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*Attorneys for Plaintiffs*

BOARD OF TRUSTEES OF PUBLIC  
EMPLOYEES' RETIREMENT SYSTEM  
OF NEW JERSEY; BOARD OF  
TRUSTEES OF TEACHERS' PENSION  
AND ANNUITY FUND OF NEW JERSEY;  
and BOARD OF TRUSTEES OF POLICE  
AND FIREMEN'S RETIREMENT SYSTEM  
OF NEW JERSEY,

Plaintiffs,

vs.

STATE OF NEW JERSEY; NEW JERSEY  
DEPARTMENT OF TREASURY;  
CHRISTOPHER JAMES CHRISTIE, GOVERNOR;  
ROBERT A. ROMANO, ACTING TREASURER,  
STATE OF NEW JERSEY,

Defendants.

SUPERIOR COURT OF NEW  
JERSEY, LAW DIVISION;

MERCER COUNTY

DOCKET NO. MER-L-2818-14

Civil Action

**NOTICE OF MOTION  
FOR LEAVE TO FILE  
SECOND AMENDED  
COMPLAINT**

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TO: John J. Hoffman, Acting Attorney General of N.J.  
Jean P. Reilly, Assistant Attorney General  
Office of the Attorney General  
Division of Law

PLEASE TAKE NOTICE that on August 21, 2015, at 10:00 a.m., or such other time as the matter may be heard, the Plaintiff Boards of Trustees of the Public Employees' Retirement System of New Jersey, the Teachers' Pension and Annuity Fund of New Jersey and the Police and Firemen's Retirement System of New Jersey will present a Motion for Leave to File Second Amended Complaint to the Honorable Mary C. Jacobson, New Jersey Superior Court Assignment Judge, or to such other Judge as may be assigned, at the Mercer County Courthouse in Trenton, New Jersey;

PLEASE TAKE FURTHER NOTICE that Plaintiffs' proposed Second Amended Complaint is attached as an Exhibit to this Notice of Motion;

PLEASE TAKE FURTHER NOTICE that Amicus shall rely upon the Letter Brief in Support of Motion to File Second Amended Complaint that has been filed herewith;

PLEASE TAKE FURTHER NOTICE that oral argument is not requested unless opposition to said motion is filed;

PLEASE TAKE FURTHER NOTICE that a Proposed Form of Order has been filed herewith.

Respectfully submitted,

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By  7/24/15  
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STATE OF NEW JERSEY,

Defendants.

SUPERIOR COURT OF NEW  
JERSEY, LAW DIVISION

MERCER COUNTY

DOCKET NO. MER-L-2818-14

Civil Action

**SECOND  
AMENDED COMPLAINT**

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<sup>1</sup> During the pendency of the litigation, former State Treasurer , Andrew Sidamon-Eristoff resigned from office and Robert A. Romano was named acting Treasurer in his place. As such the acting Treasurer is automatically substituted pursuant to R 4:34-4.

Plaintiffs, Board of Trustees of Public Employees' Retirement System of New Jersey ("PERS"); Board of Trustees of Teachers' Pension and Annuity Fund of New Jersey ("TPAF"); and Board of Trustees of Police and Firemen's Retirement System of New Jersey ("PFRS")(collectively the "Boards" as "Trustees" charged with the fiduciary duty to administer their respective "Retirement Systems"), bring this Complaint by and through their undersigned attorneys against the Defendants, State of New Jersey; New Jersey Department of Treasury; Christopher James Christie, Governor; and Robert A. Romano, Acting Treasurer, State of New Jersey, alleging the following:

### PRELIMINARY STATEMENT

This is a collection action under the New Jersey statutes governing each of the Plaintiff Retirement Systems for breach of contract and constructive trust for unpaid contributions owed to the Retirement Systems administered by the Plaintiff Trustees. Plaintiffs seek to enforce the State's statutory and common law obligation to remit statutorily mandated "unfunded accrued liability contributions" on behalf of the active membership, retirees and beneficiaries of the Retirement Systems.

1. Since the second decade of the 20<sup>th</sup> Century, New Jersey has consistently and intentionally failed to fund its public employee retirement systems in a consistent and cogent manner so as to ensure that benefits earned by dedicated officers and employees of the state would be available as promised. Given the current drastic underfunding of each of the Plaintiff Retirement Systems, that promise is in real and present danger of failing.
2. The Supreme Court of New Jersey wrote in *Burgos v. State*, \_\_\_A.3d \_\_\_, 2015 WL 3937407 (N.J. 2015): "That the State must gets its financial house in order is plain. The

need is compelling in respect of the State's ability to honor its compensation commitment to retired employees." Id. at \*22.

3. As the Supreme Court held, "[t]he individual members of the public pension systems, by their public service, earned this delayed part of their compensation. That those men and women must be paid their pension benefits when due is not in question in this matter." Id. at \*1. The Court reiterated that, "[T]here is no question that individual members of the public pension systems are entitled to this delayed part of their compensation upon retirement...." Id. at \*1 & \*22 at FN 11.
4. As a result, the individual Boards of Trustees bring this action to assure that the State honors its contractual promise of deferred wages by reducing that promise to a judgment which can be enforced in the ordinary course, as would be any other contract judgment against the State. See N.J.S.A. 59:13-9, the New Jersey Contractual Liability Act.
5. The Boards' authority and duty to bring this action is set forth in N.J.S.A. §43:3C-9.5(c)(2) (Chapter 78), which also states the terms of the contract:

Each member 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 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 sovereign immunity in such an 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.

6. Thus, the Legislature empowered the Boards to sue to enforce the State's "annual required contribution" under Chapter 78, in recognition of the Boards' role as fiduciaries charged with the responsibility for the proper administration of the Retirement Systems.
7. As the Supreme Court expressly held that the provisions of Chapter 78, other than the contractual promise to make annual budget appropriations of above 1%, were not unconstitutional and remained in full force and effect, the entry of judgment for the full amounts owed is both lawful and consistent with the Supreme Court's decision. 2015 WL 3937407 at \*22.

