

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

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AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta ascantar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Además, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

Lleve esta demanda a un abogado inmediatamente. Si no tiene abogado o si no tiene el dinero suficiente de pagar tal servicio. Vaya en persona o llame por telefono a la oficina cuya direccion se encuentra escrita abajo para averiguar donde se puede conseguir asistencia legal.

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“Defendant”), and in support thereof aver as follows:

INTRODUCTION

Plaintiffs bring this breach of contract, breach of fiduciary duty, and negligence case against Aon to recover relief Aon agreed to provide. In the course of providing investment performance reporting and other professional financial services to Plaintiffs over many years, Aon made an error. Perhaps it was a series of errors. Plaintiffs do not know for sure because, while Aon repeatedly admitted and acknowledged that it had made certain mistakes, to date – almost two and one-half years since Aon’s admissions – Aon has not fully come clean as to what actually occurred, and what it did and/or did not do.

But the impact of Aon’s errors on Plaintiffs was, and continues to be, *substantial*. Aon’s errors were widely reported in the press. Those errors adversely affected Plaintiffs’ reputation and have caused Plaintiffs *millions* of dollars in damages. Aon has refused to adequately address or take full responsibility for its errors. It has failed to fully cooperate with multiple investigations into those errors and in a separate litigation arising from those errors. For these reasons, Plaintiffs’ damages have increased, are ongoing, and continue to mount.

Plaintiffs also bring a claim for declaratory judgment on two contractual issues. *First*, Aon agreed to indemnify Plaintiffs for all claims of any nature arising out of Aon’s breach of contract or negligence, paying damages, including attorneys’ fees and costs. *Second*, Aon agreed it would make available to PSERS and provide access to and consultation about all firm research, allowing PSERS to audit its books, records, and accounts. In seeking to keep the precise nature of its errors shrouded from view and attempting to shirk its financial responsibilities related to those errors, however, Aon has, thus far, refused both obligations.

This case is straightforward and may be simpler than most of its type for *three reasons* –

each of which Aon has repeatedly *admitted to, in writing*:

- First, Aon agreed to perform its services to, and to be judged by, the strictest possible professional standards;
- Second, Aon agreed to “hold ... harmless from and indemnify” Plaintiffs against “any and all claims ... of any nature ... based upon or arising out of ... any breach” of their contract or negligence, “including [by paying for Plaintiffs’] attorneys’ fees and court costs”; and
- Third, Aon admitted that it made the errors that constitute negligence, breach of contract and fiduciary duty, fell below the applicable standard of care, and caused the substantial damages Plaintiffs seek to recover.

Plaintiffs bring this lawsuit simply to get the relief Aon is obligated to provide. This relief includes reimbursement of the millions of dollars in costs and attorney’s fees Plaintiffs have been forced to incur as a direct result of Aon’s conduct and gaining access to Aon’s books, records and databases regarding its engagement with and service performed for Plaintiffs so Plaintiffs can determine exactly how Aon’s errors occurred and ensure that similar errors will not occur again.

I. PARTIES, JURISDICTION, AND VENUE

1. Plaintiff PSERS is an agency of the Commonwealth of Pennsylvania that administers the retirement plan for Pennsylvania’s public school employees. PSERS offices are located at Five North 5th Street, Harrisburg, PA 17101-1905.

2. PSERS was established and is governed by The Public School Employees Retirement Code, 24 Pa. C.S. §§ 8101 *et seq.* (the “Retirement Code”).

3. Plaintiff the Fund is a multi-billion dollar fund which provides retirement benefits to public school employees in the Commonwealth of Pennsylvania. It consists of all monies in the

several separate funds in the State Treasury set apart to be used under the direction of the Board for the benefit of members of PSERS. 24 Pa. C.S. § 8522.

4. The Board is an independent administrative board of the Commonwealth that has the powers and privileges of a corporation and is responsible for administering and managing PSERS. 24 Pa. C.S. § 8501.

5. The Board also serves as Trustee, and has exclusive control and management responsibility, of the Fund. 24 Pa. C.S. § 8521(a).

6. Upon information and belief, Defendant Aon is an Illinois corporation with a business address at 200 East Randolph Street, Chicago, IL 60601.

7. This Court has jurisdiction over this action pursuant to 42 Pa. C.S. § 931.

8. Venue is proper in this County pursuant to Rules 1006(b) and 2179(a) of the Pennsylvania Rules of Civil Procedure, as Aon regularly conducts business in Philadelphia County, and because the agreement between PSERS and Aon specifies that Aon consents to the jurisdiction of any court of the Commonwealth of Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. *See* Purchase Order and accompanying Terms and Conditions entered into by Aon and PSERS on September 27, 2019 (the “Contract”), Rider 4 - Commonwealth Terms & Conditions § 1.34 (“This Contract shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. The Contractor consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The Contractor agrees that any such court shall have in personam jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.”). A copy of the Contract is

attached hereto as **Exhibit 1**.¹

II. FACTUAL BACKGROUND

A. The Contractual, Legal and Fiduciary Relationship Between Plaintiffs and Aon – and Aon’s Heightened Standard of Care.

9. PSERS was founded in 1917 and began operations in 1919.

10. It initially oversaw a statewide defined benefit pension plan for public school employees.

11. With the passage of Act 5 in 2017, PSERS’ role expanded to include oversight of two new hybrid options consisting of defined benefit and defined contribution components, and a stand-alone defined contribution plan.

12. The Board has fifteen members and includes several governmental officials, state legislators and members of PSERS, including public school teachers. 24 Pa. C.S. § 8501(a).

13. While PSERS employs certain investment professionals, it also relies to a great extent on several outside investment professionals, advisors and consultants with whom it contracts to help PSERS carry out its statutory duties and accomplish its investment and other objectives. In fact, the Retirement Code authorizes PSERS to contract and work with such outside advisors. 24 Pa. C.S. § 8502(b)(1) (“The [B]oard shall contract for the services of ... an actuary, investment advisors, counselors, an investment coordinator, and such other professional personnel as it deems advisable.”).

14. Since 2013, PSERS has contracted with Aon to provide it with various professional investment consulting services.

15. At present, Aon provides such services to PSERS, the Board, the Fund, and the

¹ The copy of the Contract attached to the Complaint has been redacted to remove information that may be proprietary and confidential. Plaintiffs are filing a Motion to File Under Seal with respect to the Contract simultaneously with this Motion.

School Employees' Defined Contribution Trust (the "Trust") pursuant to the Contract. *See Exhibit 1.*

16. The term of the Contract is October 1, 2019, through September 30, 2024. *See id.*

17. The Contract was awarded to Aon following a formal Request for Proposal ("RFP") process, during which Aon touted, among other things, the "team of Aon experts PSERS has relied on over the past five years," Aon's "long history of serving public plans" and its "extensive experience with public fund Defined Benefit plans." *See Exhibit 1*, Contract, Rider 3 – RFP 2018-6 Aon Proposal Document, Letter from Aon's Claire P. Shaughnessy and Stephen Cummings to PSERS' Cathy Gusler (Feb. 18, 2019).²

18. Aon further represented that it had been "working with public fund defined contribution plans for over 40 years" and had "advise[d] 32 public fund retainer clients" with substantial amounts of assets. *Id.*

19. Sections A and C of the Contract set forth an extensive list of services Aon agreed to provide for the Fund and the Trust; Section B sets forth various performance measurement, risk, and attribution services that Aon agreed to perform for the Fund. *See Exhibit 1*, Contract, Rider 1- Purchase Order Terms & Conditions §§ A, B, and C.

