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June 20, 2007

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**BY HAND DELIVERY**

The Honorable Henry Kantor  
Multnomah County Courthouse  
1021 SW 4th Avenue  
Portland, Oregon 97204

Re: White v. Public Employees Retirement Board, Case Nos. 0404-04118, 0411-11848

Dear Judge Kantor:

Enclosed please find the chambers copy of PERB's Answer to the Second Amended and Consolidated Complaint in this case. Please do not hesitate to call me if you have any questions or concerns.

Very truly yours,

Sarah C. Marriott  
Attorney for Defendants,  
Members of the Public Employees Retirement Board

Enclosures

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

URSULA WHITE, BRUCE N. REITER, and  
MARGARET RETZ,

Petitioners,  
v.

PUBLIC EMPLOYEES RETIREMENT  
BOARD,

Respondent,

and

STATE OF OREGON, LANE COUNTY,  
CITY OF EUGENE, MULTINOMAH  
COUNTY, CITY OF PORTLAND, CITY OF  
ROSEBURG, CITY OF HUNTINGTON,  
CANBY UTILITY BOARD, and ROGUE  
RIVER VALLEY,

Intervenors.

Case No. 0404-04118

**RESPONDENT PERB'S ANSWER TO  
SECOND AMENDED AND  
CONSOLIDATED COMPLAINT  
(Petition for Judicial Review of an  
Order in Other than Contested Case;  
Breach of Fiduciary Duty)**

URSULA WHITE, BRUCE N. REITER, and  
MARGARET RETZ,

Petitioners,  
v.

PUBLIC EMPLOYEES RETIREMENT  
BOARD,

Respondent,

and

STATE OF OREGON, LANE COUNTY,  
CITY OF EUGENE, MULTINOMAH  
COUNTY, CITY OF PORTLAND, CITY OF  
ROSEBURG, CITY OF HUNTINGTON,  
CANBY UTILITY BOARD, and ROGUE  
RIVER VALLEY,

Intervenors.

Case No. 0411-11848

1 Respondent Public Employees Retirement Board (“PERB”) responds to Petitioners’  
2 Petition as follows:

3 ANSWER

4 1.

5 Respondent admits paragraph 1.

6 2.

7 Respondent admits paragraph 2.

8 3.

9 Respondent admits paragraph 3.

10 4.

11 Respondent admits that ORS 238.630 and ORS 238.660(1) speak for themselves. Insofar  
12 as paragraph 4 calls for legal conclusions, no admission or denial is required.

13 5.

14 Respondent admits that PERB was a respondent in the case of *City of Eugene v. State of*  
15 *Oregon, Public Employees Retirement Board, et al.*; Marion County Circuit Court Case No. 99C-  
16 12794 (“the *City of Eugene*” litigation). Respondent admits that in the *City of Eugene* litigation,  
17 various public employers (“the petitioning employers”) challenged the administration of PERS by  
18 PERB, and certain PERS members (“the intervenors”) intervened. Respondent admits that, in the  
19 *City of Eugene* litigation, PERB, represented by the Oregon Attorney General, defended PERB’s  
20 actions in the administration of the PERS fund. Insofar as paragraph 5 calls for legal conclusions,  
21 no admission or denial is required. Respondent denies the remaining allegations of paragraph 5.

22 6.

23 Since paragraph 6 states a legal conclusion, no admission or denial is required. As to the  
24 remaining factual allegations, Respondent admits that pursuant to 2003 Or. Laws Chapter 537,  
25 Section 1, PERB’s appeal was certified directly to the Oregon Supreme Court as Case No.  
26 S50617.

27 7.

1 Respondent admits that sometime after the judgment in the *City of Eugene* litigation,  
2 described in paragraph 5 of the Petition, was entered, the Governor of the State of Oregon  
3 appointed new members to PERB; and that pursuant to ORS 238.057, PERB retained legal  
4 counsel other than the Attorney General. Respondent denies the remaining allegations of  
5 paragraph 7.

6 8.

7 Respondent admits paragraph 8.

8 9.

9 Respondent denies that the actions taken by PERB referenced in paragraph 9 occurred on  
10 March 22, 2004. Respondent admits that PERB decided to reallocate 1999 earnings so as to  
11 allocate \$133,251,417 to employer accounts and \$204,096,645 to the Contingency Reserve.  
12 Respondent further admits that the trial court in the *City of Eugene* litigation found that PERB's  
13 prior allocation to employer accounts was improper and that a copy of that judgment is attached  
14 as Exhibit 2 to the petition. Respondent denies the remaining allegations of paragraph 9.