#### PARTIES

8. The PERS Board of Trustees has the responsibility for the proper operation of the Public Employees' Retirement Systems (PERS). N.J.S.A. §43:15A-17. The Board consists of six employee representatives, the State Treasurer, and two individuals appointed by the Governor with the advice and consent of the Senate. PERS is governed by New Jersey Statutes, Title 43, Chapter 15A and Title 17, Chapters 1 and 2 of the New Jersey Administrative Code<sup>2</sup>. The State of New Jersey established PERS in 1955 to replace the former State Employees' Retirement System.
9. The TPAF Board of Trustees has the responsibility for the proper operation of the Teachers' Pension and Annuity Fund (TPAF). N.J.S.A. §18A:66-56. The Board consists of three active or retired members of the TPAF, one individual appointed by the other trustees, the State Treasurer, and two individuals appointed by the Governor with the

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<sup>2</sup> The Acting Treasurer and the Gubernatorial trustees have recused themselves from participation on the PERS Board as related to this case. The Acting Treasurer is a party defendant.

advice and consent of the Senate.<sup>3</sup> The State of New Jersey established TPAF in 1919 and completely reorganized it in 1955. TPAF is governed by New Jersey Statutes, Title 18A, Chapter 66 and Title 17, Chapters 1 and 3 of the New Jersey Administrative Code.

10. The PFRS Board of Trustees has the responsibility for the proper operation of the Police and Firemen's Retirement System (PFRS). N.J.S.A. §43:16A-13. The Board consists of two elected police representatives, two elected fire representatives, one elected retired member representative, the State Treasurer, and five individuals appointed by the Governor with the advice and consent of the Senate.<sup>4</sup> The State of New Jersey established PFRS in 1944. PFRS is governed by New Jersey Statutes, Title 43, Chapter 16A & Title 17, Chapter 1 and 4 of the New Jersey Administrative Code.
11. Defendant, State of New Jersey, is the 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 and was settlor of each plan's respective trust. The State, through the Department of Treasury, Division of Pensions and Benefits, provides administrative services to PERS, TPAF, and PFRS under the oversight of the Boards.
12. Defendant, Christopher James Christie is the Governor of the State of New Jersey.
13. Defendant, Robert A. Romano is the Acting 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. He recused himself from the Boards' consideration of the prosecution of this lawsuit.

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<sup>3</sup> The Acting Treasurer and the Gubernatorial trustees have recused themselves from participation on the TPAF Board as related to this case. The Acting Treasurer is a party defendant.

<sup>4</sup> The Acting Treasurer and the Gubernatorial trustees have recused themselves from participation on the PFRS Board as related to this case. The Acting Treasurer is a party defendant.



**FACTUAL ALLEGATIONS COMMON TO ALL PLAINTIFFS**

14. In *Burgos*, the Supreme Court concluded that the Legislature and the Governor clearly expressed an intent that Chapter 78 create a “contract right to timely and recurring ARC [Annual Required Contribution] payments to reduce the unfunded liability of the pensions fund to safe levels.” 2015 WL 3937403, \*10.
15. The Supreme Court did not declare Chapter 78 to be unconstitutional. It held only that the enforcement of the contractual promises made were subject to the Debt Limitation and Appropriation clauses of the New Jersey Constitution. *Id.* at \*1. Nowhere in the majority opinion is reducing the State’s pension liability to a judgment in the same manner as any other contract held to be unconstitutional. *Id.* at \*22, FN 10.
16. Chapter 78 provides that the State “shall” make its “annual required contribution” to each system or fund.<sup>6</sup>
17. The promise to make the annual required contribution is separate and apart from the promise that the Legislature will make the necessary appropriations to satisfy those obligations and appears in a separate subsection of Chapter 78. N.J.S.A. 43:3C-9.5(c)(1) and (c)(2).
18. It was only the promise to make the appropriations that was held to be unenforceable by the Supreme Court. 2015 WL 3937407, \*22.
19. The annual payment of the annual required contribution is mandatory and ministerial. The legislative branch and the executive branch play no role in the calculation or determination of the amount of the contribution. There is no discretionary element or

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<sup>6</sup> “The annual normal contribution plus the annual unfunded accrued liability contribution shall together be the annual required contribution . . .” The “annual unfunded accrued liability contribution . . . “[is] determined by the applicable board of trustees in consultation with the system’s or fund’s actuary.” N.J.S.A. 43:3C-9.5(c)(1).

aspect to the State's obligation to make this annual contribution. The amounts due are to be entirely calculated by the Plaintiffs and their actuaries.<sup>7</sup> N.J.S.A. 43:3C-9.5(c)(1).

20. In creating a contractual cause 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." N.J.S.A. 43:3C-9.5(c)(2).
21. Pursuant to Chapter 78, the Boards are properly awarded attorneys' fees and costs in an action to enforce the State's funding obligation. *Id.*
22. The State's full annual required contributions for the fiscal year 2014 were not made, despite the fact that the necessary budget allocation was made by the Legislature and signed into law by the Governor, thereby meeting the requirements of any possible reading of *Burgos*. This exacerbated the unfunded liability of the Retirement Systems.
23. For FY 2015, only approximately one third of the Annual Required Contribution was paid by the State to each of the Funds, exacerbating the unfunded liability of the Retirement Systems.
24. The FY 2016 budget as signed by the Governor included only a total \$1.3 billion contribution to all of the State's pension funds, including but not limited to the three plaintiffs, representing only 3/10 of the Annual Required Contribution rather than the 5/7 required by N.J.S.A. 43:3C-9.5.
25. The Annual Required Contribution for FY 2016 is approximately \$3.07 billion for all of the Retirement Systems. Insufficient allocations have been made in the Budget to pay the

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<sup>7</sup> Chapter 78 specifies that the State's mandatory funding obligation is determined solely by the Boards, i.e., the Plaintiffs, in consultation with their actuaries, "pursuant to standard actuarial practices authorized by law" unless the following conditions are met: (1) there is no existing unfunded accrued liability contribution due to the system, or (2) there are excess valuation assets in excess of the actuarial accrued liability. Neither condition which would excuse the ministerial duty to make State contributions was applicable during the time periods relevant to this Second Amended Complaint.