20. Aon agreed to perform all such services to the standard required for a professional Chartered Financial Analyst (CFA) with a "long history of serving public plans" and "extensive experience" "working with public fund defined contribution plans for over 40 years" including, at the time, "32 public fund retainer clients." *See Exhibit 1*, Contract, Rider 3 – RFP 2018-6 Aon Proposal Document, Letter from Aon's Claire P. Shaughnessy and Stephen Cummings to PSERS'

² Aon's entire proposal in response to the RFP, including the above-cited representations, was incorporated by reference into the Contract, as was the RFP itself. *See Exhibit 1*, Contract, Rider 1- Purchase Order Terms & Conditions, Preamble.

Cathy Gusler (Feb. 18, 2019).

21. Moreover, the Contract requires Aon to use the duty of care of an *expert* in carrying out its work, and Aon expressly agreed to exercise the “degree of judgment and care” that “persons of prudence, discretion, and intelligence who are experts in such matters” would use:

[AON] shall perform services under the Purchase Order subject to the exercise of that degree of judgment and care under the circumstances then prevailing which persons of prudence, discretion, and intelligence who are experts in such matters, exercise in the management of like matters, not in regard to speculation but in regard to the permanent disposition of the Fund, considering the probable income to be derived therefrom as well as the probable safety of the invested capital.

Id. § D(28).

22. The Contract also deems Aon to be a “fiduciary” of PSERS and the Fund, and Aon expressly agreed to act in that capacity:

[Aon] acknowledges that it is a “fiduciary” with respect to PSERS and the Fund as that term is defined in the Employee Retirement Income Security Act of 1974 (ERISA), *regardless of the applicability of ERISA to the Purchase Order.*

Id. (Emphasis added).

B. “Shared Risk” and Member Contributions to the Fund Under Pennsylvania Statute.

23. In 2010, Pennsylvania’s General Assembly amended the Retirement Code to specify that all members who enrolled in a PSERS defined benefit plan after June 30, 2011 would be subject to a “risk share” requirement.

24. These members would be required to contribute to the Fund through deductions from their paychecks.

25. To determine the amount that these new members must contribute, the statute mandates a process whereby PSERS must calculate the historic rate of return of its investments

every three years.

26. As part of this process, the Board, with the assistance of other outside advisors, sets a targeted rate of return or “hurdle rate” for PSERS’ investments.

27. Generally, if PSERS’ actual performance is *one percent (1%) or more* above or below the hurdle rate, the mandatory contributions of these members will change. Specifically, the statute requires that, “[i]f the actual investment rate of return, net of fees, is *less than*” the hurdle rate by “1% or more, the shared-risk contribution rate of Class T-E and T-F members will increase by .5% and the shared-risk contribution rate of Class T-G and Class T-H members will increase by .75%.” Conversely, “[i]f the actual investment rate of return, net of fees, is *equal to or exceeds*” the hurdle rate, the contribution of those members “will decrease by .5%.” 24 Pa. C.S. § 8321(b)(1) (emphasis added).

28. For the affected members at issue, the contribution rate would otherwise remain the same.

29. By statute, the last triennial review of the rate of return of PSERS’ investments for the required period of performance took place in June 2020, and the rate was certified at the end of 2020. The next triennial review of the rate of return of PSERS’ investments for the required period of performance occurred in June 2023, and it is anticipated that the rate will be certified at the end of this year, 2023.

C. Aon’s Specific Role in PSERS’ Risk Share Analysis.

30. As Aon was aware at all relevant times, PSERS relies on Aon’s expertise and proprietary reports to perform the risk share calculation, because PSERS does not have access to the underlying data Aon maintains and uses to perform an independent calculation, nor does PSERS have access to any of Aon’s analytics, reporting, and data housing software or systems.

31. Indeed, PSERS does not have access to the underlying data Aon maintains and uses to perform its independent calculation; nor does PSERS have access to any of Aon’s analytics, reporting, and data housing software or systems.

32. For this reason, it is *Aon* that calculates PSERS’ rate of return for the statutory review period.

33. These duties are part of Aon’s contractual obligations and go hand-in-hand with Aon’s obligation under the Contract to “prepare a quarterly written report *containing performance measurement attribution and analysis for each asset class and individual portfolios.*” See **Exhibit 1**, Contract, Rider 1- Purchase Order Terms & Conditions § B(2)(emphasis added).

34. After Aon calculates PSERS’ rate of return, PSERS’ actuarial consultant, Buck Global, LLC (“Buck”) – also relying on Aon’s work product – calculates whether the statutory hurdle rate has been met and whether any changes in member contribution rates will be required moving forward.

35. Finally, the Board, relying on Aon’s and Buck’s reports and calculations, formally certifies the result of the risk share analysis and votes to approve any required changes to member contribution rates.

D. Aon Errs, Causing the Board to Initially Approve and Certify Incorrect Member Contribution Rates for the 2021-2023 School Years.

1. PSERS Identifies a Discrepancy in Aon’s Historical Quarterly Returns.

36. In compliance with the statute requiring a triennial review of PSERS’ rate of return, in 2020, PSERS had to perform a calculation of its returns for the period July 1, 2011- June 30, 2020.

37. In 2020, the COVID-19 pandemic caused a great deal of economic volatility that significantly affected the stock market and other investments held by PSERS.

38. As a result of this market volatility, beginning in March 2020, PSERS' members, Board, staff, and others were particularly focused on whether the hurdle rate would be met for the upcoming December 2020 risk share certification – or whether returns would fall below the hurdle rate and cause the contribution rates of certain classes of PSERS members to increase for the next three-year period.

39. As a long-serving consultant and fiduciary to PSERS, Aon was aware of the attention and heightened scrutiny the 2020 risk share process was receiving and understood the importance of providing an accurate report of PSERS' investments' returns.

40. In June 2020, PSERS asked Buck to calculate the performance rate needed to clear the risk share hurdle rate that Buck calculated to be 6.36%.

41. Buck responded that the asset returns net of fees for the period July 1, 2019 to June 30, 2020 needed to be in excess of 1.30% to avoid triggering the risk share.

42. PSERS staff made clear to Aon that it was critical that all of Aon's data and calculations upon which PSERS would rely for the risk share determination be 100% accurate.

43. On or about June 29, 2020, PSERS notified Aon about a discrepancy between the historical quarterly returns that Aon had included in its most recent quarterly report and those same returns Aon reported in earlier years.

44. Specifically, PSERS identified a change reflected in a large increase of over 30 basis points in Aon's most recent quarterly report ending June 30, 2015.

45. On June 29, 2020, PSERS asked Aon to confirm the reason for the discrepancy.

2. Aon Wrongly Assures PSERS That Its Data is Correct.

46. Aon did not initially respond to PSERS' June 29, 2020 inquiry.

47. PSERS followed up on its question and, *one month later*, Aon responded that the

discrepancy was due to “retroactive adjustments.”

48. Notably, Aon did not provide PSERS with any further information, or acknowledge any errors or mistakes in entering data, calculating rates of return, or otherwise.

49. PSERS was, therefore, led to believe that the differences in Aon’s reporting of PSERS’ historical returns were simply the result of regular, ministerial adjustments made by Aon and did not constitute or indicate any problem or error.

3. PSERS Board Member Raises Questions About PSERS’ Investment Returns, and Aon *Again* Assures PSERS That Its Data is Correct.

50. On August 12, 2020, PSERS Board member and then-State Treasurer, Joseph Torsella, wrote to PSERS’ Executive Director, Glen Grell, to question differences between PSERS’ annual investment returns, as reported by Buck, and those same returns, as identified by Aon. A true and correct copy of the August 12, 2020 Letter from Treasurer Torsella to Executive Director Grell (the “Torsella Letter”) is attached hereto as **Exhibit 2**.

51. Specifically, Treasurer Torsella pointed out that the 2015 investment returns reported by Aon were 37 basis-points higher than those that Aon had previously reported. *See Exhibit 2*, Torsella Letter at 1.

52. In seeking answer Treasurer Torsella’s question, PSERS went to Aon for assistance and, as PSERS consistently had done over the years, relied on Aon’s professed extensive experience providing investment consulting services to retirement systems and pension plans.

