

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SALVATORE TAGLIARENI, ANGEL DE LA CRUZ, ANTONIO MEROLLA, and SMAIL MUSOVIC, Individually, and On Behalf Of All Others Similarly Situated,

Plaintiffs,

v.

BAKERY AND CONFECTIONERY UNION AND INDUSTRY INTERNATIONAL PENSION FUND PENSION PLAN, BAKERY AND CONFECTIONERY UNION AND INDUSTRY INTERNATIONAL PENSION FUND BOARD OF TRUSTEES, as Plan Administrator, BAKERY AND CONFECTIONERY UNION AND INDUSTRY INTERNATIONAL PENSION FUND BOARD OF TRUSTEES, FRANK HURT, STEVEN BERTELLI, DAVID DURKEE, ANTHONY JOHNSON, ART MONTMINY, ROBERT OAKLEY, RANDY D. ROARK, JOSEPH THIBODEAU, RICHARD B. COOK, DAN CRAIG, THOMAS G. KIRCHNER, JON MCPHERSON, LOU MINELLA, JOHN WAGNER, JOHN DOES 1-10, as Trustees of the Bakery and Confectionery Union and Industry International Pension Fund,

Defendants.

Case No.: _____

ECF - Class Action

FILED
U.S. DISTRICT COURT
2015 JAN -9 PM 3:27
S.D. OF N.Y.W.P.

PLAINTIFFS' CLASS ACTION COMPLAINT

15 CV 00171

Plaintiffs SALVATORE TAGLIARENI, ANGEL DE LA CRUZ, ANTONIO MEROLLA, and SMAIL MUSOVIC ("Plaintiffs"), individually and on behalf of all others similarly situated, by and through their undersigned attorneys, allege the following:

I. PRELIMINARY STATEMENT

1. Plaintiffs, participants in the Bakery and Confectionery Union and Industry International Pension Fund (the "Plan"), bring this action on their own behalf and on behalf of all similarly situated participants, their beneficiaries and Estates, pursuant to the Employee Retirement

Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001 *et seq.* (“ERISA”). Defendants have failed to comply with the requirements of ERISA and the Pension Protection Act of 2006 (“PPA”) by unlawfully certifying that the Plan is in “critical status” and by unlawfully implementing a Rehabilitation Plan that reinstated an amendment that retroactively reduced a retirement subsidy known as Golden 80 and Golden 90. This prior amendment was found to be unlawful by the District Court of the Southern District of New York and by the United States Court of Appeals for the Second Circuit. Plaintiffs seek to enjoin Defendants from enforcing the Plan’s unlawful Rehabilitation Plan and request that the Court order Defendants to bring the terms of the Plan into compliance with ERISA’s and the PPA’s requirements.

II. JURISDICTION AND VENUE

2. Jurisdiction over this action is based on ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1), and on 28 U.S.C. § 1331(a), because this action arises under the laws of the United States, namely ERISA.

3. This Court has personal jurisdiction over the Defendants pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2). It also has personal jurisdiction over them pursuant to Fed. R. Civ. P. 4(k)(1)(A) because they would be subject to the jurisdiction of a court of general jurisdiction in the State of New York pursuant to N.Y. CPLR § 302(a).

4. Declaratory, equitable, and injunctive relief are authorized by 28 U.S.C. § 2201 and 2202, respectively, by Rules 57 and 65 of the Federal Rules of Civil Procedure and by ERISA §§ 502(a)(3), 29 U.S.C. §§1132(a)(3).

5. Pursuant to 29 U.S.C. § 1132(e)(2), venue is proper in the Southern District of New York. Defendants may be found in this District because Plaintiffs and other participants in the Plan earned and accrued pension benefits while employed here.

III. PARTIES

A. Plaintiffs

6. Plaintiff Salvatore Tagliareni is a participant in the Plan, within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7). He resides in Mahopac, New York. He worked in covered employment within the meaning of the Plan from 1984 to 2009.