FY 2016 Annual Required Contributions to PERS, TPAF and PFRS in the FY 2016 as follows:<sup>8</sup>

- a. PERS - \$349,058,000 was appropriated although the Annual Required Contribution is \$844,313,397.
  - b. TPAF - \$762,960,000 was appropriated although the Annual Required Contribution is \$1,817,722,524.
  - c. PFRS - \$126,147,000 was appropriated although the Annual Required Contribution is \$329,343,608.
26. The difference between the Annual Required Contribution and the amount allocated in the FY 2016 Budget has not been paid, is not currently budgeted to be paid, and therefore will not be paid.
  27. The Boards are trustees of the Retirement Systems which are held in trust by virtue of common law, state statute, and federal tax law.
  28. All three Boards are required to hold assets in a tax exempt trust under section 501 of the Internal Revenue Code. N.J.S.A. §18A:66-97.
  29. In accordance with the provisions of section 401(a)(2) of the federal Internal Revenue Code, "at no time prior to the satisfaction of all liabilities with respect to members and their beneficiaries under any pension fund created as provided in this article shall any part of the corpus or income of the pension fund, within the taxable year or thereafter, be used for or diverted to purposes other than for the exclusive benefit of the members or their beneficiaries." N.J.S.A. §18A:66-97(d).

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<sup>8</sup> The budget amounts reflected in this paragraph are taken from the 2016 Budget, Interdepartmental Accounts, pp D 430-435. The annual required contributions are taken from the actuarial valuations of the respective Retirement Systems.

30. Based on common law, federal tax law, and New Jersey statutory law, the assets of the Retirement System are for the exclusive benefit of the retirement trusts' members and beneficiaries.
31. As recognized by N.J.S.A. §43:3C-9.1:  
  
In accordance with the provisions of section 401 (a) (2) of the federal Internal Revenue Code....at no time prior to the satisfaction of all liabilities with respect to members and their beneficiaries under the Teachers' Pension and Annuity Fund, established pursuant to N.J.S.18A:66-1 et seq....the Public Employees' Retirement System, established pursuant to P.L.1954, c. 84 (C.43:15A-1 et seq.),...the Police and Firemen's Retirement System, established pursuant to P.L.1944, c. 255 (C.43:16A-1 et seq.),.....shall any part of the corpus or income of the respective retirement systems, within the taxable year or thereafter, be used for or diverted to purposes other than for the exclusive benefit of the members or their beneficiaries.
32. Under the terms of Debt Limitation clause as applied in *Burgos*, the maximum amount that can be required to be appropriated without voter approval is a sum less than 1% of the budget for a given year.
33. For Fiscal Year 2014, the budget was \$32,976,962,000. Therefore, the maximum amount that could have been required to be appropriated without voter approval was \$329,769,000.
34. This limitation is irrelevant for FY 2014, however, as the entire amounts necessary to pay the Annual Required Contributions for each of retirement systems was appropriated by the Legislature and signed into law by the Governor as part of the FY 2014 Budget.
35. For FY 2015, the budget was \$32,567,765,000. Therefore, the maximum amount that could have been required to be appropriated without voter approval was \$325,677,650.
36. For FY 2016, the budget is \$33,800,000,000. Therefore, the maximum amount that could have been required to be appropriated without voter approval was \$338,000,000.

37. The Treasurer failed to remit payments to each retirement system of the full Annual Required Contribution for FY 2014 despite the fact that such amounts had been allocated in the FY 2014 Budget passed by the Legislature and signed into law by the Governor, thereby breaching the contract.
38. The Treasurer failed to remit payments to each retirement system of the full Annual Required Contribution for FY 2015 thereby breaching the contract.
39. The Budget that has now been finally adopted for FY 2016 again breaches the contract by failing to provide sufficient allocations for the full Annual Required Contribution to be made, which necessarily means that the full Annual Required Contribution will not be made, thereby breaching the contract.

#### **THE SUPREME COURT RULING IN *BURGOS***

40. On June 9, 2015, the New Jersey Supreme Court issued its opinion in *Burgos v. State*, \_\_\_ A.3d \_\_\_, 2015 WL 3937407 (N.J. 2015) .
41. *Burgos* HELD that Chapter 78 created an enforceable contractual right to pension funding because retirees “must be paid their pension benefits” after the Legislature granted a “non-forfeitable right to receive benefits, a right defined to mean that benefits could not be reduced once the right to them had attached.” Id. at \*1.
42. *Burgos* HELD that Chapter 28 created a contractual right to an annual appropriation sufficient to make the payments, BUT that promise was unenforceable only insofar as it exceeded the 1% cap of the Debt Limitation Clause. Id. at \*19 & \*22. According to the Court, “we are not declaring Chapter 78 to be unconstitutional, contrary to the dissent’s suggestion that the majority is ‘striking down,’ ‘voiding,’ or ‘invalidating’ that statute. Chapter 78 remains in effect, as interpreted, unless the Legislature chooses to modify it.”

