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

**JOSEPH BOVA,**

Case No. 08-1663-E7

Plaintiff,

PLAINTIFF'S MOTION FOR FINDING  
OF CONTEMPT AND FOR REMEDIAL  
SANCTIONS

vs.

**CITY OF MEDFORD**, an incorporated  
Subdivision of the State of Oregon, and  
**MICHAEL DYAL**, City Manager  
of the City of Medford, as an Individual, and  
in his official capacity,

Defendants.

Plaintiffs move the court for an Order finding defendants, City of Medford and Michael Dyal, in contempt of court. The motion is based upon the Affidavit of Stephen L. Brischetto in Support of Motion for Finding of Contempt, Plaintiffs' Statement of Points and Authorities in Support of Motion for Finding of Contempt and ORS 33.055.

In support of said motion, Plaintiffs allege:

1). This court filed a valid Opinion and Order dated July 10, 2009 which stated *inter alia* that "pursuant to the provision of ORS 243.303, if the city makes available healthcare insurance coverage for its current employees at the time Bova or another member of the class retires, the city is obligated to offer the same coverage as an option for the retiring member of the class, including Bova, and the city is enjoined to take the actions necessary to comply with ORS 243.303 as declared herein."

2). This court filed a valid Limited Judgment dated December 7, 2009 which

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1 enjoined the City of Medford, its officers, employees and attorneys from continuing to violate  
2 ORS 243.303(2); which required defendants to provide notice to any retiring employee of their  
3 right to elect within 60 days of the employee's effective date of retirement, for themselves, their  
4 spouse and unmarried children under 18, to continue that same health care insurance coverage  
5 under ORS 243.303(2) so long as defendants make health care insurance coverage available to  
6 current officers and employees; which required defendants, for any retiring employee who so  
7 elects, to continue health care insurance coverage for the retiring employee, their spouse or  
8 unmarried children under 18 until the retiring employee becomes eligible for Medicare, until the  
9 spouse becomes eligible for Medicare and until the child arrives at majority; which required that  
10 the City, its officers, employees and attorneys shall take all actions necessary to comply with  
11 ORS 243.303(2) including the creation of a written plan for the City's compliance with ORS  
12 243.303 on or before January 2, 2010, the presentation of the written plan to the plaintiff and the  
13 class on or before January 2, 2010 and the implementation of policies and procedures in the plan  
14 by March 15, 2010.  
15

16 3). Defendants Michael Dyal and the City of Medford knew of the July 10,  
17 Opinion and Order and the December 7, 2009 Limited Judgment.  
18

19 4). Defendants voluntarily did not comply with the Opinion and Order and the  
20 Limited Judgment as described in paragraphs 5 through 11 below.  
21

22 5). Defendants did not provide at least six employees retiring during the  
23 period May 29, 2009 through July 31, 2009 with notice and an opportunity to elect continued  
24 coverage under ORS 243.303(2) during the 60 day period in which the employees should have  
25 had the opportunity to elect continued coverage.  
26

6). Defendants did not provide a seventh retiring employee whose last day of

1 work for the City was December 31, 2009 with notice and an opportunity to elect continued  
2 coverage within 60 days of retirement under ORS 243.303(2) even after the employee's attorney  
3 requested issuance of the required election.

4 7). Defendants did not provide an eighth employee whose last day of work  
5 was June 30, 2010 with notice and an opportunity to elect continued coverage within 60 days of  
6 retirement under ORS 243.303(2) even after the employee's attorney requested issuance of the  
7 required election.

8 8). Plaintiffs have reason to believe that additional employees have retired  
9 other than the eight set forth above and have not been provided with notice and an opportunity to  
10 elect continued coverage within 60 days of retirement under ORS 243.303(2).

11 9). Defendants failed to present a Written Plan to plaintiff and the class on or  
12 before January 2, 2010.

