



IN THE CIRCUIT OF MONTGOMERY COUNTY, ALABAMA

CIVIL ACTION NO: 2011-\_\_\_\_\_

**TONYA DENSON** and **VENIUS TURNER**, individually and as members of THE RETIREMENT SYSTEMS OF ALABAMA, whether as a member of THE EMPLOYEES' RETIREMENT SYSTEM OF ALABAMA, THE TEACHERS' RETIREMENT SYSTEM OF ALABAMA, or any such other retirement system under the management and investment control of THE RETIREMENT SYSTEMS OF ALABAMA, suing individually and on behalf of herself/himself and as representatives of all persons similarly situated,

**Plaintiffs,**

v.

**DAVID BRONNER**, as Chief Executive Officer and Secretary-Treasurer of THE TEACHERS' RETIREMENT SYSTEM OF ALABAMA and/or THE EMPLOYEES' RETIREMENT SYSTEM OF ALABAMA and/or THE RETIREMENT SYSTEMS OF ALABAMA; **PAUL R. HUBBERT**, as Chairman and a member of the Board of Control of THE TEACHERS' RETIREMENT SYSTEM OF ALABAMA; **JOSEPH MORTON**, as a member of THE TEACHERS' RETIREMENT SYSTEM OF ALABAMA; **DAVID PERRY**, as a member of the Board of Control of THE TEACHERS' RETIREMENT SYSTEM OF ALABAMA and of THE EMPLOYEES' RETIREMENT SYSTEM OF ALABAMA; **YOUNG BOOZER**, as a member of the Board of Control of THE TEACHERS' RETIREMENT SYSTEM OF ALABAMA and of THE EMPLOYEES' RETIREMENT SYSTEM OF ALABAMA; **SUSAN WILLIAMS BROWN**, as a member of the Board of Control of THE TEACHERS' RETIREMENT SYSTEM OF ALABAMA; **VIC WILSON**, as a member of the Board of Control of THE TEACHERS' RETIREMENT SYSTEM OF ALABAMA; **SARAH S. SWINDLE**, as a member of the Board of Control of THE TEACHERS' RETIREMENT SYSTEM OF ALABAMA; **SALLIE COOK**, as a member of the Board of Control of THE TEACHERS' RETIREMENT SYSTEM OF ALABAMA; **LUKE HALLMARK**, as a member of the Board of Control of THE TEACHERS' RETIREMENT SYSTEM OF ALABAMA; **ROBERT WAYNE SMITH**, as a member of the Board of Control of THE TEACHERS' RETIREMENT SYSTEM OF ALABAMA; **RUSSELL TWILLEY**, as a member of the Board of Control of THE TEACHERS' RETIREMENT SYSTEM OF ALABAMA; **TERESA HARBISON SWINDALL**, as a member of the Board of Control of THE TEACHERS' RETIREMENT SYSTEM OF ALABAMA; **JOHN R. WHALEY**, as a member of the Board of Control of THE TEACHERS' RETIREMENT SYSTEM OF ALABAMA; **JUDY RIGDON**, as a member of the Board of Control of THE TEACHERS' RETIREMENT SYSTEM OF ALABAMA; **ROBERT BENTLEY**, as Chairman and a member of the Board of Control of THE EMPLOYEES' RETIREMENT SYSTEM OF ALABAMA; **JACKIE B. GRAHAM**, as a member of the Board of Control of THE EMPLOYEES' RETIREMENT SYSTEM OF ALABAMA; **JOHN H. WILKERSON, JR.**, as a member of the Board of Control of THE EMPLOYEES' RETIREMENT SYSTEM OF ALABAMA; **ROBERT S. MILLER**, as a member of the Board of Control of THE EMPLOYEES' RETIREMENT SYSTEM OF ALABAMA; **ROBERT H. PRUIT**, as a member of the Board of Control of THE EMPLOYEES' RETIREMENT SYSTEM OF ALABAMA; **STEPHEN C. WALKLEY**, as a member of the Board of Control of THE

