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PORTLAND, OREGON

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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,

Case No.: 0404-04118

Plaintiffs,

v.

PUBLIC EMPLOYEES RETIREMENT BOARD,

Defendant,

and

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

Intervenors.

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

Case No.: 0411-11848

Petitioners,

v.

PUBLIC EMPLOYEES RETIREMENT BOARD,

Respondent,

and

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

Intervenors.

**INTERVENORS LANE
COUNTY, CITY OF
EUGENE,
MULTNOMAH
COUNTY, CITY OF
PORTLAND, CITY OF
ROSEBURG, CITY OF
HUNTINGTON CANBY
UTILITY BOARD, AND
ROGUE RIVER
VALLEY IRRIGATION
DISTRICT'S ANSWER
TO SECOND AMENDED
AND CONSOLIDATED
COMPLAINT**

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1.

Intervenors are without knowledge or information sufficient to form a belief as to the truth of paragraphs 1 through 3, and therefore deny the same.

2.

Intervenors deny the allegations in paragraph 4 as they call for legal conclusions. The statutes speak for themselves.

3.

With regard to paragraph 5, Intervenors admit that PERB was a respondent in the case of City of Eugene v. State of Oregon, Public Employees Retirement Board, et al, Marion County Circuit Court Case No. 99C-12794 (“City of Eugene” litigation); that in the City of Eugene litigation, various public employers (“petitioning employers”) challenged the administration of PERS by PERB; and that certain PERS members (“intervenors”) intervened. Intervenors further admit that in the City of Eugene litigation, PERB was represented by the Oregon Attorney General and defended PERB’s actions in the administration of the PERS fund. Intervenors deny the remaining allegations of paragraph 5, including those calling for a legal conclusion.

4.

With regard to paragraph 6, Intervenors admit that PERB’s appeal was certified directly to the Oregon Supreme Court as Case No. S50617. Intervenors deny the remaining allegations of paragraph 6, including those calling for a legal conclusion.

5.

With regard to paragraph 7, Intervenors admit that sometime after the judgment in the City of Eugene litigation, described in paragraph 5 of the petition, was entered, the Governor of the State of Oregon appointed new members to PERB; and that PERB retained legal counsel other than the Attorney General pursuant to ORS 238.057. Intervenors deny the remaining allegations of paragraph 7.

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6.

Intervenors admit paragraph 8.

7.

With regard to paragraph 9, Intervenors admit that PERB decided to reallocate 1999 earnings and as part of that reallocation, allocated earnings to employer accounts and to the Contingency Reserve; that the trial court in the City of Eugene litigation found that PERB's prior allocation of 1999 earnings was improper; and that a copy of the City of Eugene judgment is attached as Exhibit 2 to the petition. Intervenors deny the remaining allegations of paragraph 9.

8.

With regard to paragraph 10, Intervenors admit that PERB in reallocating 1999 fund earnings, PERB allocated earnings to employee accounts, to the Contingency Reserve and to the Gain/Loss Reserve. Intervenors deny the remaining allegations of paragraph 10.

9.

Intervenors deny paragraph 11.

10.

With regard to paragraph 12, Intervenors admit that PERB entered into a settlement agreement with EWEB, that the intervenors were not parties to the subsequent settlement agreement, and that a copy of the settlement agreement is attached to the petition. Intervenors are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 12, and therefore deny them.

11.

Intervenors admit paragraph 13.

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12.

With regard to paragraph 14, Intervenors respond to the allegations realleged as set forth above.

13.

Intervenors deny paragraphs 15, 16, 17, 18, 19, 20 and 21.

14.

With regard to paragraph 22, Intervenors respond to the allegations realleged as set forth above.

15.

Intervenors deny paragraph 23, 24, 25, 26, 27, 28 and 29.

16.

With regard to paragraph 30, Intervenors respond to the allegations realleged as set forth above.

17.