13 10). The Written Plan defendants filed with the court does not take all actions  
14 necessary to comply with the court's Opinion and Order and Limited Judgment and is not a  
15 Written Plan for compliance with ORS 243.303 due to the following deficiencies:

16 A). The Written Plan states on its face the City's intent to resist  
17 implementation of the court's order and the judgment rather than the City's intent  
18 to implement the court's directives;

19 B). The Written Plan is designed to generate negative publicity and stimulate  
20 employee opposition to the court's order and judgment rather than attempting to  
21 implement the court's directives;

22 C). The Written Plan does not provide the administrative forms to be used and  
23 set forth the procedures to be followed for employees to elect continuation of their  
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group health insurance coverage under ORS 243.303;

1  
2 D). The Written Plan does not provide a remedy for Class Members who have  
3 retired, or who will retire, during the period of the City's non-compliance with  
4 ORS 243.303.

5 E). The Written Plan attempts to pass along increased premiums resulting  
6 from the City's period of non-compliance with ORS 243.303 to both active and  
7 retired Class Members.

8 F). The Written Plan does not contain evidence that the unions have agreed to  
9 any proposed change in health insurers and any proposed increases in premiums  
10 to employees represented by unions.

11 G). The Written Plan does not provide evidence that managers have consented  
12 to any increased deductions in pay for a change in health insurance providers and  
13 does not provide that such consent shall be obtained only with the approval of the  
14 court and on notice to class counsel.

15  
16 11). In May 2010, Director of Human Resources Douglas Detling circulated a  
17 petition among management employees seeking support to end the court's injunction; City  
18 Attorney John HuttI presented a letter from Mr. Detling together with the petition to the City  
19 Council and the City Council approved expenditure of \$20,000 to assist managers in ending this  
20 court's injunction directed against the City.  
21

22 12). Defendants have engaged in a pattern of bad faith litigation conduct  
23 designed to delay compliance with ORS 243.303(2) and obstruct efforts to remediate the City's  
24 non-compliance with ORS 243.303(2).

25 Wherefore, plaintiffs request that the court provides remedies to the Class as more  
26

1 particularly set forth in Plaintiff's Memorandum of Points and Authorities in Support of Motion  
2 for a Finding of Contempt.

3 DATED this 3 day of August, 2010.

4  
5 STEPHEN L. BRISCHETTO OSB #78156  
6 Attorney at Law  
7 621 SW Morrison St., Suite 1025  
8 Portland, OR 97205  
9 Phone: (503) 223-5814  
10 Fax: (503) 228-1317  
11 slb@brischettolaw.com  
12 Trial Attorney: Same

13  
14 George P. Fisher, OSB 910432  
15 3635 SW Dosch Road  
16 Portland OR 97239  
17 Phone: (503) 224-7730  
18 Fax: (503) 227-2429  
19 george.fisher@gpf-law.com  
20  
21  
22  
23  
24  
25  
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**CERTIFICATE OF SERVICE**

I hereby certify that I served the **Plaintiff's Motion for Finding of Contempt** on:

Robert E. Franz, Jr.  
LAW OFFICE OF ROBERT E. FRANZ, JR.  
PO BOX 62  
Springfield OR 97477

Of Attorneys for Defendants

HAND DELIVERY  
 U.S. MAIL  
 FAX  
 E-MAIL  
 ECF

George P. Fisher  
Attorney at Law  
3635 S.W. Dosch Road  
Portland OR 97239

Of Attorneys for Plaintiff

HAND DELIVERY  
 U.S. MAIL  
 FAX  
 E-MAIL  
 ECF

Lisa M. Umscheid  
Ball Janik  
101 SW Main St, Ste 1100  
Portland OR 97204

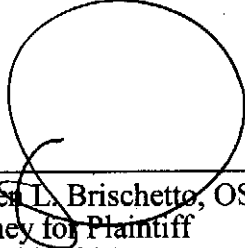
HAND DELIVERY  
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 FAX  
 E-MAIL  
 ECF

Of Attorneys for Interested Persons and Group of Respondent Class Members

by delivering this date to said attorney(s) a true copy thereof as stated above. I further certify that said documents were contained in sealed envelopes, addressed as above stated, to the last-known addresses of said attorney(s). Documents delivered by mail were deposited in the post

office at Portland, Oregon with postage thereon prepaid.

DATED: August 3, 2010.



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Stephen L. Brischetto, OSB 78156  
Attorney for Plaintiff  
(503) 223-5814