43. Thus, *Burgos* HELD that the contractual promises created by Chapter 78 were not unconstitutional and remained enforceable, except for the contractual promise to make annual budget appropriations of above 1% of the Budget.
44. Therefore the decision established:
- A. The promise to appropriate the Annual Required Contribution to each Retirement System that is owed less than the cap in each year is enforceable and supports a judgment against the State, requiring it to make the budget appropriation.
  - B. Thus, the Debt Limitation and Appropriations-related clauses in the NJ Constitution led the Court to conclude only that, “Chapter 78 cannot constitutionally create a legally binding, enforceable obligation on the State to annually appropriate funds as Chapter 78 purports to require.” 2015 WL 3937407, \*22.
  - C. The contractual right to the funding therefore remains enforceable through a breach of contract suit even if the amount exceeds 1% and can be collected in the manner of any other civil judgment against the State. The majority decision by Justice LaVecchia held that Chapter 78’s “historic compromise” and the Legislature and Governor’s evinced a clear intent to create an enforceable contractual right to pension funding. 2015 WL 3937407, \*2839.
  - D. The Court agreed with plaintiffs that a “promise was made by the legislative and executive branches when enacting Chapter 78.” The Court concludes that “morally” plaintiffs’ argument is “unassailable.” 2015 WL 3937407, \*1.

- E. “In sum, the State Constitution simply does not permit Chapter 78’s payment provisions to have any more binding effect than that of a contract that is subject to appropriation.” 2015 WL 3937407, \*22.
45. In other words, Chapter 78’s payment provisions have the same binding effect as any other contract that is subject to appropriation, such as those enforced under the Contractual Liability Act which was cited by the Court as an example. 2015 WL 3937407, \*22.
46. Thus, the Court’s holdings permit the entry of judgment that can be collected in the same manner as a judgment under the Contractual Liability Act, N.J.S.A. 59:13-9.
47. In addition, the Court only struck down Chapter 78 to the extent that it violated the Debt Limitation Clause by requiring appropriations in such a “sizable amount,” *i.e.*, more than 1% of the annual state budget. 2015 WL 3937407, \*1.
48. Nothing in the Court’s decision declares the separate promise to pay the Annual Required Contribution unconstitutional.
49. The majority decision emphasized that it was neither striking down nor invalidating Chapter 78. Rather, the Court explained that, “we are not declaring Chapter 78 unconstitutional...Chapter 78 remains in effect, as interpreted, unless the Legislature chooses to modify it.” To date, the Legislature has not chosen to amend or repeal Chapter 78.
50. Thus, to the extent that Chapter 78 requires appropriations that are less than 1% of the annual state budget it remains fully enforceable.
51. To the extent that Chapter 78 requires payment of the Annual Required Contribution it remains fully enforceable.

52. In its decision, but without analysis or comment, the Court conflated the separate appropriations necessary for payment to each of its pension funds, including but not limited to the present plaintiffs, as if they were one large appropriation.
53. Each Fund, however, requires its own individual budget line and appropriation in order to be paid the differing amounts each is owed by the State. The separate appropriations are found in the Interdepartmental Accounts section of the Annual Budget.
54. The *Burgos* decision unequivocally affirmed that the underlying right of members and beneficiaries to payment of retirement benefits remains intact:
- We reiterate that there is no question that individual members of the public pension systems are entitled to this delayed part of their compensation upon retirement, but, as stated at the outset, that is not in question in the instant matter before this Court. That said, the State repeatedly asserted at oral argument that it is not walking away from its obligations to the pension systems and to pay benefits due to retirees.
55. Unless contributions are received to fund the presently unfunded obligations, that promise will at some point in the not-very-distant-future become completely illusory.

## COUNT I

### INDEPENDENT CLAIM OF PERS FOR BREACH OF CONTRACT FOR PENSION FUNDING

56. The PERS Board of Trustees repeats and incorporates the preceding factual allegations.
57. N.J.S.A. § 43:15A-32 provides that the PERS Board “shall be and are hereby constituted trustees of the various funds and accounts established by this act.”
58. Chapter 78 (N.J.S.A. §43:3C-9.5(c)(2)) creates “a contractual right to the annual required contribution.” Plaintiffs, Defendants and the membership of the Retirement Systems are parties to a contractual and statutory agreement pursuant to Chapter 78, for which consideration was provided in exchange for value.



59. Chapter 78 provides that failure to make the Annual Required Contribution shall be deemed an impairment of the contractual right of each employee, enforceable by the PERS Board.
60. Having failed to remit the appropriated Annual Required Contribution to PERS for FY 2014 the Defendants have breached the contract.
61. Having failed to remit the Annual Required Contribution to PERS for FY 2015 the Defendants have breached the contract.
62. Having adopted a Budget for FY 2016 that does not provide a sufficient appropriation for payment of the full Annual Required Contribution to PERS for FY 2016, the Defendants have breached the contract.
63. The Annual Required Contribution owed to PERS for FY 2014 by the Defendants was \$425,599,209.
64. Only \$141,154,000 was paid to PERS in FY 2014, leaving a balance due of \$284,445,209.
65. The Annual Required Contribution owed to PERS for FY 2015 by the Defendants was \$604,661,542.
66. Only \$138,151,000 was paid to PERS in FY 2015, leaving a balance due of \$466,510,542.
67. The Annual Required Contribution owed to PERS for FY 2016 by the Defendants is \$844,313,397.
68. Only \$349,058,000 has been appropriated to be paid to PERS in FY 2016, leaving a balance due of \$495,255,397.

WHEREFORE, Plaintiff PERS requests that separate judgments be rendered in its favor for each fiscal year requiring payment of the balance owing on the Annual Required Contribution amounts for FY 2014, FY2015, and FY 2016, as follows:

(a) For Fiscal Year 2014: \$284,445,209, plus prejudgment interest at the same overall rate that each of the Plaintiffs' Trust Funds attained on their invested assets.

(b) For Fiscal Year 2015: \$466,510,542, plus prejudgment interest at the same overall rate that each of the Plaintiffs' Trust Funds attained on their invested assets.

(c) For Fiscal Year 2016: \$495,255,397, plus prejudgment interest at the same overall rate that each of the Plaintiffs' Trust Funds attained on their invested assets.

