTRODUCTION

Pending before the Court is Plaintiff Roland Harter's Motion in Limine. Dkt. 66.

On August 5, 2019, the Court held oral argument on the Motion. The Court verbally

explained its ruling on the record during the hearing and now issues the following order

memorializing its decision.

II. DISCUSSION

Under controlling Ninth Circuit caselaw, the issue of back pay—and front pay—is

for the Court to determine, not a jury. *Lutz v. Glendale Union High Sch*., 403 F.3d 1061,

1069 (9th Cir. 2005) ("there is no right to have a jury determine the appropriate amount

of back pay under Title VII . . . . Instead, back pay remains an equitable remedy to be

awarded by the district court in its discretion.").[1] Additionally, by statute, evidence of

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[1] To be sure, in order to determine back pay "A trial court, sitting in equity, may nevertheless employ an advisory jury. The ultimate decision, however, rests with the court." *Traxler v. Multnomah Cty.*, 596 F.3d 1007, 1013 (9th Cir. 2010) (citing *Lutz*, 403 F.3d at 1069).

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collateral source payments/benefits (if any) is admissible "to the court *after* the finder of fact has rendered an award." Idaho Code § 6-1606 (emphasis added).

In short, the Court *will not* allow the parties to present evidence of PERSI benefits to the jury during trial in this matter.

That said, the Court will allow the parties to discuss PERSI benefits outside the presence of the jury to aid the Court in determining back pay and front pay. Expert testimony—and argument by the parties—will also be necessary in order to determine whether Harter's PERSI benefits are, or are not, a collateral source—which the Court will determine after trial.

III. ORDER

1. Harter's Motion in Limine (Dkt. 66) is GRANTED as outlined above.

DATED: August 12, 2019

David C. Nye
Chief U.S. District Court Judge