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July 2, 2009

VIA HAND DELIVERY

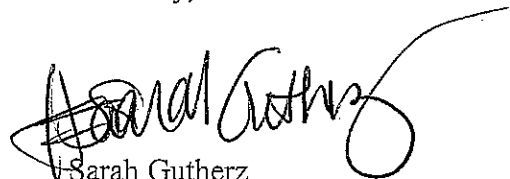
United States District Court
John Joseph Moakley U.S. Courthouse
Civil Clerk's Office
1 Courthouse Way
Boston, MA 02210

RE: *Professional Firefighters of Massachusetts, Boston Police Superior Officers Federation, Alan Jenkins, Richard Conti, Michael Wosny, individually and on behalf of a class of persons similarly situated v. Deval Patrick Governor of the Commonwealth of Massachusetts, The Commonwealth of Massachusetts, The Public Employee Retirement Administration Commission, Dominic J. F. Russo in his capacity of as Chairman of the Public Employee Retirement Administration Commission..*

Dear Sir or Madam:

Enclosed please find the following for filing: Civil Cover Sheet, Category Sheet, an original Complaint and one copy, a check in the amount of \$350.00, and a CD containing scanned copies of all filed documents. Thank you for your attention to this matter.

Sincerely,



Sarah Guthertz
Assistant to Harold L. Lichten, Esq.;

Enclosure

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BOSTON POLICE SUPERIOR
OFFICERS FEDERATION,
PROFESSIONAL FIRE FIGHTERS OF
MASSACHUSETTS, JACK GIFFORD,
JOSEPH GILLEPSIE, MAURA FLYNN,
EDWARD BUCKLEY, BOSTON FIRE
FIGHTERS UNION LOCAL 718,
BRADFORD TENNEY, EDWARD
KELLY, JOHN T. COLBERT, JOHN F.
SCIARA, and RONALD ARMSTRONG,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

DEVAL PATRICK GOVERNOR OF
THE COMMONWEALTH OF
MASSACHUSETTS; THE
COMMONWEALTH OF
MASSACHUSETTS; THE PUBLIC
EMPLOYEE RETIREMENT
ADMINISTRATION COMMISSION; and
DOMINIC J. F. RUSSO, in his capacity as
Chairman of the Public Employee
Retirement Administration Commission

Defendants.

Civil Action No. _____

CLASS ACTION COMPLAINT

COMPLAINT AND JURY DEMAND

I. INTRODUCTION

1. Plaintiffs Boston Police Superior Officers Federation, the Professional Fire Fighters of Massachusetts, the Boston Fire Fighters Local 718, and Individual Plaintiffs Jack Gifford, Joseph Gillespie, Maura Flynn, Edward Buckley, Bradford Tenney, Edward Kelly, John T. Colbert, John F. Sciara, and Ronald Armstrong (“Class Representatives”) (collectively

“Plaintiffs”), on behalf of themselves and all other persons similarly situated, by their attorneys, Lichten & Liss Riordan P.C., Stember Feinstein Doyle & Payne LLC, and Angoff Goldman Manning Wanger & Hynes P.C. bring this action against Defendants Governor Deval Patrick, the Commonwealth of Massachusetts, the Public Employee Retirement Administration Commission, and Dominic J. F. Russo, in his capacity as Chairman of the Public Employee Retirement Administration Commission.

2. This action is brought by named Class Representatives individually and on behalf of a class of similarly-situated participants in the Massachusetts public pension system pursuant to Rule 23 of the Federal Rules of Civil Procedure.

3. In June 2009, the Massachusetts Legislature passed and the Governor signed legislation that amended several provisions of the Massachusetts Retirement Law, M.G.L. c. 32 (“Pension Reform Law”), including the statutory definition of “regular compensation,” which are used to determine the amount of a participant’s pension benefit.

4. Instead of limiting application of these amendments prospectively to new hires only, Defendants have chosen to apply them retroactively as well. Individual Plaintiffs are longtime pension system participants who accepted public employment and worked, in some cases for 30 or more years, under a law which expressly promised that the definition of “regular compensation” and the specified method of calculating their pensions would not be changed. Now, when they retire, they face reduction of their pension benefits under the new legislative regime. Thus, the pension benefits of individuals who have contributed to the Massachusetts public pension system (as thousands of participants have done for decades) with the understanding that their pensions would be calculated using a definition of “regular

compensation” that encompasses “salary, wages or other compensation in whatever form” will now have their pension benefits calculated based only on their “wages.”

5. By applying the amendments to the Massachusetts public employee retirement plan retroactively, Defendants have violated the vested pension rights of the Plaintiffs and members of the putative class.

6. Count I is brought by all Plaintiffs under the Civil Rights Act of 1871, 42 U.S.C. § 1983 to enforce the Contract Clause of the United States Constitution, Art. I, §10, c. 1. It seeks (1) a declaration that Defendants Patrick and Russo are without authority to unilaterally reduce the rights of Plaintiffs and putative Class Members (who were participants in the Massachusetts public pension system as of June 30, 2009 but not yet retired) to the pension benefits vested before July 1, 2009, when the new legislation was adopted and (2) a permanent injunction prohibiting modification of pension benefits to the Plaintiffs and putative Class Members as a result of the Pension Reform Law.

7. Count II is brought by all Plaintiffs pursuant to the Massachusetts Declaratory Judgment Act, M.G.L. c. 231A, seeking an order declaring that Defendants’ application of the Pension Reform Law, St. 2009, c. 21 (S.B. 2079) to individuals who were participants in the Massachusetts public pension system as of June 30, 2009 but had not yet retired constitutes an impairment of contract in violation of Articles 1, 10 and 12 of the Declaration of Rights of the Constitution of Massachusetts.

