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DISTRICT COURT, EL PASO COUNTY, COLORADO

El Paso County District Court
270 South Tejon, Colorado Springs, CO 80903
P.O. Box 2980, Colorado Springs, CO 80901-2980

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▲COURT USE ONLY▲

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Plaintiffs: RICHARD STEWART, an individual citizen of the State of Colorado;
JAMES CONNALLY, an individual citizen of the State of Colorado;
JULIE M. CONNALLY, an individual citizen of the State of Colorado;
KENNETH M. EMRY, an individual citizen of the State of Colorado;
BARBARA EVERHART, an individual citizen of the State of Colorado;
CALVIN EDWARD FLOCK, JR., an individual citizen of the State of Colorado;
DONALD S. LASH, an individual citizen of the State of Colorado;
and
JOAN C. RYAN, an individual citizen of the State of Colorado.

v.

Defendant: LEWIS-PALMER SCHOOL DISTRICT #38, a governmental subdivision of the State of Colorado

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Case Number: ________

Div.: ________

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Lisa Welch Stevens, Atty. No. 28936
Lisa Welch Stevens, Attorney at Law, P.C.
1832 Woodmoor Drive
Suite 200
Monument, Colorado 80132
Phone Number: 719-488-9395
Fax Number: 719-488-9745
lisa@lwslawfirm.com

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FIRST AMENDED VERIFIED COMPLAINT	

Plaintiffs RICHARD STEWART, ET AL. ("Retirees"), by and through counsel, Lisa Welch Stevens, Attorney at Law, P.C., file this their Complaint against Defendant, LEWIS-PALMER SCHOOL DISTRICT #38, a governmental subdivision of the State of Colorado ("District"), and for their claims and causes of action state as follows:

THE PARTIES & JURISDICTION

1. This litigation arises from, **inter alia**, Defendant's wrongful and unjustified termination of certain of Retirees' post-early retirement employee benefits; specifically, District's termination of Retirees' contractual right, at their own election, to continue their coverage under the District's employee group health insurance policies, upon Retirees' assumption of the obligation to pay all monthly premiums therefor, at the District's employee monthly premium rate, from date of early retirement until the age of sixty-five years. Plaintiffs seek relief based on various contract and equitable claims.

2. Plaintiffs all are citizens of the State of Colorado, and each resides in the County of El Paso, with the exception of Plaintiffs JAMES CONNALLY and JULIE M. CONNALLY, who reside in the County of Douglas.

3. On information and belief, Defendant LEWIS-PALMER SCHOOL DISTRICT #38 ("District") is a legal, governmental subdivision of the State of Colorado, with its principal place of business in the Town of Monument, County of El Paso, State of Colorado, and it is duly qualified to transact business in the state of Colorado.

4. This Court has subject matter jurisdiction over all claims asserted herein and personal jurisdiction over all parties. Venue is properly laid in this district pursuant to **Colo. R. Civ. P. 98(c)**.

GENERAL ALLEGATIONS

5. Each of the Retirees was formerly employed by the District.

6. Each of the Retirees retired from his or her employment with the District prior to attaining the age of sixty-five (65) years of age.

7. During each of the Retirees' respective terms of employment with the District, the District provided group health insurance coverage to its employees, including but not limited to

the Retirees, and paid the monthly premiums due therefor.

8. During each of the Retirees' respective terms of employment with the District, the District permitted employees who retired prior to attaining the age of sixty-five (65) years, at the employees' election, to retain their coverage under the District's employee group health insurance plans, with the proviso that said early-retired employees assume the obligation to pay the monthly premiums due therefor, at the District's per employee monthly premium rate.

9. During each of the Retirees' respective terms of employment with the District, the District orally promised employees who retired prior to attaining the age of sixty-five (65) years, at the employees' election, to retain their coverage under the District's employee group health insurance plans, with the proviso that said early retired employees assume the obligation to pay the monthly premiums due therefor, at the District's per employee monthly premium rate.

10. Each of the Retirees, at the time of his or her election to retire from the District's employ prior to attaining the age of sixty-five (65) years, received a written agreement, drafted by the District, contractually obligating the District to permit each of the Retirees to maintain his or her coverage under the District's group health insurance coverage, at each Retiree's election, with the sole proviso that each such Retiree assume the obligation to pay the monthly premiums due therefor; provided, however, that said premiums would continue at the District's regular per employee rate, as if each such Retiree were continuing his or her employment with the District until the attainment of the age of sixty-five (65) years. *See* <u>*Plaintiffs' Exhibit 1*</u> *attached hereto and by this reference incorporated herein*.

11. The Retirees relied upon these oral and written promises of the District in deciding to remain in the District's employ until retirement, and continuing to provide services to the District as employees, at lower salaries than they could have obtained in other school districts in the State of Colorado.

12. The Retirees relied upon these oral and written promises of the District in deciding to retire from the District prior to attaining the age of sixty-five (65) years.

13. The District originally honored its contractual obligations to the Retirees, permitting them to maintain their coverage under the District's employee group health insurance policies, at the District per employee monthly premium rate; for some Retirees, this course of conduct continued for quite some number of years.

14. On or about May 6, 2008, the District notified the Retirees, by an undated letter, that it was unilaterally revoking its written agreement with the Retirees, and that the District would no longer permit Retirees to maintain their coverage under the District's employee group health insurance policies, under the then-existing arrangement. *See* <u>*Plaintiffs' Exhibit 2*</u>*, attached hereto and by this reference incorporated herein.*

15. On or about May 6, 2008, the District notified the Retirees, by an undated letter,

that if the Retirees wished to maintain their coverage under the District's group health insurance coverage, they could do so only under the federal government's COBRA program, at significantly higher monthly premium rates than the District's per employee monthly premium rates (specifically, 175% of the District's per employee monthly premium rate). *See Plaintiffs' Exhibit 2, attached hereto and by this reference incorporated herein.*

16. Under COBRA, the Retirees would also be limited to maintaining their coverage under the District's group health insurance policies for a maximum of eighteen (18) months, and not until the age of sixty-five (65) years (for however many months or years that might be), as under the then existing agreement.