7. Plaintiff Angel De La Cruz is a participant in the Plan, within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7). He resides in New York, New York. He worked in covered employment within the meaning of the Plan from 1988 to 2009.

8. Plaintiff Antonio Merolla is a participant in the Plan, within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7). He resides in Bronx, New York. He worked in covered employment within the meaning of the Plan from 1981 to 2009.

9. Plaintiff Musovic Smail is a participant in the Plan, within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7). He resides in Bronx, New York. He worked in covered employment within the meaning of the Plan from 1990 to 2009.

B. Defendants and Fiduciary Status

10. Defendant Bakery and Confectionery Union and Industry International Pension Fund (the “Plan”) is an “employee pension benefit plan” within the meaning of ERISA § 3(2)(A), 29 USC § 1002(2)(A), and more precisely, a multiemployer “defined benefit plan” within the meaning of ERISA §§ 3(35) & 3(37)(A), 29 U.S.C. §§ 1002(35), 1002(37)(A). Its offices are located at 10401 Connecticut Avenue, Kensington, Maryland, 20895-3960.

11. Defendant Bakery and Confectionery Union and Industry International Pension Fund Board of Trustees (the “Board of Trustees”) and its members (listed below) are the Administrator

of the Plan, within the meaning of ERISA § 3(16)(A)(i), 29 USC § 1002(16)(A)(i); Plan fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A); and the “named fiduciaries” of the Plan with the authority and control to manage the operation and administration of the Plan within the meaning of ERISA § 402(a), 29 U.S.C. § 1102(a). The Board of Trustees’ offices are also located at 10401 Connecticut Avenue, Kensington, Maryland, 20895-3960.

12. The Board of Trustees includes eight “Union Trustees” and eight “Employer Trustees,” and includes the following individuals during the Class Period, who are collectively referred to herein as the “Individual Defendants”:

- a. **Defendant Frank Hurt**, Chairman of the Board of Trustees and President of The Bakery, Confectionery, Tobacco Workers, and Grain Millers International Union, AFL-CIO (the “Bakery Workers Union”), and a Union Trustee of the Plan;
- b. **Defendant Steven Bertelli**, a Vice President of the Bakery Workers Union, and a Union Trustee of the Plan;
- c. **Defendant David Durkee**, Secretary/Treasurer of the Bakery Workers Union, and a Union Trustee of the Plan;
- d. **Defendant Anthony Johnson**, a Vice President of the Bakery Workers Union, and a Union Trustee of the Plan;
- e. **Defendant Art Montminy**, a Vice President of the Bakery Workers Union, and a Union Trustee of the Plan;
- f. **Defendant Robert Oakley**, a Vice President of the Bakery Workers Union, and a Union Trustee of the Plan;

- g. **Defendant Randy D. Roark**, a Vice President of the Bakery Workers Union, and a Union Trustee of the Plan;
- h. **Defendant Joseph Thibodeau**, Executive Vice President of the Bakery Workers Union, and a Union Trustee of the Plan;
- i. **Defendant Richard B. Cook**, Secretary of the Board of Trustees and Vice President for Labor Relations of Hostess Brands, Inc., and an Employer Trustee of the Plan;
- j. **Defendant Dan Craig**, Vice President for Labor Relations of Sara Lee North America, and an Employer Trustee of the Plan;
- k. **Defendant Thomas G. Kirchner**, Senior Director for Labor Relations of Kraft Foods, and an Employer Trustee of the Plan;
- l. **Defendant Jon McPherson**, Vice President for Labor Relations of the Kellogg Company, and an Employer Trustee of the Plan;
- m. **Defendant Lou Minella**, Vice President for Labor Relations of Stroehmann Bakeries, and an Employer Trustee of the Plan;
- n. **Defendant John Wagner**, Vice President for Labor Relations of The Kroger Company, and an Employer Trustee of the Plan; and,
- o. **Defendants John Does Nos. 1-10**, who are current and/or former members of the Board of Trustees whose identities are currently unknown to Plaintiffs and who participated in the adoption and/or the implementation of the amendment and rehabilitation plan at issue herein.