(d) The amounts to be owed for FY 2017 and any other amounts that may become due in accordance with Chapter 78 during the pendency of this litigation.

(e) Directing Defendants to pay Plaintiffs' attorneys fees, disbursements and costs.

(g) Directing enforcement of each such judgment as provided in N.J.S.A.59:13-9.

(h) Granting such other relief as the Court deems just and proper.

## COUNT II

### INDEPENDENT CLAIM OF TPAF FOR BREACH OF CONTRACT FOR PENSION FUNDING

69. The TPAF Board of Trustees repeats and incorporates all of the allegations made in paragraphs 1 – 55 of the Complaint.

70. N.J.S.A. §18A:66-61 provides that the TPAF Board “shall be and are hereby constituted trustees of the various funds and accounts established by this article.”

71. Chapter 78 (N.J.S.A. §43:3C-9.5(c)(2)) creates “a contractual right to the annual required contribution.” Plaintiffs, Defendants and the membership of the Retirement Systems are parties to a contractual and statutory agreement pursuant to Chapter 78, for which consideration was provided in exchange for value.
72. Chapter 78 provides that failure to make the Annual Required Contribution shall be deemed an impairment of the contractual right of each employee, enforceable by the TPAF Board.
73. Having failed to remit the appropriated Annual Required Contribution to TPAF for FY 2014 the Defendants have breached the contract.
74. Having failed to remit the Annual Required Contribution to TPAF for FY 2015 the Defendants have breached the contract.
75. Having adopted a Budget for FY 2016 that does not provide a sufficient appropriation for payment of the full Annual Required Contribution to TPAF for FY 2016, the Defendants have breached the contract.
76. The Annual Required Contribution owed to TPAF for FY 2014 by the Defendants was \$924,980,296.
77. Only \$387,586,000 was paid to TPAF in FY 2014, leaving a balance due of \$537,394,296.
78. The Annual Required Contribution owed to TPAF for FY 2015 by the Defendants was \$1,318,063,837.
79. Only \$379,214,000 was paid to TPAF in FY 2015, leaving a balance due of \$938,849,837.

80. The Annual Required Contribution owed to TPAF for FY 2016 by the Defendants is \$1,817,722,524.
81. Only \$762,960,000 has been appropriated to be paid to TPAF in FY 2016, leaving a balance due of \$1,054,762,524.

WHEREFORE, Plaintiff TPAF requests that separate judgments be rendered in its favor for each fiscal year requiring payment of the balance owing on the Annual Required Contribution amounts for FY 2014, FY2015, and FY 2016, as follows:

(a) For Fiscal Year 2014: \$537,394,296, plus prejudgment interest at the same overall rate that each of the Plaintiffs' Trust Funds attained on their invested assets.

(b) For Fiscal Year 2015: \$938,849,837, plus prejudgment interest at the same overall rate that each of the Plaintiffs' Trust Funds attained on their invested assets.

(c) For Fiscal Year 2016: \$1,054,762,524, plus prejudgment interest at the same overall rate that each of the Plaintiffs' Trust Funds attained on their invested assets.

(d) The amounts to be owed for FY 2017 and any other amounts that may become due in accordance with Chapter 78 during the pendency of this litigation.

(e) Directing Defendants to pay Plaintiffs' attorneys fees, disbursements and costs.

(g) Directing enforcement of each such judgment as provided in N.J.S.A.59:13-9.

(h) Granting such other relief as the Court deems just and proper.

### COUNT III

#### INDEPENDENT CLAIM OF PFRS FOR BREACH OF CONTRACT FOR PENSION FUNDING

82. The PFRS Board of Trustees repeats and incorporates all of the allegations made in paragraphs 1 – 55 of the Complaint.
83. N.J.S.A. §43:16A-14 provides that the PFRS Board “shall be and are hereby constituted trustees of the various funds and accounts established by this act.”
84. Chapter 78 (N.J.S.A. §43:3C-9.5(c)(2)) creates “a contractual right to the annual required contribution.” Plaintiffs, Defendants and the membership of the Retirement Systems are parties to a contractual and statutory agreement pursuant to Chapter 78, for which consideration was provided in exchange for value.
85. Chapter 78 provides that failure to make the Annual Required Contribution shall be deemed an impairment of the contractual right of each employee, enforceable by the PFRS Board.
86. Having failed to remit the appropriated Annual Required Contribution to PFRS for FY 2014 the Defendants have breached the contract.
87. Having failed to appropriate and to remit the Annual Required Contribution to PFRS for FY 2015 the Defendants have breached the contract.
88. Having adopted a Budget for FY 2016 that does not provide a sufficient appropriation for payment of the full Annual Required Contribution to PFRS for FY 2016, despite the fact that said Annual Required Contribution is equal to less than 1% of the entire Budget, the Defendants have breached the contract.
89. The Annual Required Contribution owed to PFRS for FY 2014 by the Defendants was \$167,009,798.

90. Only \$114,277,000 was paid to PFRS in FY 2014, leaving a balance due of \$52,732,798.
91. The Annual Required Contribution owed to PFRS for FY 2015 by the Defendants was \$236,752,545.
92. Only \$129,379,000 was paid to PFRS in FY 2015, leaving a balance due of \$107,373,545.
93. The Annual Required Contribution owed to PFRS for FY 2016 by the Defendants is \$329,343,608.
94. Only \$126,147,000 has been appropriated to be paid to PFRS in FY 2016, leaving a balance due of \$203,196,608.

WHEREFORE, Plaintiff PFRS requests that separate judgments be rendered in its favor for each fiscal year requiring payment of the balance owing on the Annual Required Contribution amounts for FY 2014, FY2015, and FY 2016, as follows:

(a) For Fiscal Year 2014: \$52,732,798, plus prejudgment interest at the same overall rate that each of the Plaintiffs' Trust Funds attained on their invested assets.

(b) For Fiscal Year 2015: \$107,373,545, plus prejudgment interest at the same overall rate that each of the Plaintiffs' Trust Funds attained on their invested assets.