53. PSERS worked extensively with Aon to prepare its September 1, 2020 response from Executive Director Grell to Treasurer Torsella (the “Grell Response”) a true and correct copy of which is attached hereto as **Exhibit 3**.

54. Executive Director Grell wrote to Treasurer Torsella, in part, that “*Aon has re-reviewed the returns for Fiscal Year 2015 and has verified that the revised returns as reported in*

the March 31, 2020 report *are correct* based on the new revised NAVs received for some private market funds after the fiscal year close.” **Exhibit 3**, Grell Response (emphasis added).³

55. Further relying on Aon, Executive Director Grell represented that Aon’s adjustments to some of the historical rates of return in its most recent reporting were just that – “adjustments [and] *not errors* in reporting”. *Id.*

56. Indeed, significant parts of the Grell Response were drafted *by Aon and Aon reviewed and approved the final letter before it was issued.*

57. In re-reviewing and verifying PSERS’ returns and providing PSERS with information and language necessary to respond to the Torsella Letter, Aon, once again, did not give PSERS any reason whatsoever to think Aon’s data contained errors – quite the opposite.

4. Before Certifying That PSERS Had Met the Hurdle Rate and Member Contribution Rates Would Remain Unchanged, Aon – for a *Third Time* – Assures PSERS That Its Data is Correct.

58. By October 2020, Aon had calculated PSERS’ actual nine-year investment rate of return as 6.38% and had reported that number to PSERS.

59. Because the 6.38% rate of return Aon had calculated was so close to the 6.36% hurdle rate that Buck calculated, PSERS hired ACA Group (a governance, risk, and compliance advisor for financial services) (“ACA”) to verify the accuracy of Aon’s methodologies and its calculated rate of return of PSERS’ investments.

60. To ensure the independence of ACA’s review, PSERS did not provide ACA with the hurdle rate Buck had calculated.

61. As is customary with such an analysis, ACA did not review PSERS’ investment returns for each month during the relevant time period; rather, it sampled and reviewed a subset of

³ *NAV* stands for *Net Asset Value* and is the net value of a fund’s assets less its liabilities, divided by the number of shares outstanding.

those months. However, because this issue was so important to PSERS, ACA selected a larger sample size – 40 months across the nine-year review period – than it typically would have.

62. Having received repeated assurances from Aon of the completeness, accuracy and reliability of its rate of return data, PSERS arranged for the data to be sent to ACA so ACA could confirm the calculation.

63. ACA's independent calculation did, in fact, *confirm* Aon's investment return rate of 6.38% – however, its calculation depended on the accuracy of the *underlying data* provided by Aon.

64. On December 3, 2020, PSERS' Board met starting at 9:00 a.m. to certify its member contribution rates for the next three-year period as required by statute.

65. At the meeting, PSERS' staff explained to the Board, in detail, the risk share process set forth in the statute, the fact that Aon had calculated PSERS' rate of return to be 6.38% – only .02% above the hurdle rate – and that PSERS had engaged ACA to independently verify Aon's calculation, which ACA had done.

66. Given the questions that had been raised, Aon put its full weight behind the accuracy of its work and, specifically, its historical adjustments and calculation and reporting of PSERS' rate of return. It did so not only prior to, but even during, this key Board meeting.

67. For example, at 10:10 a.m. on December 3, 2020, Claire P. Shaughnessy, Aon's "relationship partner" responsible for its business relationship with PSERS, e-mailed PSERS' Chief Investment Officer, Jim Grossman:

As you know, *we are very confident that the adjusted returns are accurate* reflecting the revised information we received on the valuation and therefore *we are very confident that the 6.38% reported nine-year return is an accurate representation of PSERS' investment returns during the period.*

See E-mail from Claire P. Shaughnessy to Jim Grossman (Dec. 3, 2020, 10:10 a.m.) (emphasis added), a true and correct copy of which is attached hereto as **Exhibit 4**.

68. Relying on Aon's calculations and its additional assurances that they were correct, PSERS' Board then adopted a resolution certifying that member contribution rates for the next three-year period would remain *unchanged* because PSERS had *met and exceeded* the hurdle rate.

69. PSERS publicly announced this decision, and it was widely reported in the press.

5. After the Board Meeting, PSERS Again Identifies an Apparent Discrepancy with Aon's Work – and Aon Again Assures PSERS Its Rate of Return Is Unaffected.

70. On December 4, 2020, the day after PSERS' Board certified the member contribution rates, a PSERS staff member noticed a discrepancy between the 2015 investment returns for one asset class reported on Aon's draft third quarter 2020 report and the same returns reported by a different consultant.

71. PSERS promptly raised this discrepancy with Aon and asked if it could impact PSERS' overall rate of return.

72. Aon did not immediately respond, so PSERS asked again.

73. Despite asking Aon *repeatedly* – half a dozen times in December 2020, alone – Aon failed to substantively address PSERS' question. Sometimes Aon responded that it was still researching the matter. Other times, Aon ignored PSERS' question entirely.

74. On January 7, 2021, about one month after PSERS first asked Aon about the discrepancy, Aon issued an updated report for third quarter 2020.

75. But that updated report did not acknowledge, address, or correct any errors – Aon still appeared to be avoiding PSERS' question.

76. Moreover, PSERS had further questions about new and unexpected changes to

Aon's *updated* report, including changes concerning traditional public investments.

77. On a January 13, 2021 call with PSERS, Aon acknowledged making certain changes to multiple historical composite returns in its updated report. Aon assured PSERS, however, that these changes did *not* impact the actual overall rate of return. Indeed, had Aon performed its services properly, there should not have been any impact.

78. In response, PSERS asked Aon to send a letter describing, in writing, those changes and explaining an additional change to cash flows for the quarter ending June 2015.

79. Aon assured PSERS it would look into this issue.

80. Again, PSERS relied upon Aon's assurances that its data was accurate and would not affect the rate of return calculation. PSERS therefore continued to believe Aon's reporting was correct.

81. In light of the discrepancies PSERS identified in Aon's data and the repeated inquiries PSERS made of Aon between the summer of 2020 and the weeks after the December 3, 2020 Board meeting – in addition to the expert, fiduciary standards to which Aon had committed in the Contract – Aon had not just a duty, but a *heightened duty*, to thoroughly research and fully investigate PSERS' questions. But Aon did not.

82. Instead, each time PSERS asked a question or raised an issue about Aon's numbers, Aon's often delayed response to PSERS was that the information in Aon's reports was entirely accurate.

83. PSERS did not know it at the time, but later learned that, each time Aon gave such assurances, Aon was wrong.

84. Aon either completely failed to investigate the issues PSERS had raised or was so negligent in its investigation, that *each time* Aon claimed to have checked and rechecked its work,

Aon, again and again, failed to catch its own errors.

E. Aon Finally Admits It Made Errors – and That Its Errors Affected the Calculation of PSERS’ Overall Rate of Return and Risk Share Certification.

85. More than *two-and-a-half months* after the December 3, 2020 Board meeting at which PSERS – relying on Aon – certified that the hurdle rate had been met and there would, therefore, be no increase to members’ mandatory contribution rates, Aon finally admitted to PSERS that it had made an error.

86. This admission first came during a phone call between Aon and PSERS on February 17, 2021.

87. In a larger group meeting that evening, Aon further disclosed that its error: (1) related to the same data for the quarter ending June 2015 PSERS had previously asked about; (2) impacted Aon’s calculation of PSERS’ historical investment returns; and (3) changed Aon’s calculation of PSERS’ overall rate of return.

88. On March 5, 2021, Aon’s Claire Shaughnessy sent a letter to Mr. Grossman acknowledging that Aon’s errors caused the data on which Aon had based its calculation and reporting of PSERS’ April 2015 performance to be “corrupted.” A true and correct copy of the March 5, 2021 letter from Ms. Shaughnessy to Mr. Grossman is attached hereto as **Exhibit 5**.

