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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

\_\_\_\_\_  
CWA LOCAL 1033; RAE C. ROEDER; :  
MARYANN PIUNNO SMITH; MARYANN :  
MESICS; DENNIS REITER; ANTHONY : Civil Action No.  
MISKOWSKI; VINCENT KAIGHN; :  
WILLIAM S. BAUER, JR.; MICHAEL :  
CALABRESE; and DEBORAH JACOBS, :

Plaintiffs, :

COMPLAINT

v. :

STATE OF NEW JERSEY; CHRIS :  
CHRISTIE, GOVERNOR OF THE STATE :  
OF NEW JERSEY; ANDREW SIDAMON- :  
ERISTOFF, TREASURER OF THE STATE :  
OF NEW JERSEY; THE NEW JERSEY :  
STATE SENATE; THE NEW JERSEY :  
STATE GENERAL ASSEMBLY, :

Defendants. :

\_\_\_\_\_  
Plaintiffs complain of the Defendants and say:

INTRODUCTION

This action arises under various provisions of the Constitution of the United States and the New Jersey Constitution, as well as under New Jersey statutory and common law. It seeks

declaratory and injunctive relief on behalf of active and retired public employees to protect their constitutionally guaranteed rights in the pensions they have been promised and in which they are vested under the Public Employees' Retirement System ("PERS") and the Teachers' Pension and Annuity Fund ("TPAF").

#### JURISDICTION AND VENUE

This Court has jurisdiction under 28 U.S.C. 1331 and 1343 because this civil action arises under the Constitution and laws of the United States. Further, this Court also has jurisdiction to render declaratory judgments as requested herein pursuant to the Declaratory Judgment Act, 28 U.S.C. 2201, et seq. With respect to claims set forth herein based on violations of the New Jersey Constitution, statutes and common law, this Court has jurisdiction under 28 U.S.C. 1367.

Venue in this district is proper pursuant to 28 U.S.C. 1391(b)(1) and (2) because Defendants reside and exercise their authority in this district, Plaintiffs reside and/or exercise their authority in this district, the property at issue is located in or managed from within this district, and the constitutional, statutory and common law violations sought to be enjoined or prevented by this Complaint have or will occur in this district.

#### THE PARTIES

1. Plaintiff CWA LOCAL 1033 ("Local 1033") is a local labor organization chartered by the Communications Workers of America. It represents approximately 7,000 State employees in the State of New Jersey who are members of PERS or TPAF. These employees work for the Department of Banking and Insurance, the Department of Military and Veterans Affairs, the Department of Education, the Department of Law and Public Safety, the Public Defender, the Department of Treasury, the Department of State, and the Motor Vehicle Commission. Local

1033 has its principal office at 321 West State Street, Trenton, New Jersey 08618.

2. Plaintiff Rae C. Roeder, the President of Local 1033, is an active member of TPAF with 28 years of credited service toward her pension. She resides in the Township of West Windsor in Mercer County, New Jersey.

3. Plaintiff Maryann Piunno Smith is an active member of TPAF with 32 years of credited service toward her pension. She resides in Lawrence Township in Mercer County, New Jersey.

4. Plaintiff Maryann Mesics is a retired member of TPAF with 40 years of credited service toward her pension. She resides in Columbus, in Burlington County, New Jersey.

5. Plaintiff Dennis Reiter is a retired member of TPAF with 43 years of credited service toward his pension. He resides in Willingboro in Burlington County, New Jersey.

6. Plaintiff Anthony Miskowski is an active member of PERS with 38 years of credited service toward his pension. He resides in Somerset, in Somerset County, New Jersey.

7. Plaintiff Vincent Kaighn is an active member of PERS with 22 years of credited service toward his pension. He resides in Woodbury Heights in Gloucester County, New Jersey.

8. Plaintiff William S. Bauer, Jr. is an active member of PERS with 22 years of credited service toward his pension. He resides in Levittown, Pennsylvania.