15 10.

16 Respondent denies that the actions taken by PERB referenced in paragraph 10 occurred on  
17 March 22, 2004 or that PERB acted to reverse its prior action. Respondent admits the remaining  
18 allegations of paragraph 10.

19 11.

20 Respondent denies paragraph 11.

21 12.

22 Respondent admits that PERB entered into a settlement agreement with EWEB; that the  
23 *City of Eugene* intervenors were not parties to the subsequent settlement agreement; and that a  
24 copy of the settlement agreement is attached as Exhibit 3 to the petition. Respondent denies the  
25 remaining allegations of paragraph 12.

26 13.

27 Respondent admits paragraph 13.

28

1 14.  
2 Respondent responds to the allegations realleged in paragraph 14 as set forth above.  
3 15.  
4 Respondent denies paragraph 15.  
5 16.  
6 Respondent admits that the terms of the Settlement Agreement speak for themselves.  
7 Respondent denies the remaining allegations of paragraph 16.  
8 17.  
9 Respondent denies paragraph 17.  
10 18.  
11 Respondent denies paragraph 18.  
12 19.  
13 Respondent denies paragraph 19.  
14 20.  
15 Respondent denies paragraph 20.  
16 21.  
17 Respondent denies paragraph 21.  
18 22.  
19 Respondent responds to the allegations realleged in paragraph 22 as set forth above.  
20 23.  
21 Respondent denies paragraph 23.  
22 24.  
23 Respondent admits that the terms of the Settlement Agreement speak for themselves.  
24 Respondent denies the remaining allegations of paragraph 24.  
25 25.  
26 Respondent denies paragraph 25.  
27 26.  
28

1 Respondent denies paragraph 26.  
2 27.  
3 Respondent denies paragraph 27.  
4 28.  
5 Respondent denies paragraph 28.  
6 29.  
7 Respondent denies paragraph 29.  
8 30.  
9 Respondent responds to the allegations realleged in paragraph 30 as set forth above.  
10 31.  
11 Respondent admits that PERB, at its meeting of October 12, 2004, adopted lower  
12 contribution rates for the employers who were petitioners in the *City of Eugene* litigation.  
13 Respondent denies the remaining allegations of paragraph 31.  
14 32.  
15 Respondent denies paragraph 32.  
16 33.  
17 Respondent denies paragraph 33.  
18 34.  
19 Respondent denies paragraph 34.  
20 35.  
21 Respondent responds to the allegations realleged in paragraph 35 as set forth above.  
22 36.  
23 Respondent denies paragraph 36.  
24 37.  
25 Respondent denies paragraph 37.  
26 38.  
27 Respondent denies paragraph 38.  
28

1 39.

2 Respondent denies paragraph 39.

3 40.

4 Respondent responds to the allegations realleged in paragraph 40 as set forth above.

5 41.

6 Respondent admits that the PERS Fund is a trust fund as described in ORS 238.660(1).

7 Respondent denies the remaining allegations of paragraph 41.

8 42.

9 Respondent admits that it is the trustee of the PERS Fund, that Oregon law provides that  
10 PERB acts as the trustee of the PERS Fund, and that PERB's role as trustee includes certain  
11 fiduciary duties. Respondent denies the remaining allegations of paragraph 42.

12 43.

13 Respondent admits that participating public employers are not beneficiaries of the PERS  
14 Fund. Respondent denies the remaining allegations of paragraph 43.

15 44.

16 Since paragraph 44 states a legal conclusion, no admission or denial is required.

17 45.

18 Respondent denies paragraph 45.

19 46.

20 Respondent denies paragraph 46.

21 For its affirmative defenses, Respondent alleges:

22 **FIRST AFFIRMATIVE DEFENSE TO FIRST CLAIM FOR RELIEF**

23 (No Final Order Under ORS 183.484)

24 47.

25 This Court lacks jurisdiction over Petitioners' first claim for relief because the settlement  
26 agreement is not a final order in an other than contested case subject to judicial review under ORS  
27 183.484.

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**SECOND AFFIRMATIVE DEFENSE TO FIRST CLAIM FOR RELIEF**

(Standing)

48.