17. On or about May 6, 2008, the District notified the Retirees, by an undated letter, that, in the alternative, the Retirees could obtain health insurance coverage either through the Colorado Public Employees Retirement Association ("PERA"), or through private insurers, until they attained the age of sixty-five (65) years. *See Plaintiffs' Exhibit 2, attached hereto and by this reference incorporated herein.*

18. The Retirees' costs to obtain health insurance coverage until the age of sixty-five years through either PERA or private insurers is significantly greater than under the then-existing agreement with the District, being in the tens of thousands of dollars per Retiree from each Retiree's date of early retirement until the date of such Retiree's attainment of the age of sixty-five (65) years.

19. Under federal law, none of the Retirees shall be eligible for the federal government's Medicare health insurance coverage until they attain the age of sixty-five (65) years.

20. On May 19, 2008, the District confirmed to the Retirees, in writing, that their current coverage under the District's employee group health insurance policies was being terminated, and alleged that this change was due to "new requirements" at the "Federal level", falsely implying that the change was required by the federal government. *See Plaintiffs' Exhibit 3, attached hereto and by this reference incorporated herein.*

21. On May 27, 2008, at a meeting held beginning at 6:30 PM MDT between the Retirees and Dr. Raymond Blanch (the District's Superintendent of Schools, hereinafter "Blanch") and Cheryl Wangeman (the District's Chief Financial Officer, hereinafter, "Wangeman"), the District presented the Retirees with a "GASB 45 Implementation for Lewis-Palmer School District #38 Questions and Answers" memorandum (hereinafter, the "Memo"). *See Plaintiffs' Exhibit 4, attached hereto and by this reference incorporated herein.*

22. On page 3 of the Memo, the District alleges that it is terminating the existing contractual arrangement with the Retirees regarding the Retirees' continued health insurance coverage under the District's group health insurance policies because "the Federal Government is forcing the district to recognize the actual cost of this expense (the cost of the Retirees'

monthly insurance premium payments) to the district now and in future years." *See Plaintiff's Exhibit 4*.

23. In its letters to the Retirees and in the Memo, the District alleges that, specifically, it is an organization known as the Governmental Accounting Standards Board ("GASB") that, in its GASB Statement 45, is requiring this change. *See Plaintiffs' Exhibits 4 and 2*.

24. Contrary to the false and misleading statements of the District to the Retirees, both orally at the meeting and in writing in the Memo, GASB is NOT an arm of the federal government, but, in its own words, an "independent, private-sector, not-for-profit organization that . . . establishes and improves standards of financial accounting and reporting for U.S. state and local governments." *See Plaintiffs' Exhibit 5, "GASB AT A GLANCE" print-out from the website http://www.gasb.org, a copy of which is attached hereto and incorporated herein by this reference, at paragraph 1.*

25. Contrary to the false and misleading statements of the District to the Retirees, both orally at the meeting and in writing in the Memo, GASB, in its own words, "is not a federal agency". *See Plaintiff's Exhibit 5 at paragraph 8.*

26. Contrary to the false and misleading statements of the District to the Retirees, both orally at the meeting and in writing in the Memo, in GASB's own words, GASB's "standards are not federal laws or rules". *See Plaintiff's Exhibit 5 at paragraph 8.*

27. Contrary to the false and misleading statements of the District to the Retirees, both orally at the meeting and in writing in the Memo, in GASB's own words, "GASB does not have enforcement authority to require governments to comply with its standards." *See Plaintiff's Exhibit 5 at paragraph 8.*

28. The District deliberately misrepresented to the Retirees that the District's decision to unilaterally breach its contractual agreement with the Retirees was forced upon it by the "Federal Government" when such was not at all the case.

29. Upon information and belief, at the time the District unilaterally breached its contractual agreement with the Retirees on or about May 6, 2008, the District's Board of Education had not approved that termination, nor even been presented with the fact that such was being contemplated.

30. Retirees then retained the undersigned counsel to represent them regarding the District's decision to unilaterally breach its contractual agreement with the Retirees.

31. On June 6, 2008, the undersigned counsel, on behalf of the Retirees, hand-delivered a demand letter to the District, setting forth the facts, and requesting that the District "rescind" its breach, so to speak, and honor its contractual agreements with the Retirees, permitting the Retirees to continue their health insurance coverage under the then existing

agreement.

32. On June 10, 2008, counsel for the District, Richard E. Bump of the firm of Caplan & Earnest LLC in Boulder, Colorado ("Opposing Counsel"), contacted the undersigned counsel in response to said demand letter.

33. On June 11, 2008, Opposing Counsel suggested, and the undersigned counsel agreed, that each prepare a written statement of their clients' positions on the matter, in the interests of resolving the dispute.

34. On June 11, 2008, Opposing Counsel requested, and the undersigned Counsel agreed, that the Retirees' written position statement would be forwarded to Opposing Counsel by Monday, June 16, 2008, <u>specifically</u> so that Opposing Counsel would have the opportunity to present it to the District's Board of Education in executive session prior to the regularly scheduled monthly District Board of Education meeting on Thursday, June 19, 2008.

35. On June 16, 2008, as requested, and at significant time to the undersigned counsel and consequent significant expense to the Retirees, the undersigned counsel, on behalf of Retirees, forwarded an 11 page written statement of the Retirees' position on the dispute to Opposing Counsel.

36. Undersigned counsel for Retirees received no communications initiated by Opposing Counsel, either acknowledging receipt of said written statement or forwarding Opposing Counsel's own written statement as promised and as suggested by said Opposing Counsel himself.

