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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

TIM ANDERSON, MICHAEL CULLIVAN,
JAMES LEINWEBER, CLARA RENFRO, AND
TERRY WAGNER,

Plaintiffs,

vs.

CITY OF PORTLAND by and through the
Bureau of Fire and Police Disability and
Retirement Fund,

Defendant.

No.

COMPLAINT
(Breach of Contract; Wage Claim)

CLASS ACTION

NOT SUBJECT TO MANDATORY
ARBITRATION

AMOUNT OF CLAIM \$125,000

COMMON ALLEGATIONS

1.

Plaintiffs are retired employees of Defendant City of Portland who receive pensions from the Fire and Police Disability and Retirement Fund, or the surviving beneficiary spouse of deceased City of Portland sworn employees. Defendant City of Portland is a public employer. The Fire and Police Disability and Retirement (FPD&R) Fund is a Bureau of the City of Portland which administers the FPD&R Fund.

2.

The provisions of Chapter 5 of the Charter of the City of Portland, Oregon (the contract) create a contract between the FPD&R and sworn employees of the Bureau of Police and the Bureau of Fire, Rescue and Emergency Services.

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3.

All of the plaintiffs or their spouses retired under the provisions of Article 3 of Chapter 5 of the City Charter, and all plaintiffs qualify for receipt of "FPDR Two" benefits. That section obligates Defendants City of Portland and FPD&R to provide certain pension benefits to plaintiffs upon their retirement. FPDR Two members did not participate in Social Security and do not receive Social Security benefits for their years of Police or Fire service.

4.

Under Chapter 5 of the contract, the City and FPD&R agreed to pay to members and their beneficiary spouses, a retirement benefit equal to the amounts specified under the formulas set forth in the Charter and regulations adopted by the FPDR Board.

5.

The benefits payable to FPDR Two members and their beneficiaries are adjusted on an annual basis as set forth in Section 5-312 of the FPDR Charter.

6.

On or about August, 2008, the FPDR Administrator determined that most FPDR Two beneficiaries had received an overpayment of their benefits beginning no earlier than July 14, 1995. The FPDR Board discussed whether and how to recoup such overpayments from beneficiaries, and in 2010 determined that each beneficiary who did not voluntarily repay the amount overpaid in the past 16 years would be subject to involuntary reduction of his/her pension benefit, until the overpayment amount was fully recouped.

7.

The FPDR Board determined that the monthly amount of the recoupment would be equivalent to the annual benefit adjustments authorized by FPDR Charter Section 5-312, until paid. Any members who had not been overpaid, members who voluntarily repaid the

1 full amount of the overpayment, and members who completed the repayments would have
2 the annual benefit adjustments restored.

3 8.

4 Pension benefits are wages for purposes of ORS 652.610.

5 9.

6 The deductions for purposes of recoupment of overpaid pension benefits
7 commenced in July 2011.

8 10.

9 The recipient of these deductions is the Defendant. None of the class
10 representatives has authorized in writing the deduction of recoupment payments, and the
11 deduction is not authorized by any collective bargaining agreement.

12 11.

13 The deductions are not authorized pursuant to a written agreement for the
14 repayment of a loan.

15 12.

16 Defendant is not required by law to withhold these deductions. Defendant has the
17 ability to recoup such payments by legal action, subject to legal defenses such as laches,
18 waiver, estoppel, statutes of limitations and such other counterclaims or offsets that
19 plaintiffs may be entitled to assert.

20 CLASS ALLEGATIONS

21 13.

22 Plaintiffs bring this action on their own behalf and on behalf of all other persons
23 similarly situated, pursuant to ORCP 32.

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14.

The plaintiff class is composed of FPDR Two retired City of Portland police officers and fire fighters, and beneficiary spouses of FPDR Two retired police officers and fire fighters.

15.

The plaintiff class representatives are: Tim Anderson, Michael Cullivan, James Leinweber, Clara Renfro, and Terry Wagner.

16.

The class consists of more than 500 persons. Members of the class are so numerous that joinder of all of them is impracticable.

17.

Plaintiffs have suffered damages and have claims that are typical of the claims of the class.

18.