(c) For Fiscal Year 2016: \$203,196,608, plus prejudgment interest at the same overall rate that each of the Plaintiffs' Trust Funds attained on their invested assets.

(d) For Fiscal Year 2016: an additional Budget appropriation of \$203,196,608.

(e) The amounts to be owed for FY 2017 and any other amounts that may become due in accordance with Chapter 78 during the pendency of this litigation and annual Budget appropriations therefore.

(f) Directing Defendants to pay Plaintiffs' attorneys fees, disbursements and costs.

(g) Directing enforcement of each such judgment as provided in N.J.S.A.59:13-9.

(h) Granting such other relief as the Court deems just and proper.

#### COUNT IV

##### INDEPENDENT CLAIM OF PERS FOR CONSTRUCTIVE TRUST

95. Plaintiff PERS Board repeats and incorporates all of the allegations made in paragraphs 1 – 55 and in Count I of this Complaint.

96. During the time period set forth above, a Constructive Trust should be recognized between Plaintiffs and PERS.

97. The PERS Board serves as fiduciary charged with the responsibility for the proper administration of PERS.

98. Annual payment of the State's "Annual Required Contribution" is properly payable in trust to the PERS Board, on behalf of PERS.

99. A Constructive Trust arises as a result of the Defendants' failure to comply with the State's funding obligations. Defendants' actions are wrongful and contrary to the explicit requirements of Chapter 78.

100. The Defendants have had in their possession and control the funds needed to meet their Annual Required Contribution to PERS but nevertheless chose to use those funds for other purposes.

101. The Defendants have breached their fiduciary duties as custodians of that constructive trust by diverting the funds to other purposes.
102. Defendants' breach of fiduciary duty has harmed the retirees and beneficiaries of PERS, and has resulted in unjust enrichment.
103. Payment has been demanded but remains unpaid.
104. By reason of the foregoing, a Constructive Trust should be recognized in favor of PERS in the amounts set forth in the preceding paragraphs.

WHEREFORE, Plaintiff PERS requests that separate judgments be rendered in its favor for each fiscal year recognizing the existence of a Constructive Trust and requiring payment of the balance owing on the Annual Required Contribution amounts for FY 2014, FY2015, and FY 2016 as follows:

(a) For Fiscal Year 2014: \$284,445,209, plus prejudgment interest at the same overall rate that each of the Plaintiffs' Trust Funds attained on their invested assets.

(b) For Fiscal Year 2015: \$466,510,542, plus prejudgment interest at the same overall rate that each of the Plaintiffs' Trust Funds attained on their invested assets.

(c) For Fiscal Year 2016: \$495,255,397, plus prejudgment interest at the same overall rate that each of the Plaintiffs' Trust Funds attained on their invested assets.

(d) The amounts to be owed for FY 2017 and any other amounts that may become due in accordance with Chapter 78 during the pendency of this litigation.

(e) Directing Defendants to pay Plaintiffs' attorneys fees, disbursements and costs.

(g) Directing enforcement of each such judgment as provided in N.J.S.A.59:13-9.



- (h) Granting such other relief as the Court deems just and proper.

## COUNT V

### INDEPENDENT CLAIM OF TPAF FOR CONSTRUCTIVE TRUST

105. Plaintiff TPAF Board repeats and incorporates all of the allegations made in paragraphs 1 – 55 and Count II of this Complaint.
106. During the time period set forth above, a Constructive Trust should be recognized between Plaintiff and Defendants.
107. The TPAF Board serves as fiduciary charged with the responsibility for the proper administration of the TPAF.
108. Annual payment of the State's "Annual Required Contribution" is properly payable in trust to the TPAF Board, on behalf of the TPAF.
109. A Constructive Trust arises as a result of the Defendants' failure to comply with the State's funding obligations. Defendants' actions are wrongful and contrary to the explicit requirements of Chapter 78.
110. The Defendants have had in their possession and control the funds needed to meet their Annual Required Contribution to TPAF but nevertheless chose to use those funds for other purposes.
111. The Defendants have breached their fiduciary duties as custodians of that constructive trust by diverting the funds to other purposes.
112. Defendants' breach of fiduciary duty has harmed the retirees and beneficiaries of TPAF, and has resulted in unjust enrichment.
113. Payment has been demanded but remains unpaid.

114. By reason of the foregoing, a Constructive Trust should be recognized in favor of TPAF in the amounts set forth in the preceding paragraphs.

WHEREFORE, Plaintiff TPAF requests that separate judgments be rendered in its favor for each fiscal year recognizing the existence of a Constructive Trust and requiring payment of the balance owing on the Annual Required Contribution amounts for FY 2014, FY2015, and FY 2016 as follows:

(a) For Fiscal Year 2014: \$537,394,296, plus prejudgment interest at the same overall rate that each of the Plaintiffs' Trust Funds attained on their invested assets.

(b) For Fiscal Year 2015: \$938,849,837, plus prejudgment interest at the same overall rate that each of the Plaintiffs' Trust Funds attained on their invested assets.

(c) For Fiscal Year 2016: \$1,054,762,524, plus prejudgment interest at the same overall rate that each of the Plaintiffs' Trust Funds attained on their invested assets.

(d) The amounts to be owed for FY 2017 and any other amounts that may become due in accordance with Chapter 78 during the pendency of this litigation.

(e) Directing Defendants to pay Plaintiffs' attorneys fees, disbursements and costs.

(g) Directing enforcement of each such judgment as provided in N.J.S.A.59:13-9.

(h) Granting such other relief as the Court deems just and proper.