37. On June 17, 2008, the undersigned counsel re-faxed the Retirees' written position statement to Opposing Counsel; again, no response was made by Opposing Counsel, either acknowledging receipt of said written statement or forwarding Opposing Counsel's own written statement as promised and as suggested by said Opposing Counsel himself.

38. On June 18, 2008, Char Wahlborg, a District retiree who is not a party to this suit, notified the undersigned counsel by telephone that the agenda for the upcoming meeting of the District's Board of Education listed as an agenda item consideration and approval of a resolution regarding retiree insurance benefits; said meeting was scheduled for the very next day, June 19, 2008, to begin at approximately 5:00 PM MDT.

39. On June 19, 2008, at approximately 9:56 AM MDT, the undersigned counsel left a voice mail on Opposing Counsel's personal office voice mail box, inquiring as to whether Retirees' written position statement had been received.

40. On June 19, 2008, at approximately 9:56 AM MDT, the undersigned counsel left a voice mail on Opposing Counsel's personal office voice mail box, inquiring as to whether the agenda item reported by Char Wahlborg dealt with the Retirees' issue, notifying Opposing

Counsel that she intended to attend the meeting to speak on the Retirees' behalf, inquiring as to whether Opposing Counsel would be present, and requesting a copy of the proposed resolution prior to the District Board of Education meeting.

41. On June 19, 2008, at approximately 3:46 PM MDT, Opposing Counsel finally responded to the undersigned counsel's various and several inquiries, leaving a voice mail to the effect that the undersigned counsel could pick up a copy of the proposed resolution from the President of the District's Board of Education at the meeting itself, prior to its commencement.

42. On June 19, 2008, at approximately 4:10 PM MDT, less than one hour prior to the commencement of the District's Board of Education meeting, Vicky Wood, an employee of the District, notified the undersigned counsel that she would fax over a copy of the proposed resolution.

43. The proposed resolution authorized the District to unilaterally breach the District's contractual agreement with the Retirees, and to terminate their continued coverage under the District's employee group health insurance policies, under the then existing arrangement and terms. *See* *Plaintiffs' Exhibit 6*, *a copy of which is attached hereto and by this reference incorporated herein.*

44. At that meeting, the undersigned counsel spoke on behalf of the Retirees, summarizing their position on the matter as set forth in the retirees' written position statement previously forwarded to Opposing Counsel.

45. At that meeting, the District's Board of Education voted to approve the proposed resolution, unilaterally breaching the District's contractual agreement with the Retirees, and terminating the Retirees continued coverage under the District's employee group health insurance policies, under the then existing arrangement and terms.

46. Opposing Counsel never did forward a written position statement on behalf of the district to the undersigned counsel, as he had promised, and as he himself suggested.

47. The District is liable for the acts of its officers, as the acts alleged herein forming the basis of Plaintiffs' claims against District were conducted by the officers in their capacity as officers of the District.

FIRST CLAIM FOR RELIEF
(Injunctive Relief)

48. Plaintiffs incorporate by reference paragraphs 1 through 47 as if fully set forth herein.

49. Pursuant to **Colo. R. Civ. P. 65** and the common law, Plaintiffs are entitled to

preliminary and permanent injunction relief because: (a) Plaintiffs have a reasonable probability of success on the merits; (b) there is a danger of real, immediate, and irreparable injury which may be prevented by injunctive relief; (c) there is no other plain, speedy, and adequate remedy at law; (d) the granting of a preliminary injunction will not disserve the public interest; (e) the balance of equities favors the injunction; and (f) the injunction will preserve the status quo pending a trial on the merits.

50. Thus, to avoid irreparable injury, Plaintiffs request that the Court issue a preliminary and permanent injunction enjoining Defendant from terminating Retirees' coverage under the District's employee group health insurance policies, and requiring the District to reinstate said coverage, at the terms of the contractual agreement existing between the parties as of May 6, 2008.

SECOND CLAIM FOR RELIEF
(Breach of Contract)

51. Plaintiffs incorporate by reference paragraphs 1 through 50 as if fully set forth herein.

52. As memorialized by the written agreement (attached hereto as <u>Plaintiffs' Ex. 1</u>), Defendant expressly promised Plaintiffs that, if Plaintiffs elected to retire from the District's employ prior to attaining the age of sixty-five (65) years, Plaintiffs could maintain continued coverage under the District's employee health insurance policies until reaching the age of sixty-five (65) years, at the District's per employee monthly premium rate, upon assuming themselves the obligation to make the monthly premium payments therefor..

53. In return and as consideration for Defendant's contractual promise, Plaintiffs agreed to elect early retirement form the District's employ.

54. Defendant breached its contractual promises, and Plaintiffs consequentially suffered damages, and are entitled to, **inter alia,** contract damages for loss of benefits and interest, all in amounts to be proven at trial.

THIRD CLAIM FOR RELIEF
(Breaches of Implied Covenant of Good Faith)

55. Plaintiffs incorporate by reference paragraphs 1 through 54 as if fully set forth herein.

56. Defendant expressly promised Plaintiffs, and owed as an implied covenant, an obligation of good faith and fair dealing.

57. Defendant had a duty to perform the terms of the contract in good faith, and

Defendant had a concomitant duty to refrain from doing things that would deprive Plaintiffs of the reasonable and mutually anticipated benefits of those agreements.

58. Defendant's course of conduct towards Plaintiffs, from and after approximately May 6, 2008, constituted bad faith and was in breach of the implied covenant of good faith and fair dealing.

59. Defendant's conduct deprived Plaintiffs of the reasonable expectation of benefiting from the contract, as described herein above.

60. Defendant's breach of the implied covenant of good faith and fair dealing caused Plaintiffs losses and consequential damages in amounts to be proven at trial.