EMPLOYEES' RETIREMENT SYSTEM OF ALABAMA; **ALICE THORNTON**, as a member of the Board of Control of THE EMPLOYEES' RETIREMENT SYSTEM OF ALABAMA; **JAMES ROWELL**, as a member of the Board of Control of THE EMPLOYEES' RETIREMENT SYSTEM OF ALABAMA; **JAMES FIBBE**, as a member of the Board of Control of THE EMPLOYEES' RETIREMENT SYSTEM OF ALABAMA; **STEVEN W. WILLIAMS**, as a member of the Board of Control of THE EMPLOYEES' RETIREMENT SYSTEM OF ALABAMA; **BEN POWELL**, as a member of the Board of Control of THE EMPLOYEES' RETIREMENT SYSTEM OF ALABAMA; **A**, whether singular or plural, being that person(s) or entity(ies) who or which are members of the Boards of Control of the Retirement System of Alabama and/or the Employees' Retirement System of Alabama and/or the Teachers' Retirement System of Alabama; **B**, whether singular or plural, being that person(s) and/or entity(ies) who or which is the chief executive officer and/or secretary or treasurer of the Retirement Systems of Alabama and/or the Employees' Retirement System of Alabama and/or Teachers' Retirement System of Alabama; **C**, whether singular or plural, being that person(s) and/or entity(ies) who or which is the chairman of the Boards of Control of the Retirement Systems of Alabama and/or the Employees' Retirement System of Alabama and/or Teachers' Retirement System of Alabama; **D**, whether singular or plural, being that person(s) and/or entity(ies) who or which are members of the Investment Committees of the Retirement Systems of Alabama and participate in any manner in the investment of assets held by the Retirement Systems of Alabama and/or the Employees' Retirement System of Alabama and/or the Teachers' Retirement System of Alabama; **E**, whether singular or plural, being that person(s) and/or entity(ies) who or which participates in any manner in the recommendation or determination of the manner in which assets of the Retirement Systems of Alabama and/or the Employees' Retirement System of Alabama and/or the Teachers' Retirement System of Alabama shall be invested. **F**, whether singular or plural, being that person(s) and/or entity(ies) who or which manages or participates in any manner in the management of the investment portfolio of the Retirement Systems of Alabama and/or the Employees' Retirement System of Alabama and/or the Teachers' Retirement System of Alabama; **G**, whether singular or plural, being that person(s) and/or entity(ies) who or which violates or in the future shall violate the Prudent Man Rule and/or the Mission Statement of the Retirement Systems of Alabama in investing assets of the Retirement Systems of Alabama, the Employees' Retirement System of Alabama and/or the Teachers' Retirement System of Alabama; **H**, whether singular or plural, being that person(s) and/or entity(ies) who or which, concerning the allegations made in the Complaint, was the principal of any of the named or above-described fictitious party Defendants; **I**, whether singular or plural, being that person(s) and/or entity(ies) who or which is successor-in-interest of any of the named or above-described fictitious party Defendants. Plaintiffs aver that the fictitious party defendants are unknown to the Plaintiffs at this time, or if their names are known to the plaintiffs at this time, their identities as proper party defendants are not known to the Plaintiffs at this time, but that their true names will be supplied by amendment when the aforesaid lacking knowledge is ascertained,

**Defendants.**

## **COMPLAINT**

COME NOW Tonya Denson, individually and as a member of the Retirement Systems of Alabama through the Employees' Retirement System of Alabama, and Venius Turner, individually and as a member of the Retirement Systems of Alabama through the Teachers' Retirement System of Alabama, Plaintiffs, who sue on behalf of themselves and as representatives of all other persons similarly situated.

## **INTRODUCTION**

1. The Retirement Systems of Alabama ("RSA") consists of, but is not limited to, the Employees' Retirement System of Alabama ("ERS") and the Teachers' Retirement System of Alabama ("TRS").

2. The ERS was established as a body corporate by the Alabama Legislature in 1945 to provide benefits to state employees, state police, and on an elective basis, to qualified persons employed by cities, towns and quasi-public organizations. The ERS Board of Control is responsible for management and administration of the ERS. Its Board of Control elects its Secretary-Treasurer who serves as the Chief Executive Officer of ERS and/or RSA and is responsible for the day-to-day management of the ERS and/or RSA.

3. The TRS was established as a body corporate by the Alabama Legislature in 1939 to provide benefits to qualified persons employed by state-supported educational institutions. Responsibility for the management and administration of the TRS is vested in its Board of Control. Its Board of Control elects its Secretary-Treasurer who serves as the Chief Executive Officer of the TRS and/or RSA and is responsible for the day-to-day management of the TRS and/or RSA.