## COUNT VI

### INDEPENDENT CLAIM OF PFRS FOR CONSTRUCTIVE TRUST

115. Plaintiff PFRS Board repeats and incorporates all of the allegations made in paragraphs 1 – 55 and Count III of this Complaint.
116. During the time period set forth above, a Constructive Trust should be recognized between Plaintiff and Defendants.
117. The PFRS Board serves as fiduciary charged with the responsibility for the proper administration of PFRS.
118. Annual payment of the State's "Annual Required Contribution" is properly payable in trust to the PFRS Board, on behalf of PFRS.
119. A Constructive Trust arises as a result of the Defendants' failure to comply with the State's funding obligations. Defendants' actions are wrongful and contrary to the explicit requirements of Chapter 78.
120. The Defendants have had in their possession and control the funds needed to meet their Annual Required Contribution to PFRS but nevertheless chose to use those funds for other purposes.
121. The Defendants have breached their fiduciary duties as custodians of that constructive trust by diverting the funds to other purposes.
122. Defendants' breach of fiduciary duty has harmed the retirees and beneficiaries of PFRS, and has resulted in unjust enrichment.
123. Payment has been demanded but remains unpaid.
124. By reason of the foregoing, a Constructive Trust should be recognized in favor of PFRS in the amounts set forth in the preceding paragraphs.

WHEREFORE, Plaintiff PFRS requests that separate judgments be rendered in its favor for each fiscal year recognizing the existence of a Constructive Trust and requiring payment of the balance owing on the Annual Required Contribution amounts for FY 2014, FY2015, and FY 2016 as follows:

(a) For Fiscal Year 2014: \$52,732,798, plus prejudgment interest at the same overall rate that each of the Plaintiffs' Trust Funds attained on their invested assets.

(b) For Fiscal Year 2015: \$107,373,545, plus prejudgment interest at the same overall rate that each of the Plaintiffs' Trust Funds attained on their invested assets.

(c) For Fiscal Year 2016: \$203,196,608, plus prejudgment interest at the same overall rate that each of the Plaintiffs' Trust Funds attained on their invested assets.

(d) The amounts to be owed for FY 2017 and any other amounts that may become due in accordance with Chapter 78 during the pendency of this litigation.

(e) Directing Defendants to pay Plaintiffs' attorneys fees, disbursements and costs.

(g) Directing enforcement of each such judgment as provided in N.J.S.A.59:13-9.

(h) Granting such other relief as the Court deems just and proper.

## COUNT VII

### INDEPENDENT CLAIM OF PERS FOR ACCOUNT STATED

125. Plaintiff PERS Board repeats and incorporates all of the allegations made in paragraphs 1 – 55 and Counts I and IV of this Complaint.

126. During the time period set forth above, an account was stated between the PERS Board of Trustees and Defendants.
127. The account was stated and is evidenced in written submissions by the PERS Board, actuarial reports, and through the parties' conduct. The basis for liability arises statutorily and under common law.
128. The Annual Required Contribution owed to PERS for FY 2014 by the Defendants was \$425,599,209.
129. Only \$141,154,000 was paid to PERS in FY 2014, leaving a balance due of \$284,445,209.
130. The Annual Required Contribution owed to PERS for FY 2015 by the Defendants was \$604,661,542.
131. Only \$138,151,000 was paid to PERS in FY 2015, leaving a balance due of \$466,510,542.
132. The Annual Required Contribution owed to PERS for FY 2016 by the Defendants is \$844,313,397.
133. Only \$349,058,000 has been appropriated to be paid to PERS in FY 2016, leaving a balance due of \$495,255,397.
134. The PERS Board submits a statement of the Annual Required Contribution liability to Defendants in the regular course. The amount of Annual Required Contribution was agreed by the parties to be due and owing by the ministerial application of Chapter 78.
135. Payment has been demanded but only partial payments toward the Annual Required Contribution have been made and the balance remains unpaid.

136. By reason of the foregoing, there is an account stated between the parties in the amount set forth above, plus interest.

WHEREFORE, Plaintiff PERS requests that separate judgments be rendered in its favor for each fiscal year recognizing the existence and liability as an Account Stated for FY 2014, FY2015, and FY 2016, as follows:

(a) For Fiscal Year 2014: \$284,445,209, plus prejudgment interest at the same overall rate that each of the Plaintiffs' Trust Funds attained on their invested assets.

(b) For Fiscal Year 2015: \$466,510,542, plus prejudgment interest at the same overall rate that each of the Plaintiffs' Trust Funds attained on their invested assets.

(c) For Fiscal Year 2016: \$495,255,397, plus prejudgment interest at the same overall rate that each of the Plaintiffs' Trust Funds attained on their invested assets.

(d) The amounts to be owed for FY 2017 and any other amounts that may become due in accordance with Chapter 78 during the pendency of this litigation.

(e) Directing Defendants to pay Plaintiffs' attorneys fees, disbursements and costs.

(g) Directing enforcement of each such judgment as provided in N.J.S.A.59:13-9.

(h) Granting such other relief as the Court deems just and proper.

## COUNT VIII

### INDEPENDENT CLAIM OF TPAF FOR ACCOUNT STATED

137. Plaintiff TPAF Board repeats and incorporates all of the allegations made in paragraphs 1 – 55 and Counts II and V of this Complaint.

138. During the time period set forth above, an account was stated between Plaintiff and Defendants.
139. The account was stated and is evidenced in written submissions by the Board, actuarial reports, and through the parties' conduct. The basis for liability arises statutorily and under common law.
140. The Annual Required Contribution owed to TPAF for FY 2014 by the Defendants was \$924,980,296.
141. Only \$387,586,000 was paid to TPAF in FY 2014, leaving a balance due of \$537,394,296.
142. The Annual Required Contribution owed to TPAF for FY 2015 by the Defendants was \$1,318,063,837.
143. Only \$379,214,000 was paid to TPAF in FY 2015, leaving a balance due of \$938,849,837.
144. The Annual Required Contribution owed to TPAF for FY 2016 by the Defendants is \$1,817,722,524.
145. Only \$762,960,000 has been appropriated to be paid to TPAF in FY 2016, leaving a balance due of \$1,054,762,524.
146. The TPAF Board submits a statement of the Annual Required Contribution liability to Defendants in the regular course. The amount of Annual Required Contribution was agreed by the parties to be due and owing by the ministerial application of Chapter 78.
147. Payment has been demanded but only partial payments toward the Annual Required Contribution have been made and the balance remains unpaid.

