IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

STATE OF OHIO, *ex rel.* DAVE YOST, OHIO ATTORNEY GENERAL Charitable Law Section 30 East Broad Street, 25th Floor Columbus, Ohio 43215, Plaintiff, v. WADE STEEN 121 E. Frankfort St. Columbus, OH 43206 and DR. RUDY FICHTENBAUM 7300 Crestway Rd. Clayton, OH 45315 Defendants.	Case No.: Judge COMPLAINT OF OHIO ATTORNEY GENERAL DAVE YOST

I. INTRODUCTION

1. The Attorney General files this suit, as he must, to protect teachers against private interests attempting to hijack their retirement accounts.

2. Revised Code Section 109.98 provides that "[i]f a member of a state retirement board breaches the member's fiduciary duty to the retirement system, the attorney general may maintain a civil action against the board member for harm resulting from that breach." *Id.* "The attorney general may recover damages or be granted injunctive relief, which shall include the enjoinment of specified activities and the removal of the member from the board."

3. Defendants Wade Steen and Dr. Rudy Fichtenbaum must be removed from the State Teachers Retirement Board ("STRS Board") because they have breached their fiduciary duties.

4. Upon information and belief, Steen and Fichtenbaum seek to steer as much as 70% of STRS's current assets (about $65 billion in teacher pension funds) to a shell company that lacks any indicia of legitimacy and has backdoor ties to Steen and Fichtenbaum themselves.

5. Upon information and belief, the owner of this shell company continues to peddle to STRS a secretive and untested investment scheme while his own condominium is in foreclosure.

6. While this scheme may benefit Steen and Fichtenbaum, it may spell disaster for Ohio teachers who have retired or hope to retire someday.

7. Accordingly, under R.C. 109.98, this Court should remove Steen and Fichtenbaum from the STRS board.

II. THE DEFENDANTS, JURISDICTION, AND VENUE

8. Defendant Wade Steen is currently a STRS Board member and resides at 121 E. Frankfort Street, Columbus, Ohio 43206.

9. Defendant Dr. Rudy Fichtenbaum is currently a STRS Board member and resides at 7300 Crestway Rd., Clayton, Ohio 45315.

10. Defendants' actions and omissions, as described herein, occurred in Ohio.

11. This Court has subject matter jurisdiction in this case pursuant to R.C. 2305.01.

12. This Court may exercise personal jurisdiction over Defendants in this case pursuant to R.C. 2307.382 because the acts and omissions alleged in this Complaint occurred in Ohio and/or because they involve or relate to the activities of Ohio residents and public trustees of statutory Ohio corporations.

13. This Court is the proper venue for this action pursuant to R.C. 3307.131, which provides that "[a]ny action brought against [STRS] or the [STRS Board] or its officers, employees, or board members in their official capacities shall be brought in the appropriate court in Franklin County, Ohio."

III. ACTIVITIES GIVING RISE TO THIS COMPLAINT

Background and Relationships of STRS Board and QED entities

14. STRS is the statutorily created retirement system for the benefit of Ohio's public-school teachers.

15. STRS is one of the largest public pension funds in the United States.

16. As of June 30, 2023, STRS had net assets of $91 billion.

17. There are over 500,000 total members of STRS, including over 150,000 retirees and beneficiaries.

18. In Fiscal Year 2023, STRS distributed $5.8 billion in benefits to its members.

19. Also created by statute, the STRS Board governs STRS and manages and administers its funds.

20. STRS Board members are fiduciaries who, by statute and common law, must discharge their duties as to STRS funds with reasonable care, skill, prudence, and diligence and to minimize the risk of large losses.

21. STRS Board members are bound to discharge their fiduciary duties as to STRS funds solely in the interest of the participants and beneficiaries, including acting consistent with state ethical laws and a code of conduct, under which they must generally act as a board and cannot purport to do so individually or in small groups.

22. The STRS Board is comprised of 11 members, including Board Chair Dale Price, Vice Chair Carol Correthers, and additional board members Stephen Dackin, Pat Davidson, Alison

Lanza Falls, Rudy Fichtenbaum, Steven Foreman, Claudia Herrington, Elizabeth Jones, Julie Sellers, and Wade Steen.