9. Plaintiff Michael Calabrese is a retired member of PERS with 18 years of credited service toward his pension. He resides in Hamilton Township in Mercer County, New Jersey.

10. Plaintiff Deborah Jacobs is an active member of PERS with 34 years of credited service toward her pension. She will retire effective July 2011. She resides in Bristol, Pennsylvania.

11. Defendant State of New Jersey is the entity ultimately responsible for ensuring that the pension benefits promised to State employees under PERS and TPAF are secure and paid when due as provided by law.

12. Defendant Chris Christie, Governor of the State of New Jersey, is the chief executive officer of the State with the power and responsibility, *inter alia*, to propose and approve budgets, to sign or veto legislation, and to ensure that the laws of the State are faithfully executed. The Governor has a particular legal responsibility and fiduciary obligation to ensure that the monies necessary to pay the State's obligations to PERS and TPAF are appropriated and paid on an annual basis.

13. Defendant Andrew Sidamon-Eristoff, Treasurer of the State of New Jersey, is charged with safeguarding the public treasury and making payments from the general fund in the manner and amounts required by law. The Treasurer has a particular responsibility and fiduciary obligation to ensure that the amounts payable into TPAF and PERS are in fact paid. The Treasurer is also a member of the Board of Trustees of both PERS (N.J.S.A. 43:15A-17.b) and TPAF (N.J.S.A. 18A:66-56(a)).

14. Defendants New Jersey State Senate and New Jersey State General Assembly in their respective capacities constitute the Legislature of New Jersey which has created retirement systems for State and other public employees and has made and continues to make laws governing PERS and TPAF and their obligations to members, subject to the constraints of the United States and New Jersey Constitutions. The Legislature has a legal responsibility and fiduciary obligation to make appropriations sufficient to provide for the State's obligations to TPAF and PERS.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

15. The Public Employees Retirement System (PERS) and the Teachers Pension and Annuity Fund (TPAF) are retirement systems for public employees governed respectively by N.J.S.A. 43:15A-1, et seq. and N.J.S.A. 18A:66-1, et seq., and as further provided by law.

16. PERS and TPAF are corporate entities holding the retirement assets of the Plaintiffs and other public employees who are members of these systems. The assets are held in trust and separate from the general funds and assets of the State of New Jersey. No part of the corpus or income of these retirement funds may be used or diverted for other than the exclusive benefit of the members or their beneficiaries. See N.J.S.A. 43:3C-9.1.

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

18. Through PERS and TPAF, the State promises a pension to each member employee who meets eligibility criteria. The amount of the pension is determined by formula based on such factors as years of service and average salary of the members.

19. TPAF and PERS are “defined benefit” plans meaning that retirees are paid a specific benefit based on their final average salary and years of service, not based on contributions or returns on investments. PERS and TPAF must therefore maintain reserves sufficient to guarantee that pension benefits are paid when due, taking into account actuarial factors such as length of careers, expected growth of workforce, payroll growth, expected increases in the costs of living, mortality and future investment income.

20. The assets of TPAF and the assets of PERS allocable to State employees, come from three sources: employee contributions, deducted from wages based on a percentage of

compensation; contributions by the State, based on annual actuarial evaluation of expected obligations; and investment income earned on system reserves.

21. Employee contributions are presently 5.5 percent of compensation. See N.J.S.A. 43:15A-25 and 18A:66-29.

22. The State contribution is determined actuarially. By law, the actuary for each plan must annually evaluate plan reserves in light of applicable actuarial factors and determine the cost of expected obligations to plan members. Based on these determinations, the trustees of each plan must certify annually the aggregate amount payable by the State in the ensuing year. See N.J.S.A. 43:15A-24.c; 18A:66-18.d and 18A:66-33.