89. Aon blamed this data corruption on “an error by an [Aon] analyst in uploading NAV and cash flow data from the BNY system into the PARis performance system Aon uses.” See **Exhibit 5**, March 5, 2021 Letter at 1.

90. According to Aon, “it appear[ed]” to have made “an incomplete erroneous upload ... for April 2015 data” which overwrote certain data and “corrupted” other data for several accounts. *Id.* at 6.

91. Even to Aon, however, “the exact timing and nature” of its errors were “unclear.”

Id.

92. Regardless, Aon admitted that “due to [its] error, the FY and CY 2015 returns for several of the asset class composites and Total Plan were inaccurately reported in the June 30, 2020 report.” *Id.* at 1.

93. This was not an inconsequential report. To the contrary, as Aon was well aware, that June 30, 2020 report was *precisely* what PSERS relied upon in analyzing whether the hurdle rate had been met, and in certifying the risk share result in December 2020.

94. As Aon now explained, after correcting its error using “recalculated quarterly returns for 2Q2015 and 3Q2015,” the nine-year rate of return of PSERS’ investments ended June 30, 2020 was *actually* “**6.34%**” – “*a 4-basis point decline from the originally reported nine-year trailing return[.]*” *Id.* at 6 (emphasis added).

95. Put otherwise: Contrary to the position the Board had taken – relying on Aon’s work – at its December 3, 2020 meeting and publicized thereafter, once Aon corrected its errors, it was now apparent that PSERS had *failed* to meet the hurdle rate.

F. Aon Promises Further Answers but Delivers None.

96. On March 24, 2021, Ms. Shaughnessy wrote to Mr. Grossman, reiterating her admission that Aon’s errors affected its calculation of the overall rate of return. *See* Letter from Claire P. Shaughnessy to Jim Grossman (Mar 24, 2021), a true and correct copy of which is attached hereto as **Exhibit 6** (“As we have already communicated, in the process of reconciling some prior year asset class composites we identified an error in a prior year return which when corrected results in a four-basis point change in the nine-year Total Plan return.”).

97. Ms. Shaughnessy also promised that Aon would get to the bottom of what happened with a secondary review to ensure the accuracy of its data going forward, but informed Mr.

Grossman that she did not expect this review would be completed for another thirty days. *Id.*

98. On April 16, 2021, Steve Voss, Aon’s Head of North American Investments, further acknowledged that Aon’s errors caused it to provide PSERS with incorrect investment reports and an incorrect calculated rate of return of PSERS’ investments – *i.e.*, the very information upon which PSERS relied in making the initial risk share certification. *See* Letter from Steve Voss to Jim Grossman (Apr. 16, 2021), a true and correct copy of which is attached hereto as **Exhibit 7**, at 1 (admitting that Aon had further investigated the “data errors ... in the April, May and September 2015 [investment] returns” and, contrary to Aon’s earlier representations, “all indications are that the issues here reflect inadvertent clerical mistakes at a data-entry level” such that, after further review, “Aon identified an apparent clerical data entry error” in five of its own monthly returns).

99. Similar to Ms. Shaughnessy, Mr. Voss further advised that, after recalculating the quarterly returns: (1) Aon “believe[d] that the nine-year return ended June 30, 2020 is 6.34%, a 4-basis point decline from the originally reported nine-year trailing return”; (2) Aon’s repeated errors “very much appear[] to have been clerical data-entry mistakes, however unfortunate;” and (3) Aon promised to “provide further and updated information as best we are able to provide it as our comprehensive review continues.” *Id.* at 2-3.

100. In addition, Mr. Voss admitted – now two months after Aon first disclosed these errors to PSERS – that Aon still had not ascertained why, how or when the errors in question occurred. *See id.* at 1, 3 (“*all indications are* that the issues here reflect inadvertent clerical mistakes at a data-entry level”; “an *apparent* clerical data entry error”; “we very much appreciate PSERS patience as we have *endeavored to unravel* what very much *appears to have been* clerical data-entry mistakes”) (emphasis added).

101. Two days later, on April 18, 2021, Mr. Voss e-mailed Mr. Grossman, promising a diligent review and stating that, since Aon discovered its errors, “we have been working with the utmost diligence to understand – and correct – not solely ‘what’ happened here and any (whether material or otherwise) impact on return calculations, but ‘how’ the apparent mistakes in question may have occurred.” A true and correct copy of the April 18, 2021 e-mail from Mr. Voss to Mr. Grossman is attached hereto as **Exhibit 8**.

102. Mr. Voss also wrote that he was “comfortable” with the revised, lower 6.34% rate of return of PSERS’ investments but confirmed that Aon was “continu[ing] in its efforts” to determine “how” its “mistakes occurred” so it could “implement process improvements where possible.” *See id.*

103. Since Mr. Voss sent his April 18, 2021 e-mail, however, Aon has failed to provide *any* additional details or explanation of what caused the errors that Aon had, for months, denied even existed.

104. Indeed, at present, PSERS has waited more than *two years* without receiving answers.

G. Aon’s Errors Have Caused Significant Ongoing Harm to Plaintiffs.

105. The harm Aon’s admitted errors have caused Plaintiffs is significant and continuing.

106. Because Aon’s corrected rate of return was now *below* the hurdle rate, PSERS had to publicly repudiate its statutorily-required certification that the hurdle rate had been met.

107. On April 19, 2021, PSERS recertified the risk share calculation with the lower rate of return and, as required, increased the future contribution rates for July 1, 2021 to June 30, 2024 for several classes of PSERS members.

108. PSERS had to then publicly announce and communicate to its members that, even though PSERS had previously certified that the mandatory contributions would stay the same, in fact, the contributions for certain members *would increase* for the 2021-2022 school year and the two following school years.

109. As a direct result of Aon's admitted errors, Plaintiffs have suffered tremendous reputational harm. Indeed, the media has relentlessly reported on PSERS: (a) having to revise its risk share calculation and reverse course, increasing certain members' contribution rates; (b) being subject to various governmental investigations; and (c) incurring substantial fees for attorneys and consultants, all of which shine an ongoing negative spotlight on PSERS.

110. The investigations and civil litigation, as well as the heightened scrutiny and publicity – all resulting from Aon's errors – have made it more difficult for PSERS to do business.

111. For example, many PSERS' employees have been and continue to be forced to take time away from their normal duties to assist with and attend to numerous inquiries, investigations, and requests for information relating to and arising from Aon's errors.

112. As a result of Aon's errors, Plaintiffs also have been forced to spend countless hours, hire multiple outside counsel and consultants, and spend millions of dollars to investigate, respond to, and prevent in the future a host of complicated, sensitive and high-profile legal and other problems including, without limitation:

- (a) Conducting an internal investigation into the circumstances surrounding PSERS' initial certification of member contribution rates;
- (b) Analyzing PSERS' legal ability to recertify whether the risk share hurdle was met after Aon had admitted its error and changed its numbers;
- (c) Creating additional internal controls on investment performance reporting;

- (d) Performing an independent review and analysis of the historical performance of PSERS' investments;
- (e) Defending itself against a criminal probe by the United States Department of Justice, which was commenced in March 2021 when PSERS was served with a subpoena for testimony before a grand jury or the production of documents (the "DOJ Investigation");
- (f) Responding to a September 2021 subpoena for the production of documents by the United States Securities and Exchange Commission (the "SEC Investigation");
- (g) Providing separate indemnification counsel to individual PSERS' officers, Board members and employees, and to the Board, as a whole, in connection with the DOJ Investigation and the SEC Investigation; and
- (h) Reviewing hundreds of thousands of documents and responding to multiple subpoenas, defending and attending depositions of PSERS' representatives and others, and engaging in motion practice as a non-party in a civil class action lawsuit brought by a subset of PSERS members that relates to and arises from, among other things, the errors Aon made with respect to the professional services it provided to PSERS in connection with the 2020 risk share certification in *Steinke v. Aon Investments USA, Inc., et al.* (June Term, 2021, No. 210601197, Phila. Ct. of Common Pleas), which remains a pending and actively litigated case.