23. Chair Price's term on the STRS Board ends August 31, 2024, and the voting for his successor closed on May 6, 2024.

24. The STRS Board has its own Investment Committee, which has its own Charter within the STRS Board Policies. That Charter specifies that the Investment Committee's purpose is "to assist the Board in fulfilling its fiduciary responsibility in investment of system assets."

25. STRS claims to have approximately 500 associates, more than 100 of whom are Investment Department professionals who manage about 70% of STRS investment assets.

26. As would be expected, the STRS Investment Department "is divided into specialty areas requiring high levels of expertise." STRS Investment associates work according to an annual plan and longer-term comprehensive investment policy and, ostensibly, work closely with the STRS Board.

27. STRS senior staff currently includes, without limitation, Acting Executive Director and CFO Lynn Hoover, Deputy Executive Director – Member Benefits and Chief Benefits Officer Christina Elliott, and Deputy Executive Director – Investments and Chief Investments Officer Matthew (Matt) Worley.

28. Jonathan Tremmel formed QED Technologies, LLC ("QED Technologies") in March 2019.

29. Upon information and belief, Tremmel is a former professional colleague and/or acquaintance of Steen.

30. QED Systematic Solutions, LLC ("QED Systematic Solutions") was formed in September 2019. Its statutory agent, KBHR Statutory Agent Corp., signed its formation documents as a member, manager, or other representative.

31. James Metcalf formed QED Management, LLC ("QED Management") in October 2020. QED Management's formation documents were signed by Indian Stone Consulting, LLC, which James Seth Metcalf incorporated in 2016.

32. Upon information and belief, James Metcalf, Seth Metcalf, and James Seth Metcalf are the same individual.

33. Upon information and belief, Steen and Metcalf know each other through church as well as local politics.

34. Upon information and belief, QED Technologies, QED Systematic Solutions, and QED Management are closely related entities and are interchangeably referred to as "QED" by Tremmel, Metcalf, and STRS Board members, including the Defendants. References simply to "QED" in this Complaint therefore refer to any of these QED entities, with the specific entity to be identified in discovery, unless otherwise specified.

Defendant Steen's former colleague and acquaintance pitch a scheme to invest billions of dollars of STRS funds with QED

35. In spring 2020, former STRS board member Robert (Bob) Stein directed STRS investment staff to connect with Tremmel on an investment proposal.

36. Upon information and belief, it was at this initial meeting with STRS investment staff that Tremmel asserted that STRS was not properly calculating performance, benchmarks, and investment costs.

37. Upon information and belief, Tremmel also asserted that his newly formed company, QED, had a proposal to improve investment returns and cut costs.

38. Upon information and belief, shortly thereafter, Matt Worley, then director of STRS's alternative investments, met with Tremmel. Worley disputed Tremmel's assertions that STRS was not properly calculating performance, benchmarks, and investment costs.

39. Upon information and belief, through a two-month long vetting process that included several phone calls and email exchanges, Worley also determined that Tremmel and QED were not suitable for STRS.

40. Upon information and belief, Tremmel had less than five years overall investment experience at the time.

41. Upon information and belief, QED was not registered as a broker-dealer or investment advisor nor did it have any existing clients or track record.

42. Upon information and belief, QED also did not own the technology to facilitate the proposed investment strategy.

Steen and a minority of STRS Board members ask for authority to do business with and oversee QED under an "OhioAI" partnership

43. Despite Worley's objections, in December 2020, Steen and several fellow STRS Board members, including Yoel Mayerfeld and Bob Stein, addressed a memorandum to the STRS Board urging the STRS Board to enter into a partnership with "OhioAI" and "to delegate authority in all matters regarding this potential partnership to the Investment Committee."

44. While these Board members were named as the memorandum's authors, the metadata for this document establishes that it was last modified by Metcalf.

45. Metcalf organized OhioAI, LLC in October 2020 as an Ohio for-profit LLC. The formation documents for OhioAI, LLC were signed by another of Metcalf's companies, Indian Stone Consulting, LLC.

Cliffwater, an investment firm and expert, recommends that STRS not work with QED

46. According to its website, Cliffwater, LLC ("Cliffwater") "is an alternative investment adviser and fund manager" with locations in Los Angeles, Chicago, and New York.

47. The STRS Board engaged Cliffwater to conduct due diligence on QED Systematic Solutions. Cliffwater presented its findings to the STRS Board in or around February 2021.

