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NEW JERSEY EDUCATION ASSOCIATION,
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JERSEY STATE FIREFIGHTERS' MUTUAL
BENEVOLENT ASSOCIATION, AMERICAN
FEDERATION OF STATE, COUNTY AND
MUNICIPAL EMPLOYEES, COUNCIL 1,
AFL-CIO, CHRISTINE SAMPSON-CLARK,
HEIDI OLSON, PATRICIA PROVNIK,
KEITH DUNN, PATRICK COLLIGAN, MARK
KOVAR, TIM DEUTSCH, KYLE HUGHES,
JOHN E. MURPHY, JR., LANCE P.
LOPEZ, SR.

Plaintiff,

vs.

STATE OF NEW JERSEY, CHRISTOPHER
J. CHRISTIE, as Governor of the
State of New Jersey, NEW JERSEY
DEPARTMENT OF THE TREASURY,
ANDREW P. SIDAMON-ERISTOFF,
TREASURER, STATE OF NEW JERSEY,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MERCER COUNTY

DOCKET NO.:

Civil Action

COMPLAINT FOR
DECLARATORY JUDGMENT AND ACTION
IN LIEU OF PREROGATIVE WRITS
(MANDAMUS)

Plaintiffs, New Jersey Education Association; New Jersey State Policemen's Benevolent Association, Inc.; New Jersey State Firefighters' Mutual Benevolent Association; American Federation of State, County and Municipal Employees, Council 1, AFL-CIO; Christine Sampson-Clark; Heidi Olsen; Patricia Provnick; Keith Dunn; Patrick Colligan; Marc Kovar; Tim Deutsch; Kyle Hughes; John E. Murphy, Jr.; and Lance P. Lopez, Sr., and by way of Complaint against the Defendants, say as follows:

PRELIMINARY STATEMENT

This is an action for declaratory judgment and writ of mandamus to compel Defendants to honor their ministerial statutory, contractual, and constitutional funding obligation to the members of the various state-operated public employee pension funds and retirement systems of which Plaintiffs are active and retiree members. The right of a member of any fund or retirement system to enforce Defendants' contractual funding obligation is expressly granted and guaranteed by the Legislature in N.J.S.A. 43:3C-9.5(c).

Briefly stated, N.J.S.A. 43:3C-9.5(c)(1) declares that the State "shall make [its] annual normal contribution" and "annual unfunded accrued liability contribution" to each system or fund as determined by the applicable board of trustees in

consultation with the system's or fund's actuary. Also, "[t]he annual normal contribution plus the annual unfunded accrued liability contribution shall together be the annual required contribution," The statute then declares that the "State's annually required contributions shall be included in all annual appropriations acts as a dedicated line item." Id. (emphasis added)

Clearly, the annual payment of the normal contribution and the unfunded accrued liability contribution is mandatory and ministerial. The executive branch plays no role in the calculation or determination of the amount of the contribution. There is no discretionary element or aspect to the State's obligation to make this annual contribution.

In addition, N.J.S.A. 43C-9.5(c)(2) provides that each member of each pension system shall have "a contractual right to the annual required contribution amount being made by the" State (or other contributing employer). The legislation further mandates that this contractual right to the annual required contribution means that the State and other contributing employers:

shall make the annual required contribution on a timely basis to help ensure that the retirement system is securely funded and that the retirement benefits to which the members are entitled by statute and in consideration for their public service and in compensation for their work will be paid upon

retirement. The failure of the State or any other public employer to make the annually required contribution shall be deemed to be an impairment of the contractual right of each employee. The Superior Court, Law Division shall have jurisdiction over any action brought by a member of any system or fund or any board of trustees to enforce the contractual right set forth in this subsection.

In crafting this statutory-contract right of action, the Legislature explicitly waived the bar of sovereign immunity and directed that the State and other public employers "submit to the jurisdiction of the Superior Court." And it further provided that a party who successfully asserted his or her rights under the law may be awarded attorneys fees and costs.

This case presents this Court with a fiat by the Governor that he will not spend the money appropriated for the current 2014 fiscal year for the unfunded accrued liability contribution owed to the various retirement funds in the aggregate amount of \$887 million. The Governor has also stated, in no uncertain terms, that he will not include in the proposed budget for Fiscal Year 2015, or any subsequent fiscal year during his term of office, any contribution for the unfunded accrued liability, in flagrant disregard for the law that Governor is duty-bound to uphold.