23. The amounts payable by the State consist of a “normal contribution” and, when necessary, a contribution for “unfunded accrued liability.” The “normal contribution” is the expected cost of the additional years of service credit to be earned by employees during the ensuing year. The “unfunded accrued liability” is the amount of the accrued liability of the retirement system that is not already covered by the assets of the system. If the State consistently makes its normal contributions and the actuarial assumptions on which they are based are substantially accurate, there should be little or no “unfunded accrued liability.” See again N.J.S.A. 43:15A-24 and 18A:66-18.

24. Defendants are required by law to make these contributions or to ensure that they are made. N.J.S.A. 18A:66-33 provides in pertinent part:

“Upon the basis of each actuarial determination and appraisal provided for in this article, the board of trustees shall prepare and submit to the Governor in each year an itemized estimate of the amounts necessary to be appropriated by the State to provide for the payment in full on June 30 of the ensuing fiscal year of the obligations of the State accruing during the year

preceding such payment. The Legislature shall make an appropriation sufficient to provide for the obligations of the State. The amounts so appropriated shall be paid into the contingent reserve fund. The amounts payable into the contingent reserve fund shall be paid by the State Treasurer . . . to the contingent reserve fund not later than June 30 of the ensuing fiscal year.”

25. N.J.S.A. 43:15A-24.c. provides in relevant part:

“The retirement system shall certify annually the aggregate amount payable to the contingent reserve fund in the ensuing year, which amount shall be equal to the sum of the amounts described in this section. . .

The State shall pay into the contingent reserve fund during the ensuing year the amount so determined. . . .”

26. Defendants have failed in their duty to ensure that the State’s obligations to PERS and TPAF, as certified by the trustees, have in fact been paid. Beginning at least as early as 2004, the Defendants have failed to pay into the plans the amounts so determined, diverting the funds in whole or in part to unrelated purposes.

27. Over the period Fiscal Year 2004 through Fiscal Year 2011, the Defendants failed to fund Annual Required Contributions to PERS by more than \$2.3 billion; and they failed to make Annual Required Contributions to TPAF totaling more than \$7.4 billion. Using the State’s actuarial assumptions about expected investment returns, these funding choices by Defendants also forfeited approximately \$2.9 billion in investment income.

28. The unfunded accrued liability of PERS grew from \$3.8 billion in 2004 to an estimated \$12.7 billion in 2011. The unfunded accrued liability of TPAF grew from \$8.8 billion in 2004 to an estimated \$31.2 billion in 2011. The growth of unfunded accrued liability for TPAF and PERS combined total approximately \$31 billion for this period.

29. In 2010 the Legislature adopted Chapter 1, P.L. 2010, effective May 21, 2010, which

rather than funding the State's obligations deferred for seven years the State's obligation to fund fully its Annual Required Contributions to PERS and TPAF. The new law provides that the State will be considered in compliance with ARC requirements if in Fiscal Year 2012 it makes 1/7th of the Annual Required Contribution for that year and in each subsequent fiscal year it increases its contribution by an additional 1/7th of the Annual Required Contribution for the year in question, until the seventh fiscal year, in which the State is purportedly required to resume making full Annual Required Contributions. This deferral of State contributions is hereafter referred to as the "Seven-Year Deferral."

30. As a result of the Seven Year Deferral, the combined deficit in TPAF and PERS will increase from approximately \$44 billion in 2011 to \$72 billion in 2018. The Annual Required Contribution owed by the State will grow from approximately \$429 million in the first year of the Deferral period (FY 2012) to \$3.2 billion in the first year the State is scheduled to pay its full share (FY 2018). During the Seven-Year period, using the State's assumption of an 8.25% investment return annually, the State will also give up an additional \$9 billion in investment income as the result of cumulative under-funding.

31. The Seven-Year Deferral of the State's obligation to fully fund its Annual Required Contribution is continued in the most recent round of pension legislation, Senate Bill No. 2937, which has passed the Senate and is pending before the Assembly with the endorsement of the Governor. Senate Bill No. 2937 also would increase employee contributions from 5.5% to 6.5% plus 1 additional percent phased-in over seven years and suspend indefinitely cost-of-living adjustments for retirees.