48. Cliffwater's findings were not favorable to QED.

49. QED would not let Cliffwater's full report be shared, even with STRS staff.

50. Nonetheless, an available summary makes clear that Cliffwater recommended that the STRS Board not engage any further with QED Systematic Solutions.

51. In its summary, Cliffwater identified adverse factors including "[r]eliance upon an **investment strategy not used by other institutional investors**, to our knowledge, **raising basic fiduciary issues for the board**" and a "**[l]ack of any performance track record from QED** [Systematic Solutions], **or any other institution, supporting the proposed investment strategy**." Cliffwater also identified **regulatory risk** in any dealing with QED.

52. In public coverage, it was reported that QED was proposing a bond swap scheme that, if attempted by an ERISA-covered corporate pension, would be met with an immediate lawsuit for breach of fiduciary duty.

QED attacks STRS, including consultant Callan and data aggregator CEM Benchmarking

53. Upon information and belief, unable to make its own case on the merits, QED went after STRS staff and used Defendant Steen to assist the attack.

54. In December 2020, Defendant Steen demanded information from STRS staff, Callan, LLC ("Callan"), and CEM Benchmarking Inc. ("CEM Benchmarking"). STRS's former

Chief Investment Officer, John Morrow, expressed concerns about "misinformation" in Defendant Steen's demands of Callan.

55. Callan is another investment consultant that contracted with STRS. According to its website, Callan has over 60 government pension plan clients.

56. Upon information and belief, CEM Benchmarking is a third-party aggregator that provides investment cost benchmarking to the STRS Board.

57. Upon information and belief, Defendant Steen's demands of staff, Callan and CEM Benchmarking were actually authored by Tremmel.

Division on STRS Board related to QED "Partnership" Proposal and Defendant Steen's Departure and Return

58. Upon information and belief, despite the expert advice against Tremmel and Metcalf's investment schemes, certain current and former STRS Board members attacked STRS and advocated for Tremmel, Metcalf, and/or QED.

59. These board members are Wade Steen, Rudy Fichtenbaum, Bob Stein, and Yoel Mayerfeld.

60. Of these individuals, only Defendants Steen and Fichtenbaum remain on the STRS Board.

61. Defendant Fichtenbaum wrote a blog post criticizing STRS during his campaign to join the STRS Board.

62. The post alleged that "STRS systematically overstates its return" and pledged to continue fighting to "increase employer contributions and restore the COLA [Cost of Living Adjustment]."

63. Fichtenbaum's post appears to expressly support Steen's proposal to partner with QED: "The solution that Mr. Steen alluded to would result in STRS earning an additional $4 billion per year."

64. In a November 18, 2021 STRS Board meeting, Fichtenbaum, Stein, and Steen presented what they called "a business partnership opportunity."

65. The transcript of that meeting illustrates that the QED partnership was being pitched outside STRS's typical process to review and evaluate an investment proposal.

66. In addition, the transcript of that meeting includes multiple failures or refusals by QED proponents to provide relevant information. For example:

a. Defendant Fichtenbaum was openly frustrated with questions about his presentation, despite this being apparently common practice during presentations from consultants.

b. Former board member Stein claimed that he had information about the proposal that he would not provide in a public forum, vaguely claiming he was "constrained" by "a revolving door thing from STRS" and also a "non-disclosure agreement."

c. When asked by senior staff about Ohio AI, Defendant Steen stated that, at the time of the meeting, "there is no such thing as Ohio AI" and "Ohio AI doesn't even exist." But Metcalf had registered Ohio AI, LLC more than a year prior to the board meeting.

d. Having advised the Board that the presentation was about a business partnership opportunity, Steen and Fichtenbaum were repeatedly unwilling or unable to provide information about the ownership of QED.

e. When asked whether a slide had been copied and pasted from Goldman Sachs, Defendant Steen denied that it had but refused to provide any public information, saying instead: "I'm not going to speak any further because I can't implicate someone."

f. Ultimately, Defendant Steen proposed that the Attorney General should "appoint special counsel to negotiate a business partnership named Ohio AI between the State Teachers Retirement System and QED," apparently removing STRS staff and its hired consultants from the vetting and negotiating process.