148. By reason of the foregoing, there is an account stated between the parties in the amount set forth above, plus interest.

WHEREFORE, Plaintiff TPAF requests that separate judgments be rendered in its favor for each fiscal year recognizing the existence and liability as an Account Stated for FY 2014, FY2015, and FY 2016, as follows:

(a) For Fiscal Year 2014: \$537,394,296, plus prejudgment interest at the same overall rate that each of the Plaintiffs' Trust Funds attained on their invested assets.

(b) For Fiscal Year 2015: \$938,849,837, plus prejudgment interest at the same overall rate that each of the Plaintiffs' Trust Funds attained on their invested assets.

(c) For Fiscal Year 2016: \$1,054,762,524, plus prejudgment interest at the same overall rate that each of the Plaintiffs' Trust Funds attained on their invested assets.

(d) The amounts to be owed for FY 2017 and any other amounts that may become due in accordance with Chapter 78 during the pendency of this litigation.

(e) Directing Defendants to pay Plaintiffs' attorneys fees, disbursements and costs.

(g) Directing enforcement of each such judgment as provided in N.J.S.A.59:13-9.

(h) Granting such other relief as the Court deems just and proper.

## COUNT IX

### INDEPENDENT CLAIM OF PFRS FOR ACCOUNT STATED

149. Plaintiff PFRS Board repeats and incorporates all of the allegations made in paragraphs 1 – 55 and Counts III and VI of this Complaint.

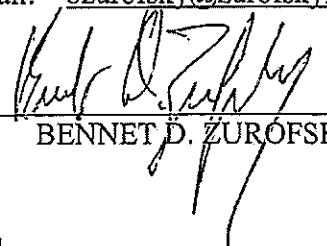


150. During the time period set forth above, an account was stated between Plaintiff and Defendants.
151. The account was stated and is evidenced in written submissions by the Board, actuarial reports, and through the parties' conduct. The basis for liability arises statutorily and under common law.
152. The Annual Required Contribution owed to PFRS for FY 2014 by the Defendants was \$167,009,798.
153. Only \$114,277,000 was paid to PFRS in FY 2014, leaving a balance due of \$52,732,798.
154. The Annual Required Contribution owed to PFRS for FY 2015 by the Defendants was \$236,752,545.
155. Only \$129,379,000 was paid to PFRS in FY 2015, leaving a balance due of \$107,373,545.
156. The Annual Required Contribution owed to PFRS for FY 2016 by the Defendants is \$329,343,608.
157. Only \$126,147,000 has been appropriated to be paid to PFRS in FY 2016, leaving a balance due of \$203,196,608.
158. The PFRS Board submits a statement of the Annual Required Contribution liability to Defendants in the regular course. The amount of Annual Required Contribution was agreed by the parties to be due and owing by the ministerial application of Chapter 78.
159. Payment has been demanded but only partial payments toward the Annual Required Contribution have been made and the balance remains unpaid.
160. By reason of the foregoing, there is an account stated between the parties in the amount set forth above, plus interest.

WHEREFORE, Plaintiff PFRS requests that separate judgments be rendered in its favor for each fiscal year recognizing the existence and liability as an Account Stated for FY 2014, FY2015, and FY 2016, as follows:

- (a) For Fiscal Year 2014: \$52,732,798, plus prejudgment interest at the same overall rate that each of the Plaintiffs' Trust Funds attained on their invested assets.
- (b) For Fiscal Year 2015: \$107,373,545, plus prejudgment interest at the same overall rate that each of the Plaintiffs' Trust Funds attained on their invested assets.
- (c) For Fiscal Year 2016: \$203,196,608, plus prejudgment interest at the same overall rate that each of the Plaintiffs' Trust Funds attained on their invested assets.
- (d) The amounts to be owed for FY 2017 and any other amounts that may become due in accordance with Chapter 78 during the pendency of this litigation.
- (e) Directing Defendants to pay Plaintiffs' attorneys fees, disbursements and costs.
- (g) Directing enforcement of each such judgment as provided in N.J.S.A.59:13-9.
- (h) Granting such other relief as the Court deems just and proper.

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By  7/24/15  
BENNET D. ZUROFSKY

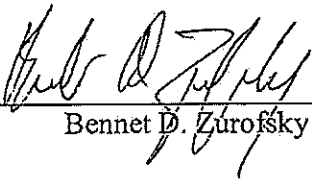
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*Attorneys for Plaintiffs*

**CERTIFICATION PURSUANT TO RULE 4:5-1(b)(2)**

I, Bennet D. Zurofsky, an attorney for the above-named Plaintiffs, do hereby certify that the exact matter in controversy in the above dispute is not the subject of any other action pending in any other court or of a pending arbitration or other proceeding. Related actions are pending in the consolidated cases of *Burgos v. State* (MER-L-1267-14). I am not aware of any party which could be joined in this action other than the Defendants to whom notice is being given by service of the within complaint. No other action or arbitration is contemplated at this time.

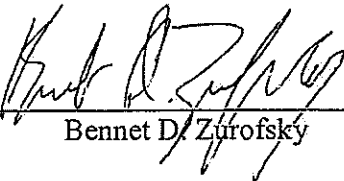
Dated: 7/24/15

  
Bennet D. Zurofsky

**DESIGNATION OF TRIAL COUNSEL**

Robert D. Klausner, Esq., and Bennet D. Zurofsky, Esq. are hereby designated as trial counsel for Plaintiffs in this matter.

Dated: 7/24/15

  
Bennet D. Zurofsky