32. These measures unlawfully shift to Plaintiffs and other members and retirees of

PERS and TPAF the cumulative costs of the State's chronic failure to fund required contributions to these funds in accordance with the law.

33. Plaintiffs and thousands of other public employees and retirees have vested rights in the continued existence of PERS and TPAF and in the level of benefits the State has promised to them as compensation for their work. By State law, as confirmed in N.J.S.A. 43:3C-9.5, these vested rights are non-forfeitable:

“Vested members of the **Teachers’ Pension and Annuity Fund**, the Judicial Retirement System, the Prison Officers’ Pension Fund, the **Public Employees’ Retirement System**, the Consolidated Police and Firemen’s Pension Fund, the Police and Firemen’s Retirement System, and the State Police Retirement System, upon the attainment of five years of service credit in the retirement system or fund or on the date of enactment of this bill, whichever is later, shall have a non-forfeitable right to receive benefits as provided under the laws governing the retirement system or fund . . . .”

34. In New Jersey Education Association v. State of New Jersey, 412 N.J. Super. 192 (App. Div. 2010), certif. denied 2010 N.J. Lexis 761 (2010), on a record limited to four years of under-funding of the TPAF (2004 through 2007), a New Jersey Appellate panel ruled that TPAF members had constitutionally-protected contractual rights to receive their vested benefits but these rights did not include a right to insist that the State actually make the contributions needed to fund these benefits as mandated by statute. The present case involves a more extensive record including substantially increased under-funding and the breaking of additional contractual guarantees. Moreover, for the purposes of the U.S. Constitution, federal law controls whether or not there is a protected contractual relationship.

FIRST COUNT

Impairment of Contract under Federal Contract Clause

35. Plaintiffs repeat and incorporate herein by reference each of the allegations of paragraphs 1 through 34.

36. Article I, Section 10 of the United States Constitution provides:

“No State shall . . . pass any . . . Law impairing the Obligation of Contracts . . . .”

37. Under trust law applicable to pension funds and under the statutory scheme providing for pensions to public employees under PERS and TPAF, the accumulated assets of the public pension systems and their economic enhancement exist for the sole and exclusive benefit of members and retirees and their beneficiaries and shall not be reduced.

38. Pension benefits payable under TPAF and PERS are promises made by the State. These promises are relied upon by prospective, current and retired employees, are supported by deductions from the employees’ wages, and constitute deferred compensation in which vested participants and retirees have a non-forfeitable right. Once vested, these benefits may not be reduced.

39. The statutory provisions for mandatory funding of TPAF and PERS are integral to these non-forfeitable rights to pension benefits and establish, create and constitute legally enforceable contract rights.

40. Defendants’ cumulative failures to make Annual Required Contributions have substantially undermined the financial integrity of PERS and TPAF and made the likelihood that member employees will receive their pensions increasingly uncertain. Defendants nonetheless have failed to resume the full funding of Annual Required Contributions for these plans.

41. The Seven-Year Deferral, following the State's long history of failing to make Annual Required Contributions, unreasonably reduces the likelihood that the State will ever meet its obligations to PERS and TPAF.

42. It defies credulity to expect that based on past history Defendants will be able or willing to fund a \$3.2 billion Annual Required Contribution for PERS and TPAF beginning in 2018. In fact, the accumulated shortfall and the Seven-Year Deferral threaten the future existence of PERS and TPAF and compromise the level of benefits which members are guaranteed to receive upon retirement.

43. Defendants actions, the repeated failures to make contributions to the funds required by law, coupled with the Seven-Year Deferral have impaired the contract rights of the members of TPAF and PERS in violation of Article I, Section 10 of the United States Constitution.