In short, the Governor refuses to allow the release of already appropriated money that is mandated to be paid this fiscal year, and refuses to perform the ministerial act of

including as a line item the contribution for the unfunded accrued liability as determined by boards of trustees of the various state-operated pension systems and funds in consultation with their actuary, all in contravention of a clear and unmistakable law.

The Plaintiffs ask that this Court declare the Governor's actions to be in violation of the law, to direct by mandamus that the State Treasurer pay the contribution, already appropriated and owed for Fiscal Year 2014, and that the Governor include in the budget for fiscal year 2015 and future fiscal years, the contribution for the unfunded accrued liability as determined by the actuary for each retirement system or fund under the laws of the pension systems. The law leaves neither the calculation of the amount owed, nor the obligation to budget and pay it, to Defendants' discretion or choice.

JURISDICTION AND VENUE

1. This Court has jurisdiction to render declaratory judgments pursuant to the Declaratory Judgment Act, N.J.S.A. 2A:16-50 et seq., which statute allows a party to seek a declaration of rights that a statute, or parts thereof, are void under the New Jersey Constitution. The Legislature has also expressly granted this Court jurisdiction pursuant to P.L. 2011,

c. 78, §26, N.J.S.A. 43:3C:9.5 (c)(2), over any action brought by a member of any state-operated public employee retirement system or fund to enforce the contractual right to funding of said retirement systems or funds, as set forth in Section 28 of P.L. 2011, c. 78, N.J.S.A. 43:3C:9.5 (c)(1) and (2). This Court has jurisdiction to provide relief available by prerogative writs, including mandamus, under Rule 4:69-1. In addition, this Court has jurisdiction over Plaintiffs' federal constitutional and statutory claims.

2. Venue is properly laid by Plaintiffs in the Superior Court pursuant to Rule 4:3-2(a)(2).

PARTIES

3. Union Plaintiff New Jersey Education Association (NJEA) is a labor organization with offices located at 180 West State Street Trenton, New Jersey 08607. NJEA, through its local affiliates, represents over 195,000 school board employees who are members of the Teachers Pension and Annuity Fund (TPAF) and additional employees who are in the Public Employees' Retirement System (PERS).

4. Union Plaintiff New Jersey State Policemen's Benevolent Association, Inc. (State PBA), located at 158 Main Street, Woodbridge, New Jersey 07095, is a not-for-profit association that represents the collective bargaining,

professional and economic interests of approximately 33,000 active and over 17,000 retired law enforcement officers who are, or were, employed by law enforcement agencies in State, county and municipal government, and whose membership constitutes the majority of the participants in the Police and Firemen's Retirement System (PFRS). The State PBA is also the parent organization of over 350 local PBA affiliates that represent law enforcement officers at all levels of government in New Jersey.

5. Union Plaintiff New Jersey State Firefighters' Mutual Benevolent Association (FMBA) is a labor organization with offices located at 1447 Campbell Street, Rahway, New Jersey 07065. The FMBA, through its affiliates, represents over 5,000 active and over 1,100 retired professional firefighters, EMTs and fire dispatchers employed by the State, and by counties, municipalities and independent authorities, whose members consist primarily of participants in PFRS.

6. Union Plaintiff American Federation of State, County and Municipal Employees, Council 1, AFL-CIO (AFSCME Council 1) is a labor organization with offices located at 2930 South Broad Street, Trenton, New Jersey 08610. AFSCME Council 1 represents approximately 10,000 employees of the State of New Jersey who participate in PERS.

7. Individual Plaintiff Christine Sampson-Clark, residing in Trenton, New Jersey, has over 12 years of credited service in TPAF and is a vested and active member in that retirement system.

8. Individual Plaintiff Heidi Olson, residing in Ewing, New Jersey, has over 19 years of credited service in TPAF and is a vested and active member in that retirement system.

9. Individual Plaintiff Patricia Provnick, residing Hammonton, New Jersey, retired with 33 years of service and is receiving a pension from TPAF.

10. Individual Plaintiff Keith Dunn, residing in Clark, New Jersey, has over 27 years of credited service in PFRS and is a vested and active member in that retirement system.