4. Applicable enabling statutes governing the management of funds by both ERS and TRS, particularly §36-27-25 and §16-25-20, Code of Alabama, provide that the Boards of Control of

each system shall have full power to invest and reinvest the assets held by the systems through their respective Secretary-Treasurers “in the class of bonds, mortgages, common and preferred stocks, shares of investment companies or mutual funds, or other investments as the Board of Control may approve, with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.” Furthermore, pursuant to the above statutory authorities, both boards, subject to the above terms, conditions, limitations and restrictions, acting through their respective Secretaries-Treasurers are empowered to hold, purchase, sell, assign and transfer investments, the proceeds of investments and any monies belonging to the respective retirement systems. The Secretary-Treasurers of both boards are authorized and empowered to carry out the investment policies fixed by the respective Boards of Control of ERS and TRS.

5. As part of the Investment Policies and Procedures of the RSA, the Board objectives are set forth in pertinent part, as:

The Boards of Control, as Trustees of the Teachers’ Retirement System and Employees’ Retirement System (Systems), have full power, through each System’s secretary-treasurer, to invest and reinvest System funds in accordance with the Prudent Man Rule: “with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.” Other funds currently and hereafter under the management of the Systems will be governed by this Investment Policy Statement within each System’s limitations and/or by other applicable legislated restrictions.

It is the objective of the Boards that funds be invested in such a manner as to maximize the total return of each System within prudent risk parameters. Also, the Systems recognize that a stronger Alabama equates to a stronger Retirement System, and as such, investments in Alabama businesses are encouraged to the extent the investment meets the criteria delineated by this policy statement.

The long term investment performance expectations of the Systems are to achieve a return on marketable securities in excess of the actuarial investment assumption and to exceed the rate of inflation (as measured by the CPI) by 3% through investments in a broadly diversified portfolio. The performance evaluation of each System will be

submitted to the respective Board on a semi-annual basis.

Retirement Systems of Alabama INVESTMENT POLICIES AND PROCEDURES, (rev'd May 2007), <http://www.rsa-al.gov/Investments/Investment%20Policy/RSA%20Investment%20Policy.pdf>.

6. The Mission Statement of RSA is as follows: "The mission of the Retirement Systems of Alabama is to serve the interests of our members by preserving the excellent benefits and soundness of the Systems at the least expense to the State of Alabama and all Alabama taxpayers."

2010 RSA ANNUAL REPORT.

7. The principal offices of RSA, ERS and TRS are located in the city of Montgomery, Montgomery County, Alabama.

### **JURISDICTION AND VENUE**

8. This Court has jurisdiction over this action. The Plaintiffs are resident citizens of the State of Alabama. Defendants are residents and/or domiciled in the State of Alabama. Greater than two-thirds of the members of the putative class in the aggregate are citizens of the State of Alabama. Diversity of citizenship does not exist in this action. Plaintiffs do not assert any federal claim nor cause of action based on federal law.

9. Venue in this case is proper in Montgomery County, Alabama pursuant to Ala. Code Sec. 6-3-7, et. seq. in that a substantial portion of the conduct of the Defendants which forms the basis of this action occurred in such venue.

### **PARTIES**

10. Plaintiff Tonya Denson is a resident of the State of Alabama, Montgomery County. She is a member of the Retirement Systems of Alabama by and through her membership in the Employees' Retirement System of Alabama.

11. Plaintiff Venius Turner is a resident of the State of Alabama, and is a member of the Retirement Systems of Alabama by and through her membership in the Teachers' Retirement System

of Alabama.

12. The Plaintiffs sue individually and in their capacities as members of the Retirement Systems of Alabama and their respective retirement systems.

13. The Plaintiffs seek to represent a statewide class of members of the Retirement Systems of Alabama and the respective retirement systems.

14. Defendant David Bronner is an adult resident of Montgomery County, Alabama. He serves as Chief Executive Officer and/or Secretary-Treasurer of RSA and/or ERS and/or TRS.

15. Defendant Paul Hubbert is an adult resident of Montgomery County, Alabama. He is Chairman and member of The Board of Control of TRS.

16. Defendant Robert Bentley is an adult resident of Montgomery County, Alabama. He serves as Chairman and member of The Board of Control of ERS.

17. Defendants David Perry and Young Boozer are adult residents of the State of Alabama. They each serve as members of the Boards of Control of TRS and ERS.