44. This violation of the United States Constitution is actionable under 42 U.S.C. Sec. 1983.

## SECOND COUNT

### Impairment of Contract under State Constitution

45. Plaintiffs repeat and incorporate herein by reference each of the allegations of paragraphs 1 through 44.

46. Article IV, Section 7, Paragraph 3 of the New Jersey Constitution provides:

“The Legislature shall not pass any . . . law impairing the obligation of contracts, or depriving a party of any remedy for enforcing a contract which existed when the contract was made.”

47. Defendants' actions, the repeated failures to make contributions to the funds required by law, coupled with the Seven-Year Deferral have impaired the contract rights of the members

of TPAF and PERS in violation of Article IV, Section 7, Paragraph 3 of the New Jersey Constitution.

THIRD COUNT

Violation of Debt Limitation Clause under State Constitution

48. Plaintiffs repeat and incorporate herein by reference each of the allegations of paragraphs 1 through 47.

49. By extending the State's history of failing to pay Annual Required Contributions and by adopting the Seven-Year Deferral going forward as contained in Chapter 1 of P.L. 2010 and Senate Bill No. 2937, Defendants have passed to future legislatures the obligation to pay the accrued Annual Required Contributions which they have intentionally left unpaid.

50. The failure to pay an Annual Required Contribution necessarily increases the amounts of the Annual Required Contributions in subsequent years.

51. The full Annual Required Contribution due in 2018, which Senate Bill No. 2937 purports to require the Legislature to pay at that time, will include deferred deficits from prior years without the means to pay them.

52. These actions on Defendants' part violate the Debt Limitations Clause of the New Jersey Constitution, Article VIII, Section 2, Paragraph 3.

FOURTH COUNT

Indefinite Suspension of COLA in Violation of Federal Contract Clause

53. Plaintiffs repeat and incorporate herein by reference each of the allegations of paragraphs 1 through 52.

54. Beginning in at least 1970, the Legislature has incorporated cost-of-living

adjustments (“COLAs”) in the pension benefits of State retirement systems. See N.J.S.A. 43:3B-1, et seq.

55. The COLAs for both TPAF and PERS retirees are paid for and pre-funded by their respective retirement systems. See N.J.S.A. 43:3B-4a and 43:3B-4.3.

56. COLAs are a substantial benefit on which members rely not only in coping with increases in the cost-of-living while retired but also in making the initial decisions about if and when to retire.

57. N.J.S.A. 43:3C-9.5, granting to members of TPAF and PERS non-forfeitable rights to pension benefits, includes COLAs in its purview. The statute defines a “non-forfeitable right to receive benefits” to mean “that the benefits program, for any employee for whom the right has attached, cannot be reduced.” 43:3C-9.5.a.

58. Senate Bill No. 2937 provides that these COLAs shall no longer be provided to current and future retirees unless the future funding of their plans achieves targeted levels. See Section 25 of that bill, amending Section 2 of P.L.1958, c.143 (C.43:3B-2).

59. This reduction in level of benefits impairs the contract rights of the members of TPAF and PERS in violation of Article I, Section 10 of the United States Constitution.

60. This violation of the United States Constitution is actionable under 42 U.S.C. Sec. 1983.

#### FIFTH COUNT

##### Indefinite Suspension of COLA in Violation of State Constitution

61. Plaintiffs repeat and incorporate herein by reference each of the allegations of paragraphs 1 through 60.

62. The indefinite suspension of COLAs under Senate Bill No. 2937 thereby impairing contract rights of plaintiffs and other members and retirees of PERS and TPAF violates Article IV, Section 7, Paragraph 3 of the New Jersey Constitution.

### SIXTH COUNT

#### Violation of the Due Process Clause of the United States Constitution

63. Plaintiffs repeat and incorporate herein by reference each of the allegations of paragraphs 1 through 62.

64. The Fourteenth Amendment to the United States Constitution provides that no state shall “deprive any person of life, liberty or property without due process of law.”

65. Plaintiffs and other members of PERS and TPAF have vested property rights in the benefits to which they are entitled and rights to actuarially sound funding practices necessary to secure these benefits.

