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

MICHAEL ARKEN, DALE CANNON,  
ROBYN CARRICO, CAROL YOUNG, JOHN  
HAWKINS, LESLIE HUNTER, RICK  
MULLINS, S.M. RUONALA, PATRICIA  
THOMPSON WESTOVER, and MYRNA  
WILLIAMS,

Case No. 0601-00536

Plaintiffs,

v.

**AFFIDAVIT OF MICHAEL  
ARKEN IN OPPOSITION TO  
DEFENDANTS' CROSS-MOTION  
FOR SUMMARY JUDGMENT**

CITY OF PORTLAND, WESTERN OREGON  
UNIVERSITY, PORTLAND SCHOOL  
DISTRICT, CITY OF GRESHAM, LINN  
COUNTY, UNIVERSITY OF OREGON,  
PORTLAND COMMUNITY COLLEGE,  
MULTNOMAH COUNTY, CENTRAL  
SCHOOL DISTRICT 13J, FOREST GROVE  
SCHOOL DISTRICT #15, and the PUBLIC  
EMPLOYEES RETIREMENT BOARD,

Defendants.

STATE OF OREGON )  
COUNTY OF MULTNOMAH )ss

I, Michael Arken, being first duly sworn, depose and say that:

1. I am a plaintiff in this action and make this affidavit in opposition to  
defendants' cross-motion for summary judgment.

2. During the course of my employment, PERB made representations to me that  
my pension benefits would be calculated under three, separate alternative formulas (Full  
Formula, Money Match, and Pension Plus Annuity) and I would receive benefits based on the


1 formula that produced the highest benefit amount at retirement. PERB also represented that I  
2 would be entitled to an annual Cost of Living Adjustment (COLA) of up to 2 percent per year  
3 after retirement.

4 3. At the time I was pursuing retirement, PERB also made representations to me  
5 that I would receive pension benefits based upon the value of my PERS account at my date of  
6 retirement.

7 4. At my date of retirement, the value of my PERS account included 20 percent  
8 earnings for the calendar year 1999. Attached as **EXHIBIT 1** to this affidavit and  
9 incorporated herein is a true and exact copy of my Statement of Entitlement from PERS  
10 including the value of my PERS account at retirement.

11 5. In making my decision to retire from the City of Portland, I relied upon the  
12 representations made by PERB. Had I known that my retirement allowance would not include  
13 20 percent earnings for the calendar year 1999, I would have continued my PERS covered  
14 employment.

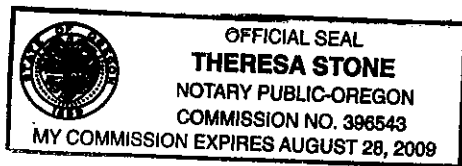
15 Dated this 18 day of August, 2006.

16  
17   
18 MICHAEL ARKEN

19  
20 SUBSCRIBED AND SWORN TO before me this 18 day of August 2006.

21 

22 Notary Public for Oregon  
23 My Commission Expires:



**NOTICE OF ENTITLEMENT**

ARKEN MICHAEL R  
 PO BOX 33131  
 PORTLAND OR 97282-3131

Date: 04/11/2002

Soc. Sec. No.:

PERS No.: 336545

Your retirement benefit has been calculated and your first check(s) will be sent on **APR 10, 2002** if you decide to change your option, your written request must be received in a PERS office within 60 days after the date of your first check(s). Please refer to your Soc. Sec. No. and PERS Benefit No. if you write or telephone our office.