IV. CLASS ACTION ALLEGATIONS

13. **Class Definition.** Plaintiffs bring this action as a class action pursuant to Rules 23(a), (b)(1) and (b)(2) of the Federal Rules of Civil Procedure on behalf of themselves and the following class of persons similarly situated (the “Class”):

All participants in the Bakery and Confectionery Union and Industry International Pension Fund or, if deceased, their beneficiaries or Estates, who accrued (a) years of Covered Employment credits and (b) age credits towards eligibility for pension benefits under Plan C (also known as the “Golden 90”) or Plan G (also known as “Golden 80”), but who were rendered ineligible for pension benefits under Plan C or G by reason of Amendment Number Two to the Rules and Regulations of the Bakery and Confectionery Union and Industry International Pension Fund, as amended and restated January 1, 2010, and who would have benefitted from the judicial determination that this amendment was unlawful, but did not do so because the Plan certified that it was in critical status and enacted a Rehabilitation Plan that removed the benefit.

14. **Numerosity.** The Class is large in number; the exact number and identities of all Class members are currently unknown to Plaintiffs, but are known to Defendants. The number of Class members, who are individuals affected by the amendment to the Plan that is the subject of this litigation, is believed to be in the thousands. Moreover, given the multiemployer nature of the Plan, the members of the Class are so numerous and so geographically dispersed across the country that joinder of all Class members is impracticable. Consequently, Plaintiffs satisfy the “numerosity” requirement of Rule 23(a) of the Federal Rules of Civil Procedure.

15. **Commonality.** There are questions of law common to all members of the Class, namely whether certification by the Plan that was in critical status warranting the reinstatement of an amendment that was previously declared by a Court to be unlawful, constitutes a violation of

ERISA and the PPA. These and similar questions will focus exclusively on Defendants' actions and entail consideration of Plan and ERISA provisions uniformly applicable to all Class members, rather than require an inquiry into the actions or circumstances of individual Plan participants. Each Class member's rights will be determined on the basis of the same statutory and regulatory provisions. Consequently, Plaintiffs satisfy the "commonality" element of Rule 23(a) of the Federal Rules of Civil Procedure.

16. **Typicality.** Plaintiffs are members of the Class as defined above. They are affected by the reinstatement of the same July 1, 2010 Plan amendment, and they assert the same legal theories under the same provisions of ERISA and Regulations promulgated thereunder with respect to that amendment. Consequently, Plaintiffs satisfy the "typicality" requirement of Rule 23(a) of the Federal Rules of Civil Procedure.

17. **Adequacy.** Plaintiffs will fairly and adequately protect the interests of the absent members of the Class. That their claims are typical of those of absent members of the Class gives them every incentive to vigorously pursue those claims on behalf of absent Class members, and their interests are coincidental with, and not antagonistic to, those of the remainder of the Class. Moreover, Plaintiffs are represented by counsel experienced in ERISA and complex class action litigation. Consequently, Plaintiffs satisfy the "adequacy" component of Rule 23(a) of the Federal Rules of Civil Procedure.

18. **Rule 23(b)(1) Requirements.** The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications establishing incompatible standards of conduct for Defendants and a risk of adjudications which as a practical matter would be dispositive of the interests of other members of the Class who are not parties.

19. **Rule 23(b)(2) Requirements.** Defendants have acted and/or refused to act and are likely to act and/or refuse to act on grounds generally applicable to the Class, thereby making appropriate final injunctive and other relief with respect to the Class as a whole.

V. FACTS

20. The Plan covers tens of thousands of participants and their beneficiaries throughout the United States who work or worked in everything from large manufacturing plants to small retail shops in the bakery and confectionery industry.

21. Under the terms of the Plan, a participant with at least twenty-five years of service is eligible to retire with a normal pension at age 65. See Rules and Regulations of the Bakery and Confectionary Union and Industry International Pension Fund (“Rules and Regulations”) § 4.01.