18. Defendants Jackie B. Graham, John H. Wilkerson, Jr., Robert S. Miller, Robert H. Pruitt, Stephen H. Walkley, Alice Thornton, James H. Rowell, James Fibbe, Steven W. Williams and Ben Powell are adult residents of the State of Alabama, and each serve as members of the Board of Control of ERS.

19. Defendants Joseph Morton, Susan Williams Brown, Vic Wilson, Sarah S. Swindle, Sallie Cook, Luke Hallmark, Robert Wayne Smith, Russell Twilley, Teresa Harbison Swindall, John R. Whaley and Judy Rigdon are adult residents of the State of Alabama, and each is a member of the Board of Control of TRA.

20. Fictitious Defendants A, B, C, D, etc., whose correct names and identities as proper party defendants are unknown to the Plaintiffs but will be correctly named and identified when

ascertained, are the respective persons or entities who or which fit the descriptions below:

**A**, whether singular or plural, being that person(s) or entity(ies) who or which are members of the Boards of Control of the Retirement Systems of Alabama and/or the Employees' Retirement System of Alabama and/or the Teachers' Retirement System of Alabama;

**B**, whether singular or plural, being that person(s) and/or entity(ies) who or which is the chief executive officer and/or secretary or treasurer of the Retirement Systems of Alabama and/or the Employees' Retirement System of Alabama and/or Teachers' Retirement System of Alabama;

**C**, whether singular or plural, being that person(s) and/or entity(ies) who or which is the chairman of the Boards of Control of the Retirement Systems of Alabama and/or the Employees' Retirement System of Alabama and/or Teachers' Retirement System of Alabama;

**D**, whether singular or plural, being that person(s) and/or entity(ies) who or which are members of the Investment Committees of the Retirement Systems of Alabama and participate in any manner in the investment of assets held by the Retirement Systems of Alabama and/or the Employees' Retirement System of Alabama and/or the Teachers' Retirement System of Alabama;

**E**, whether singular or plural, being that person(s) and/or entity(ies) who or which participates in any manner in the recommendation or determination of the manner in which assets of the Retirement Systems of Alabama and/or the Employees' Retirement System of Alabama and/or the Teachers' Retirement System of Alabama shall be invested.

**F**, whether singular or plural, being that person(s) and/or entity(ies) who or which manages or participates in any manner in the management of the investment portfolio of the Retirement Systems of Alabama and/or the Employees' Retirement System of Alabama and/or the Teachers' Retirement System of Alabama;

**G**, whether singular or plural, being that person(s) and/or entity(ies) who or which violates or in the future shall violate the Prudent Man Rule and/or the Mission Statement of the Retirement Systems of Alabama in investing assets of the Retirement Systems of Alabama, the Employees' Retirement System of Alabama and/or the Teachers' Retirement System of Alabama;

**H**, whether singular or plural, being that person(s) and/or entity(ies) who or which, concerning the allegations made in the Complaint, was the principal of any of the named or above-described fictitious party Defendants;

**I**, whether singular or plural, being that person(s) and/or entity(ies) who or which is successor-in-interest of any of the named or above-described fictitious party Defendants.

The above named fictitious defendants have committed and/or are committing actions or conduct hereinbelow described for which remedy lies.

## **FACTUAL ALLEGATIONS**

21. Plaintiffs bring this action on behalf of themselves and a class of persons similarly situated (sometimes referred to herein as “Class Members”). This action is properly maintainable as a class action pursuant to ALABAMA RULES OF CIVIL PROCEDURE, Rules 23(a), 23(b)(1), 23(b)(2) and 23(b)(3).

22. For a period of time for as much as the most recent fifteen year period, the named and fictitious defendants, separately and severally, have purposely and admittedly invested or approved of investments of RSA assets in violation of the statutory mandates and restrictions, and in particular, the Prudent Man Rule stated in paragraph 4 and 5 above, and in violation of the Mission Statement of RSA quoted in paragraph 6 above. Such investments have been made in Alabama golf courses, office buildings, condominiums, hotels, resorts and stock and debt holdings in companies conducting business in Alabama (collectively referred to as “Alabama Investments”), which investments have historically yielded lower returns than investments which could or should have been made in compliance with the mandates of the law, the Prudent Man Rule, the Investment Policy of the RSA, and its Mission Statement.