113. All of these expensive and time-consuming actions were directly and necessarily caused by Aon's errors.

H. Aon's Continuing Refusal to Fully Cooperate Has Separately Caused Further Significant and Ongoing Harm to Plaintiffs.

114. After initially – and repeatedly – admitting its errors to PSERS,⁴ Aon appeared to change course, clamming up, exhibiting a “bunker mentality,” and deliberately seeking to hide from its contractual, fiduciary, and other duties to Plaintiffs.

115. Despite initial promises to provide further information – and contractual, fiduciary and other obligations to do so – Aon has refused and failed to adequately cooperate with or assist PSERS in the various investigations and lawsuits resulting from and related to Aon’s errors.

116. As one example only, Aon refused to allow its employees to be interviewed in connection with PSERS’ internal investigation into what occurred.

117. While Aon had promised in correspondence to PSERS admitting its errors to implement quality controls and process improvements that would avoid the risk of these errors occurring again, to date, PSERS has seen no evidence or proof that Aon has taken those steps.

118. Aon has also failed to fulfill the promises it made to review, determine, and correct what had caused Aon’s errors to occur.

119. In these ways and others, Aon’s continuing refusal to fully cooperate has extended, complicated and elongated investigations and created additional costly damages from Aon’s errors, perpetuating ongoing repercussions, disruptions, and distractions to Plaintiffs and causing significant additional ongoing harm.

120. Aon’s refusal to communicate and fully cooperate with PSERS, and to instead leave PSERS to respond on its own to the various criminal and civil investigations and litigation that Aon’s conduct brought about, is an additional and further abdication of the basic, ongoing duties Aon owes PSERS.

⁴ In its March 5, 2021 letter to PSERS, for example, Aon used some variation of the word “error” *more than fifteen times*. **Exhibit 5**, March 5, 2021 Letter.

I. PSERS Makes – and Aon Ignores – a Specific Request for Indemnification.

121. On September 15, 2022, counsel for PSERS notified Aon by letter that Aon had breached its contractual and fiduciary duties to Plaintiffs and demanded indemnification, reimbursement, and/or compensation for the harm PSERS suffered as a result of Aon’s errors, as well as access to the documents and records relevant to Aon’s errors (the “Demand Letter”). A true and correct copy of the Demand Letter is attached hereto as **Exhibit 9**.

122. In the Demand Letter, PSERS describes, among other things, how Aon repeatedly represented to PSERS that its investment return information was accurate; PSERS relied upon that information to make the risk share determination and certify member contribution rates; and PSERS suffered (and continues to suffer) millions of dollars in damages because Aon disclosed its errors only *after* certification, forcing PSERS to repudiate its prior certification that the risk share hurdle rate had been met.

123. In addition to describing PSERS’ financial harm, PSERS notified Aon that it had breached its contractual and fiduciary duties by failing to provide sufficient details related to how and why the errors occurred. *Id.* at 4-5. For example, the Contract:

- (a) obligates Aon to “make available [to PSERS] all firm research, including proprietary research, regardless of the firm department in which it was created” and “provide access and consultation with [Aon’s] research staff.” **Exhibit 1**, Contract Rider 1- Purchase Order Terms & Conditions §§ A(14) and A(15);
- (b) requires Aon to make these services and this information “available directly to PSERS through [Aon’s] proprietary tools (‘AON Tools’) or indirectly through licensed third party applications (‘Third Party Tools’).” *Id.*; and
- (c) affords PSERS, “from time to time upon reasonable notice,” the broad right

to audit Aon’s “records, books, and accounts for all purposes authorized and permitted by law.” *Id.* at § D(21).

124. Aon had done none of these things and, in the Demand Letter, PSERS demanded that Aon provide PSERS – and any independent forensic experts PSERS retains – with access to all relevant records and databases, and any summaries, reports, or analyses prepared by Aon or at Aon’s request regarding any and all errors made by Aon relating to its calculation and reporting of PSERS’ investment returns. *See Exhibit 9*, Demand Letter at 5.

125. PSERS also demanded that Aon indemnify, compensate, reimburse, and/or otherwise hold Plaintiffs and the other entities and individuals covered by the Contract’s indemnification clause harmless for those fees as well as all other ongoing fees, expenses, and damages arising out of Aon’s conduct. *See Exhibit 9*, Demand Letter at 4.

126. Specifically, PSERS demanded – as Aon is required to do pursuant to Section D(2) of the Contract – that Aon “hold ... harmless from and indemnify” Plaintiffs for all fees, costs, and other expenses Plaintiffs have incurred and will continue to incur “based upon or rising out of” Aon’s admitted errors, breach of contract, negligence and breach of Aon’s heightened fiduciary duties:

The CONSULTANT [Aon] ***shall hold the Commonwealth of Pennsylvania, the Board, PSERS, the Fund and the Trust, their beneficiaries, directors, officers, agents, and employees harmless from and indemnify*** the Commonwealth of Pennsylvania, the Board, PSERS, the Fund and the Trust, their beneficiaries, directors, officers, agents, and employees ***against any and all claims, demands, actions, or liability of any nature, including attorneys’ fees and court costs, based upon or arising out of (a) any breach of this Agreement, (b) negligence, (c) fiduciary breach or (d) failure to comply with applicable law, in each case by or of the CONSULTANT, its directors, officers, employees, and agents under the Purchase Order and shall, at the request of PSERS, defend at the CONSULTANT’s expense actions brought against the Commonwealth of Pennsylvania, the Board, PSERS and/or the***

Fund, based upon any such claims or demands, and *the costs of such defense shall be borne by the CONSULTANT and shall not constitute any expense of, nor shall be paid out of, FUND, Board, PSERS or Commonwealth of Pennsylvania assets.*

Exhibit 1, Contract, Rider 1- Purchase Order Terms & Conditions § D(2)(emphasis added).

127. PSERS attached as Exhibit A to the Demand Letter a chart outlining various expenses incurred as of that time in connection with Aon's errors. Though not exhaustive, as of July 31, 2022, the total of those expenses was in excess of \$8 million. *See Exhibit 9*, Demand Letter at Ex. A.

128. PSERS also attached as Exhibit B to the Demand Letter a list of questions about Aon's databases, records, and related issues, and demanded that Aon provide answers to those questions.

129. PSERS asked Aon to confirm in writing within ten days of its receipt of the letter that Aon would honor its legal and other obligations to PSERS as detailed in the letter and the Contract. *Id.* at 6.

130. To date, however, Aon has refused.

131. In refusing to provide the required information, Aon is not only violating its contractual and other obligations to Plaintiffs, but also depriving PSERS of its ability to ensure that Aon is following necessary process improvements, quality controls, and other measures Aon promised to implement to avoid similar errors from occurring again.

COUNT I – BREACH OF CONTRACT
CONDUCT THROUGH AON'S ADMISSION OF ERROR
(DIRECT AND THIRD-PARTY BENEFICIARY)

132. Plaintiffs repeat the averments in the above paragraphs as if fully set forth herein.

133. PSERS entered into a written Contract with Aon. *See Exhibit 1*, Contract.

134. Under the Contract, PSERS and Aon each agreed to provide one another with

valuable consideration: Among other things, Aon agreed to provide PSERS with professional investment consulting services performed with the prudence, discretion, and intelligence of those who are experts in such matters; and, in exchange, PSERS agreed to pay Aon significant fees.

135. Sections A and C of the Contract set forth multiple consulting services that Aon provides for the Fund and the Trust, respectively, while Section B sets forth various performance measurement, risk, and attribution services that Aon provides for the Fund. *See Exhibit 1, Contract, Rider 1- Purchase Order Terms & Conditions §§ A, B, and C.*

136. Among the most important services Aon performs under the Contract is providing PSERS with reports on the performance results of its investments, which PSERS then relies upon to determine whether certain retirement classes will be required to increase their contributions for each three-year period. *See, e.g., id. § B(2)* (Aon agrees to “prepare a quarterly written report containing performance measurement attribution and analysis for each asset class and individual portfolios”).

