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Attorneys for Defendants

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

WILLIAM ROBERTSON, et al.,

Plaintiff,

v.

**GOVERNOR THEODORE
KULONGOSKI**, et al.,

Defendant.

Civil No. 03-999 KI

**ANSWER AND AFFIRMATIVE
DEFENSE**

The State of Oregon, on behalf of Governor Theodore Kulongoski and the Public Employees Retirement Board ("PERB") (collectively, the "State"), admits, denies and alleges as follows:

ANSWER

1. Answering paragraph 1, the State admits that plaintiffs seek declarative and injunctive relief. The State denies the remaining allegations in paragraph 1.

2. The State denies paragraphs 2 and 3.

3. The State admits paragraph 4.

4. Answering paragraph 5, the State admits that plaintiff Robertson is an employee of the State of Oregon, Department of Environmental Quality and that the Oregon Department of Environmental Quality is a public employer. The State lacks knowledge or information sufficient to form a belief as to the truth of plaintiffs' allegation that plaintiff Robertson is a member of the American Federation of State, County and Municipal Employee and denies it on that basis. The State denies the remaining allegations in paragraph 5.

5. Answering paragraph 6, the State admits that plaintiff Carlisle is an employee of the Springfield School District and that the Springfield School District is a public employer. The State lacks knowledge or information sufficient to form a belief as to the truth of plaintiffs' allegation that plaintiff Carlisle is a member of Oregon School Employees Association and denies it on that basis. The State denies the remaining allegations in paragraph 6.

6. Answering paragraph 7, the State admits that plaintiff Hathhorn is a retired employee of Portland Community College and that Portland Community College is a public employer. The State lacks knowledge or information sufficient to form a belief as to the truth of plaintiffs' allegation that plaintiff Hathhorn is a member of the American Federation of Teachers and denies it on that basis. The State denies the remaining allegations in paragraph 7.

7. Answering paragraph 8, the State admits that plaintiff Myers is an employee of the State of Oregon, Oregon Department of Transportation, and that the Oregon Department of

Transportation is a public employer. The State lacks knowledge or information sufficient to form a belief as to the truth of plaintiffs' allegation that plaintiff Myers is a member of the Association of Engineering Employees of Oregon and denies it on that basis. The State denies the remaining allegations in paragraph 8.

8. Answering paragraph 9, the State admits that plaintiff Simpson is an employee of the State of Oregon, Department of Human Services, and that the Oregon Department of Human Services is a public employer. The State lacks knowledge or information sufficient to form a belief as to the truth of plaintiffs' allegation that plaintiff Simpson is a member of the Service Employees International Union and denies it on that basis. The State denies the remaining allegations in paragraph 9.

9. Answering paragraph 10, the State lacks knowledge or information sufficient to form a belief as to the truth of plaintiffs' allegations regarding plaintiff Bowler's current employment and her membership in the Oregon Education Association. The State admits that Clatsop County School District is a public employer. The State denies the remaining allegations in paragraph 10.

10. Answering paragraph 11, the State admits that plaintiff Dean is an employee of the City of Salem, and that the City of Salem is a public employer. The State lacks knowledge or information sufficient to form a belief as to the truth of plaintiffs' allegation that plaintiff Dean is a member of the International Association of Fire Fighters and denies it on that basis. The State denies the remaining allegations in paragraph 11.

11. Answering paragraph 12, the State admits that plaintiff DeJarnatt is an employee of Marion County and that Marion County is a public employer. The State lacks knowledge or information sufficient to form a belief as to the truth of plaintiffs' allegation that plaintiff

DeJarnatt is a member of the Oregon Nurses Association and denies it on that basis. The State denies the remaining allegations in paragraph 12.

12. Answering paragraph 13, the State admits that the PERB administers PERS. The State denies that Dawn Morgan, Janice Deringer, Mark Gardiner, Jeanne Garst, Glenn Harrison, Todd Schwartz, and George Russell currently are members of the PERB. The State admits that as of September 1, 2003, Michael Pittman, James Dalton, Eva Kripalani, Thomas Grimsley, and Brenda Rocklin are members of the PERB. The State denies the remaining allegations in paragraph 13.

13. Answering paragraph 14, the State admits that Theodore Kulongoski is governor of the State of Oregon and, in that capacity, is chief executive of the State of Oregon. The State also admits that the State of Oregon is a public employer. The State denies the remaining allegations in paragraph 14.

14. Answering paragraph 15, the State admits that Oregon courts have held in the past that some provisions of PERS constitute a contract and that the terms of ORS Chapter 238 (2001) speak for themselves. The State denies the remaining allegations in paragraph 15.

15. Answering paragraph 16, the State admits that Governor Kulongoski signed HB 2003 and HB 2004 on May 9, 2003, the terms of which speak for themselves. The State denies the remaining allegations in paragraph 16.