23. The investment returns for ERS over the most recent three year, five year and ten year periods trailed 90% of those pension funds surveyed by State Street. Additionally, the average annual investment return for ERS over the last three year period was a loss of 0.24% while the State Street median reported a gain of 3.06%. *See David White, Investments Look Good Over 6 Months, THE BIRMINGHAM NEWS, May 18, 2011.*

24. Similarly, the investment returns for TRS over the most recent one year, three years, five years and ten years have trailed most public pension funds located in the United States. Returns for the three year, five year and ten year periods ending May 31, 2011 ranked TRS in the bottom 12%

among pension funds nationally. Furthermore, the RSA's total investment returns for the past ten years have been considerably lower than the national average.

25. Defendant Bronner, Chief Executive Officer and Secretary-Treasurer of RSA, has recently stated that he thinks the RSA's Alabama Investments have produced lower investment returns than if he had bought hotels on Long Island or office buildings in New York City. *See* David White, *Teachers' Retirement System Trails Most Pension Plans*, THE BIRMINGHAM NEWS, June 4, 2011. Defendant Bronner admits in RSA's 2010 ANNUAL REPORT that 15% of total RSA assets described above as "Alabama Investments" are "at risk" and have caused lower total returns than otherwise would have been the case if invested in accordance with the Prudent Man Rule. 2010 RSA ANNUAL REPORT.

26. Defendant Bronner has further admitted that the returns generated by the TRS and ERS have trailed national returns in part because of investments in TV stations, newspapers and a rail car plant in Alabama. RSA made a \$500 million dollar loan to a Canadian owner to build rail cars. This loan was practically in default *ab initio* and the property sits empty. RSA's **\$2 billion** dollar investment in two companies, Raycom Media and Community Newspaper Holdings, Inc., is **unmarketable**. Defendant Bronner has reportedly admitted that the national market for the TV stations and newspapers owned by these companies is poor. In the words of Defendant Bronner, "There are no buyers." *See* David White, *State's Pension Lag Most in Nation, RSA Returns in Bottom 10%*, THE BIRMINGHAM NEWS, December 25, 2010.

# RETIREMENT COMPARISON

Investment returns of the Retirement Systems of Alabama's two biggest pension funds, compared to a national median.

	1 YEAR	3 YEARS	5 YEARS	7 YEARS	10 YEARS
RSA Teachers' Retirement System	▲ 8.4%	▼ 5.5%	▲ 1.55%	▲ 4.2%	▲ 3.0%
RSA Employees' Retirement System	▲ 8.5%	▼ 6.1%	▲ 1.1%	▲ 3.7%	▲ 2.6%
State Street national median	▲ 10.7%	▼ 2.4%	▲ 3.7%	▲ 6.4%	▲ 3.9%

Note: The median represents the midpoint of investment returns for roughly 65 pension funds. Returns are actual or average annual returns for periods that ended Sept. 30. Percentages have been rounded.

Source: Retirement Systems of Alabama and State Street Investment Analytics.

NEWS STAFF

*Id.*

27. Lower returns mandate that the members of the RSA, TRS and ERS, such as the Plaintiffs, and the State of Alabama pay more to maintain the necessary funding level of the RSA Pension Fund to enable it to meet the required distributions to retirees, thus creating added costs which may not have otherwise been necessary for the members and the State of Alabama and its taxpayers.

28. Though the Alabama Investments may have been well intended, and may serve as a vehicle for creating goodwill, they have not been made in compliance with the Prudent Man Rule. As noted by Defendant Young Boozer, Treasurer of the State of Alabama and a member of the TRS Board of Control at a recent TRS board meeting, "Ultimately, I can't pay pension benefits with goodwill," further stating, "I've got to have the money to do it." *See David White, Teachers' Retirement System Trails Most Pension Plans*, THE BIRMINGHAM NEWS, June 4, 2011. When asked if TRS investment returns were acceptable to him, Defendant Boozer replied, "We need to do better."

See David White, *Teachers' Retirement System Trails Most Pension Plans*, THE BIRMINGHAM NEWS, June 4, 2011.

29. Defendant Bronner has defended the RSA's Alabama Investments despite their lower returns on the grounds that the State of Alabama bears the investment risk, not the participants in the RSA. See 2010 RSA ANNUAL REPORT. While the State of Alabama in the past may have solely borne the risk of such investments, that era has drawn to a close. To the contrary, the State of Alabama has now demanded that RSA participants bear a higher share of the investment risk and burden, with an increase in their annual contribution. The State of Alabama may demand and legislate higher contributions from the RSA participants, but it should not expect those same participants to provide funding for projects and investments that are *anticipated* to yield a lower investment return than more prudent investments outside the State of Alabama would yield.

