

BENNETT, HARTMAN, MORRIS  
& KAPLAN, LLP

AUG - 7 2006  
5415-260  
PORTLAND, OREGON

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

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

12 Plaintiff,

13 v.

14 CITY OF PORTLAND, WESTERN  
15 OREGON UNIVERSITY, PORTLAND  
16 SCHOOL DISTRICT, CITY OF  
17 GRESHAM, LINN COUNTY,  
18 UNIVERSITY OF OREGON, PORTLAND  
19 COMMUNITY COLLEGE,  
20 MULTNOMAH COUNTY, CENTRAL  
21 SCHOOL DISTRICT 13J, FOREST  
22 GROVE SCHOOL DISTRICT #15, and the  
23 PUBLIC EMPLOYEES RETIREMENT  
24 BOARD,

25 Defendant.

No. 0601-00536

**STATE DEFENDANTS' MOTION TO  
JOIN PERB'S CROSS-MOTION FOR  
SUMMARY JUDGMENT AND IN  
OPPOSITION TO PLAINTIFFS'  
MOTION FOR SUMMARY  
JUDGMENT**

Hearing Date: September 26, 2006  
Time: 1:30 p.m.

19 **I. UTCR CERTIFICATION**

20 Pursuant to UTCR 5.010, counsel for Western Oregon University and University of  
21 Oregon ("State Defendants") conferred in good faith with counsel for plaintiffs in the above-  
22 captioned action regarding the filing of this Motion and matters contained herein, but was  
23 unable to resolve the matter. Counsel for defendant Public Employees Retirement Board  
24 ("PERB") does not object to the State Defendants joining its Cross-Motion for Summary  
25 Judgment.

STOEL RIVES LLP  
900 SW Fifth Avenue, Suite 2600, Portland, OR 97204  
Main (503) 224-3380 Fax (503) 220-2480

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**II. MOTION**

The State Defendants move to join PERB’s Cross-Motion for Summary Judgment and respectfully request that the Court grant its Motion and PERB’s Cross-Motion based upon the accompanying points and authorities.

**III. POINTS AND AUTHORITIES**

The State Defendants adopt and incorporate herein PERB’s arguments in support of its Cross-Motion for Summary Judgment, with the exception of the first paragraph of Part IV.B. of PERB’s supporting memorandum, which addresses plaintiffs’ second claim for relief. Unlike PERB, the State Defendants are employers of certain members of the Oregon Public Employees Retirement System (“PERS”).

Notwithstanding this fact, the State Defendants are entitled to summary judgment plaintiffs’ second claim, which asserts liability under the Oregon Wage Claim Act (“OWCA”). To the extent that the State Defendants are “employers” within the meaning of the OWCA, they may “withhold, deduct, or divert any portion of an employee’s wages” if they are “required to do so by law.” ORS 652.610(3)(a). The PERB Orders at issue in this case and the 2003 PERS Reform Legislation required the State Defendants to withhold payment of certain funds to PERS on their employees’ behalf. Because the State Defendants withheld the funds as directed by law, plaintiffs have no liability for that withholding under the OWCA. For this reason, the State Defendants respectfully request that the Court enter summary judgment in their favor on plaintiffs’ second claim for relief.

**III. CONCLUSION**

For the foregoing reasons, as well as those in PERB’s supporting memorandum, the

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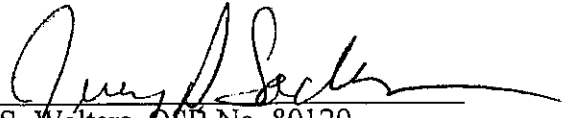
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1 State Defendants respectfully request the Court to grant its Motion to Join PERB's Cross-  
2 Motion for Summary Judgment and to grant the Cross-Motion itself.

3 DATED: August 4, 2006.



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5 Stephen S. Walters, OSB No. 80120  
Special Counsel, State of Oregon

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7 Jeremy D. Sacks, OSB No. 99426  
Amy Edwards, OSB No. 01249

8 Attorneys for State Defendants  
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served the foregoing **STATE DEFENDANTS' MOTION TO**  
3 **JOIN PERB'S CROSS-MOTION FOR SUMMARY JUDGMENT AND IN**  
4 **OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT** on the  
5 following named person(s) on the date indicated below by

- 6  mailing with postage prepaid  
7  hand delivery  
8  facsimile transmission  
9  overnight delivery

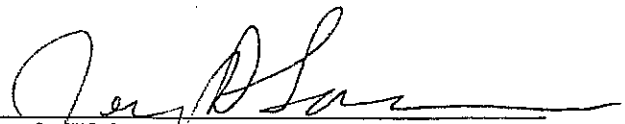
10 to said person(s) a true copy thereof, contained in a sealed envelope, addressed to said  
11 person(s) at his or her last-known address(es) indicated below.

12 Gregory A. Hartman  
13 Bennett, Hartman, Morris & Kaplan,  
14 111 SW 5th Ave., Suite 1650  
Portland, OR 97204-3627

Leah Spero  
Orrick, Herrington, et al.  
The Orrick Building  
405 Howard Street  
San Francisco, CA 94105-2669

15 William F. Gary  
16 Sharon A. Rudnick  
17 Harrang Long Gary Rudnick PC  
360 East 10th Ave., Suite 300  
Eugene, OR 97401

18 DATED: August 4, 2006.

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20  
21   
22 Stephen S. Walters, OSB No. 80120  
Amy Edwards, OSB No. 01249  
Jeremy D. Sacks, OSB No. 99426  
23 Attorneys for State Defendants  
24  
25  
26

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