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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,

Plaintiffs,

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,

Defendants.

Case No. 0601-00536

PLAINTIFFS' REPLY TO
DEFENDANT PUBLIC EMPLOYEES
RETIREMENT BOARD'S
RESPONSE TO PLAINTIFFS'
MOTION FOR LEAVE TO FILE
SECOND AMENDED AND
SUPPLEMENTAL COMPLAINT

Plaintiffs Michael Arken, Dale Cannon, Robyn Carrico, Carol Young, John Hawkins,
Leslie Hunter, Rick Mullins, S. M. Ruonala, Patricia Thompson Westover, and Myrna
Williams submit the following reply to defendant Public Employees Retirement Board's
opposition to their motion for leave to file a second amended and supplemental complaint to
add a claim for prejudgment interest.

POINTS AND AUTHORITIES

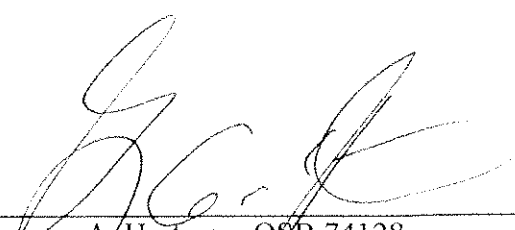
"The allowance of prejudgment interest in an action is not a matter of judicial
discretion, but is required by ORS 82.010(1)(a) on 'all moneys after they become due.'" *Wilson*
v. Smurfit Newsprint Corporation, 197 Or App 648, 673, 107 P3d 61 (2005) *citing Highway*

1 *Comm. V. DeLong Corp.*, 275 Or 351, 357 n2, 551 P2d 102 (1976). Defendant PERB does not
2 dispute that since the Oregon Supreme Court issued its decision in *Strunk et al v. PERB et al*,
3 338 Or 145, 108 P3d 1058 (2005), all COLAs previously withheld under Oregon Laws 2003,
4 Ch 68, §§9-10, as amended by, Ch 625, §13, are due and owing to plaintiffs. Defendant PERB
5 also does not, and can not, dispute that the exact amount owed for withheld COLAs is easily
6 ascertainable, the other pre-requisite for pre-judgment. *See e.g. Smith v. Williams*, 98 Or App
7 258, 263, 779 P2d 1057 (1989). Finally, defendant PERB raises no substantial prejudice it
8 would suffer at this time if the court allowed the amendment plaintiffs seek. To the contrary, it
9 is the PERB's delay in paying the COLAs owed to plaintiffs and its motion for additional stay
10 which necessitates plaintiffs request for prejudgment interest. The court should not allow
11 defendant PERB to continue such delays at the expense of plaintiffs without the benefit of
12 prejudgment interest.

13 CONCLUSION

14 For all these reasons, plaintiffs respectfully request that the court grant their motion for
15 leave to file the second amended and supplemental complaint.

16 Dated this 13th day of August, 2007.

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **PLAINTIFFS' REPLY TO DEFENDANT PUBLIC EMPLOYEES RETIREMENT BOARD'S RESPONSE TO PLAINTIFFS' MOTION FOR LEAVE TO FILE SECOND AMENDED AND SUPPLEMENTAL COMPLAINT** upon the following persons at the following addresses:

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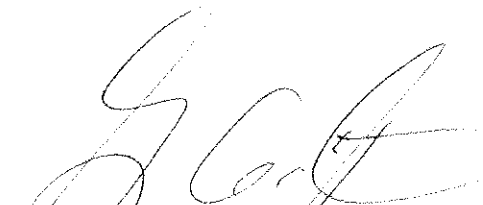
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by the following indicated method or methods:

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Dated this 13th day of August, 2007.



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