30. Unless the Board of Controls of both the TRS and ERS take affirmative action and other steps to ensure that the RSA hereforth makes prudent investment decisions so that it can "do better" with the returns on the funds that the RSA is entrusted to manage, the Plaintiffs and other members of the TRS and ERS, as well as the State of Alabama and its taxpayers, will continue to incur added and unnecessary costs in supplementing the contributions to be made to the respective retirement funds.

31. CLASS DEFINITION: Plaintiffs seek to represent a class of individuals (the "Class"), as follows:

All individuals who, as of the date of the filing of this Complaint, were members of, contributing to or benefitting in any manner from the Retirement Systems of Alabama and/or the Teachers Retirement System of Alabama and/or The Employees Retirement System of Alabama.

32. The members of the proposed Class ("Class Members") can be ascertained from Defendants' records or from information readily accessible to Defendants. Notice can be sent to the

Class Members by mail, the Internet, through publication in newspapers and periodicals, or by other means authorized by the Court.

33. This action is brought and may be maintained as a class action under Rule 23(a) of the ALABAMA RULES OF CIVIL PROCEDURE.

(a) Numerosity: The Class Members are so numerous that joinder of all of them is extremely impractical. Plaintiffs reasonably believe and hereby allege that the size of the class exceeds 10,000 persons.

(b) Commonality: Common questions of law and fact are shared by the Class Members. Such common questions include, but are not limited to, the following:

1. Whether the Defendants, in investment of retirement fund assets, have violated the statutory mandates and restrictions set forth in §36-27-25 and §16-25-20, Code of Alabama;
2. Whether the Defendants, in investing retirement fund assets, have violated the Prudent Man Rule;
3. Whether the Defendants, in investing retirement fund assets, have violated their own Mission Statement; and,
4. Whether the Defendants, in investment of retirement fund assets, have unlawfully substituted their own investment standards and desires, or otherwise improper and imprudent investment standards/decisions in lieu of statutory mandates;

(c) Typicality: Plaintiffs' claims are typical of the claims of the Class Members. Plaintiffs and the other Class Members were subjected to the same kind of unlawful conduct and the claims of Plaintiffs and the other Class Members are based on the same legal theories.

(d) Adequacy of Representation: Plaintiffs, individually and through counsel, will fairly and adequately protect the interests of the Class, and Plaintiffs have no interest adverse to the interests of the Class. Plaintiffs' attorneys are experienced class action attorneys, who will fully and adequately represent and protect the Class, and are ready, willing and able to do so.

34. This case is brought and may be maintained as a class action under Rule 23(b)(1), 23(b)(2) and/or 23(b)(3) of the ALABAMA RULES OF CIVIL PROCEDURE.

(a) Risk of Inconsistent Judgments: The unlawful practices of Defendants alleged herein constitute a course of conduct common to Class Members. Prosecution of separate actions by individual Class Members would create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for Defendants and/or substantially impair or impede the ability of the individual Class Members to protect their interests.

(b) Injunctive Relief: The unlawful practices of Defendants are applicable to the Class thereby making injunctive relief or corresponding declaratory relief with respect to the Class as a whole appropriate.

(c) Predominant Questions of Law or Fact: Questions of law or fact common to Class Members, including those identified above, predominate over questions affecting only individual members (if any), and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Class action treatment will allow a large number of similarly situated individuals to prosecute their common claims in a single forum, simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would require. A class action will serve important public interests by permitting individuals harmed by Defendants' unlawful practices to effectively protect their interests and by deterring further unlawful conduct. The public interest in protecting the rights of individuals favors disposition of the

controversy in the class action form.

### **COUNT ONE**

35. Plaintiffs adopt the allegations of paragraphs 1 through 34 above in support of this their Count One and incorporate the same as if fully set out herein.

36. There presently exists a justiciable controversy between Plaintiffs and Defendants with respect to the manner in which retirement system assets are and have been invested.

37. The named and fictitious Defendants, separately and severally, have historically for a period of time invested and presently invest retirement system assets in violation of statutory mandates and restrictions, the Mission Statement of RSA, and without “the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims” as required by the Prudent Man Rule.