16. Answering paragraph 17, the State admits that the PERB has adopted administrative rules and that it will abide by HB 2003 and HB 2004, the terms of which speak for themselves. The State denies the remaining allegations in paragraph 17.

17. The State denies paragraph 18.

18. Answering paragraph 19, the State admits that the calculation of PERS benefits are addressed in ORS 238.300, the terms of which speak for themselves. The State denies the remaining allegations in paragraph 19.

19. The State denies paragraphs 20 and 21.

FIRST CLAIM FOR RELIEF

20. The State incorporates its responses to paragraphs 1 through 21 as its response to paragraph 22.

21. Answering paragraph 23, the State admits that contributions of salary to PERS are addressed in ORS 238.200, the terms of which speak for themselves, and that the crediting of accounts is addressed in ORS 238.250, the terms of which speak for themselves, and ORS 238.205, the terms of which speak for themselves. The State denies the remaining allegations in paragraph 23.

22. Answering paragraph 24, the State admits that transitional accounts are established in HB 2003, the terms of which speak for themselves. The State denies the remaining allegations in paragraph 24.

23. The State denies paragraphs 25 through 28.

SECOND CLAIM FOR RELIEF

24. The State incorporates its responses to paragraphs 1 through 21 as its response to paragraph 29.

25. Answering paragraph 30, the State lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 30 and denies them on that basis.

26. Answering paragraph 31, the State admits that the crediting of accounts was addressed in *former* ORS 238.255, the terms of which speak for themselves. The State denies the remaining allegations in paragraph 31.

27. Answering paragraph 32, the State admits that the legislation governing the PERS system is amended by HB 2003, the terms of which speak for itself. The State denies the remaining allegations in paragraph 32.

28. The State denies paragraphs 33 through 35.

THIRD CLAIM FOR RELIEF

29. The State incorporates its responses to paragraphs 1 through 21 as its response to paragraph 36.

30. Answering paragraph 37, the State admits that a gain-loss reserve is addressed in *former* ORS 238.255, the terms of which speak for themselves. The State denies the remaining allegations in paragraph 37.

31. Answering paragraph 38, the State admits that the legislation governing the PERS system is amended by HB 2003, the terms of which speak for themselves. The State denies the remaining allegations in paragraph 38.

32. The State denies paragraphs 39 through 41.

FOURTH CLAIM FOR RELIEF

33. The State incorporates its responses to paragraphs 1 through 21 as its response to paragraph 42.

34. Answering paragraph 43, the State lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 43 and denies them on that basis.

35. Answering paragraph 44, the State admits that the examination of PERS accounts and the crediting of those accounts is addressed in *former* ORS 238.255, the terms of which speak for themselves. The State denies the remaining allegations in paragraph 44.

36. Answering paragraph 45, the State admits that the legislation governing the PERS system is amended by HB 2003, the terms of which speak for themselves. The State denies the remaining allegations in paragraph 45.

37. The State denies paragraph 46 through 48.

FIFTH CLAIM FOR RELIEF

38. The State incorporates its responses to paragraphs 1 through 21 as its response to paragraph 49.

39. Answering paragraph 50, the State admits that plaintiff Hathhorn retired effective June 1, 2003. The State denies the remaining allegations in paragraph 50.

40. Answering paragraph 51, the State admits that cost-of-living adjustments (“COLAs”) are addressed in ORS 238.360, the terms of which speak for themselves. The State denies the remaining allegations in paragraph 51.

41. Answering paragraph 52, the State admits that the legislation governing the PERS system is amended by HB 2003, the terms of which speak for themselves. The State denies the remaining allegations in paragraph 52.

42. The State denies paragraphs 53 through 55.

SIXTH CLAIM FOR RELIEF

43. The State incorporates its responses to paragraphs 1 through 21 as its response to paragraph 56.

44. Answering paragraph 57, the State admits that variable accounts are addressed in *former* ORS 238.260, the terms of which speak for themselves. The State lacks knowledge or information sufficient to form a belief as to the truth of plaintiffs' allegations regarding contributions to variable accounts and deny them on that basis. The State denies the remaining allegations in paragraph 57.

45. Answering paragraph 58, the State admits that the legislation governing the PERS system is amended by HB 2003, the terms of which speak for themselves. The State denies the remaining allegations in paragraph 58.

46. The State denies paragraphs 59 through 61.

SEVENTH CLAIM FOR RELIEF

47. The State incorporates its responses to paragraphs 1 through 21 as its response to paragraph 62.

48. Answering paragraph 63, the State admits that plaintiff Hathhorn retired effective June 1, 2003. The State denies the remaining allegations in paragraph 63.

49. Answering paragraph 64, the State admits that the legislation governing the PERS system is amended by HB 2003, the terms of which speak for themselves. The State also admits that COLAs are addressed in ORS 238.360, the terms of which speak for themselves. The State denies the remaining allegations in paragraph 64.