FOURTH CLAIM FOR RELIEF
(Promissory Estoppel)

61. Plaintiffs incorporate by reference paragraphs 1 through 60 as if fully set forth herein.

62. Defendant made various promises to Plaintiffs, including its promises to, in the event of early retirement by the Plaintiffs, permit Plaintiffs to maintain their coverage, until attainment of sixty-five (65) years of age, under the District's employee group health insurance policies, which promises must be enforced to avoid injustice.

63. On information and belief, Defendant intended, or at least reasonably should have expected, that its promises would be acted and relied upon by Plaintiffs.

64. Plaintiffs actually and justifiably relied upon such promises by Defendant to their detriment, and consequently suffered damages, and they are entitled to an award of actual, compensatory and/or restitutionary relief and consequential damages all in amounts to be proven at trial.

FIFTH CLAIM FOR RELIEF
(Willful Breaches of Contract)

65. Plaintiffs incorporate by reference paragraphs 1 through 64 as if fully set forth herein.

66. Defendant's breaches of express and implied contractual covenants were attended by circumstances of willful and wanton conduct. Specifically, Defendant deliberately and willfully breached the express terms of its written and oral agreements with the Plaintiffs, and further willfully and deliberately misrepresented the District's reasons for so doing, falsely representing that it was the Federal Government that was forcing the District to take its actions.

67. Defendant's breaches of express and implied contractual covenants were attended by circumstances of willful and wanton conduct. Specifically, Defendant deliberately and willfully misrepresented to Plaintiffs that if Plaintiffs elected to continue in the District's employ until retirement, and further elected to retire prior to attaining the age of sixty –five (65) years, District would permit Plaintiffs to maintain their coverage under the District's employee group health insurance policies, at the District's per employee monthly premium rate, upon assumption of the monthly premium payment obligation by the Plaintiffs.

68. In addition to the economic damages and losses set forth above, Defendant's willful breach proximately caused Plaintiffs significant noneconomic losses, including emotional distress, and other noneconomic losses or injuries incurred or which are likely to be incurred in the future, entitling Plaintiffs to additional consequential damages including an amount sufficient to reasonably compensate them for their mental suffering, also in an amount to be proven at trial.

SIXTH CLAIM FOR RELIEF
(Fraud/Misrepresentation/Duty to Disclose)

69. Plaintiffs incorporate by reference paragraphs 1 through 68 as if fully set forth herein.

70. Beginning no later than the respective dates of early retirement of each of the Plaintiffs, Defendant created a false impression that it would permit the Plaintiffs to maintain, until the attainment of the age of sixty-five (65) years, Plaintiffs' coverage under the District's employee group health insurance policies, at the District's monthly per employee premium rates, by making misrepresentations, half-truths, and ambiguous statements to Plaintiffs, and concealing from Plaintiffs Defendant's intention not to honor its contractual agreements to do so (all as alleged herein above) -- and all for the purpose and with the intent of inducing actions by Plaintiffs, as also alleged herein above.

71. The information misrepresented or withheld was material to Plaintiffs.

72. Defendant had a duty to avoid and/or correct these false impressions and to disclose the concealed information to Plaintiffs.

73. On information and belief, Defendant concealed this information with the intent of inducing the Plaintiffs to take a course of action which might not have been taken had Plaintiffs known the actual facts, including specifically: (1) to remain in the District's employ until retirement, at rates of compensation below what could be obtained in other school districts in the state of Colorado; and (2) to retire from the District's employ prior to attaining the age of sixty-five (65) years.

74. Plaintiffs' reliance on the false impressions created by Defendant was justified.

75. Plaintiffs suffered actual damage proximately caused by their reliance on those false impressions.

76. Defendant's conduct was attended by circumstances of fraud, malice and/or willful and wanton misconduct within the meaning of **C.R.S. § 13-21-102.**

77. By virtue of Defendant's deceitful and fraudulent conduct, Plaintiffs are entitled to actual and consequential damages (including damages for emotional distress) as well as an award of exemplary damages against Defendant sufficient to punish the Defendant and deter similar conduct in the future, all in amounts to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, Retirees, respectfully pray for judgment against the Defendant District upon each and all of the claims for relief asserted herein above, including and without limitation:

(1) on the First Claim for Relief, an injunction prohibiting Defendant from terminating the Plaintiffs' continued coverage under the District's employee group health insurance policies, at the District's monthly per employee premium rates, and requiring Defendant to reinstate such coverage, pending the resolution of this litigation.

(2) on the Second through Sixth Claims for Relief, a money judgment for all economic loss, including damages for lost benefits of employment and other damages sufficient to afford Plaintiffs the benefit of their bargains with Defendant and to make them whole from and against all breaches of duties owed by Defendant to Plaintiffs;

(3) on the Fifth and Sixth Claims For Relief, an award of noneconomic damages, for emotional distress and severe emotional distress;

(4) an award of reasonable attorney fees, costs, and expenses incurred in this action;

(5) prejudgment or moratory interest in accordance with law; and

(6) such other and further relief as the Court deems just and proper under the circumstances.

DATED this 23rd day of July, 2008.

Respectfully submitted,

Lisa Welch Stevens, Attorney at Law, P.C.

By: _S/ Lisa Welch Stevens______________
Lisa Welch Stevens, Atty. No. 28936
1832 Woodmoor Drive
Suite 200
Monument, Colorado 80132
Tel: 719-488-9395
Fax: 719-488-9745

Plaintiffs' Addresses:

RICHARD STEWART
2910 Mt. Herman Road
Monument, CO 80132

JAMES CONNALLY
JULIE M. CONNALLY
13350 S. Perry Road
Larkspur, CO

KENNETH M. EMRY
3950 Doolittle Rd.
Monument, CO 80132

BARBARA EVERHART
1920 Pine Grove Ave.
Colorado Springs, CO

CALVIN EDWARD FLOCK, JR.
P.O. Box 565
Palmer Lake, CO 80133

DONALD S. LASH
P.O. Box 1141
Monument, CO 80132

JOAN C. RYAN
19685 Capella Drive
Monument, CO 80132

VERIFICATION OF COMPLAINT

WE, RICHARD STEWART, an individual citizen of the State of Colorado;
JAMES CONNALLY, an individual citizen of the State of Colorado;
JULIE M. CONNALLY, an individual citizen of the State of Colorado;
KENNETH M. EMRY, an individual citizen of the State of Colorado;
BARBARA EVERHART, an individual citizen of the State of Colorado;
CALVIN EDWARD FLOCK, JR., an individual citizen of the State of Colorado;
DONALD S. LASH, an individual citizen of the State of Colorado;
and
JOAN C. RYAN, an individual citizen of the State of Colorado., do hereby state that the facts asserted in this Complaint are true and correct to the best of our personal knowledge.