67. In May 2023, Governor DeWine removed Defendant Steen from the STRS Board. Following litigation, Defendant Steen was recently reinstated on the board.

68. Upon information and belief, a campaign to have STRS adopt measures like the ones being proposed by Steen and Fichtenbaum continues and is now coming from outside the STRS Board and staff. For example:

a. Upon information and belief, the Ohio Retirement for Teachers Association ("ORTA") established what it calls a Pension Defense Fund to pay Defendant Steen's legal fees.

b. ORTA released a video in January 2022 called "Cliffwatergate" in which Defendant Fichtenbaum claimed that Cliffwater's due diligence report had misrepresented relevant facts. But "Cliffwatergate" has been described as "hypocrisy."

c. Upon information and belief, STRS began receiving extraordinary amounts of public records requests from an anonymous party called "uhohspgo" in September 2022. Upon information and belief, records provided by STRS in response to the

requests were soon disseminated by ORTA-related parties on social media. Upon information and belief, STRS suspected that Metcalf was behind the requests.

d. While communicating with STRS staff regarding a public records request in September 2022, one ORTA member included STRS in an email thread that the ORTA member also forwarded to Tremmel and Defendant Fichtenbaum.

e. Upon information and belief, in March and April of 2023, an entity called Save Ohio STRS started a website and sent emails and postcards attacking STRS and advocating for QED-friendly board candidates. These postcards claim that candidates are endorsed by several entities including ORTA and "STRSOhioWatchdogs.com."

f. Upon information and belief, in November 2023, STRS's Chief Legal Officer received an anonymous letter making broad claims of improper conduct by STRS Executive Director Bill Neville.

g. Upon information and belief, separate and independent of this action, a law firm engaged by the Attorney General's Office investigated this matter and found the accusations "largely without merit."

Defendants' actions pose an imminent threat of irreparable injury to STRS and its beneficiaries.

69. STRS holds approximately $91 billion to provide benefits to over 500,000 total members, including over 150,000 retirees and beneficiaries.

70. Yet, despite bearing fiduciary responsibility for the quality and safety of STRS's funds, upon information and belief, Defendants Fichtenbaum and Steen continue to support QED's risky investment scheme even now in the spring of 2024.

71. Upon information and belief, Defendants Fichtenbaum and Steen, together with former STRS Board member Bob Stein, have been advocating for what they call a "partnership" with QED, since at least November 2021.

72. Upon information and belief, in this partnership, Defendants Steen and Fichtenbaum continue to propose that STRS invest $65 billion with QED, for a theoretical return of $4 billion.

73. For reference, $65 billion accounts for **over 70% of STRS's current assets**.

74. Fiduciaries of any organization must tread carefully with any portion of the money entrusted to their care, and this concern is especially heightened when the sum is such a large proportion of total pension fund assets.

75. The Attorney General has no basis to believe that Tremmel and Metcalf themselves are qualified to properly manage a $65 billion "partnership" between STRS and QED.

76. Tremmel, Metcalf, and QED are not registered with FINRA, a not-for-profit organization that oversees U.S. broker-dealers, or with the Securities and Exchange Commission as investment advisors.

77. Rather, Tremmel and Metcalf are registered lobbyists for QED Technologies, LLC.

78. Special qualifications aside, Tremmel's Franklin County condominium (also the service address for QED Technologies, LLC) is currently in foreclosure.

79. Upon information and belief, the facts alleged evidence an impermissible scheme or other collusion between Defendants Steen and/or Fichtenbaum and the QED entities and/or their principals.

80. As would be expected, Defendant Steen's reinstatement to the STRS board has caused additional disarray.

81. Following the issuance of the Court of Appeals opinion reinstating Defendant Steen to the STRS Board on the date of the April 2024 STRS Board meeting, the Board Chair reported being "unable to conduct the meeting in an efficient and effective manner."

82. Board consultant Aon Fiduciary Services attended that same meeting and recommended that the STRS Board and staff continue to work tougher on the STRS Board's strategic plan. Upon information and belief Aon Fiduciary Services fired STRS as a client following Defendant Steen's return to the STRS Board.

83. After his reinstatement to the STRS Board, Defendant Steen told NBC4: "They are trying to stop change, but change is coming."

84. The STRS Board meets again May 15–16, 2024. This will be Defendant Steen's first full Board meeting since being reinstated.