66. The policy judgment of the Legislature reflected in P.L 2010, c. 1 and in S2937 (P.L. \_\_\_, c. \_\_\_), deferring the State’s obligation to pay its debts to TPAF and PERS while reducing members’ vested benefits, is arbitrary and irrational, is not supported by facts that were known or could reasonably have been assumed by the Legislature, and bears no rational or reasonable relationship to a permissible legislative objective.

67. These laws improperly infringe upon the liberty and property interests of Plaintiffs and other members of TPAF and PERS without due process of law, in violation of the United States Constitution.

68. These violations of the United States Constitution are actionable under 42 U.S.C. Sec. 1983.

SEVENTH COUNT

Violation of the Takings Clause of the United States Constitution

69. Plaintiffs repeat and incorporate herein by reference each of the allegations of paragraphs 1 through 68.

70. The Fifth Amendment to the United States Constitution prohibits the taking of private property without just compensation.

71. The Fifth Amendment to the United States Constitution is applicable to the states through the Fourteenth Amendment to the United States Constitution

72. Plaintiffs and other participants in TPAF and PERS have vested property rights in their respective salaries and compensation.

73. Senate Bill No. 2937 (P.L. \_\_\_, c. \_\_\_) increases employee contributions to TPAF and PERS from 5.5 per cent of compensation to 6.5 percent, with an additional 1 percent to be phased in over seven years. See Section 8 of the Bill, amending N.J.S. 18A:66-29; and Section 10, amending 43:15A-25.

74. Increasing the percentage of compensation Plaintiffs and other members of TPAF and PERS are required to contribute to their respective pension funds reduces their take-home pay without a corresponding benefit and interferes with their rightful salary expectations.

75. This taking is without just compensation and thus violates the Fifth Amendment of the United States Constitution.

76. This violation of the United States Constitution is actionable under 42 U.S.C. Sec. 1983.

EIGHTH COUNT

Breach of Trust and Fiduciary Duty

77. Plaintiffs repeat and incorporate herein by reference each of the allegations of paragraphs 1 through 70.

78. Defendants have statutory and common law fiduciary obligations to obey the laws governing the funding of the pensions system, including the obligation to provide funding at the level the State's actuaries recommend and the trustees of PERS and TPAF certify as necessary to secure benefits for retirees.

79. Defendants have statutory and common law fiduciary obligations not to gamble with the pension system through systematic and willful under-funding that jeopardizes the soundness of the system and threatens the security of the retirement benefits promised to Plaintiffs and other members.

80. Defendants also have a fiduciary obligation not to divert or use monies otherwise due to PERS and TPAF for other uses, including the general operation of the State.

81. Defendants individually and in concert have violated these fiduciary obligations.

NINTH COUNT

Violation of N.J.S. 43:3C-9.1, et seq. and the Internal Revenue Code

82. Plaintiffs repeat and incorporate herein by reference each of the allegations of paragraphs 1 through 81.

83. Defendants' repeated failures to make contributions to PERS and TPAF as required by law, now coupled with the Seven-Year Deferral, deprive these retirement systems of income to which they are legally entitled and divert that income to purposes other than for the exclusive

benefit of Plaintiffs and other fund beneficiaries.

84. This diversion constitutes a violation of provisions of the Internal Revenue Code (“IRC”), namely 26 U.S.C. 401, 402, 403, 404, 412 and 415. Section 401 provides in pertinent part:

“A trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust . . . if under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees or their beneficiaries . . . .”

85. This diversion also constitutes a violation of N.J.S. 43:3C-9.1, which incorporates the cited IRC provisions and provides an independent State prohibition of the illegal diversion of monies in the State’s pension funds.

86. The violations jeopardize the status of the TPAF and PERS as tax-exempt qualified trusts and jeopardize the tax-deferred status of funds reserved for beneficiaries.