_S/ Richard Stewart________________________________
RICHARD STEWART, an individual citizen of the State of Colorado, Plaintiff;

STATE OF COLORADO)
) ss.
County of El Paso **)**

Subscribed and sworn to me this 24th day of July, 2008, by RICHARD STEWART, an individual citizen of the State of Colorado, Plaintiff;

Witness my hand and official seal.

My Commission expires: _September 12, 2011____________________________________

__S/ Lori McConnaughey______________
Notary Public

_S/ James Connally_________________________________
JAMES CONNALLY, an individual citizen of the State of Colorado, Plaintiff;

STATE OF COLORADO)
) ss.
County of El Paso **)**

Subscribed and sworn to me this _____ day of July, 2008, by JAMES CONNALLY, an individual citizen of the State of Colorado, Plaintiff;

Witness my hand and official seal.

My Commission expires: September 12, 2011

S/ Lori McConnaughey
Notary Public

S/ Julie M. Connally
JULIE M. CONNALLY, an individual citizen of the State of Colorado, Plaintiff;

STATE OF COLORADO)
) ss.
County of El Paso **)**

Subscribed and sworn to me this _____ day of July, 2008, by JULIE M. CONNALLY, an individual citizen of the State of Colorado, Plaintiff;

Witness my hand and official seal.

My Commission expires: September 12, 2011

S/ Lori McConnaughey
Notary Public

S/ Kenneth M. Emry
KENNETH M. EMRY, an individual citizen of the State of Colorado, Plaintiff;

STATE OF COLORADO)
) ss.
County of El Paso **)**

Subscribed and sworn to me this _____ day of July, 2008, by KENNETH M. EMRY, an individual citizen of the State of Colorado, Plaintiff;

Witness my hand and official seal.

My Commission expires: September 12, 2011______________________________

__S/ Lori McConnaughey________________
Notary Public

__S/ Barbara Everhart________________________________
BARBARA EVERHART, an individual citizen of the State of Colorado, Plaintiff;

STATE OF COLORADO)
) ss.
County of El Paso **)**

Subscribed and sworn to me this _____ day of July, 2008, by BARBARA EVERHART, an individual citizen of the State of Colorado, Plaintiff;

Witness my hand and official seal.

My Commission expires: September 12, 2011____________________________________

__S/ Lori McConnaughey_______________
Notary Public

__S/ Calvin Edward Flock_________________________________
CALVIN EDWARD FLOCK, JR., an individual citizen of the State of Colorado, Plaintiff;

STATE OF COLORADO)
) ss.
County of El Paso **)**

Subscribed and sworn to me this 24th day of July, 2008, by CALVIN EDWARD FLOCK, JR., an individual citizen of the State of Colorado, Plaintiff;

Witness my hand and official seal.

My Commission expires: September 12, 2011

S/ Lori McConnaughey
Notary Public

S/ Donald S. Lash
DONALD S. LASH, an individual citizen of the State of Colorado, Plaintiff;

STATE OF COLORADO)
) ss.
County of El Paso **)**

Subscribed and sworn to me this _____ day of July, 2008, by DONALD S. LASH, an individual citizen of the State of Colorado, Plaintiff;

Witness my hand and official seal.

My Commission expires: September 12, 2011

S/ Lori McConnaughey
Notary Public

And

S/ Joan C. Ryan
JOAN C. RYAN, an individual citizen of the State of Colorado., Plaintiff.

STATE OF COLORADO)
) ss.
County of El Paso **)**

Subscribed and sworn to me this _____ day of July, 2008, by JOAN C. RYAN, an individual citizen of the State of Colorado, Plaintiff.

Witness my hand and official seal.

My Commission expires: ___September 12, 2011___________________________

__S/ Lori McConnaughey___________
Notary Public

LEWIS-PALMER SCHOOL DISTRICT #38
P.O. Box 40
Monument, CO 80132-0040

(719) 785-4209

TO: [redacted]
DATE: 6/13/2007
FROM: Amy Yeazel, Personnel Services
RE: Retirement – 05/31/07

HEALTH INSURANCE: You currently have Health Insurance coverage through the school district which will continue through 09/30/07. You have two options to continue health insurance through the district after that date:

1) You can continue as a retiree by paying the district rate for the full package (medical, vision & dental – currently $327.09 Single, $659.26 PPO2 plus spouse). To do this, you just need to let me know in writing attached to your Cobra form. As a retiree, you can stay with the district health insurance until you reach age 65.

2) You can continue on COBRA at the school district rates for 18 months after your benefits with us terminate. With COBRA, you have the option of taking ONLY medical coverage ($296.31 single PPO2, and $592.61 plus spouse) or the package of medical, dental and vision ($659.26). If you wish to continue health coverage through the district on COBRA or if you do not wish to continue district health coverage at all, you must complete the "Right to Continue Group Health Coverage" form.

If you choose to continue the district's health coverage, your first check will be due 08-25-07.

No reminders are sent; it will be up to you to remember to get your premiums to this office. Coverage will automatically terminate if no payment has been made within a 30 day grace period.