22. The Plan’s Plan C (commonly known as the Golden 90) provision states that when a participant’s age (in years and months) and service (in years and months) equal 90, the participant is entitled to retire at the full benefit level, except that participants who commenced participation after December 3, 1998 must have a minimum of 15 years of service. See Rules and Regulations §§ 4.17-18.

23. The Plan’s Plan G (commonly known as the Golden 80) provision states that when a participant’s age (in years and months) and service (in years and months) equal 80, the participant is entitled to retire at the full benefit level, except that participants who commenced participation after December 3, 1998 must have a minimum of 15 years of service. See Rules and Regulations §§ 4.23-4.24.

24. At all relevant times prior to July 1, 2010, a participant who retired before normal retirement age could leave covered employment after completing the minimum years of service and

receive his or her normal retirement age pension as soon as he or she “aged into” the necessary 90 or 80 years of combined age and service, without any reduction in the pension benefit due to receipt of the benefit before attaining normal retirement age and without ever returning to work in covered employment. See Rules and Regulations §§ 4.17, 4.18, 4.23, 4.24.

25. At all relevant times prior to July 1, 2010, a surviving spouse whose participant spouse died before reaching the necessary 80 or 90 years of combined age and service could defer receipt of the pension benefit until the date when the participant would have “aged into” the necessary 90 or 80 years of combined age and service and receive the normal retirement age pension at that time, without any reduction in the pension benefit due to receipt of the benefit before the participant would have attained normal retirement age. See Rules and Regulations § 6.04(d)(ii).

26. Effective July 1, 2010, the Plan was amended to no longer permit participants and their beneficiaries who have left covered employment to “age into” eligibility for the Golden 80 and Golden 90 benefits. Amendment Number Two to the Rules and Regulations of the Bakery and Confectionery Union and Industry International Pension Fund, as amended and restated effective January 1, 2010 (“Amendment”).

27. Plaintiffs and their beneficiaries and all others similarly situated left covered employment before June 30, 2010 and could not reach the required plateaus of Plan C (Golden 90) and Plan G (Golden 80) by June 30, 2010 without being permitted to “age into” benefit eligibility.

28. In recent years, thousands of Plan participants across the country have been laid off due to plant closings or reductions in force, or have accepted buy-out offers from unionized bakery companies as part of their downsizing programs. They have been unable to find work in covered employment and have no realistic prospect of ever again obtaining work in covered employment

given their ages and the ever-growing scarcity of bakery jobs. Thus, absent the ability to “age into” eligibility, thousands of participants have no realistic chance of ever qualifying for a full pension under the Golden 80 or 90 provisions, and must either accept an actuarially-reduced pension, see Rules and Regulations §§ 4.05-4.06, or must wait until age 65 to receive a full pension.

29. Many of these workers have accepted buy-outs from their employers or otherwise left employment, including by reason of a layoff or plant closing, on the understanding that they would be eligible to qualify for their full pensions under the Golden 80 or 90 provisions upon reaching the appropriate age that, summed with their years of service, would add up to the 80 or 90 “credits” needed to qualify.

30. In 2011, several participants on behalf of themselves and others similarly situated, filed lawsuits challenging the July 1, 2010 amendment taking away the Golden 80 and Golden 90 early retirement subsidy. These lawsuits asserted claims that the July 2010 amendment retroactively reduced benefits already accrued in violation of ERISA § 204(g), 29 U.S.C. § 1054(g).

31. The lawsuits were filed in various venues around the United States and were ultimately transferred to the Southern District of New York. The cases were styled *In re Bakery & Confectionery Union & Industry Int’l Pension Fund Litig.*, No. 11-cv-01471 (VB)(S.D.N.Y.); *Martinez v. Bakery & Confectionery Union & Industry Int’l Pension Fund*, No. 11-cv-09203 (VB)(S.D.N.Y.); *Blackwell v. Bakery & Confectionery Union & Industry Int’l Pension Fund*, No. 12-cv-0141 (VB)(S.D.N.Y.); *Scott v. Bakery & Confectionery Union & Industry Int’l Pension Fund*, No. 12-cv-0142 (VB)(S.D.N.Y.); and *Moore v. Bakery & Confectionery Union & Industry Int’l Pension Fund*, No. 12-cv-00913 (VB)(S.D.N.Y.).