With regard to paragraph 31, Intervenors admit that at its October 12, 2004 meeting, PERB adopted lower contribution rates for the employers who were petitioners in the City of Eugene litigation. Intervenors deny the remaining allegations of paragraph 31.

18.

Intervenors deny paragraphs 32, 33 and 34.

19.

With regard to paragraph 35, Intervenors respond to the allegations realleged as set forth above.

20.

Intervenors deny paragraphs 36, 37, 38, and 39.

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Page 4 – ANSWER TO SECOND AMENDED AND CONSOLIDATED COMPLAINT

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21.

With regard to paragraph 40, Intervenors respond to the allegations realleged as set forth above.

22.

With regard to paragraph 41, Intervenors admit that the PERS Fund is a trust fund as described in ORS 238.660(1). Intervenors deny the remaining allegations of paragraph 41.

23.

With regard to paragraph 42, Intervenors admit that PERB is the trustee of the PERS fund, that Oregon law provides that PERB act as the trustee of the PERS fund, and that PERB's role as trustee includes certain fiduciary duties. Intervenors deny the remaining allegations of paragraph 42.

24.

With regard to paragraph 43, Intervenors admit that participating public employers are not beneficiaries of the PERS fund. Intervenors deny all remaining allegations of paragraph 43.

25.

Intervenors deny paragraphs 44 as it states a legal conclusion, 45 and 46.

26.

Except as expressly admitted above, Intervenors deny each and every allegation of the petition.

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FIRST AFFIRMATIVE DEFENSE TO FIRST CLAIM FOR RELIEF

(No Final Order Under ORS 183.484)

27.

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

SECOND AFFIRMATIVE DEFENSE TO FIRST CLAIM FOR RELIEF

(Standing)

28.

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

THIRD AFFIRMATIVE DEFENSE TO SECOND CLAIM FOR RELIEF

(No Final Order Under ORS 183.484)

29.

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

FOURTH AFFIRMATIVE DEFENSE TO SECOND CLAIM FOR RELIEF

(Standing)

30.

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

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FIFTH AFFIRMATIVE DEFENSE TO THIRD CLAIM FOR RELIEF

(Standing)

31.

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

SIXTH AFFIRMATIVE DEFENSE TO FOURTH CLAIM FOR RELIEF

(Standing)

32.

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

SEVENTH AFFIRMATIVE DEFENSE TO ALL CLAIMS FOR RELIEF

(Failure to State a Claim)

33.

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

Wherefore, Intervenors pray for a judgment in their favor and against Petitioners on their claims for relief as follows:

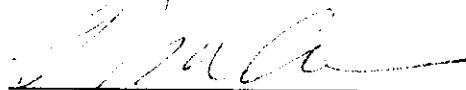
- 1. Dismissing the Petition in its entirety; or
- 2. Declaring the Settlement Agreement valid; and
- 3. Declaring the PERB allocation orders valid; and

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1 4. Granting such other and additional relief as the court deems just and
2 proper.

3 DATED this 20th day of June, 2007.

4 **HARRANG LONG GARY RUDNICK P.C.**

5 

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16 of Roseburg, City of Huntington, Canby Utility
17 Board and Rogue River Valley Irrigation District

18 Trial Attorney: William F. Gary, OSB #77032

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CERTIFICATE OF SERVICE

I certify that on June 20, 2007, I served or caused to be served a true and complete copy of the foregoing **INTERVENORS LANE COUNTY, CITY OF EUGENE, MULTNOMAH COUNTY, CITY OF PORTLAND, CITY OF ROSEBURG, CITY OF HUNTINGTON CANBY UTILITY BOARD, AND ROGUE RIVER VALLEY IRRIGATION DISTRICT'S ANSWER TO SECOND AMENDED AND CONSOLIDATED COMPLAINT** on the party or parties listed below as follows:

- Via First Class Mail, Postage Prepaid
- Via Facsimile
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CERTIFICATE OF SERVICE
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