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Attorney for Plaintiffs/Movants

UNITED STATES DISTRICT COURT

THE DISTRICT OF OREGON

SANDY L. HENDERSON, ANNA  
MARGARET WICKER, JANE GRAY, and  
CARMELLE L. HARTIN,

Plaintiffs,

v.

THE STATE OF OREGON BY AND  
THROUGH THE BUREAU OF LABOR  
AND THE BOARD OF HIGHER  
EDUCATION; NORMAN O. NILSEN,  
COMMISSIONER OF LABOR; DR. ROY  
LIEUALLEN, CHANCELLOR OF THE  
BOARD OF HIGHER EDUCATION; THE  
PUBLIC EMPLOYEES RETIREMENT  
SYSTEM; and JOSEPH J. ADAMS, HUGH  
McKINELY, CHALMERS L. JONES,  
ROGER S. MEIER and EDWIN H.  
ARMSTRONG, in their capacity as members  
of the PUBLIC EMPLOYEES RETIREMENT  
BOARD,

Defendants.

CV 74-538

MOVANTS' RESPONSE TO CONCISE  
STATEMENT OF MATERIAL FACTS  
IN SUPPORT OF DEFENDANT  
PERB'S/ INTERVENORS' MOTIONS  
FOR SUMMARY JUDGMENT AND  
ALTERNATIVE MOTIONS TO  
MODIFY THE CONSENT DECREE

Movants respond to each of the alleged facts contained in PERB's concise statement of material facts as follows:

1. Accepted.
2. Accepted
3. Accepted.
4. Accepted.
5. Accepted.
6. Denied. There is no statutory requirement "to maintain actuarial equivalency of the OPERS." Movants agree that the PERB is required by statute to maintain adequate funding, and to use actuaries to determine the level of employer contributions needed. The statute does not determine whether to apply a particular set of actuarial assumptions about interest rates, life expectancies, etc.
7. Accepted, with a caveat that strictly speaking, there were actually more than two sets of life expectancy tables; however they were divided into two categories of tables, one for men and another for women.
8. Accepted, with a caveat that plaintiffs also sought injunctive relief and attorneys fees.
9. Movants agree that the consent decree enjoined PERB from sex-segregated life expectancy tables, but the decree prescribed a specific "topping up" method for rectifying the sex-segregated tables.
10. Denied. The consent decree expressly states that female members retiring after July 1, 1978 are to receive the same "refund annuity" benefit in effect for males

on that date. The injunction does not state it is in “perpetuity,” but it was entered as a permanent injunction and remains in effect until modified.

11. Accepted, but objected to as irrelevant and immaterial in this proceeding.
12. Accepted, but objected to as irrelevant and immaterial in this proceeding.
13. Accepted, but objected to as irrelevant and immaterial in this proceeding.
14. Accepted, but objected to as irrelevant and immaterial in this proceeding.
15. Accepted, but objected to as irrelevant and immaterial in this proceeding.  
Accepted, but objected to as irrelevant and immaterial in this proceeding.
16. Accepted, but objected to as irrelevant and immaterial in this proceeding.
17. Accepted.
18. Accepted.
19. Accepted.
20. Accepted, but objected to as irrelevant and immaterial in this proceeding.

Pursuant to LR 56.1(b)(2), movants wish to incorporate herein by reference the additional material facts set forth in Movants’ Concise Statement of Material Facts in Support of Motion for Summary Judgment, filed today.

Dated this 12 day of April, 2004.

/s/ Henry J. Kaplan

Gregory A. Hartman, OSB No. 74128

Henry J. Kaplan, OSB No. 83055

(503) 227-4600

Attorney for Movants

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing MOVANTS' RESPONSE TO  
CONCISE STATEMENT OF MATERIAL FACTS upon the following persons at the following  
addresses:

James Baker  
Townsend Hyatt OSB No. 89439  
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by the following indicated method or methods:

- ± by **mailing** the original in a sealed, first-class postage-paid envelope, addressed to the attorney(s) listed above, and deposited with the United States Postal Service at Portland, Oregon, on the date set forth below.
- ± by **hand delivering** a copy thereof to the attorney(s) listed above, on the date set forth below.
- ± by **faxing** a copy thereof to the attorney(s) at the fax number(s) shown above, on the date set forth below.
- X by service **electronically** pursuant to LR 100.13.

DATED: April 12, 2004

/s/ Henry J. Kaplan

Henry J. Kaplan  
OSB 83055  
[503] 227-4600  
Of Attorneys for Movants

CERTIFICATE OF SERVICE