50. Answering paragraph 65, the State admits that the trial court issued a decision in *City of Eugene v. State of Oregon*, Marion County No. 99C-12794, the terms of which speak for themselves. The State lacks knowledge or information sufficient to form an a belief as to the truth of plaintiffs' allegations regarding (a) the reasons for plaintiff Hathhorn's employment

decisions and (b) legal challenges to plaintiff Hathhorn's retirement benefits and denies them on that basis. The State denies the remaining allegations in paragraph 65.

51. Answering paragraph 66, the State admits that COLAs are addressed in HB 2003, the terms of which speak for themselves. The State denies the remaining allegations in paragraph 66.

52. The State denies paragraphs 67 and 68.

EIGHTH CLAIM FOR RELIEF

53. The State incorporates its responses to paragraphs 1 through 21 as its response to paragraph 69.

54. Answering paragraph 70, the State admits that plaintiffs Robertson, Carlisle, Myers, Simpson, Dean, and DeJarnatt currently work for public entities. The State lacks knowledge or information sufficient to form a belief as to the truth of plaintiffs' allegation that plaintiff Bowler is a "current employee" and denies it on that basis. The State denies the remaining allegations in paragraph 70.

55. Answering paragraph 71, the State admits that employee account earnings are addressed in *former* 238.255, the terms of which speak for themselves. The State denies the remaining allegations in paragraph 71.

56. Answering paragraph 72, the State admits that erroneously paid sums are addressed in HB 2003, the terms of which speak for themselves. The State denies the remaining allegations in paragraph 72.

57. The State denies paragraph 73 through 75.

NINTH CLAIM FOR RELIEF

58. The State incorporates its responses to paragraphs 1 through 21 as its response to paragraph 76.

59. Answering paragraph 77, the State admits that actuarial issues are addressed in *former* ORS 238.255, the terms of which speak for themselves. The State denies the remaining allegations in paragraph 77.

60. Answering paragraph 78, the State admits that mistaken payments are addressed in HB 2003, the terms of which speak for themselves. The State denies the remaining allegations in paragraph 78.

61. The State denies paragraphs 79 through 81.

TENTH CLAIM FOR RELIEF

62. The State incorporates its responses to paragraphs 1 through 21 as its response to paragraph 82.

63. Answering paragraph 83, the State admits that plaintiff Robertson became a member of PERS on June 1, 1984; that plaintiff Carlisle became a member of PERS on March 1, 1986; that plaintiff Myers became a member of PERS on November 1, 1975; that plaintiff Simpson became a member of PERS on June 1, 1991; the plaintiff Dean became a member of PERS on February 1, 1988; and that plaintiff DeJarnatt became a member of PERS on April 1, 1984. The State lacks knowledge or information sufficient to form a belief as to the truth of plaintiffs' allegation that plaintiff Bowler became a member of PERS prior to January 1, 1999, and denies it on that basis. The State denies the remaining allegations in paragraph 83.

64. Answering paragraph 84, the State admits that actuarial issues were addressed in *former* ORS 238.630, the terms of which speak for themselves. The State also admits that the

PERB promulgated OAR 459-005-0055, the terms of which speak for themselves. The State denies the remaining allegations in paragraph 84.

65. Answering paragraph 85, the State admits that actuarial issues are addressed in HB 2004, the terms of which speak for themselves. The State denies the remaining allegations in paragraph 85.

66. The State denies paragraphs 86 through 88.

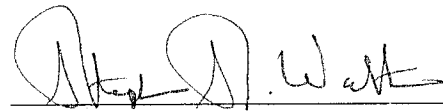
AFFIRMATIVE DEFENSE

(Lack of Unnecessarily Broad Repudiation
Required to Establish Federal Impairment of Contract Claims)

67. Plaintiffs' claims against the State that are based on the Federal Constitution's Impairment of Contracts Clause are barred, in whole or in part, because the Oregon law allegedly creating the substantial impairment of contract is justified by a significant and legitimate public purpose and because the methods used by Oregon to advance that public purpose do not constitute an unnecessarily broad repudiation of contractual obligations to private persons.

DATED: September 25, 2003.

STOEL RIVES LLP



STEPHEN S. WALTERS, OSB NO. 80120
SPECIAL COUNSEL

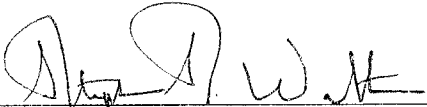
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served the foregoing **ANSWER AND AFFIRMATIVE**
3 **DEFENSE** on the following named person(s) on the date indicated below by
4 mailing with postage prepaid
5 hand delivery
6 facsimile transmission
7 overnight delivery
8 to said person(s) a true copy thereof, contained in a sealed envelope, addressed to said
9 person(s) at his or her last-known address(es) indicated below.

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17 DATED: September 24, 2003.

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