38. By investing a sizeable portion of retirement fund assets in Alabama Investments which knowingly yield lower returns than investments which could have been made in other allowable and permissible investments, the named and fictitious Defendants, separately and severally, have breached their duties to the named Plaintiffs and to other individuals who as of the date of filing of this Complaint, are members of RSA and/or TRS and/or ERS or contribute to or benefit from these retirement systems.

### **PRAYER FOR RELIEF**

39. WHEREFORE, Plaintiffs request that the Court grant the following relief against the Defendants, as follows:

(a) Certify this matter as a class action with the class being defined as:

All individuals who, as of the date of the filing of this Complaint, were members of, contributing to or

benefitting in any manner from the Retirement Systems of Alabama and/or the Teachers' Retirement System of Alabama and/or The Employees' Retirement System of Alabama.

(b) That Plaintiffs be designated as the Class Representatives and the Plaintiffs' attorneys of record be designated as Class Counsel;

(c) That the Court issue a declaration specifying that the duties of the Defendants, separately and severally, are specifically subject to the statutory provisions, mandates and restrictions specified in §36-27-25 and §16-25-20, Code of Alabama, and that any deviation from those provisions, mandates and restrictions are unlawful;

(d) That the Court declare that the following actions of the Defendants, separately and severally, constitute ultra vires acts:

1. investment of any assets and funds of the RSA and/or TRS and/or ERS in violation of the Prudent Man Rule;
2. investment of any assets and funds of the RSA and/or TRS and/or ERS in Alabama Investments which the Defendants expected or were aware would yield less of a return than alternative or other investments;
3. investment of any assets and funds of the RSA and/or TRS and/or ERS which were done in contravention of the Mission Statement of the RSA requiring that it serve the interest of its members by preserving the excellent benefits and soundness of the system at the least expense to the State of Alabama and all Alabama taxpayers;

(e) That a prohibitory injunction be issued enjoining the Defendants, separately and severally, from performing the following acts and/or engaging in the following activities:

1. investment of any assets and funds of the RSA and/or TRS and/or ERS in

violation of the Prudent Man Rule;

2. investment of any assets and funds of the RSA and/or TRS and/or ERS in Alabama Investments in which the Defendants expect or are aware will yield less of a return than alternative or other investments;
3. investment of any assets and funds of the RSA and/or TRS and/or ERS which are done in contravention of the Mission Statement of the RSA requiring that it serve the interest of its members by preserving the excellent benefits and soundness of the system at the least expense to the State of Alabama and all Alabama taxpayers;

(f) That a mandatory injunction be issued directing that the Defendants immediately cease and desist from any making, approving, ratifying or otherwise allowing the investment of any assets and funds of the RSA and/or TRS and/or ERS which are not made in accordance with:

1. Prudent Man Rule;
2. Mission Statement of the RSA;

(g) That the Plaintiffs and other Class Members be awarded the costs of this litigation and attorneys' fees; and

(h) That such other and further relief be awarded as the Court deems just and appropriate.

*[Signature Lines on the Following Page]*

Respectfully submitted,

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Please serve the Defendant by certified mail pursuant to the ALABAMA RULES OF CIVIL PROCEDURE, Rule 4.

/s/ William S. Pritchard, III  
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505 North 20<sup>th</sup> Street  
Birmingham, Alabama 35203-2605

**Defendants to be served by certified mail as follows:**

David Bronner, in his capacity as  
Chief Executive Officer and Secretary-  
Treasurer of The Teachers' Retirement  
System of Alabama and/or The Employees'  
Retirement System of Alabama and/or The  
Retirement Systems of Alabama  
c/o The Retirement Systems of Alabama  
135 South Union Street  
Montgomery, AL 36130

Paul Hubbert, in his capacity as Chairman and  
member of the Board of Control of The Teachers'  
Retirement System of Alabama  
c/o Alabama Education Association  
422 Dexter Avenue  
Montgomery, AL 36104

Joseph Morton, in his capacity as a member of  
The Teachers' Retirement System of Alabama  
c/o State Department of Education  
50 North Ripley Street  
Montgomery, AL 36104

David Perry, in his capacity as a member of  
The Boards of Control of The Teacher's  
Retirement System of Alabama and  
The Employees' Retirement System of Alabama  
c/o Alabama Department of Finance  
600 Dexter Avenue- Suite N-105  
Montgomery, AL 36130