85. Defendant Steen's term on the STRS Board expires in September, mere months from now. This may be Steen's last chance to steer Ohio teacher pension funds from STRS to QED.

IV. ATTORNEY GENERAL'S CLAIMS

COUNT ONE: BREACH OF FIDUCIARY DUTIES, R.C. 3307.15

86. Plaintiff Attorney General incorporates all prior paragraphs of this Complaint as if fully rewritten herein.

87. STRS Board members owe fiduciary duties and "shall discharge their duties with respect to the funds . . . with care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims; and by diversifying the investments of the system so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so." R.C. 3307.15.

88. Revised Code Section 3307.15(B) provides that, concerning fund investments, STRS Board members must consider investments "that enhance the general welfare of the state and its citizens where the investments offer quality, return, and safety comparable to other investments currently available to the board."

89. Revised Code Section 3307.15(B) further provides that STRS Board members must consider investments according to board-adopted "policies, objectives, or criteria for the operation of the investment program that include asset allocation targets and ranges, risk factors, asset class benchmarks, time horizons, total return objectives, and performance evaluation guidelines."

90. STRS Board members also owe fiduciary duties of good faith and loyalty and must "discharge [his] duties with respect to the [STRS] funds solely in the interest of the participants and beneficiaries." R.C. 3307.15.

91. Defendant Fichtenbaum, as a STRS Board member, owes fiduciary duties to STRS participants and beneficiaries.

92. Upon information and belief, Defendant Fichtenbaum's actions as alleged in this Complaint constitute breaches of fiduciary duties required of STRS Board members under R.C. 3307.15.

93. Defendant Steen, as a STRS Board member, owes fiduciary duties to STRS participants and beneficiaries.

94. Upon information and belief, Defendant Steen's actions as alleged in this Complaint constitute breaches of fiduciary duties required of STRS Board members under R.C. 3307.15.

95. Defendants' breaches of their fiduciary duties have caused injury to STRS.

COUNT TWO: BREACH OF FIDUCIARY DUTIES & PUBLIC TRUST, COMMON LAW

96. Plaintiff Attorney General incorporates the preceding paragraphs of this Complaint as if fully rewritten herein.

97. A public office constitutes a public trust, and, thus, public officials owe fiduciary duties to the citizens of the state in which they serve, including the duties of care and loyalty.

98. Public officials may not use their public office for private gain or engage in financial misconduct.

99. Created by the Ohio Revised Code, the STRS Board is a public trust, and STRS Board members are public officials.

100. Defendant Steen, as an STRS Board member, is a public trustee and owes fiduciary duties to Ohioans.

101. Upon information and belief, Defendant Steen's actions as alleged in this Complaint constitute breaches of fiduciary duties required of public trustees under Ohio common law.

102. Defendant Fichtenbaum, as an STRS Board member, is a public trustee and owes fiduciary duties to Ohioans.

103. Upon information and belief, Defendant Fichtenbaum's actions as alleged in this Complaint constitute breaches of fiduciary duties required of public trustees under Ohio common law.

104. Defendants' breaches of their fiduciary duties have caused injury to STRS.

PRAYER FOR RELIEF

WHEREFORE, pursuant to his statutory and common law authority, Plaintiff Attorney General respectfully requests this Court grant the following relief:

A. Grant equitable and statutory relief by permanently removing Defendants Steen and Fichtenbaum from the STRS Board.

B. In the alternative, grant an injunction and permanently enjoin Defendants Fichtenbaum and Steen, and those persons in active concert or participation with them, from serving on STRS's Investment Committee, in any capacity, or participating in any way in STRS's investment decisions.

C. Order Defendants Steen and Fichtenbaum, jointly and/or separately, to account for any and all financial interests in QED or any company owned or controlled by Tremmel or Metcalf and to pay restitution and compensatory damages, including all amounts unjustly or illegally retained or received by Defendants Steen and Fichtenbaum, to STRS.

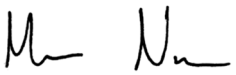
D. Order Defendants, jointly and separately, to pay prejudgment and post judgment interest on amounts due at the statutory rate.

E. Assess against Defendants, jointly and separately, court costs of this case.

F. Grant the Attorney General other relief as the Court deems proper and necessary.

Very respectfully submitted,

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