137. Aon breached the Contract by, among other things, inaccurately calculating and reporting PSERS’ investment returns.

138. Aon knew Plaintiffs would rely on Aon’s inaccurate calculations and reporting.

139. Plaintiffs did rely on Aon’s inaccurate calculations and reporting when PSERS adopted a resolution at its December 3, 2020 Board meeting certifying that member contribution rates would *not* increase for the next three-year period.

140. As later became clear once Aon admitted its errors, PSERS should *not* have certified that member contribution rates would not increase for the next three-year period and would not have done so except for its reliance on Aon and Aon’s reports.

141. Due to Aon’s errors, PSERS had to change and recertify member contribution rates,

indicating that there would, in fact, be *increases*; defend itself and others from a host of resulting investigations into the error; and divert significant resources from its mission to address subpoenas for documents and testimony and other significant fallout caused by Aon's errors.

142. As a result of Aon's breach of the Contract, Plaintiffs have suffered monetary damages for which Aon is contractually liable, including, without limitation, expenses incurred in connection with investigating Aon's errors and their impact on the risk share calculation; defending PSERS and its officers, Board members, and employees in the DOJ and SEC Investigations; responding to civil subpoenas and litigation complaints; and bringing in additional expert consultants to monitor and oversee investment activities and performance in the wake of Aon's disclosure of its errors.

143. The Fund is entitled to seek the relief sought herein because it is an intended third-party beneficiary to the Contract. Indeed, it is plain that PSERS and Aon intended to benefit the Fund through the Contract and did, in fact, explicitly indicate this intent in the Contract.

144. Accordingly, Plaintiffs are entitled to the monetary and other relief as set forth in its Prayer for Relief.

COUNT II – BREACH OF CONTRACT
CONDUCT SINCE AON'S ADMISSION OF ERROR
(DIRECT AND THIRD-PARTY BENEFICIARY)

145. Plaintiffs repeat the averments in the above paragraphs as if fully set forth herein.

146. While Aon eventually admitted to and acknowledged its error once caught, it has failed to act appropriately to address, limit, and remedy Plaintiffs' ongoing damages.

147. Aon's actions and failures to act are ongoing and constitute separate and additional breaches of the express terms of the Contract as well as of the covenant of good faith and fair dealing implied by law in the Contract.

148. For example, despite being asked repeatedly, Aon has breached Section D(2) of the Contract by failing and refusing to indemnify and hold Plaintiffs and the other entities and individuals covered by the Contract's indemnification clause harmless for the fees and costs identified in the Demand Letter as well as all other ongoing fees, expenses, and damages arising out of Aon's conduct.

149. Aon also has breached Sections A(14), A(15), A(19), and D(21) of the Contract by failing and refusing to provide Plaintiffs access to the books and records PSERS has repeatedly requested, including all relevant records and databases, and any summaries, reports, or analyses prepared by Aon or at Aon's request regarding any and all errors made by Aon relating to its calculation and reporting of PSERS' investment returns.

150. In addition, Aon breached the covenant of good faith and fair dealing implied in the Contract by failing and refusing to adequately cooperate and assist with certain investigations that have been conducted into Aon's errors and the circumstances surrounding those errors.

151. The Fund is entitled to seek the relief sought herein because it is an intended third-party beneficiary to the Contract. Indeed, it is plain that PSERS and Aon intended to benefit the Fund through the Contract and did, in fact, explicitly indicate this intent in the Contract.

152. Accordingly, Plaintiffs are entitled to the monetary, equitable, injunctive, and other relief as set forth in its Prayer for Relief.

COUNT III – BREACH OF FIDUCIARY DUTY

153. Plaintiffs repeat the averments in the above paragraphs as if fully set forth herein.

154. Aon has agreed and acknowledged that it is a *fiduciary* to Plaintiffs. *See, e.g., Exhibit 1*, Contract, Rider 1- Purchase Order Terms & Conditions § D(28) (“[Aon] acknowledges that it is a ‘fiduciary’ with respect to PSERS and the Fund as that term is defined in the Employee

Retirement Income Security Act of 1974 (ERISA), *regardless of the applicability of ERISA to the Purchase Order*”) (emphasis added).

155. As a fiduciary, Aon is required to act in good faith and solely for Plaintiffs’ benefit.

156. Even so, Aon negligently and/or intentionally has breached and continues to breach this duty to Plaintiffs in multiple ways.

157. For example, first, Aon inaccurately calculated and reported PSERS’ historical investment returns, which PSERS reasonably relied upon when it adopted the December 3, 2020 Board resolution certifying member contribution rates would *not* increase for the next three-year period.

158. Aon’s breach of fiduciary duty is particularly egregious given that PSERS’s staff and Board members raised multiple questions about the accuracy of Aon’s data between the summer of 2020 and the December 3, 2020 PSERS Board meeting (and more after that Board meeting before Aon finally admitted its error).

159. Despite these numerous requests for Aon to further investigate, discover, and disclose any errors, however, Aon repeatedly – and wrongly – assured and reassured PSERS that Aon’s work product was correct.

160. Aon further breached its fiduciary duty to Plaintiffs by failing and refusing to adequately and fully cooperate or assist with certain investigations that have been conducted into Aon’s errors and the circumstances surrounding those errors.

161. Aon also breached its fiduciary duty to Plaintiffs by failing to provide PSERS and/or its forensic experts with access to all relevant records and databases, and any summaries, reports, or analyses prepared by Aon or at Aon’s request regarding any and all errors made by Aon relating to its calculation and reporting of PSERS’ investment returns.

162. As a result of Aon's various breaches of its fiduciary duties, Plaintiffs have suffered and continue to suffer significant financial harm, including the increased expenses incurred in connection with investigating Aon's errors and their impact on the risk share calculation; defending PSERS and its officers, Board members, and employees in the DOJ and SEC Investigations; responding to civil subpoenas and litigation complaints; and bringing in additional expert consultants to monitor and oversee investment activities in the wake of Aon's disclosure of its errors.

163. Plaintiffs have further been harmed by virtue of the fact that Aon has deprived PSERS of its right to access and review all of the documents and information related to Aon's errors and the causes thereof.

164. Accordingly, Plaintiffs are entitled to the monetary, equitable, injunctive, and other relief as set forth in its Prayer for Relief.

COUNT IV – PROFESSIONAL NEGLIGENCE

165. Plaintiffs repeat the averments in the above paragraphs as if fully set forth herein.

166. Upon information and belief, Aon is a licensed investment advisor and/or employees licensed investment advisors that provide professional consulting services to Plaintiffs.

167. Upon information and belief, Aon and its employees and agents therefore owe Plaintiffs the duty to exercise the skill and care of a licensed investment advisor rendering those services to Plaintiffs.

168. In fact, the RFP required Aon to be a Registered Investment Advisor, and Aon represented in paragraph D.6 of the Contract that it is registered as an investment advisor under the Investment Advisers Act of 1940 or is exempt therefrom. **Exhibit 1**, Contract, Rider 2 - RFP § III-4.A.3; *id.*, Rider 1 - Purchase Order Terms & Conditions § D.6; *see also id.*, Rider 3 -

Appendix to Aon's Response to RFP (in which Aon included a Form ADV, Part 2A, in which Aon represented in Item 4 that it is a registered investment adviser with the SEC; a Commodity Pool Operator; and a Commodity Trading Advisor registered with the Commodity Futures Trade Commission).

