

SEP 21 2006

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PORTLAND, OREGON

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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,

Plaintiff,

v.

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,

Defendant.

No. 0601-00536

**STATE DEFENDANTS' MOTION TO  
JOIN PERB'S AND NON-STATE  
DEFENDANTS' REPLY  
MEMORANDA IN SUPPORT OF  
CROSS-MOTION FOR SUMMARY  
JUDGMENT AND IN OPPOSITION  
TO PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT**

Hearing Date: September 28, 2006  
Time: 1:30 p.m.

**I. UTCR CERTIFICATION**

Pursuant to UTCR 5.010, counsel for Western Oregon University and University of Oregon ("State Defendants") conferred in good faith with counsel for plaintiffs in the above-captioned action regarding the filing of this Motion to Join. Counsel for plaintiffs does not object to the filing of this Motion to Join, although plaintiffs and the State Defendants were not able to resolve the underlying summary judgment issues. Counsel for defendant Public Employees Retirement Board ("PERB") and counsel for Non-State Defendants do not object to the State Defendants joining their Reply Memoranda.

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1 **II. MOTION**

2 The State Defendants move to join PERB’s and the Non-State Defendants Reply  
3 Memoranda in Support of the PERB’s Cross-Motion for Summary Judgment and in  
4 Opposition to Plaintiffs’ Motion for Summary Judgment. The State Defendants respectfully  
5 request that the Court grant its Motion and the pending Cross-Motion for Summary  
6 Judgment, and deny plaintiffs’ Motion for Summary Judgment, based upon the  
7 accompanying points and authorities.

8 **III. POINTS AND AUTHORITIES**

9 The State Defendants adopt and incorporate herein PERB’s and the Non-State  
10 Defendants’ arguments in support of the pending Cross-Motion for Summary Judgment and  
11 in opposition to plaintiffs’ Motion for Summary Judgment.

12 As noted in the State Defendant’s initial Motion to Join PERB’s Cross Motion, filed  
13 on August 4, 2006, the State Defendants, like the Non-State Defendants, are employers of  
14 certain members of the Oregon Public Employees Retirement System (“PERS”). Plaintiffs’  
15 second claim for relief, which asserts liability under the Oregon Wage Claim Act  
16 (“OWCA”), is therefore targeted at the State and Non-State Defendants (but not PERB). In  
17 defense of this claim, the State Defendants explained that the PERB Orders at issue in this  
18 case, as well as the 2003 PERS Reform Legislation, required the State Defendants to  
19 withhold funds directed by law. For this reason, they and the Non-State Defendants have no  
20 liability under the OWCA for the withholding at issue here.

21 Plaintiffs do not deny that the State and Non-State Defendants had a legal obligation  
22 to withhold the sums. Rather, they cite the *Stovall*<sup>1</sup> case to assert that participating  
23 employers promised to provide pension benefits to PERS members. (Plaintiffs’ Reply at 20.)  
24 This response is a non-sequitur. Whatever the employers’ duties under the relevant PERS

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26 <sup>1</sup> *Stovall v. State Department of Transportation*, 324 Or 92, 123-24 922 P2d 646 (1996).

1 statutes (and *Stovall* merely states that employers “agreed to the terms of [the employees’]  
2 compensation, including the terms relating to retirement benefits”) the purported duty to  
3 provide a pension benefit must be performed within the confines of the law. Indeed, *Stovall*  
4 itself recognizes that relevant statutes govern an employer’s compensation duties. 324 Or. at  
5 123. Plaintiffs ignore this critical acknowledgement, which is fatal to their argument.

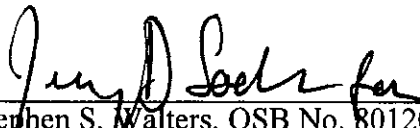
6 Plaintiffs’ additional response—that “[t]he situation is no different than when an  
7 employer hires an outside contractor to provide its paycheck services”—is even more far-  
8 fetched. The failure of an outside contractor to draft paychecks bears absolutely no  
9 resemblance to a sovereign’s act of lawmaking which binds the conduct of its citizens and its  
10 constituent entities.

11 For these reasons, the State Defendants respectfully request that the Court enter  
12 summary judgment in defendants’ favor on plaintiffs’ second claim for relief.

#### 13 IV. CONCLUSION

14 For the foregoing reasons, as well as those in PERB’s and the Non-State Defendants  
15 Reply Memoranda, the State Defendants respectfully request that the Court grant its Motion  
16 to Join PERB’s and the Non-State Defendants Reply Memoranda in Support of the PERB’s  
17 Cross-Motion for Summary Judgment and in Opposition to Plaintiffs’ Motion for Summary  
18 Judgment, to grant the pending Cross-Motion itself, and to deny plaintiffs’ Motion for  
19 Summary Judgment.

20 DATED: September 20, 2006.

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

25 Jeremy D. Sacks, OSB No. 99426  
26 Amy Edwards, OSB No. 01249

Attorneys for State Defendants

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**CERTIFICATE OF SERVICE**


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

- mailing with postage prepaid
- hand delivery
- facsimile transmission
- overnight delivery

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

Gregory A. Hartman Bennett, Hartman, Morris & Kaplan, 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
William F. Gary Sharon A. Rudnick Harrang Long Gary Rudnick PC 360 East 10th Ave., Suite 300 Eugene, OR 97401	

DATED: September 20, 2006.

  
\_\_\_\_\_  
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