SICK LEAVE: Sick leave pay is not automatically reimbursed. Employees under five years of employment are not eligible for reimbursement. A written request for reimbursement must be sent to the payroll office. You have requested days to be paid to you on your 08/25/07 paycheck.

LIFE INSURANCE: Information for conversion of your life insurance through CEBT is enclosed. This life insurance will not continue unless you apply for conversion, even if you choose to remain on the district health insurance. If you have Rocky Mountain Life insurance, conversion information for that insurance is enclosed.

OTHER INFORMATION: If you move, please be sure to inform the payroll office of your new address so that your W-2 can be sent to you in a timely manner.

PLAINTIFF'S EXHIBIT
1

Lewis-Palmer School District #38

"In Pursuit of Excellence"

146 Jefferson Street, PO Box 40
Monument, CO 80132-0040

Administrative Office:
Phone (719) 488.4700
Fax (719) 785-4218
www.lewispalmer.org

I rec'd 5/8 or 5/9 & found out that it was due mon. 5/12. This was later extended to 6/10.

Dear Lewis-Palmer Retiree,

The Governmental Accounting Standards Board (GASB) has issued recent changes for the rules governing insurance plans for retirees. GASB Statement No. 45, *Accounting and Financial Reporting by Employers for Post-employment Benefits other than Pensions*, requires separate accounting for the retiree healthcare benefits based on the claims cost, or age-adjusted claims costs approximating claims costs. These changes will be implemented for the 2009 Fiscal Year beginning July 1, 2008.

Currently, retirees are allowed to pay the same healthcare premiums as active employees. Due to the fact that the premium is a blended premium rate for all plan members (active and retiree), the retirees are enjoying an implicit rate subsidy (benefit). The new rules require retiree premiums to be actuarially set, meaning premiums have to be based on retiree utilization. United Healthcare's book of business has established the renewal rates for retirees at a 75% increase on current paid premiums. Enclosed are the new rates for the individual plans and coverage beginning July 1, 2008.

For planning purposes, you will be offered three different options for coverage **beginning July 1, 2008**.

1. You can take COBRA insurance which will give you our group rate for another 18 months after June 30, 2008. Your insurance would then terminate December 31, 2009. After that time you would have to take PERA insurance or any other private insurance of your choice. You will not be able to take #2 below if you select COBRA.

2. You can take our retiree plan that we will set up starting July 1, 2008. Again, the rate sheet for health care premiums is enclosed in the packet. Voluntary dental and vision will remain at the same rate for the 2008-09 Fiscal Year.

3. You can take PERA insurance (if you did not elect a lump-sum payment upon retirement) or any other private insurance of your choosing. You can all PERA at 1-800-759-7372 or check the website at www.copera.org, then click on "Retiree/Benefit Recipients," then on the left hand side click on "PeraCare".

Please feel free to contact our office with any questions you may have regarding the change effective July 1, 2008.

Sincerely,

Teale Kocher

Teale Kocher
Personnel Services
719-785-4202

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Lewis-Palmer School District #38

146 Jefferson Street, PO Box 40
Monument, CO 80132-0040

Administrative Office:
Phone (719) 488.4700
Fax (719) 785-4218
www.lewispalmer.org

"In Pursuit of Excellence"

May 19, 2008

Dear D38 Retiree,

There have been many questions regarding the Retiree insurance packet that was sent out to you a couple of weeks ago. I'm writing this letter to give you some further clarification.

We Apologize

One concern was that I didn't include the COBRA rate sheet with the previous mailing. I apologize for that oversight. I have been in touch with many of you by phone or by email and given you your personal COBRA rate, but am including the rate sheet today so you have it in hard copy. One of your options is to take the COBRA plan beginning July 1 for up to 18 months. Please know that you can drop COBRA at any time. If you find a coverage that you prefer over our COBRA option before the 18 month expiration date, you can simply notify us in writing that you will be dropping your COBRA coverage for an alternative coverage and please give us the effective date of that change.

Another concern was the deadline date these enrollment cards needed to be returned to us. I had originally set May 12 as the deadline to return them. Unfortunately, it doesn't appear that date was included in the paperwork that was sent out. If you called me with this concern, I encouraged you to take more time for planning and research on your end. The "drop down deadline date" for us is June 10th. Please be aware June 10th really is a hard deadline (the date we *must* send out the forms). If you *can* get the paperwork to us any earlier, your efforts will be much appreciated.

I apologize for any confusion. In our rush to get the information out to you as quickly as possible after we received it (we had difficulty getting our questions answered from the Federal level concerning the new requirements), we left out some important information which you needed to make an informed decision. ***Please, don't ever hesitate to contact me or Amy Rose-Bagwell should you have questions now or in the future at 488-4700.*** We both want to help you with a smooth transition.

Quick Hints on how to complete the form:

If you chose to stay on the Retiree Plan, please write "retiree" at the top of the enrollment form. If you chose to switch to COBRA, please write "cobra" at the top of the enrollment form. If you are not going to take either option, we need to have that in writing. Please either drop us a letter, or you can send an email to Amy Rose-Bagwell at arosebagwell@lewisplmer.org.

Sincerely,

Teale Kocher

Teale Kocher
Personnel Services Supervisor

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rcd@ meeting 5-27-08
Big Rad 6:30 PM
w/ Ray & Cheryl

GASB 45 Implementation for
Lewis-Palmer School District #38

Questions and Answers

What are you doing?

We are recognizing "Other Post Employment Benefits (OPEB) costs earned or granted to employees during the time they were actually employed.

What benefits are considered OPEB?

For LP they include:

Medical, Dental, Prescription Drug, Vision, Life Insurance

Why are you doing this?

We are complying with GASB 45. GASB is the Governmental Accounting Standards Board. GASB establishes financial accounting and reporting standards for state and local governmental entities. The standards guide the preparation of our financial reports.

What is GASB 45 and why was it issued?