32. A consolidated amended complaint was filed in the Southern District of New York in the case *In re Bakery & Confectionery Union & Industry Int'l Pension Fund Litig.*, No. 11-cv-01471 (VB)(S.D.N.Y.) on August 24, 2011. Defendants filed an Answer on April 13, 2012.

33. The Court held a conference on March 12, 2012, directing that the parties file motions for judgment on the pleadings pursuant to Fed. R. Civ. Pro 12(c). Defendants filed their motion on April 13, 2012; Plaintiffs filed their cross-motion and opposition to Defendants' motion on April 20, 2012; Defendants filed their opposition to Plaintiffs' cross-motion on April 27, 2012; and Defendants filed their reply in support of their motion on April 30, 2012, such that the matter was fully briefed on April 30, 2012.

34. On April 12, 2012, the Plan sent out to Plan participants two notices: an Annual Funding Notice and a Notice of Critical Status. The Notice of Critical Status stated that "on March 30, 2012 the plan actuary certified to the U.S. Department of the Treasury, and also to the Trustees, that the plan is in critical status (the "red zone") for the plan year beginning January 1, 2012."

35. The Notice of Critical Status also indicated that due to the Plan's poor funding status, "at the present funding levels the plan is projected to have an accumulated funding deficiency in five years."

36. The Notice of Critical Status also indicated that the Plan might adapt a Rehabilitation Plan where certain "adjustable benefits" may be reduced or eliminated. The list of benefits that might be reduced or eliminated included, *inter alia*, "Subsidized early retirement benefits," which included the Golden 80 and Golden 90 pensions.

37. At the time the Court ruled on the pending motions for judgment on the pleadings on June 6, 2012, the Plan had not yet adopted a Rehabilitation Plan. In its June 6, 2012 ruling, the

Court determined that the July 1, 2010 amendment violated ERISA's anti-cutback rule, pursuant to ERISA § 204(g), 29 § 1054(g).

38. On October 12, 2012, the Court held a conference at which it directed the parties to submit a proposed Order/Judgment pursuant to Fed. R. Civ. P. 54(b).

39. On November 7, 2012, the Plan adopted a Rehabilitation Plan, which directed that participants who had not reached the combination of age and service to be eligible for Golden 80 or Golden 90 benefit as of April 30, 2012 would not be able to "age in" to these benefits after leaving covered employment. The Plan indicated that, except for the new effective date, the amendment will be identical to the one issued on July 1, 2010. The Plan further stated that this was a contingent measure, because of the pending legal challenge to the previous July 2010 amendment. Upon information and belief, the Plan had already decided to appeal the District Court's June 6, 2012 ruling well before it issued the Rehabilitation Plan on November 7, 2012.

40. On November 11, 2012, the District Court entered judgment on the unlawful July 2010 amendment pursuant to Fed. P. Civ. R. 54 (b), to enable the Plan to appeal its ruling to the United States Court of Appeal for the Second Circuit.

41. On November 14, 2012, the Plan issued a notice to all participating employers and local unions describing how various benefits, including the Golden 80 and Golden 90 early retirement subsidy, was reduced by the Rehabilitation Plan.

42. On December 4, 2012, the Plan filed its Notice of Appeal from the District Court decision.

43. On May 1, 2014, the Second Circuit affirmed the District Court's decision in *Alcantara v. Bakery & Confectionary Union & Industrial Int'l Pension Fund Pension Plan*, 751 F.3d 71 (2d. Cir. 2014). The Second Circuit subsequently issued its mandate on May 23, 2014.