Young Boozer, in his capacity as a member of  
the Board of Control of The Teachers' Retirement  
System of Alabama and The Employees'  
Retirement System of Alabama  
c/o Executive Office of the Treasurer  
600 Dexter Ave., Room S-106  
Montgomery, AL 36104

Dr. Susan Williams Brown, in her capacity as  
a member of the Board of Control of The  
Teachers' Retirement System of Alabama  
c/o Gadsden State Community College  
1001 George Wallace Drive  
Gadsden, AL 35903

Vic Wilson, in his capacity as  
a member of the Board of Control of The  
Teachers' Retirement System of Alabama  
c/o Mountain Brook High School  
3650 Bethune Drive  
Mountain Brook, AL 35223

Sarah S. Swindle, in her capacity as  
a member of the Board of Control of The  
Teachers' Retirement System of Alabama  
1811 Paulette Drive  
Birmingham AL 35226

Sallie B. Cook, in her capacity as  
a member of the Board of Control of The  
Teachers' Retirement System of Alabama  
4001 22<sup>nd</sup> Street NE  
Tuscaloosa, AL 35404-1439

Luke Hallmark, in his capacity as  
a member of the Board of Control of The  
Teachers' Retirement System of Alabama  
400 South Strawberry Ave.  
Demopolis, AL 36732-2158

Robert Wayne Smith, in his capacity as  
a member of the Board of Control of The  
Teachers' Retirement System of Alabama  
c/o The Retirement Systems of Alabama

135 South Union Street  
Montgomery, AL 36130  
Russell Twilley, in his capacity as  
a member of the Board of Control of The  
Teachers' Retirement System of Alabama  
89 Summerville Estates Lane  
Jasper, AL 35504-6578

Teresa Harbison Swindall, in her capacity as  
a member of the Board of Control of The  
Teachers' Retirement System of Alabama  
c/o The Retirement Systems of Alabama  
135 South Union Street  
Montgomery, AL 36130

John R. Whaley, in his capacity as  
a member of the Board of Control of The  
Teachers' Retirement System of Alabama  
412 Ninth Avenue NE  
Jacksonville, AL 36265-1961

Judy L. Rigdon, in her capacity as  
a member of the Board of Control of The  
Teachers' Retirement System of Alabama  
2501 Wentworth Drive  
Montgomery, AL 36106-3240

Robert Bentley, in his capacity as Chairman  
and a member of the Board of Control of  
The Employees' Retirement System of Alabama  
State Capitol  
600 Dexter Ave.  
Montgomery, AL 36130

Jackie B. Graham, in her capacity as a  
member of the Board of Control of The  
Employees' Retirement System of Alabama  
State of Alabama Personnel Dept.  
300 Folsom Administrative Bldg  
64 North Union Street  
Montgomery, AL 36130-4100

John R. Wilkerson, Jr., in his capacity as a  
member of the Board of Control of The  
Employees' Retirement System of Alabama  
c/o Court of the Judiciary

300 Dexter Ave.  
Montgomery, AL 36104  
Robert S. Miller, in his capacity as a  
member of the Board of Control of The  
Employees' Retirement System of Alabama  
3716 Willow Lane Drive  
Montgomery, AL 36109

Robert H. Pruitt, in his capacity as a  
member of the Board of Control of The  
Employees' Retirement System of Alabama  
7601 Deer Ridge Court  
Montgomery, AL 36117

Stephen C. Walkley, in her capacity as a  
member of the Board of Control of The  
Employees' Retirement System of Alabama  
6418 Applewood Court  
Montgomery, AL 36117

Alice Thornton, in her capacity as a  
member of the Board of Control of The  
Employees' Retirement System of Alabama  
424 Easy Street  
Wetumpka, AL 36092

James H. Rowell, in his capacity as a  
member of the Board of Control of The  
Employees' Retirement System of Alabama  
541 Larkin Lane  
Montgomery, AL 36109

James Fibbe , in his capacity as a  
member of the Board of Control of The  
Employees' Retirement System of Alabama  
124 Silverwood Street  
Mobile, AL 36607

Steven W. Williams, in his capacity as a  
member of the Board of Control of The  
Employees' Retirement System of Alabama  
1551 Riverbirch Drive  
Bessemer, AL 35023

Ben Powell, in his capacity as a  
member of the Board of Control of The

Employees' Retirement System of Alabama  
Administrator of Personal Property  
Baldwin County Revenue Office  
1705 U.S. Hwy 31 South  
Bay Minette, AL 36507