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Attorneys for Plaintiffs

**IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

STATE OF ARIZONA , ex rel. Terry Goddard, Attorney General,)	Case No. CV _____
)	
Plaintiff,)	COMPLAINT
)	
vs.)	
)	
PHOENIX POLICE PENSION BOARD ,)	
and ED ZUERCHER , in his official capacity as Chairperson of the Phoenix Police Pension Board, and TROY HILLMAN , in his official capacity as a member of the Phoenix Police Pension Board, and STAN HOOVER , in his official capacity as a member of the Phoenix Police Pension Board, and WENDY LARSEN in her official capacity as a member of the Phoenix Police Pension Board, and GAYLE STARR , in her official capacity as a member of the Phoenix Police Pension Board, and JACK F. HARRIS , Chief of Police of the Phoenix Police Department,)	
)	
Defendants.)	
_____)	

The State of Arizona brings this action pursuant to A.R.S. § 35-212 to enjoin the illegal payment of pension benefits to Phoenix Police Department Chief of Police Jack F. Harris.

GENERAL ALLEGATIONS

1. The court has jurisdiction over the subject matter of this Complaint pursuant to A.R.S. § 12-123 and Ariz. Const. art. 6, § 14.
2. The court has personal jurisdiction over the named defendants in accordance with the substantive law of the State of Arizona, the Arizona Rules of Civil Procedure, and the Constitutions of the State of Arizona and the United States of America.
3. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401.
4. The minimum jurisdictional amount established for filing an action in the Superior Court of the State of Arizona is satisfied.

PARTIES

5. Plaintiff is the State of Arizona, ex rel. Terry Goddard, who is authorized to bring this action pursuant to A.R.S. § 35-212.
6. Defendant Phoenix Police Pension Board is a five-member local board authorized by the law to oversee participation in the Public Safety Personnel Retirement System (“PSPRS”) by the Phoenix Police Department and Phoenix Police Department officers and other eligible employees. The Phoenix Police Pension Board has authority to decide all questions of eligibility and to determine the amount, manner, and time of payment of any benefits paid to members under the PSPRS, among other powers.
7. Defendant Ed Zuercher is the Chairperson of Defendant Phoenix Police Pension Board. Defendant Zuercher is being sued in his official capacity.
8. Defendant Troy Hillman is a member of Defendant Phoenix Police Pension Board. Defendant Hillman is being sued in his official capacity.

9. Defendant Stan Hoover is a member of Defendant Phoenix Police Pension Board. Defendant Hoover is being sued in his official capacity.

10. Defendant Wendy Larsen is a member of Defendant Phoenix Police Pension Board. Defendant Larsen is being sued in her official capacity.

11. Defendant Gayle Starr is a member of Defendant Phoenix Police Pension Board. Defendant Starr is being sued in her official capacity.

12. Defendant Jack F. Harris is the Chief of Police of the Phoenix Police Department.

STATEMENT OF FACTS

13. The PSPRS is a special retirement system created by the state legislature for certain full-time certified police officers and full-time fire fighters in the State of Arizona. The PSPRS was created by the state legislature to provide a uniform, consistent, and equitable statewide retirement program to public safety personnel who are regularly assigned to hazardous duty of the type expected of police officers and fire fighters. The PSPRS is designed to meet the special needs of personnel engaged in hazardous duty situations.

14. The PSPRS is a government retirement plan qualified under 401(a) of the Internal Revenue Code. It is a “defined benefit plan,” which means that the pension benefits received by a participant are determined by a formula, not by the amount of money in a participant’s individual account.

15. In addition, the PSPRS is a multiple-employer retirement plan. Separate accounts are kept for each employer participating in the system, but monies are pooled for investment purposes. Benefit payments are not shared by all employers in the system, but are paid from an

employer's separate account. A total of two hundred twenty-nine (229) Arizona public employers participate in the PSPRS.