11. Individual Plaintiff Patrick Colligan, residing in Milltown, New Jersey, has over 22 years of credited service in PFRS and is a vested and active member in that retirement system.

12. Individual Plaintiff Marc Kovar, residing in Clifton, New Jersey, has over 22 years of credited service in PFRS and is a vested and active member in that retirement system.

13. Individual Plaintiff Tim Deutsch, residing in Summit, New Jersey, has over 17 years of credited service in PFRS and is a vested and active member in that retirement system.

14. Individual Plaintiff Kyle Hughes, residing in Paterson, New Jersey, has approximately 4 years of credited service in PFRS and is an active member in that retirement system.

15. Individual Plaintiff John E. Murphy, Jr., residing in Linwood, New Jersey, has over 19 years of credited service in PFRS and is a vested and active member in that retirement system.

16. Individual Plaintiff Lance P. Lopez, Sr., residing in Ewing, New Jersey, has 18 years of credited service in PFRS and is a vested and active member in that retirement system.

17. Defendant State of New Jersey is a body politic that established PERS, TPAF and PFRS as defined benefit pension plans for the benefit of employees and retirees of the State and its political subdivisions. The State, through the Department of Treasury, Division of Pensions and Benefits, administers PERS, TPAF, and PFRS.

18. Defendant Governor Chris Christie is the chief executive of the State of New Jersey and is charged with

ensuring that the laws of this state and the constitutions of the United States and the State of New Jersey are faithfully executed.

19. Defendant Andrew Sidamon-Eristoff is the Treasurer of the State of New Jersey and is a member of the boards of trustees of PERS, TPAF and PFRS. He has a fiduciary and legal obligation to ensure that contribution payments required to be made from the State Treasury to PERS, TPAF and PFRS are made.

FACTUAL ALLEGATIONS

20. The State of New Jersey established PFRS in 1944. The Division of Pensions and Benefits is assigned all administrative functions of the retirement system except for investment. PFRS is established and governed by N.J.S.A. 43:16A-1 et seq.

21. The State of New Jersey established PERS in 1954, in place of the former State Employees' Retirement System. The Division of Pensions and Benefits is assigned all administrative functions of the retirement system except for investment. PERS is governed by N.J.S.A. 43:15A-1 et seq.

22. The State of New Jersey originally established TPAF in 1919, and the current structure of the TPAF was established in 1955. The Division of Pensions and Benefits is assigned all administrative functions of the retirement system except for

investment. TPAF is governed by N.J.S.A. 18A:66-1 et seq. Membership is mandatory for substantially all teachers or members of the professional staff certified by the State Board of Examiners, and employees of the Department of Education who have titles that are unclassified, professional, and certified.

23. TPAF, PERS and PFRS are each managed by a board of trustees. See N.J.S.A. 18A:66-56, 43:15A-17 and 43:16A-13.

24. As of June 30, 2012 there were approximately 150,200 active employees in TPAF, 280,158 active employees in PERS, and 40,819 active employees in PFRS.

25. As of June 30, 2012, there were approximately 153,625 retirees in PERS, 89,700 retirees in TPAF, and 39,767 retirees in PFRS.

26. TPAF, PERS and PFRS are "defined benefit" plans. A defined benefit plan, unlike a defined contribution plan, is one in which retirees are paid a specific benefit based primarily on their final average salary and years of service. TPAF, PERS and PFRS are obligated to pay pension benefits when due, and for the remainder of the life of the participants and/or beneficiaries.

27. In order to be able to pay these benefits, the pension systems operate on an actuarial reserve basis, meaning that based upon a series of actuarial assumptions and calculations,

an amount is contributed each year for each participant which, with the investment earnings on each contribution, will be sufficient upon a member's retirement to pay the monthly benefit for the remainder of that member's life, and of the member's spouse in the event that option is chosen.

28. The dual foundations essential to an actuarial reserve system include both the continuity of the contributions for service in each year as service accrues, and the investment return on those contributions, which constitutes the major part of the assets available for pension benefits upon retirement. If contributions are not made, the pension systems lose the contribution for that year and the future investment return on those contributions.

29. If contributions are not made in any given year, and for any significant period of time, the loss of the contributions and return on investment dramatically increases the amount of future contribution necessary each year, until ultimately reaching a point at which the system can no longer pay benefits, and where the State would be unable to afford to pay benefits out of the general treasury.