The case raises common questions of law and fact. Common questions include the existence and breach of police and fire retirees' contracts and liability of the City and FPD&R under the Oregon Wage and Hour Laws for pension benefits promised to police officer and fire fighter retirees. Plaintiffs seek damages.

19.

Plaintiffs will fairly and adequately protect the interests of the class because there is no conflict of interest between plaintiffs and the class members and because plaintiffs are represented by competent counsel that will vigorously pursue their claims.

20.

Plaintiffs have complied with the pre-litigation requirements of ORCP 32H.

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21.

For the fair and efficient adjudication of this controversy, a plaintiff class action is superior to other available methods because:

(a) This case affects numerous FPDR Level Two retired police officers, fire fighters, and beneficiary spouses. Given the large number of affected persons, it is probable that inconsistent or varying adjudications with respect to the members of the plaintiff class could establish incompatible standards of conduct for defendants.

(b) Common questions of law and fact predominate over individual questions;

(c) All class members have been treated the same by defendant so as to make appropriate final relief with respect to the class as a whole;

(d) Individual plaintiffs have no interest in individually controlling the prosecution of separate actions. The individual amounts at stake are not sufficient generally to support the type of complex and costly litigation such as is required in this case;

(e) It is desirable to concentrate litigation of these claims in a single forum. Multnomah County is the most easily accessible circuit court for the named parties and their counsel; and

(f) Plaintiffs know of no other means available to eliminate or significantly reduce the difficulty of managing this class action. All of the FPDR claimants (or the FPDR members for whom claimants are beneficiary spouses) retired after 1990. Given the large number of plaintiffs, and the elderly status of many of the claimants, a class action is the only reasonable method by which to adjudicate this matter. Plaintiffs believe that pursuit of these claims as a class action will be significantly more manageable than pursuing the claims through separate adjudications.

1 FIRST CLAIM FOR RELIEF

2 (Breach of Contract)

3 22.

4 Plaintiffs reallege paragraphs 1 through 21 above.

5 23.

6 The City of Portland and FPD&R breached plaintiffs' pension contracts by failing to
7 increase their benefits as authorized by Section 5-312 of the FPD&R Charter.

8 24.

9 Plaintiffs are entitled to damages for this breach in an amount equivalent to the
10 difference between the amount they are actually receiving in benefits and the amount they
11 would have received in benefits had the City and FPD&R increased their benefits
12 according to the Charter.

13 25.

14 Plaintiffs are entitled to reasonable attorney fees under the common fund doctrine
15 for protecting the benefits of other FPDR Two retired members and widows of members.

16 SECOND CLAIM FOR RELIEF

17 (Wage Claim-ORS 652.610(3))

18 26.

19 Plaintiffs reallege paragraphs 1 through 22 above.

20 27.

21 Plaintiffs' pension benefits are wages within the meaning of ORS Chapter 652.

22 28.

23 Defendants have improperly withheld plaintiffs' wages in violation of
24 ORS 652.610(3) by failing to increase plaintiffs' pension benefits according requirements
25 of Chapter 5 of the City Charter.

26 29.

1 Pursuant to ORS 652.200 and ORS 652.615, plaintiffs are entitled to actual
2 damages and reasonable attorney fees and costs incurred in the prosecution of this action.

3 WHEREFORE, plaintiffs pray for judgment against defendants:

4 1. Awarding damages in an amount equivalent to the difference between the
5 amount that defendants are actually paying plaintiffs in benefits and the amount they
6 would have received in benefits had defendant increased plaintiffs pension by the amounts
7 authorized under Chapter 5 of the City Charter. Such amounts are estimated at \$25,000
8 per plaintiff assuming normal life expectancy;

9 2. Enjoining defendants from withholding the increment corresponding from any
10 and all future pension benefit payments;

11 3. Awarding plaintiffs' costs, disbursements and reasonable attorney fees under
12 ORS 652.200 and ORS 652.615;

13 4. Awarding plaintiffs' costs, disbursements and reasonable attorney fees under
14 the common fund doctrine; and

15 5. Awarding such other relief as the court may deem just and equitable.

16 Dated this 22 day of August, 2011.

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