GASB Statement 45 was issued in 2004, as the result of a growing concern that state and local governments, like corporate entities in the 1990's were not recognizing the total cost of promised other post-employment benefits, such as retiree health benefits, in their annual financial statements.

What does LP have to do to comply with GASB 45?

We have to recognize the cost of these benefits. From here on, for current employees, we must recognize the cost during the time they were actually employed, rather than when benefits are paid out. As the additional expense is very high and the district currently pays for subsidized health insurance through PERA for retirement, current active (non-trip year for 08-09) employees will not have the option of staying on the district's benefit plans.

For retired employees we must calculate an actuarially determined liability for OPEB and report this liability in our financial statements. We must also account for the extent to which we make contributions or accumulate funds to offset the liability.

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As this group is already on our retirement plans, we are currently attempting to allow them to stay on the plan, but have them pay the implicit subsidy. The implicit subsidy recognizes the fact that healthcare usage and therefore costs tend to increase significantly with age. Consequently, when healthcare premiums take into consideration the age of the employees, premiums normally will be significantly higher than premiums for active employees.

What is this Implicit Subsidy for LP?

We were required to be part of an actuarial study for CEBT retirees. They found that our implicit rate subsidy is 175%. In other words, on the average, our retiree's use of medical benefits is 175% of the average active employee.

For example: Assume both active and retired employees pay a premium of $100 for health insurance and that this $100 per person covers all actual costs. However, when analyzing the claims experience, it is discovered the actual retiree's full cost of benefits is $175. The difference between the retiree's average cost ($175) and the average cost for the entire group ($100) is the implicit rate subsidy.

So, this is why you are asking us to pay 175% of the active employee's rate?

This is correct. The district still must recognize the projected cost of these benefits on our financial reports (audits). We project that we will initially show a liability of approximately $2 million dollars as the projected additional amount the district will pay for this implicit rate subsidy until our current group of retirees on the plan turn 65 and move off the plan. This liability is called an Unfunded Actuarial Liability. We must amortize or expense this liability off our books over 10 to 16 years.

But, this extra 75% we will be paying – what will you do with the funds?

As you can see, we will have an unfunded liability of $2 million dollars. We are required to calculate an Annual Required Contribution (ARC) towards paying for these OPEB. This $2 million dollar liability must be amortized or expensed as a part of this over the next 10-16 years. The additional 75% in premiums retirees will now pay will be used to offset this liability. We expect to collect approximately $150,000 of the $2 million dollar liability in year one, with less collected per year on the out years.

Why are you doing this to us? Can't you continue to subsidize our premiums?

The district and our retirees have paid into PERA for retiree insurance. ***The active employee's insurance plan was never intended to also cover the***

expense of retiree's health insurance. As the Federal Government is forcing the district to recognize the actual cost of this expense to the district now and in future years, we have no choice but to have the retirees fund their actual costs. Currently, the district is working through how to deal with the $2 million dollar unfunded liability it must now show on the financial reports.

What happens if I move over to PERA insurance?

The liability that LP has for your OPEB goes away.

Are Other Districts in this same spot?

Yes, a few other districts in CEBT did allow retirees to stay on the plan. They must also comply with this new Federal Law.

What should I consider doing?

As we (and you) have already contributed to PERA's health insurance plans on retiree's behalf, many retirees are opting to use PERA'S plans.

Do PERA's plans cost more?

Assuming 20 years of PERA service, it looks like similar plans will cost approximately $50 more per month for a retiree, $335 per month more for a retiree and spouse or a retiree and family, and $175 more per month for a retiree and child.

As one would expect, these rates are close to the new GASB 45 rates for retirees.

Will this change in the future?

It might. As the law is new, we are still gaining an understanding of how we must comply with it. We are certain of the calculation (175%) that we must show the liability on our financial reports ($2 million). We are uncertain as to how long we have to amortize or expense the liability. We know that our youngest retirees have 16 more years until they are 65. We are very concerned to be placing this unfunded liability on our financial statements. We do not know the effect this will have on our financial ratings. We may be forced to take additional action in the future.

We understand the impact this new law may be having on our retirees. As a result, we have extended our deadlines to make decisions as long as possible. We would be happy to answer any questions you might have and to help in any way we can.

Information from:

-Municipal Association of South Carolina
GFOA's An Elected Official's Guide: Employer's Accounting for Pensions and
-Other Post-Employment Benefits (OPEB)
-Johnson, Holscher & Company, P.C.
-PERACARE, Colorado Pera

GASB AT A GLANCE

1. What is the GASB?

The Governmental Accounting Standards Board or GASB is an independent, private-sector. not-for-profit organization that—through an open and thorough due process—establishes and improves standards of financial accounting and reporting for U.S. state and local governments. Governments and the accounting industry recognize the GASB as the official source of generally accepted accounting principles (GAAP) for state and local governments.

In line with its mission, the GASB issues standards that:

- Result in useful information for users of financial reports (for example, owners of municipal bonds and members of citizen groups) and
- Guide and educate the public, including issuers, auditors, and users about the implications of those financial reports.

2. Why is the work of the GASB important?

GASB standards help constituents to determine the ability of their government to provide services and repay its debt. Those standards also help government officials demonstrate accountability to constituents, including their stewardship over public resources. GASB standards help to ensure that those who finance government or who participate in the financing process have access to relevant, reliable, and understandable information that assists them to make better. more informed decisions.

3. How does the GASB carry out its mission?

The GASB works to accomplish its mission by issuing standards that:

- Improve the decision-usefulness of financial reports
- Foster reliable, relevant. and consistent information
- Recognize the unique and distinguishing characteristics of the governmental environment
- Improve constituent understanding of the information contained in financial reports
- Are accompanied by helpful and understandable implementation guidance.

4. Who are the primary users of the information that results from GASB standards?

Government financial reports are used by a number of stakeholders including:

- Citizens and citizen groups
- State, county, and local legislative and oversight officials
- Creditors and persons involved in the municipal bond industry.