30. If the Governor's actions, both immediate and future, are permitted to stand, the systems will become insolvent within

a few years: The pension as an actuarial reserve system will collapse.

31. TPAF, PERS and PFRS are funded by contributions from employees and employers. Employee contributions are set by statute as a percentage of salary. All employee contributions are made each year in full.

32. Effective June 5, 1997, the New Jersey Legislature enacted P.L. 1997, Chapter 113, which codifies the requirement that the State make both an annual normal contribution (hereinafter, "Normal Cost") and an annual unfunded accrued liability contribution (hereinafter, "Unfunded Accrued Liability Contribution") to each system or fund. Chapter 113 stated that, pursuant to standard actuarial practices, unless there is no existing unfunded accrued liability contribution due to the system at the close of the valuation period applicable to the upcoming fiscal year and there are excess valuation assets in excess of the actuarial accrued liability of the system or fund at the close of the valuation period applicable to the upcoming fiscal year. N.J.S.A. 43:3C-9.5.

33. "Normal Cost" is the amount necessary to fund, on an actuarial basis, the pension service accrued in and for that year of service. The annual "Unfunded Accrued Liability Contribution" is the amount due each year, as determined by the

State actuary, to pay down the unfunded liability of the Funds, which would typically arise from underfunding of the Fund or failure to meet the Fund's actuarial expected rate of return on investment. The aggregate of the Normal Cost and the Unfunded Accrued Liability Contribution is the annual statutorily required contribution ("Annual Required Contribution"). All of these contributions are determined by the State actuary in accordance with an established formula and do not reflect any subjective actions or discretionary determinations.

34. In 2010 the Legislature adopted P.L. 2010, Chapter 1 ("Chapter 1"), which became effective May 21, 2010. Chapter 1 permitted the State to make no contribution for FY 2011, and then to contribute only 1/7th of its Annual Required Contribution in Fiscal Year 2012, and to increase the amount of its contribution by an additional 1/7th in each fiscal year thereafter. Thus, the State would not make its full Annual Required Contribution until Fiscal Year 2019, a payment schedule arrived at by the Legislature and the Governor. This deferral of State contributions is hereafter referred to as the "Deferral Period."

35. Effective June 28, 2011, Chapter 78, Sections 8 and 10, the Legislature, acting in response to the increased unfunded accrued liability in each system, increased employee

contributions in TPAF and PERS respectively from 5.5% to 6.5%, with an additional contribution of 1% to be phased-in in equal installments over a period of seven years commencing with the first year following that effective date, while at the same time providing the State with a pension contribution "holiday" followed by a sharply reduced and amortized annual required contribution schedule which only served to increase the unfunded accrued liability. Though increasing the employee contributions, the State provided no offsetting or comparable benefits to the participants.

36. Prior to June 28, 2011, employees participating in PFRS contributed 8.5% of compensation to the system pursuant to P.L. 1979, Chapter 109.

37. Effective June 28, 2011, Chapter 78, Section 15 increased employee contributions in PFRS from 8.5% to 10%, without any offsetting or comparable benefits to the participants.

38. Commencing June 28, 2011, Chapter 78, Section 25 suspended the cost-of-living adjustments (COLAs) to the monthly retirement allowance or pension granted to current and future retirees. The COLA suspension has continued to the present date, and can only be restored, if at all, if the Annual Required Contributions are paid and the pension system's funding

ratio increases, none of which will happen as a direct result of the Governor's actions at issue in this Complaint.

39. In response to years of chronic underfunding of the various Funds, and a judicial determination that the members of the TPAF --and by extension the members of PERS and PFRS as well-- did not enjoy any contractual and therefore constitutionally protected right to contributions from the State, the Legislature enacted Chapter 78, Section 26, which amended N.J.S.A. 43:3C:9.5 (c), to provide as follows:

(1) The State and all other applicable employers shall make their annual normal contribution to each system or fund as determined by the applicable board of trustees in consultation with the system's or fund's actuary. The State and all other applicable employers shall also make their annual unfunded accrued liability contribution to each system or fund as determined by the applicable board in consultation with the system's or fund's . . . The annual normal contribution plus the annual unfunded accrued liability contribution shall together be the annual required contribution, provided, however, that for the State, section 38 of P.L.2010, c. 1 (C.43:3C-14) shall apply with regard to the State's annual required contribution. The amount of the State's annually required contributions shall be included in all annual appropriations acts as a dedicated line item.

