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

MARIE VITULLI, MARK PERLMAN, DAVID)
ALLEN AND MICHAEL BOWMAN)

Plaintiffs,)

v.)

STATE OR OREGON; OREGON)
UNIVERSITY SYSTEM; by and through)
PORTLAND STATE UNIVERSITY,)
UNIVERSITY OF OREGON, EASTERN)
OREGON UNIVERSITY, WESTERN)
OREGON UNIVERSITY.)

Defendants.)

Case No.

COMPLAINT
(Wage Claim, Declaratory Relief)

NOT SUBJECT TO MANDATORY
ARBITRATION

Plaintiffs allege:

- 1.
- 2.
- 3.
- 4.

Plaintiffs are all employed by defendant Oregon University System.

Plaintiff Bowman is a resident of Multnomah County and is employed by Portland State University.

Plaintiff Allen is a resident of Union County and is employed by Eastern Oregon University.

Plaintiff Perlman is a resident of Marion County and is employed by Western Oregon University.

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Plaintiff Vitulli is a resident of Lane County and is employed by University of Oregon.

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Oregon University System is a division of the State of Oregon and consists of the programs, activities and institutions of higher education under the jurisdiction of the State Board of Higher Education including the following: (1) University of Oregon; (2) Oregon State University; (3) Portland State University; (4) Oregon Institute of Technology; (5) Western Oregon University; (6) Southern Oregon University; and (7) Eastern Oregon University. ORS 352.002.

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In 1995, the legislature created the Optional Retirement Plan under ORS 243.800 for certain academic and administrative higher education employees of the OUS. Under that statute, the Board of Higher Education may create an Optional Retirement Plan ("ORP") as an alternative to membership in the Public Employees Retirement System ("PERS").

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All plaintiffs have elected to become members of the ORP.

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ORS 243.800(9) requires the OUS to contribute monthly to the Optional Retirement Plan, "a percentage of salary of each employee participating in the plan equal to the percentage of salary that would otherwise have been contributed as an *employer contribution*, on behalf of the employee to the Public Employees Retirement System if the employee had not elected to participate in the Optional Retirement Plan." (Emphasis added). Thus, contributions under the Optional Retirement Plan are dictated by the employer contribution that would have been made if the employee remained a member of PERS.

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4 Under OAR 459-009-0084, PERS has established procedures to allow for employers to
5 make lump sum payments to cover unfunded actuarial liabilities (“UALs”). A UAL is the
6 excess of the actuarial liabilities for future retirees over the fair market actuarial value of
7 employer contributed assets. Employers, including the State, are allowed to make payments on
8 those liabilities before they are due through a “side account” mechanism. In effect, this allows
9 an employer to refinance this debt obligation through its bonding powers.

10 11.

11 Under OAR 459-009-0084, any payment which is not regularly scheduled, that is not
12 paid as a percentage of salary, and that is made for the express purpose of reducing the UAL,
13 is considered a lump sum UAL payment and placed in a "side account." That side account is
14 held by PERS for the benefit of the employer.

15 12.

16 Payments are made out of this "side account" to the employer contribution account for
17 that employer once a year. The amount of these payments is determined by the PERS actuary
18 on an annual basis. Under these rules, these payments are treated as pre-funded contributions
19 for the payment of obligations of the employer under ORS Chapter 238. Thus, in effect, these
20 payments from the side account are treated as employer contributions.

21 13.

22 OAR 459-009-0084 specifically provides that these payments are not to be treated as a
23 reduction of the employer’s contribution obligations but rather as a contribution to satisfy that
24 obligation.

25 14.

26 In November 2003, the State of Oregon decided to take advantage of the lump-sum

1 UAL payments option. The legislature referred and the voters passed Measure 29.

2 ///

3 15.

4 Measure 29 allowed the State of Oregon to borrow two-billion dollars to fund the
5 State's unfunded actuarial liabilities. That two billion dollars was borrowed by the State of
6 Oregon and placed into a side account as a lump-sum payment to prepay unfunded actuarial
7 liabilities pursuant to OAR 459-009-0084.

8

9 16.

10 As a result of this two-billion-dollar lump-sum payment, the additional funds required
11 from the State to satisfy its required contribution have been reduced and the nominal employer
12 contribution rate has been reduced in an amount corresponding to the amount that has been
13 prepaid from this side account.

14 17.

15 OUS, has announced that its nominal employer contribution rate has therefore dropped
16 from 11.31 percent for Tier One members to 3.71 percent. Similarly, Tier Two members
17 whose rate had been 11.71 percent of their salary would be 4.27 percent. According to OUS,
18 because of this prepayment contribution, and because the rate has dropped as a result of this
19 prepayment, it is only obligated to pay the rate required by PERS. OUS has taken the position
20 that the pre-payment amount is not to be considered an "employer contribution" for purposes
21 of ORS 243.800.

22 18.

23 Plaintiffs have each been notified that the OUS has reduced their ORP pension
24 contributions by the same amount that the nominal PERS contribution rates have been reduced
25 by the prepayment.

26 19.

1 OUS has not made a contribution to plaintiffs' ORP accounts equal to "the same
2 percentage of salary that would otherwise have been contributed as an *employer contribution*"
3 if plaintiffs' were PERS members.

4 20.

5 Plaintiffs have provided 12 days notice of their intent to file a claim in this matter.

6 **CLAIM FOR RELIEF**

7 (Wage Claim - ORS Ch. 652.120)

8 21.

9 Plaintiffs reallege paragraphs 1 through 15 above.

10 22.

11 OUS has failed to pay the full amount of pension contributions for ORP members due
12 and payable on plaintiffs' pay dates.

13 23.

14 Defendant county has failed to properly pay the full amount of wages due each plaintiff
15 on all paydays between November 2003 and the present.

16 24.

17 Defendant OUS's failure to pay these wages constitutes a violation of ORS 652.120.

18 25.

19 Plaintiffs are entitled to reasonable attorney fees and costs pursuant to ORS 652.200.

20 WHEREFORE, plaintiffs pray for relief as follows:

- 21 1. That plaintiffs be awarded damages for all amounts improperly withheld from
22 their salary from November 2003 to the present plus statutory interest.
- 23 2. That this court issue a declaratory ruling that the State of Oregon and the OUS
24 must comply with ORS 243.800 by paying the same employer contribution, as
25 a percentage of salary, that it pays for similarly situated PERS members.
- 26 3. For plaintiffs' reasonable attorney fees and costs and such other relief as the

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court deems proper.

DATED this _____ day of March, 2004.

Thomas Doyle, #97251
Of Attorneys for Plaintiffs