44. Since the Rehabilitation Plan was adopted, the Plan has not issued any formal notice confirming that the Golden 80 and 90 early retirement subsidies will be reduced or eliminated.

VI. AS AND FOR A FIRST CLAIM FOR RELIEF
(For Violation of the PPA and ERISA in Certifying Critical Status, against all Defendants)

45. The Plaintiffs repeat and reallege the preceding paragraphs as if fully set forth herein.

46. In order to certify itself in "Critical Status" with the meaning of the PPA, the Plan's funding status must meet specific criteria set forth in 29 U.S.C. § 1085(b).

47. The certification by the Plan of its critical status fails to comply with the standards set forth in the above-referenced section of the PPA.

48. The actuarial assumptions applied, including the assumptions regarding the interest rate, mortality, and projected hours, are not reasonable, as required by 29 U.S.C. §§ 1084(c)(2)(A) and (3). This application of unreasonable actuarial assumptions resulted in undervaluation of the Plan's funding status.

49. The Plan's projected accumulated funding deficiency does not occur for five years, or until year 2017, which is a longer period of time than set forth in the criteria for establishing critical status, in 29 U.S.C. § 1085(b)(2).

50. As a result, Plaintiffs seek declaratory and injunctive relief consisting of an order invalidating the Plan's critical status, and rescinding the Rehabilitation Plan that reinstates the July 1, 2010 amendment, which unlawfully removed Golden 80 and 90 benefits from those who become eligible after April 30, 2012.

VII. AS AND FOR A SECOND CLAIM FOR RELIEF
**(For Violation of the PPA and ERISA by Failing to Give Adequate Notice,
against all Defendants)**

51. The Plaintiffs repeat and reallege the preceding paragraphs as if fully set forth herein.

52. Following the Second Circuit's May 2014 affirmance of the District Court's order that the July 1, 2010 amendment was an unlawful retroactive reduction of an accrued benefit, the Plan failed to notify the affected Plan participants, as required by the PPA, 29 U.S.C. § 1085(b)(3)(D), that its critical status and resulting Rehabilitation Plan reinstated the amendment that was just judicially determined to be unlawful.

53. As a result, Plaintiffs seek declaratory and injunctive relief consisting of an order invalidating the Plan's critical status, as of April 30, 2012 and rescinding the Rehabilitation Plan that reinstated the July 1, 2010 amendment, which unlawfully removed Golden 80 and 90 benefits to those who become eligible after April 30, 2012.

VIII. AS AND FOR A THIRD CLAIM FOR RELIEF
(For Breach of Fiduciary Duty in Certifying Critical Status, against the Plan Trustees)

54. The Plaintiffs repeat and reallege the preceding paragraphs as if fully set forth herein.

55. On April 12, 2012 when the Plan certified that it was in critical status, the Trustees of the Plan were fully aware that if the July 1, 2010 amendment was declared invalid by the District Court, this would result in an approximate 214 million dollar expense to the Plan. At such time, motions for judgment on the pleadings were in the process of being filed with the District Court.

56. The Notice of Critical Status indicated that the Plan "may" reduce or eliminate a list of adjustable benefits that may include the Golden 80 and 90 early retirement benefits.

57. On November 7, 2012, following the District Court's June 6, 2012 ruling invalidating the July 1, 2010 amendment and just days before the District Court entered judgment against the

Plan on November 11, 2012 (certifying its ruling pursuant to Fed. R. Civ. P. 54 (6) enabling the Plan to appeal its decision to the Second Circuit), the Plan adopted a Rehabilitation Plan. The Rehabilitation Plan reinstated the July 1, 2010 amendment that the District Court had just ruled was unlawful.

58. Reinstatement of that July 2010 amendment saved the Plan approximately 200 million dollars (as only 560 or so of the Plan participants could benefit from the District Court's ruling because the Plan had to grant the Golden 80 and 90 benefits to participants who aged into the benefit between the date the unlawful amendment became effective on July 1, 2010 and April 30, 2012, the date the Plan unlawfully certified it was in critical status).