Petitioners lack standing to challenge the settlement agreement under ORS 183.484.

**THIRD AFFIRMATIVE DEFENSE TO FIRST CLAIM FOR RELIEF**

(Untimely)

49.

This Court lacks jurisdiction over Petitioners' First Claim for Relief because Petitioners' claim is untimely under ORS 183.484.

**FOURTH AFFIRMATIVE DEFENSE TO SECOND CLAIM FOR RELIEF**

(No Final Order Under ORS 183.484)

50.

This Court lacks jurisdiction over Petitioners' second claim for relief because the settlement agreement is not a final order in an other than contested case subject to judicial review under ORS 183.484.

**FIFTH AFFIRMATIVE DEFENSE TO SECOND CLAIM FOR RELIEF**

(Standing)

51.

Petitioners lack standing to challenge the settlement agreement under ORS 183.484.

**SIXTH AFFIRMATIVE DEFENSE TO SECOND CLAIM FOR RELIEF**

(Untimely)

52.

This Court lacks jurisdiction over Petitioners' Second Claim for Relief because Petitioners' claim is untimely under ORS 183.484.

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**SEVENTH AFFIRMATIVE DEFENSE TO THIRD CLAIM FOR RELIEF**

(Standing)

53.

Petitioners lack standing to challenge the settlement agreement under ORS 183.484.

**EIGHTH AFFIRMATIVE DEFENSE TO FOURTH CLAIM FOR RELIEF**

(Standing)

54.

Petitioners lack standing to challenge the settlement agreement under ORS 183.484.

**NINTH AFFIRMATIVE DEFENSE TO FIFTH CLAIM FOR RELIEF**

(Standing)

55.

Petitioners lack standing to challenge the settlement agreement under ORS 183.484.

**TENTH AFFIRMATIVE DEFENSE TO ALL CLAIMS FOR RELIEF**

(Failure to State a Claim)

56.

Petitioners fail to state ultimate facts sufficient to state a claim.

WHEREFORE, Respondent prays for a judgment in its favor and against Petitioners on its claims for relief as follows:

- 1. Dismissing the Petition in its entirety; or
- 2. Declaring the Settlement Agreement valid; and
- 3. Declaring the PERB allocation orders valid; and
- 4. Granting such other and additional relief as the court deems just and proper.

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1 Dated: June 20, 2007

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thyatt@orrick.com, (503) 943-4820  
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8 Townsend Hyatt  
9 Attorneys for Defendant

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1 CERTIFICATE OF SERVICE

2 I am more than eighteen years old and not a party to this action. My business  
3 address is Orrick, Herrington & Sutcliffe LLP, 1125 NW Couch St., Suite 800, Portland, Oregon  
4 97209. On June 20, 2007, I served the following document(s):

5 **RESPONDENT PERB'S ANSWER TO PETITION FOR JUDICIAL**  
6 **REVIEW OF ORDER IN OTHER THAN A CONTESTED CASE**

7 on the interested parties in this action by placing true and correct copies thereof in sealed  
8 envelope(s) addressed as follows:

9 Gregory A. Hartman  
10 Aruna A. Masih  
11 Bennett, Hartman, Morris & Kaplan, LLP  
12 111 SW Fifth Avenue, Suite 1650  
13 Portland, OR 97204-3627  
14 Attorneys for Petitioners.

William F. Gary  
Sharon Rudnick  
Karla Alderman  
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Attorneys for Intervenor Local Employers

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900 SW 5th Ave., Suite 2600  
Portland, OR 97204

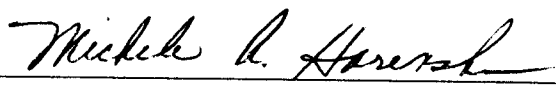
Attorneys for Intervenor State

15 I am employed in the county from which the mailing occurred. On the date  
16 indicated above, I placed the sealed envelope(s) for collection and mailing at this firm's office  
17 business address indicated above. I am readily familiar with this firm's practice for the collection  
18 and processing of correspondence for mailing with the United States Postal Service. Under that  
19 practice, the firm's correspondence would be deposited with the United States Postal Service on  
20 this same date with postage thereon fully prepaid in the ordinary course of business.

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I declare under penalty of perjury that the foregoing is true and correct.  
Executed on June 20, 2007, at Portland, Oregon.

  
\_\_\_\_\_  
Michele Harinski  
Attorneys for Respondent