YOUR BENEFIT OPTION: OPTION 2 ANNTY		GROSS AMOUNTS UNDER ALL OPTIONS	
Gross Amount	\$2,504.60	Refund Annuity:	\$2,739.45
OREGON TAX W/H: Insurance Premium	\$144.01	Option 1 (non-refund):	\$2,782.88
Federal Tax Withholding:	\$169.91	15 Year Certain:	\$2,633.48
Net Amount:	\$2,190.68	Option 2:	\$2,504.60
Employee Contributions (for tax purposes):	\$210.96	Option 2A:	\$2,476.77
NON-TAXABLE:	\$0.51	Option 3:	\$2,643.74
Effective Retirement Date:	03/01/2002	Option 3A:	\$2,615.91
Best Calculation Method:	MONEY MATCH	Lump Sum Option 1:	\$1,391.44
		Lump Sum Option 2:	\$1,252.30
		Lump Sum Option 2A:	\$1,238.38
		Lump Sum Option 3:	\$1,321.87
		Lump Sum Option 3A:	\$1,307.95

INFORMATION USED	
If you purchased additional service credit, it is included in the information listed below.	
Current Service: 21 years 10 months	Account Balance: \$165,171.80
Prior Service: 0 years	High 3 years salaries:
Sick Leave Hours: 5	Year: 2001 Amount: \$46,115.36
Beneficiary: PENNY E ARKEN	2000 \$43,161.09
Birthdates: Member: 01/28/1946	1999 \$40,680.69
Beneficiary: 05/18/1954	Last 36 months salary: \$135,736.59

You have the right to contest the information used to calculate your retirement benefits. If you choose to do so, you must submit a signed letter detailing the specific item(s) you are contesting. Your signed letter must be received by PERS within 240 days after the date of this notice.

1 CERTIFICATE OF SERVICE

2 I hereby certify that I served the foregoing **AFFIDAVIT OF MICHAEL**

3 **ARKEN IN OPPOSITION TO DEFENDANTS' CROSS-MOTION FOR SUMMARY**

4 **JUDGMENT** upon the following persons at the following addresses:

5 Joseph M. Malkin/Emily R. Epstein  
Orrick, Herrington & Sutcliffe LLP  
6 Old Reserve Bank Bldg, 405 Howard St.  
San Francisco, CA 94105-2669  
7 FAX: 1 (415) 773-5759  
E-Mail: [jmalkin@orrick.com](mailto:jmalkin@orrick.com)  
8 Of Attorneys for Defendant Public  
Employees Retirement Board

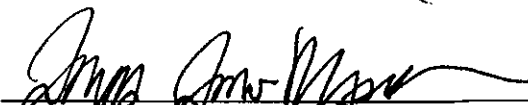
William F. Gary  
Harrang Long Gary et al  
360 E. 10th Avenue, Suite 300  
Eugene, OR 97401  
FAX: 1 (541) 686-6564  
Email: [william.f.gary@harrang.com](mailto:william.f.gary@harrang.com)  
Of Attorneys for Local Jurisdiction  
Defendants

9  
10 Steve Walters  
Stoel Rives LLP  
900 SW 5<sup>th</sup>, Suite 2600  
11 Portland, OR 97204  
FAX: 1 (503) 220-2480  
12 E-Mail: [sswalters@stoel.com](mailto:sswalters@stoel.com)  
Of Attorneys for State Defendants  
13 Western Oregon University and  
University of Oregon

14 by the following indicated method or methods:

- 15  by **mailing** a copy thereof in a sealed, first-class postage-paid envelope,  
16 addressed to the attorney(s) listed above, and deposited with the United States  
Postal Service at Portland, Oregon, on the date set forth below.  
17  by **hand delivering** a copy thereof to the attorney(s) listed above, on the date  
set forth below.  
18  by **sending via overnight courier** a copy thereof in a sealed, postage-paid  
envelope, addressed to the attorney(s) listed above, on the date set forth below.  
19  by **faxing** a copy thereof to the attorney(s) at the fax number(s) shown above,  
on the date set forth below.

20  
21 Dated this 6<sup>th</sup> day of September, 2006.

22  
23   
24 Gregory A. Hartman, OSB 74128  
hartmang@bennetthartman.com  
25 Aruna A. Masih, OSB 97324  
masiha@bennetthartman.com  
Of Attorneys for Plaintiffs