16. Monies contributed by employees and employers to the PSPRS are deposited in a fund managed, overseen, and invested by the PSPRS Fund Manager, a state agency composed of five members appointed by the Governor.

17. Each employer that participates in the PSPRS is required to establish a local board that is responsible for deciding questions of eligibility and service credits, determining the amount, manner, and time of payments of any benefits, prescribing procedures to be followed by claimants in filing applications for benefits, and determining the right of any claimant to benefits, among other powers.

18. The Phoenix Police Department participates in the PSPRS. The local board that oversees participation in the PSPRS for the Phoenix Police Department is the Phoenix Police Pension Board.

19. The Code of the City of Phoenix expressly requires that there be a Chief of Police and expressly sets forth the duties and authority of the Chief of Police. The duties and authority of the Chief of Police of the City of Phoenix are set forth at §§ 2-37 and 2-199 of the Code of the City of Phoenix.

20. Defendant Harris became Chief of Police of the Phoenix Police Department in July 2004. As a long-time officer in the Phoenix Police Department, Chief Harris was eligible to participate in and did participate in the PSPRS.

21. Chief Harris retired from his position as Chief of Police of the Phoenix Police Department on or about January 19, 2007.

22. After a period of approximately two (2) weeks, Chief Harris was reemployed by the City of Phoenix as its “Public Safety Manager.” As Public Safety Manager, however, Chief Harris continues to serve as Chief of Police. He wears the uniform of the Chief of Police, calls himself the Chief of Police, and performs all of the same duties and exercises all of the same authority that he performed and exercised before his retirement.

23. According to the organizational chart of the Phoenix Police Department posted on the City of Phoenix’s website, Chief Harris is the head of the Phoenix Police Department. He is identified on the organizational chart as “Public Safety Manager/Police Chief Jack F. Harris.”

24. In May 2009, City of Phoenix City Manager Frank Fairbanks officially confirmed that Chief Harris is the Chief of Police of the Phoenix Police Department.

25. Despite being reemployed as Chief of Police after his retirement on or about January 19, 2007, the Phoenix Police Pension Board authorized the payment of pension benefits to Chief Harris. Chief Harris began receiving pension benefits from the PSPRS shortly after his retirement on or about January 19, 2007, and he continues to receive pension benefits from the PSPRS up to the present. On information and belief, the value of these pension benefits is approximately \$90,000 per year.

COUNT I
(A.R.S. § 35-212)

26. Plaintiff incorporates paragraphs 1 through 25, and each of them as if they were set forth in full.

27. Pursuant to A.R.S. § 38-849.D, if a retired member subsequently becomes reemployed in the same position from which the member retired, pension benefits shall not be paid to the member during the period of reemployment.

28. Chief Harris has been reemployed in the same position by the City of Phoenix from which he retired on or about January 19, 2007.

29. Chief Harris continues to receive pension benefits from the PSPRS despite the fact that he has since been reemployed by the City of Phoenix in the same position from which he retired on or about January 19, 2007.

30. The pension benefits being paid to Chief Harris are illegal under A.R.S. § 38-849.D.

31. The pension benefits being paid to Chief Harris are “public monies” as that term is defined by A.R.S. § 35-212.B.

32. A.R.S. § 35-212.A. empowers the Attorney General to bring an action to enjoin illegal payments of public monies.

WHEREFORE, Plaintiff respectfully requests that the Court:

A. Enjoin Defendants Phoenix Police Pension Board, Zuercher, Hillman, Hoover, Larsen, and Starr from paying pension benefits to Defendant Harris so long as Defendant Harris continues to serve as Chief of Police of the Phoenix Police Department.

B. Order All Defendants to reimburse the Attorney General for the costs of this action, including reasonable attorney fees.

C. Order any other and further relief as the Court deems just and proper.

DATED this ____ day of _____, 2009.

TERRY GODDARD
Attorney General

By: _____