(2) Each member of the Teachers' Pensions and Annuity Fund, the Judicial Retirement System, the Prison Officers' Pension Fund, the Public Employee's Retirement System, the Consolidated Police and Firemen's Pension Fund, the Police and Firemen's Retirement system, and the State Police Retirement System shall have a contractual right to the annual required contribution amount being made by the

member's employer or by any other public entity. The contractual right to the annual required contribution means that the employer or other public entity shall make the annual required contribution on a timely basis to help ensure that the retirement system is securely funded and that the retirement benefits to which the members are entitled by statute and in consideration for their public service and in compensation for their work will be paid upon retirement. The failure of the State or any other public employer to make the annually required contribution shall be deemed to be an impairment of the contractual right of each employee. The Superior Court, Law Division shall have jurisdiction over any action brought by a member of any system or fund or any board of trustees to enforce the contractual right set forth in this subsection. The State and other public employers shall submit to the jurisdiction of the Superior Court, Law Division and shall not assert a sovereign immunity in such action. If a member or board prevails in litigation to enforce the contractual right set forth in this subsection, the court may award that party their reasonable attorney's fees.

(Emphasis added)

40. The effect of Chapter 78, Section 26 is to vest in each and every member of the Funds and retirement systems, and in the boards of trustees of said retirement systems and Funds, a right of action, cognizable in the Superior Court, Law Division, to enforce the contractual right to payment of the State's Annual Required Contribution, subject only to the provisions of section 38 of P.L.2010, c. 1, N.J.S.A. 43:3C-14, during the Deferral Period.

41. Ostensibly consistent with the provisions of Chapter 78, Section 26 and P.L.2010, c. 1, § 38, the State claimed to

have contributed 1/7th of its Annual Required Contribution to the Funds in Fiscal Year 2012, and to have increased the amount of its required contributions by an additional 1/7th in Fiscal Year 2013.

42. In the Fiscal Year 2014 Appropriations Act, P.L. 2013, c. 77, the State projected an increase of its required contributions by an additional 1/7th, as mandated by Section 26 of Chapter 78 and P.L.2010, c. 1, §38.

43. Effective July 1, 2012, by means of changes in the actuarial valuations of the various Funds, the determination of the State's Normal Cost contributions was revised to reflect the use of all member contributions in each fund as an offset to the gross Normal Cost. The use of this methodology resulted in reducing the amount of the State's contributions appropriated in Fiscal Years 2013 and 2014 to a figure substantially less than the 2/7th and 3/7th of the State's full Annual Required Contribution that would otherwise have been required had they been calculated under the actuarial methodology in use prior to July 1, 2012.

44. On February 26, 2013, the Governor submitted to the Legislature a budget with line items for the required Annual Contribution, incorporating the Normal Cost and Unfunded Accrued Liability contributions due in the Fiscal Year 2014, as

determined by boards of trustees of the various retirement systems and funds in consultant with their actuary. The Legislature thereafter enacted a budget with appropriations for those full contributions. P.L. 2013, c. 77.

45. On May 20, 2014, Governor Christie, violating his duty to carry out and enforce the laws, issued Executive Order No. 156. However, under well-established law, an Executive Order cannot contravene or subvert express legislative mandates or clear legislative intent, such as that set forth in N.J.S.A. 43:3C-9.5(c).

46. Asserting that current projections developed by the Department of the Treasury anticipated revenues significantly below the amounts estimated in connection with the Fiscal Year 2014 Appropriations Act, and in order to ensure that the State finished Fiscal Year 2014 with an undesignated fund balance (surplus) of \$300 million, Executive Order No. 156 authorized the Director of the Division of Budget and Accounting, pursuant to N.J.S.A. 52:27B-26, to place into reserve, i.e. not make, the Unfunded Accrued Liability Contribution portion of the State's statutorily required Annual Required Contribution to the Funds for Fiscal Year 2014. The Director was ordered not to place into reserve the Fiscal Year 2014 Normal Cost portion of the contributions.

