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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,**

Case No. 0601-00536

**NON-STATE DEFENDANTS'
ANSWER TO SECOND
AMENDED AND
SUPPLEMENTAL COMPLAINT**

Plaintiffs,

vs.

**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.

Defendants City of Portland, Portland School District, City of Gresham, Linn
County, Portland Community College, Multnomah County, Central School District 13J,
Forest Grove School District #15 ("Non-State Defendants") answer plaintiffs' Amended
and Supplemental Complaint as follows:

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ANSWER

1.

Non-State Defendants admit that they are public employers and that Public Employees Retirement Board (“PERB”) administers PERS, and deny the remaining allegations of paragraph 1.

2.

Non-State Defendants admit that ORS Ch. 238 contains some contractual provisions that provide certain pension benefits to public employees upon retirement, and deny the remaining allegations of paragraphs 2.

3.

Non-State Defendants admit that ORS 238.300 contains various benefits calculation formulae and deny the remaining allegations of paragraph 3.

4.

Non-State Defendants admit that ORS 238.360(1) provides for COLAs on retirement service allowances, and deny the remaining allegations of paragraph 4.

5.

Non-State Defendants admit that in 2003, the Legislature passed, and the Governor signed, amendments to the PERS statutes, and deny the remaining allegations of paragraph 5.

6.

Non-State Defendants deny the allegations of paragraphs 6 and 7 in their entirety.

7.

Non-State Defendants have insufficient knowledge or belief to admit or deny the allegations of paragraph 8, and therefore deny it in its entirety.

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8.

Non-State Defendants admit that PERB adopted an order on January 27, 2006, that the order speaks for itself, and deny the remaining allegations of paragraph 9.

9.

Non-State Defendants deny the allegations of paragraphs 10 and 11 in their entirety.

10.

Non-State Defendants admit that this is a purported class action and deny all remaining allegations of paragraph 12.

11.

Non-State Defendants have insufficient information or belief to admit or deny the allegations of paragraph 13 and 14, and therefore deny them in their entirety.

12.

Non-State Defendants admit the allegations of paragraph 15.

13.

Non-State Defendants lack sufficient information or belief to admit or deny the allegations of paragraph 16, and therefore deny them in their entirety.

14.

Non-State Defendants admit the allegations of paragraphs 17, 18 and 19.

15.

Non-State Defendants lack sufficient information or belief to admit or deny the allegations of paragraph 20, and therefore deny the same.

16.

Non-State Defendants admit the allegations of paragraph 21, 22, 23, and 24.

17.

Non-State Defendants deny the allegations of paragraphs 25, 26 and 27.

1 18.

2 Non-State Defendants lack sufficient information or belief to admit or deny the
3 allegations of paragraph 28 and therefore deny them in their entirety.

4 19.

5 Non-State Defendants admit the allegations of paragraph 29.

6 20.

7 Non-State Defendants deny the allegations of paragraph 30.

8 21.

9 Non-State Defendants lack sufficient information or belief to admit or deny the
10 allegations of paragraph 31, and therefore deny them in their entirety.

11 22.

12 Non-State Defendants admit that plaintiffs identify the named defendants in
13 paragraph 32 and deny the remaining allegations.

14 23.

15 Non-State Defendants deny the allegations of paragraph 33.

16 24.

17 Non-State Defendants admit the allegations of paragraph 34

18 25.

19 Non-State Defendants deny the allegations of paragraph 35.

20 FIRST CLAIM FOR RELIEF

21 (Contract – Against Defendant Employers)

22 Count One - Breach

23 26.

24 In response to paragraph 36, Non-State Defendants incorporate and reallege
25 their answers to paragraphs 1 – 35 above as if set forth fully herein.

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27.

Non-State Defendants deny the allegations of paragraphs 37, 38, 39 and 40 in their entirety.

Count Two -- Promissory Estoppel

28.

In response to paragraph 41, Non-State Defendants reallege their answers to paragraphs 1 – 40 above as if set forth fully herein.

29.

Non-State Defendants lack sufficient information or belief to admit or deny the allegations of paragraphs 42, 43, 44 and 45 and therefore deny them in their entirety.

30.

Non-State Defendants deny the allegations of paragraphs 46, 47 and 48 in their entirety.

SECOND CLAIM FOR RELIEF

(Wage Claim – ORS 652.610(3) – Against Defendant Employers)

31.

In response to paragraph 49, Non-State Defendants incorporate and reallege their answers to paragraphs 1 – 40 above as if set forth fully herein.

32.

Non-State Defendants deny the allegations of paragraphs 50, 51, 52 and 53 in their entirety.

33.

Non-State Defendants do not respond to the allegations in paragraphs 54 through 62 because the third and fourth claims for relief are not directed to them.

34.

Except as expressly admitted above, Non-State Defendants deny each allegation

1 of the Second Amended and Supplemental Complaint.

2 For its affirmative defenses, Non-State Defendants allege as follows:

3 **FIRST AFFIRMATIVE DEFENSE**

4 (Failure to State a Claim)

5 35.

6 Plaintiffs fail to state ultimate facts sufficient to state a claim upon which relief
7 can be granted.

8 **SECOND AFFIRMATIVE DEFENSE**

9 (Lack of Damages)

10 36.

11 Plaintiffs have not been damaged by defendants' conduct as alleged in the
12 Amended and Supplemental Complaint.

13 **THIRD AFFIRMATIVE DEFENSE**

14 (Inappropriate Class Action)

15 37.

16 Plaintiffs' claims cannot and should not be maintained as a class action pursuant
17 to any section of the Oregon Rules of Civil Procedure. Plaintiffs may also be
18 inappropriate class representatives.

19 **FOURTH AFFIRMATIVE DEFENSE**

20 (Reasonableness and Good Faith)

21 38.

22 At all times the Non-State Defendants acted reasonably, in good faith, and in
23 accordance with the law and did not engage in any act or omission that constitutes a
24 legal violation.

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FIFTH AFFIRMATIVE DEFENSE

(Res Judicata/ Collateral Estoppel)

39.

Plaintiffs' claims are barred by the doctrines of res judicata or collateral estoppel.

SIXTH AFFIRMATIVE DEFENSE

(Lack of Standing)

40.

Plaintiffs lack standing under ORS 183.484 and/or 238.715.

SEVENTH AFFIRMATIVE DEFENSE

(Defenses of Illegality, Impossibility, and Impracticability)

41.

Any alleged breach is excused by the defenses of illegality, impossibility, or impracticability.

EIGHTH AFFIRMATIVE DEFENSE

(Discharge of Duty)

42.

The Non-State Defendants discharged any duty that they may have owed to plaintiffs.

WHEREFORE, Non-State Defendants pray for the following:

1. That the Court award judgment against plaintiffs and in favor of Non-State Defendants on all claims; and

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CERTIFICATE OF SERVICE

I certify that on September 28, 2007, I served or caused to be served a true and complete copy of the foregoing **ANSWER TO SECOND AMENDED AND SUPPLEMENTAL COMPLAINT** on the party or parties listed below as follows:

- Via First Class Mail, Postage Prepaid
- Via Facsimile
- Via Personal Delivery

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 Central School District 13J, and Forest
 Grove School District #15

CERTIFICATE OF SERVICE