59. By certifying that the Plan was in critical status when in actuality it was not, the Trustees breached their fiduciary duties to act solely in the interest of Plan participants and beneficiaries, as required by ERISA § 404(a); 29 U.S.C. § 1104(a), and ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3).

60. As a result, Plaintiffs seek declaratory and injunctive relief consisting of an order invalidating the Plan's critical status, and rescinding the Plan Rehabilitation Plan that reinstates the July 1, 2010 amendment, which unlawfully removed Golden 80 and 90 benefits to those who become eligible after April 30, 2012.

IX. AS AND FOR A FOURTH CLAIM FOR RELIEF

(For Breach of Fiduciary Duty in Amending the Plan through the Rehabilitation Plan, against the Plan Trustees)

61. The Plaintiffs repeat and reallege the preceding paragraphs as if fully set forth herein.

62. This count alleges a fiduciary breach against the Board of Trustees and the Individual Defendants.

63. Section 8.19 of the Plan provides, in pertinent part, that

This Plan may be amended at any time by the Trustees, consistent with the provisions of the Trust Agreement. In making any decision to amend the Plan, the Trustees shall act as fiduciaries. No amendment may decrease the accrued benefit of any Participant, except:

(a) As necessary to establish or maintain the qualification of the Plan or the Trust Fund under the Internal Revenue Code and to maintain compliance of the Plan with the requirements of ERISA[.]

64. The Rehabilitation Plan and its reinstatement of the July 2010 Amendment reducing and eliminating the Golden 80/90 benefits were not adopted pursuant to Plan § 8.19(a) above.

65. In addition, through the Rehabilitation Plan and its reinstatement of the July 2010 amendment, the Plan Trustees completely eliminated the Golden 80/90 benefits for those participants who had already left covered employment but had not yet reached the required 80 or 90 credits to be eligible for the benefit, because such participants were no longer permitted to “age in” to the benefit. However, the Golden 80/90 benefit was not eliminated for those participants still working in covered employment or who were able to return to work in covered employment within a limited time period. Thus, the Rehabilitation Plan and its reinstatement of the July 2010 amendment favored those participants still working in covered employment over those no longer working in covered employment.

66. By favoring one group of participants over another, the Plan Trustees breached their fiduciary duties to act solely in the interest of Plan participants and beneficiaries, as required by ERISA § 404(a); 29 U.S.C. § 1104(a), and ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3).

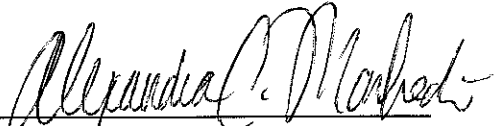
67. As a result, Plaintiffs seek declaratory and injunctive relief consisting of an order invalidating the Plan’s critical status, and rescinding the Rehabilitation Plan that reinstates the July 1, 2010 amendment, which unlawfully removed Golden 80 and 90 benefits from those who become eligible after April 30, 2012.

X. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court enter judgment as follows:

- A. Certifying this action as a class action;
- B. Declaring that the certification of critical status and the enactment of the Rehabilitation Plan to the extent it restores the July 1, 2010 amendment to those who age into the Golden 80 and Golden 90 retirement subsidy after April 30, 2012, violated ERISA and the PPA and is thus void ab initio;
- C. Ordering Defendants to calculate the benefits of Plaintiffs and absent Class members pursuant to the Plan as if the Rehabilitation Plan had not been adopted, as well as to provide make-whole payments plus interest to any Plaintiff or Class member already receiving pension benefits from the Plan;
- D. Awarding Plaintiffs
 - (1) their costs, disbursements and expenses herein;
 - (2) an award for having acted as Class Representatives;
 - (3) reasonable attorney's fees; and
- E. Awarding the Class such other and further relief as the Court may deem just, proper and equitable.

Dated: White Plains, New York
January 9, 2015

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