47. Governor Christie has stated publicly that the \$887 million Unfunded Accrued Liability Contribution portion of the State's Annual Required Contribution to the Funds for Fiscal Year 2014 will not be made, and that the Unfunded Accrued Liability Contribution portion of the State's Annual Required Contribution will not be included in the budget submitted to the Legislature for Fiscal Year 2015 or thereafter.

48. On May 21, 2014, in testimony before the Assembly Budget Committee, Defendant State Treasurer Andrew Sidamon-Eristoff confirmed that the State will not make its approximately \$887 million Unfunded Accrued Liability Contribution to the Funds for Fiscal Year 2014. He further confirmed that in Fiscal Year 2015, the Governor proposes to make only the \$681 million Normal Cost portion of the State's Annual Required Contribution, and not the approximately \$1.58 billion Unfunded Accrued Liability Contribution.

49. As a result of the foregoing, and contrary to the express and specific statutory command and contractual guarantee of Section 26 of Chapter 78, Defendants have decided not to make contributions to the Funds totaling approximately \$887 million in Fiscal Year 2014, and approximately an additional \$1.58 billion in Fiscal Year 2015.

COUNT ONE

FOR FISCAL YEAR 2014, IMPAIRMENT OF CONTRACTUAL RIGHTS
GUARANTEED BY SECTION 26 OF P.L. 2011, C. 78

50. Plaintiffs repeat the allegations of the previous paragraphs of the Complaint as if set forth at length herein.

51. P.L. 2011, c. 78, §26 provides that the failure of the State to make its Annual Required Contribution, which includes the Unfunded Accrued Liability Contribution, shall be deemed to be an impairment of the statutorily-created contractual right of each employee.

52. Each member of TPAF, PERS, and PFRS has a statutorily-created contractual entitlement to payment by the State of its Annual Required Contribution, including the Annual Unfunded Accrued Liability Contribution.

53. Defendants' failure to make the already appropriated Unfunded Accrued Liability Contribution portion of the State's Annual Required Contribution for Fiscal Year 2014 violates N.J.S.A. 43:3c-9.5 and impairs the statutorily-created contractual right that payment of the Annual Required

Contribution will be made, and violates the express provisions of P.L. 2011, c. 78, §26.

COUNT TWO

FOR FISCAL YEAR 2014, IMPAIRMENT OF CONTRACTUAL RIGHTS
UNDER THE UNITED STATES CONSTITUTION, ARTICLE I, SECTION
10, CLAUSE 1, AND THE NEW JERSEY CONSTITUTION ARTICLE IV,
SECTION VII, PARAGRAPH 3

54. Plaintiffs repeat the allegations of the previous paragraphs of the Complaint as if set forth at length herein.

55. Article I, Section 10 of the United State Constitution provides that "No state . . . shall . . . pass any . . . law impairing the obligation of contracts. . . ."

56. Pursuant to Article IV, Section VII, Paragraph 3 of the Constitution of the State of New Jersey, the State Legislature is prohibited from passing any law that "impair(s) the obligation of contracts, or deprive(s) any remedy for enforcing a contract that existed when the law was made."

57. P.L. 2011, c. 78, §26 provides the failure of the State to make its Annual Required Contribution, which includes the Unfunded Accrued Liability Contribution, shall be deemed to be an impairment of the statutorily created contractual right of each employee.

58. Each member of TPAF, PERS, and PFRS has a contractual entitlement to payment by the State of its Annual Required Contribution, including the Unfunded Accrued Liability Contribution.

59. Defendants' failure to make the Unfunded Accrued Liability Contribution portion of the State's Annual Required Contribution for Fiscal Year 2014 impairs contractual obligations in violation of P.L. 2011, c. 78, §26; Article I of the United States Constitution, and Article IV of the New Jersey Constitution, and constitutes a violation of 42 U.S.C. §1983.

COUNT THREE

FOR FISCAL YEAR 2014, VIOLATION OF SUBSTANTIVE AND
PROCEDURAL DUE PROCESS RIGHTS, AND A TAKING, UNDER THE
UNITED STATES CONSTITUTION, AND THE NEW JERSEY CONSTITUTION

60. Plaintiffs repeat the allegations of the previous paragraphs of the Complaint as if set forth at length herein.

61. The Fifth and Fourteenth Amendments of the United States Constitution provide that no person shall be deprived of life, liberty or property without due process of law. The Fifth Amendment is made applicable to the Defendants through the incorporation doctrine.