169. Aon has breached that duty by, among other things:

- (a) inaccurately calculating and reporting the historical investment returns, which PSERS relied upon when it adopted a resolution at the December 3, 2020 Board meeting certifying member contribution rates for the next three-year period;
- (b) failing to adequately and timely investigate, discover, and disclose later-admitted errors after PSERS's staff and Board members raised multiple questions about the accuracy of Aon's data between the summer of 2020 and the December 3, 2020 PSERS Board meeting, and several times after that Board meeting;
- (c) failing and refusing to adequately cooperate or assist with certain investigations and a civil lawsuit that have been conducted and litigated regarding Aon's errors and the circumstances surrounding those errors;
- (d) failing to provide PSERS and/or its forensic experts with access to all relevant records and databases, and any summaries, reports, or analyses prepared by Aon or at Aon's request regarding any and all errors made by Aon relating to its calculation and reporting of PSERS' investment returns;
- (e) failing to implement and maintain proper and adequate quality controls, policies, and processes that would have detected and corrected such errors.

170. These breaches are a direct and proximate cause of significant injury to Plaintiffs, including, without limitation, by forcing Plaintiffs to incur the expenses, costs, and fees, associated

with investigating Aon's errors and their impact on the risk share calculation; defending Plaintiffs and their current and former officers, Board members, and employees in the DOJ and SEC Investigations; responding to civil subpoenas and litigation complaints; and bringing in additional expert consultants to monitor and oversee investment activities in the wake of Aon's disclosure of its errors.

171. Accordingly, Plaintiffs are entitled to the monetary, equitable, injunctive, and other relief as set forth in its Prayer for Relief.

COUNT V– NEGLIGENCE

172. Plaintiffs repeat the averments in the above paragraphs as if fully set forth herein.

173. Separate from and in addition to the agreed fiduciary duties and professional duties that Aon owes Plaintiffs, Aon also owes Plaintiffs the duty to exercise ordinary skill and care in rendering consulting, performance management, risk, and attribution service to Plaintiffs.

174. Aon breached that duty by, among other things:

- (a) inaccurately calculating and reporting the historical investment returns, which PSERS relied upon when it adopted a resolution at the December 3, 2020 Board meeting certifying member contribution rates for the next three-year period;
- (b) failing to adequately and timely investigate, discover, and disclose later-admitted errors after PSERS's staff and Board members raised multiple questions about the accuracy of Aon's data between the summer of 2020 and the December 3, 2020 PSERS Board meeting, and several times after that Board meeting;
- (c) failing and refusing to adequately cooperate or assist with certain investigations and a civil lawsuit that have been conducted and litigated regarding Aon's errors and the circumstances surrounding those errors;

- (d) failing to provide PSERS and/or its forensic experts with access to all relevant records and databases, and any summaries, reports, or analyses prepared by Aon or at Aon's request regarding any and all errors made by Aon relating to its calculation and reporting of PSERS' investment returns;
- (e) failing to implement and maintain proper and adequate quality controls, policies, and processes that would have detected and corrected such errors.

175. These breaches by Aon of its duty to exercise ordinary skill and care in rendering consulting, performance management, risk, and attribution service to Plaintiffs have directly and proximately caused significant injury to Plaintiffs, including, without limitation, forcing Plaintiffs to incur the expenses, costs, and fees, associated with investigating Aon's errors and their impact on the risk share calculation; defending Plaintiffs and their officers, Board members, and employees in the DOJ and SEC Investigations; responding to civil subpoenas and litigation complaints; and bringing in additional expert consultants to monitor and oversee investment activities in the wake of Aon's disclosure of its errors.

176. Accordingly, Plaintiffs are entitled to the monetary, equitable, injunctive, and other relief as set forth in its Prayer for Relief.

COUNT VI – GROSS NEGLIGENCE

177. Plaintiffs repeat the averments in the above paragraphs as if fully set forth herein.

178. In addition to Plaintiffs' allegations of duty, breach, causation and damages giving rise to the foregoing claim for negligence, Aon's actions also exhibit a recklessness in causing harm to Plaintiffs.

179. Specifically, Aon held itself out as an experienced expert with over 40 years' extensive experience with public fund defined contribution plans, having advised 32 public fund

retainer clients with substantial assets.

180. Aon promised to exercise the “degree of judgment and care” that “persons of prudence, discretion, and intelligence who are experts in such matters” and agreed to perform all services to the standard required for a professional CFA with such experience.

181. Perhaps most important, Aon expressly agreed to act as a *fiduciary* toward PSERS, someone that would owe PSERS the highest duty of good faith, trust, confidence and candor, and someone that would act purely for PSERS’ benefit (and not its own).

182. Given the economic environment around COVID and how close PSERS’ investment returns appeared to be to the established hurdle rate, Aon knew just how important the accuracy of its calculations was to PSERS.

183. In the weeks before PSERS’ Board relied on Aon’s flawed risk share data to wrongly certify that PSERS had met the hurdle rate, PSERS raised specific questions about Aon’s data no less than three times.

184. Each time, Aon represented that it had gone back and rechecked its data – and that there were no errors.

185. When PSERS identified another apparent discrepancy in Aon’s calculations the day after PSERS had made its certification, Aon was not fully and immediately responsive; rather, despite PSERS asking Aon *repeatedly* whether the discrepancy could have affected the certified numbers, Aon dragged its feet for more than *two-and-a-half months* before finally admitting its error.

186. And, when Aon finally did admit the error, Aon claimed that one of its analysts had simply made an error in uploading data.

187. At a minimum, these facts speak to Aon’s recklessness in not have the appropriate

processes, quality controls, and other measures in place that would have identified the error sooner, especially when PSERS explicitly asked Aon to check and recheck its work. Instead, Aon told PSERS that there was no error when, in fact, Aon had made a basic mistake, and repeatedly and falsely representing to PSERS that there was no error without taking the appropriate care to check and find it.

188. Aon was grossly negligent in carrying out its duties to PSERS, entitling PSERS to punitive damages.

189. Accordingly, Plaintiffs are entitled to the monetary, equitable, injunctive, and other relief as set forth in its Prayer for Relief.

COUNT VII – NEGLIGENT MISREPRESENTATION

190. Plaintiffs repeat the averments in the above paragraphs as if fully set forth herein.

191. Between the summer of 2020 and the weeks after the December 3, 2020 Board meeting, Aon repeatedly misrepresented to Plaintiffs material facts about the accuracy of the historical investment returns that Aon calculated for PSERS.

192. Aon ought to have known that the statements it made to Plaintiffs about the accuracy of Aon's calculation for PSERS were false.

193. Indeed, Aon had multiple opportunities to adequately and timely investigate, discover, and disclose any errors in its investment return information after PSERS's staff and Board members raised questions about the accuracy of Aon's data between the summer of 2020 and the December 3, 2020 PSERS Board meeting, and several times after that Board meeting.

194. Aon intended to induce Plaintiffs to act upon those misstatements, because Aon knew that PSERS relied upon the historical investment returns that Aon provided to calculate the risk share hurdle and certify member contribution rates.

195. Plaintiffs justifiably relied upon Aon’s misrepresentations when PSERS certified member contribution rates for the next three-year period at the December 3, 2020 Board meeting.

196. Plaintiffs have been harmed by its justifiable reliance upon Aon’s misrepresentations, including, without limitation, by incurring the expenses, costs, and fees, associated with investigating Aon’s errors and their impact on the risk share calculation; defending Plaintiffs and their officers, Board members, and employees in the DOJ and SEC Investigations; responding to civil subpoenas and litigation complaints; and bringing in additional expert consultants to monitor and oversee investment activities in the wake of Aon’s disclosure of its errors.

197. Accordingly, Plaintiffs are entitled to the monetary and other relief as set forth in its Prayer for Relief.

COUNT VIII – DECLARATORY JUDGMENT PURSUANT TO THE DECLARATORY JUDGMENTS ACT, 42 Pa. C.S. § 7531, et seq.