WHEREFORE, Plaintiffs request that judgment be entered:

a. Declaring that the State’s repeated failure to pay its Annual Required Contributions to TPAF and PERS coupled with the Seven Year Deferral substantially impair Plaintiffs’ contract rights and the security of these retirement systems in violation of Article I, Section 10 of the United States Constitution and 42 U.S.C. Sec. 1983.

b. Declaring that the Seven-Year Deferral under P.L. 2010, c.1 and P.L. 2011, c.\_\_\_\_ (S-2937) is void and of no effect because it substantially impairs contract rights under Article I, Section 10 of the United States Constitution as aforesaid.

c. Declaring that the State's repeated failure to pay its Annual Required Contributions to TPAF and PERS coupled with the Seven Year Deferral substantially impair Plaintiffs' contract rights and the security of these retirement systems in violation of Article IV, Section 7, Paragraph 3 of the New Jersey Constitution.

d. Declaring that the Seven-Year Deferral under P.L. 2010, c.1 and P.L. 2011, c. \_\_\_ (S-2937) is void and of not effect because it substantially impairs contract rights under Article IV, Section 7, Paragraph 3 of the New Jersey Constitution as aforesaid.

e. Declaring that the Seven-Year Deferral under P.L. 2010, c.1 and P.L. 2011, c. \_\_\_ (S-2937) is void and of no effect because it violates the Debt Limitation Clause of the New Jersey Constitution, Article VIII, Section 2, Paragraph 3.

f. Declaring that the indefinite suspension of COLAs contained in P.L. 2011, c. \_\_\_ (S-2937) is void and of no effect because it impairs Plaintiffs' contract rights in violation of Article I, Section 10 of the United States Constitution and 42 U.S.C. Sec. 1983.

g. Declaring that the indefinite suspension of COLAs contained in P.L. 2011, c. \_\_\_ (S-2937) is void and of no effect because it impairs Plaintiffs' contract rights in violation of Article IV, Section 7, Paragraph 3 of the New Jersey Constitution.

h. Declaring that the Seven-Year Deferral of the State's obligations under P.L. 2010, c.1 and P.L. 2011, c. \_\_\_ (S-2937) combined with the increase in contributions for employees from 5.5 percent to 6.5 percent plus 1 percent phased in over seven years, as provided by P.L. 2011, c. \_\_\_ (S-2937) infringe upon the liberty and property interests of Plaintiffs and other members of TPAF and PERS without due process of law, in violation of the Fourteenth Amendment of the United States Constitution and 42 U.S.C. Sec. 1983 and are therefore void.

i. Declaring that the increase in contributions for employees from 5.5 percent to 6.5 percent plus 1 percent phased in over seven years, as provided by P.L. 2011, c\_\_\_\_, is a taking without just compensation and therefore violates the Fifth Amendment of the Constitution and 42 U.S.C. Sec. 1983 and is therefore void.

j. Declaring that Defendants have breached their trust and violated their fiduciary obligations to Plaintiffs and the members and retirees of TPAF and PERS for failing to fund these retirement systems as required by law.

k. Declaring that Defendants' diversions of funds from TPAF and PERS violate N.J.S. 43:3C-9.1 and related provisions of the Internal Revenue Code.

l. Directing Defendants to commence immediately the full funding of TPAF and PERS.

m. Awarding Plaintiffs reasonable attorneys' fees and costs pursuant to 42 U.S.C. Sec. 1983 and otherwise as provided by law.

n. Granting such other relief as the Court deems proper.

s/Walter R. Bliss, Jr.  
WALTER R. BLISS, JR., ESQUIRE  
Attorney for Plaintiffs

Dated: June 22, 2011

CERTIFICATION

I hereby certify that to the best of my knowledge, information and belief, the within matter is not the subject of any other action pending in any court or the subject of a pending arbitration proceeding, and no other parties known to the plaintiffs at this time should be joined.

s/Walter R. Bliss, Jr.  
WALTER R. BLISS, JR., ESQUIRE  
Attorney for Plaintiffs

Dated: June 22, 2011