62. Likewise, Article I, Paragraph 1 of the New Jersey Constitution, considers the acquisition, possession and

protection of "property" a "natural and unalienable right", subject to due process protections.

63. The members of the pension funds have a property interest in payment of the State's Annual Required Contribution, including of the Unfunded Accrued Liability Contribution, to the pension funds.

64. Defendants' failure to make the Unfunded Accrued Liability Contribution portion of the State's Annual Required Contribution for Fiscal year 2014 violates Plaintiffs' substantive and procedural due process rights under the Fifth and Fourteenth Amendments of the United States Constitution, Article I, Paragraph 1 of the New Jersey Constitution, and constitutes a violation of 42 U.S.C. §1983.

COUNT FOUR

FOR FISCAL YEAR 2015, IMPAIRMENT OF CONTRACTUAL RIGHTS GUARANTEED BY SECTION 26 OF P.L. 2011, C. 78

65. Plaintiffs repeat the allegations of the previous paragraphs of the Complaint as if set forth at length herein.

66. Defendants' refusal and failure to recommend that the Unfunded Accrued Liability Contribution portion of the State's Annual Required Contribution be included in the State's budget

for Fiscal Year 2015 violates the express provisions of P.L. 2011, c.78, §26 and impairs the statutorily-created contractual right that payment of the Annual Requirement Contribution be made.

COUNT FIVE

FOR FISCAL YEAR 2015, IMPAIRMENT OF CONTRACTUAL RIGHTS UNDER THE UNITED STATES CONSTITUTION, ARTICLE I, SECTION 10, CLAUSE 1, AND THE NEW JERSEY CONSTITUTION, ARTICLE IV, SECTION VII, PARAGRAPH 3

67. Plaintiffs repeat the allegations of the previous paragraphs of the Complaint as if set forth at length herein.

68. Defendants' failure to recommend that the Unfunded Accrued Liability Contribution portion of the State's Annual Required Contribution be included in the State's budget for Fiscal Year 2015 impairs contractual obligations in violation Article I of the United States Constitution and Article IV of the New Jersey Constitution, and constitutes a violation of 42 U.S.C. §1983.

COUNT SIX

FOR FISCAL YEAR 2015, VIOLATION OF SUBSTANTIVE AND PROCEDURAL DUE PROCESS RIGHTS, AND A TAKING, UNDER THE UNITED STATES CONSTITUTION, AND THE NEW JERSEY CONSTITUTION

69. Plaintiffs repeat the allegations of the previous paragraphs of the Complaint as if set forth at length herein.

70. Defendants' failure to recommend that the Unfunded Accrued Liability Contribution portion of the State's Annual Required Contribution be included in the State's budget for Fiscal year 2015 violates Plaintiffs' substantive and procedural due process rights under the Fifth and Fourteenth Amendments of the United States Constitution, Article I, Paragraph 1 of the New Jersey Constitution, and constitutes a violation of 42 U.S.C. §1983.

COUNT SEVEN

PROMISSORY ESTOPPEL

71. Plaintiffs repeat the allegations of the previous paragraphs of the Complaint as if set forth at length herein.

72. Defendants made a clear and definite promise to annually make the State's Annual Required Contribution, including the Unfunded Accrued Liability Contribution, as a means to restore the Funds and retirement systems to actuarial soundness and fiscal integrity; as an essential part of the plan by which employee contributions were increased; the promise was made with the expectation that Plaintiffs would rely upon it, and Plaintiffs reasonably relied on the promise to their detriment.

COUNT EIGHT

VIOLATIONS OF THE NEW JERSEY CIVIL RIGHTS ACT

73. Plaintiffs repeat the allegations of the previous paragraphs of the Complaint as if set forth at length herein.

74. Defendants' actions under Counts One through six constitute violations of the New Jersey Civil Rights Act, N.J.S.A. 10:6-1 et seq.

WHEREFORE, Plaintiffs request that Judgment be rendered, and an Order entered:

A. Declaring that failure to make the Unfunded Accrued Liability Contribution payment portion of the State's Annual Required Contribution for Fiscal Year 2014, and in any future fiscal year violates P.L. 2011, c. 78, § 26.