198. Plaintiffs repeat the averments in the above paragraphs as if fully set forth herein.

199. Plaintiffs ask that the Court provide relief in the form of a declaratory judgment in two discrete areas by declaring that: (1) Aon must hold Plaintiffs harmless and indemnify them for the harm and losses described herein; and (2) Aon must promptly make available to Plaintiffs all firm research, books, records, databases, electronic data, and accounts regarding Plaintiffs, and reasonable consultation about them.

200. First, Aon is obligated under the Contract to “hold ... harmless from and indemnify” Plaintiffs “against ***any and all claims, demands, actions, or liability of any nature, including attorneys’ fees and court costs, based upon or arising out of*** (a) any breach of [the Contract,] (b) negligence, (c) fiduciary breach or (d) failure to comply with applicable law,” including, for example, Aon’s failure to accurately calculate and report the historical investment returns that

PSERS relied upon in certifying member contribution rates pursuant to statute at the December 3, 2020 Board meeting. **Exhibit 1**, Contract, Rider 1- Purchase Order Terms & Conditions § D(2)(emphasis added).

201. Aon’s conduct for which it must indemnify Plaintiffs is described more fully in the Demand Letter. *See Exhibit 9*.

202. To date, Aon has completely refused to indemnify Plaintiffs for the significant damages they have suffered and continue to suffer.

203. Second, the Contract also requires Aon to “*make available*” to PSERS “*all firm research*, including proprietary research, regardless of the firm department in which it was created” and “*provide access and consultation with [Aon’s] research staff.*” **Exhibit 1**, Contract, Rider 1- Purchase Order Terms & Conditions §§ A(14) and A(15) (emphasis added).

204. In addition, the Contract gives PSERS, “from time to time upon reasonable notice,” the broad right to audit Aon’s “records, books, and accounts *for all purposes authorized and permitted by law.*” *Id.* at § D(21)(emphasis added).

205. PSERS has repeatedly provided Aon with such notice.

206. In the Demand Letter, for example, PSERS demanded that Aon provide PSERS – and any independent forensic experts PSERS retains – with access to all relevant records and databases, and any summaries, reports, or analyses prepared by Aon or at Aon’s request regarding any and all errors made by Aon relating to its calculation and reporting of PSERS’ investment returns. *See Exhibit 9*.

207. Aon has refused to provide PSERS with any of the information, records, or access requested.

208. As such, there exists a genuine controversy between the parties.

209. In addition, Plaintiffs do not have an adequate remedy at law – and will be irreparably harmed if it does not receive the information, records, and access it has requested – because Plaintiffs need them to confirm that its holdings are being properly monitored. This is not an issue that can be addressed through the payment of money damages.

210. Justice requires that Aon be compelled to produce the information, records, and access at issue because Plaintiffs are seeking to confirm the accuracy of information about the retirement fund for the Commonwealth’s public school employees, and obtaining access to Aon’s records and information is necessary and essential to accomplish this.

211. Aon will not be harmed by having to provide the information, records, and access that it is required to provide to Plaintiffs by virtue of the contractual, fiduciary, and professional obligations that Aon owes to Plaintiffs. In fact, compelling Aon to provide the information, records, and access will merely implement the status quo that would have existed had Aon complied with its obligations.

212. Plaintiffs advance this declaratory judgment claim to establish with certainty their rights which they believe and contend are clearly set forth in the Contract and as otherwise described herein.

213. Specifically, Plaintiffs seek a determination that:

(a) Aon breached the Contract;

(b) Aon must indemnify and hold harmless PSERS, the Commonwealth of Pennsylvania, the Board, PSERS, and the Fund, their former and current beneficiaries, directors, officers, agents, and employees from and against any and all claims, demands, actions, or liability of any nature, including attorneys’ fees and court costs, based upon or arising out of Aon’s failure to accurately calculate and

report the historical investment returns that PSERS relied upon when it adopted a resolution at the December 3, 2020 Board meeting certifying member contribution rates for the next three-year period; and

(c) Aon must provide Plaintiffs – and any independent forensic experts Plaintiffs retain – with access to all relevant records and databases, and any summaries, reports, or analyses prepared by Aon or at Aon’s request regarding any and all errors made by Aon relating to its calculation and reporting of PSERS’ investment returns and provide access and consultation with Aon’s research staff about these documents.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that the Court enter judgment in its favor and against Defendant Aon for the following relief:

- a. Damages in an amount to be determined at trial and in excess of the Court’s compulsory arbitration threshold;
- b. Disgorgement of the fees that PSERS has paid to Aon under the Contract;
- c. Punitive damages;
- d. Prejudgment and post-judgment interest;
- e. All costs incurred in this action;
- f. Attorneys’ fees as permitted by law;
- g. A declaration that Aon breached the Contract;
- h. A declaration that Aon is obligated to indemnify and hold harmless PSERS, the Commonwealth of Pennsylvania, the Board, PSERS, and the Fund, their current and former beneficiaries, directors, officers, agents, and employees from and against any and all claims, demands, actions, or liability of any nature, including attorneys’ fees and court costs, based upon or arising out of Aon’s failure to accurately calculate and report the historical investment returns that PSERS relied upon when it adopted a resolution at the December 3, 2020 Board meeting certifying member contribution rates for

the next three-year period.

- i. A declaration that Aon must provide Plaintiffs – and any independent forensic experts Plaintiffs retain – with access to all relevant records and databases, and any summaries, reports, electronic data, or analyses prepared by Aon or at Aon’s request regarding any and all errors made by Aon relating to its calculation and reporting of PSERS’ investment returns and provide access and consultation with Aon’s research staff about these documents.
- j. An award of specific performance and/or a mandatory injunction compelling Aon to promptly provide Plaintiffs – and any independent forensic experts Plaintiffs retain – with access to all relevant records and databases, and any summaries, reports, or analyses prepared by Aon or at Aon’s request regarding any and all errors made by Aon relating to its calculation and reporting of PSERS’ investment returns; and
- k. All such other, additional and further relief as this Court deems appropriate and just.

Respectfully submitted,

BLANK ROME LLP

By: Charles S. Marion

CHARLES S. MARION

JONATHAN SCOTT GOLDMAN

JOHN P. WIXTED

Pa. ID. Nos. 56509, 93909, and 309044

One Logan Square

130 North 18th Street

Philadelphia, PA 19103-6998

Telephone No. (215) 569-5500

Fax No. (215) 569-5555

Attorneys for Plaintiffs

JURY DEMAND

Plaintiffs demand trial by jury on all issues so triable.

Respectfully submitted,

BLANK ROME LLP

By: Charles S. Marion

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Fax No. (215) 569-5555

Attorneys for Plaintiffs

VERIFICATION

I, Christopher SantaMaria, hereby state that I am authorized to make this Verification on behalf Plaintiffs, Commonwealth of Pennsylvania, Public School Employees' Retirement Board, transacting business as the Public School Employees' Retirement System and Commonwealth of Pennsylvania, Public School Employees' Retirement Board, as Trustee of the Public School Employees' Retirement Fund. I verify that the statements set forth in the foregoing Complaint are true and correct to the best of my knowledge, information, and belief. I understand that these statements are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.



Dated: July 31, 2023

CERTIFICATE OF SERVICE

I, Charles S. Marion, hereby certify that I caused a copy of the foregoing Complaint, with Exhibits, to be served via the Court's electronic filing system upon all counsel of record.

Respectfully submitted,

Charles S. Marion
BLANK ROME LLP
Charles S. Marion (Pa. ID No. 56509)
One Logan Square
Philadelphia, PA 19103
215-569-5500 - Telephone
215-569-5555 – Facsimile

CERTIFICATE OF COMPLIANCE WITH PUBLIC ACCESS POLICY

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Respectfully submitted,

Charles S. Marion

BLANK ROME LLP

Charles S. Marion (Pa. ID No. 56509)

One Logan Square

Philadelphia, PA 19103

215-569-5500 - Telephone

215-569-5555 – Facsimile