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http://www.gasb.org

5. *How is the GASB structured?*

The GASB is composed of seven members drawn from its diverse constituency, which includes preparers and auditors of government financial statements, users of those statements, and members of the academic community. The current Board members are:

Robert H. Attmore, Chairman	Former Deputy Comptroller of New York State
William W. Holder	Ernst & Young Professor of Accounting, University of Southern California
Jan I. Sylvis	Chief of Accounts, Department of Finance and Administration, State of Tennessee
Girard Miller	Former President, Janus Funds
Marcia L. Taylor	Assistant Manager of Mt. Lebanon, Pennsylvania
Richard C. Tracy	Former Director of Audits, Portland. Oregon
James M. Williams	Former Partner and National Director of Public Sector Accounting and Assurance Services, Ernst & Young LLP

The Chairman serves full time and the other members are employed on a one-third-time basis. The GASB also has a professional staff drawn from government, public accounting, academia, and the user community. The staff works directly with the Board and its task forces, conducts research, participates in public hearings, analyzes oral and written comments received from constituents on due process documents, and prepares draft documents for consideration by the Board members.

6. *Who provides financial support for the GASB?*

Funding for the GASB is derived in part from sales of publications, in part from contributions from state and local governments and the financial community, and in part from a nominal voluntary fee assessment on municipal bonds issued.

7. *Why is independent standards setting important?*

As an independent body free from inappropriate political pressure or commercial influence, the GASB brings objectivity and integrity to the process of issuing neutral, unbiased accounting and financial reporting standards that are relevant in the government environment.

8. *What the GASB Is NOT....*

The GASB is not a federal agency. The federal government does not fund GASB, and its standards are not federal laws or rules. The GASB does not have enforcement authority to require governments to comply with its standards. However, compliance with the GASB's standards is enforced through the audit process, when auditors render opinions on the fairness of presentations in conformity with GAAP, and through the laws of individual states, many of which require local governments to prepare GAAP basis financial statements. In addition, the municipal bond industry prefers that governments issuing debt prepare their financial statements on a GAAP basis.

Lewis-Palmer School District 38

Resolution Concerning Post-Employment Liability

WHEREAS, it has come to the attention of the Board of Education of Lewis-Palmer School District 38 that certain individuals who have retired from the District are participating in the District's healthcare insurance plan by paying the same premium rate to the insurance provider as is applicable to current employees; and

WHEREAS, the Board of Education has never authorized or adopted any such option, policy, rule or regulation for employees or for persons who retire from the District; and

WHEREAS, the Governmental Accounting Standards Board (GASB) has adopted Statement 45, "Accounting and Financial Reporting by Employers for Post-Employment Benefits Other Than Pension," that the District is required to follow in order to comply with generally accepted accounting principles (GAAP); and

WHEREAS, GAAP must be adhered to by the Board under Colorado law; and

WHEREAS, the Board is concerned that the application of GASB 45 to the District and compliance with GAAP and other provisions of Colorado law will result in an unfunded, unbudgeted, and unappropriated liability to the District to the extent that allowing persons who have retired from the District to participate in the District's healthcare insurance plan constitutes a claimed post-employment benefit or otherwise provides an implicit or explicit premium rate subsidy from the District to retirees by their payment of the same premium as current employees; and

WHEREAS, the Board does not have adequate appropriated funds available to cover the significant costs associated with such a potential current and future liability in light of other educational needs and by law cannot expend moneys in excess of amounts budgeted and appropriated; and

WHEREAS, as stewards of public funds, the Board cannot adopt any plan, benefit, policy, rule or regulation that could result in unfunded liabilities, multiple year financial obligations, or that otherwise violate the provisions of Colorado law including applicable budget laws and TABOR, Article X, Section 20, of the Colorado Constitution.

NOW, THEREFORE, BE IT RESOLVED by the Board of Education of Lewis-Palmer School District 38 as follows:

1. That the Board disclaims any obligation for and disavows any claimed option or right to current employees to participate in the District's healthcare insurance plans following retirement or severance from the District other than as provided by the applicable federal law (COBRA); and

PLAINTIFF'S EXHIBIT 6

2. That the Board disclaims any obligation for and disavows any claimed option or right to former employees or retirees to participate in the District's healthcare insurance plans following retirement or severance from the District other than as provided by the applicable federal law (COBRA) and this Resolution; and

3. That any person who retired or is retiring from the District prior to July 1, 2008, who is currently covered under the District's healthcare insurance plan may elect, by no later than the end of the current fiscal year, June 30, 2008, to do one of the following:

a. Elect under COBRA to continue under the District's healthcare insurance plan for a period not to exceed 18 months by paying the then-current rates applicable to District employees during that 18 month period after which time coverage will terminate; or

b. Subject to the provisions of any plans offered by the District's then-current healthcare insurance provider and then only up to age 65, elect to participate in the District's employee plan, commencing July 1, 2008, so long as such persons timely pay the rate applicable to retirees without any implicit or explicit premium subsidy from the District; or

c. Elect to convert from the District's healthcare insurance plan and enroll in insurance under the Colorado Public Employees' Retirement Association (PERA) if eligible under PERA rules; or

d. Obtain insurance from a separate insurance company.

4. That other than as required by COBRA for those persons electing under Paragraph 2.a. above, the Board finds that it has not specifically appropriated during the 2007-2008 fiscal year and will not budget or appropriate for the 2008-2009 fiscal year any funds for any implicit or explicit premium rate subsidies for any District healthcare insurance plan for persons previously employed by or who have retired or will retire from the District prior to July 1, 2008.

Adopted this 19th day of June, 2008.

LEWIS PALMER SCHOOL DISTRICT 38

By:____________________________
Dee Dee Eaton, President

ATTEST:

By:____________________________