B. Declaring that failure to make the Unfunded Accrued Liability Contribution payment portion of the State's Annual Required Contribution for Fiscal Year 2014, and in any future fiscal year violates Article I, Section 10 of the United States Constitution.

C. Declaring that failure to make the Unfunded Accrued Liability Contribution payment portion of the State's Annual Required Contribution for Fiscal Year 2014, and in any future fiscal year violates Article 4, Section 7, Paragraph 3 of the New Jersey Constitution.

D. Declaring that failure to make the Unfunded Accrued Liability Contribution payment portion of the State's Annual Required Contribution for Fiscal Year 2014, and in any future fiscal year, violates the Fifth and Fourteenth Amendments to the United States Constitution.

E. Declaring that failure to make the Unfunded Accrued Liability Contribution payment portion of the State's Annual Required Contribution for Fiscal Year 2014, and in any future fiscal year, violates Article I, Paragraph 1 of the New Jersey Constitution.

F. Declaring that failure to recommend that the Unfunded Accrued Liability Contribution portion of the State's Annual Required Contribution be included in the State's budget for Fiscal Year 2015, and in any future fiscal year, violates P.L. 2011, c. 78, § 26.

G. Declaring that failure to recommend that the Unfunded Accrued Liability Contribution portion of the State's Annual

Required Contribution be included in the State's budget for Fiscal Year 2015 impairs contractual obligations in violation Article I of the United States Constitution and Article IV of the New Jersey Constitution, and constitutes a violation of 42 U.S.C. §1983.

H. Declaring that failure to recommend that the Unfunded Accrued Liability Contribution portion of the State's Annual Required Contribution be included in the State's budget for Fiscal year 2015 violates Plaintiffs' substantive and procedural due process rights under the Fifth and Fourteenth Amendments of the United States Constitution, Article I, Paragraph 1 of the New Jersey Constitution, and constitutes a violation of 42 U.S.C. §1983.

I. Mandating and directing Defendants by writ of mandamus to make the State's Annual Required Contribution payments consistent with the mandate of P.L. 2011, c. 78, §26, including the Unfunded Accrued Liability Contribution payment applicable for Fiscal Year 2014, and in all future fiscal years.

J. Mandating and directing Defendant Governor Chris Christie by writ of mandamus to include the Annual Unfunded Accrued Liability Contribution portion of the State's Required Contribution for Fiscal Year 2015 in the proposed annual

appropriation act recommendations to the Legislature for Fiscal Year 2015, and in all future fiscal years.

K. Directing Defendants to pay Plaintiffs' attorneys fees, disbursements and costs.

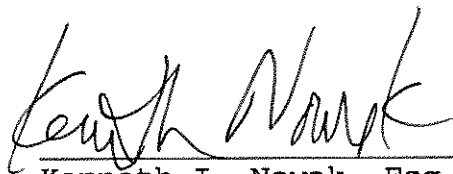
L. Granting such other relief as the Court deems just and proper.

Respectfully submitted,

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Patrick Colligan, Marc Kovar,
Lance P. Lopez, Sr.

Dated: June 6, 2014

By:

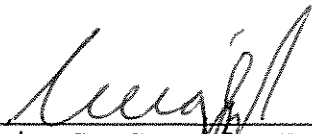


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Dated: June 6, 2014

By:




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DESIGNATION OF TRIAL COUNSEL

Kenneth I. Nowak, Esq. is hereby designated as trial
counsel for Plaintiffs in this matter.

Dated: June 6, 2014

By:



Kenneth I. Nowak, Esq.
Attorney ID #021041977

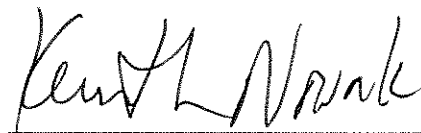
CERTIFICATION PURSUANT TO R. 4:5-1

I certify that to the best of my knowledge, except for a matter presently pending before the Hon. Mary Jacobson, A.J.S.C., Burgos, et al. v. State of New Jersey, et al., Docket No.: L-1267-14 (Mercer County), the within matter in controversy is not the subject of any other action pending in any other Court or of a pending arbitration or other proceeding, nor are there other parties required to be joined in this action.

I certify that the foregoing statements made by me are true to the best of my knowledge, information, and belief. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: June 6, 2014

By:



Kenneth I. Nowak, Esq.
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