II. JURISDICTION and VENUE

8. This action is brought pursuant to 42 U.S.C. § 1983. The Court has subject matter jurisdiction pursuant to 28 U.S.C § 1331.

9. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) & (c) because Defendants Patrick, PERAC, and Russo have principal executive offices in, and/or regularly do business in, this District.

III. PARTIES

10. Plaintiff, Boston Police Superior Officers Federation (BPSOF), is an employee organization as defined pursuant to M.G.L. c. 150E § 1 with a principal place of business located at 413 Neponset Avenue, Boston MA, 02122. The Union is the exclusive representative of all non-commissioned officers employed by the Boston Police Department. The BPSOF membership consists of non-detective sergeants, lieutenants, and captains, many of whom have sought, are seeking, and will seek retirement benefits under the Massachusetts public pension system.

11. Plaintiff, the Professional Fire fighters of Massachusetts, is a statewide labor organization that represents fire fighters and local fire unions throughout the Commonwealth of Massachusetts.

12. Plaintiff, Boston Fire Fighters Union Local 718, is an employee organization as defined pursuant to M.G.L. c. 150E § 1 with a principal place of business located at 55 Hallet Street, Boston MA, 02124. The Union is the exclusive representative of all firefighters employed by the Boston Fire Department, many of whom have sought, are seeking, or will seek retirement benefits under the Massachusetts public pension system.

13. The Plaintiff and Class Representative, Jack Gifford, is an adult male resident of Hyde Park, Massachusetts and is a police officer in the City of Boston, Massachusetts.

14. The Plaintiff and Class Representative, Joseph Gillespie, is an adult male resident of West Roxbury, Massachusetts and is a police officer in the City of Boston, Massachusetts.

15. The Plaintiff and Class Representative, Maura Flynn, is a female adult resident of West Roxbury, Massachusetts and is a police officer in the City of Boston, Massachusetts.

16. The Plaintiff and Class Representative, Edward Buckley, is an adult male resident of Milton, Massachusetts and is a firefighter in the Chelsea Fire Department.

17. The Plaintiff and Class Representative, Bradford Tenney, is an adult male resident of Arlington, Massachusetts and is a lieutenant in the Cambridge Fire Department.

18. The Plaintiff and Class Representative, Edward Kelly, is an adult male resident of Boston, Massachusetts and is a fire fighter in the Boston Fire Department.

19. The Plaintiff and Class Representative, John T. Colbert, is an adult male resident of Somerville, Massachusetts and is a lieutenant in the Somerville Fire Department.

20. The Plaintiff and Class Representative, John F. Sciara, is an adult male resident of Scituate, Massachusetts and is a fire fighter in the Rockland Fire Department.

21. The Plaintiff and Class Representative, Ronald Armstrong, is an adult male resident of Jefferson, Massachusetts and is a captain in the Worcester Fire Department.

22. The Defendant Deval Patrick is the Governor of the Commonwealth of Massachusetts and in that capacity is responsible for the overall administration of the Massachusetts public pension system.

23. The Defendant Commonwealth of Massachusetts is responsible for the administration of the Massachusetts public pension system.

24. The Defendant Massachusetts Public Employee Retirement Commission ("PERAC") is charged by law M.G.L. c. 32 with oversight, guidance, monitoring and regulation of all public pension systems throughout the Commonwealth of Massachusetts.

25. The Defendant Dominic J. F. Russo is the Chairman of PERAC.

IV. FACTUAL BACKGROUND

26. The Massachusetts public retirement plan is a defined benefit program. Membership in this system is mandatory for all full-time public employees and many part-time Massachusetts government employees. Employees can contribute up to 12% of their regular compensation to the Massachusetts public pension system.

27. Most public employees who participate in the Massachusetts pension system are eligible to retire on the basis of superannuation and receive a retirement allowance upon attaining age 55 with ten years of creditable service, or at any age if they have twenty years of creditable service. A retirement allowance consists of an annuity and a pension.

28. Contributions deducted during the course of an employee's creditable service are deposited in an annuity savings fund. Interest that accrues on these contributions is credited to the participant's individual account. The individual account is based on the total amount in the annuity savings account on the date of retirement is the annuity.

29. The amount of a participant's pension benefit is the difference between the total retirement allowance specified by law and the annuity described in the previous paragraph.

30. The amount of a participant's retirement allowance depends on (a) age, (b) length of creditable service, (c) the average annual rate of compensation, and (d) the participant's group classification based on type of occupation, position or duties.¹

31. The basic formula for calculating a superannuation retirement allowance is:
(benefit rate) x (highest three-year average rate of regular compensation) x (creditable service).

¹ The four groups are roughly the following: Group 1 – Officials and general employees; Group 2 – Employees with job titles reflecting hazardous duties; Group 3 – State police officers; and Group 4 – Fire fighters, police officers and some correctional officers.

32. Through June 30, 2008, the term “regular compensation” was defined, in pertinent part, as: “salary, wages or **other compensation in whatever form . . .** not including bonus, overtime, severance pay for any and all unused sick leave, early retirement incentives, or any other payments made as a result of giving notice of retirement” Mass. Gen. L. c. 32, § 1 (2008) (emphasis added).

33. As to the Individual Plaintiffs, the definition of “regular compensation” included “other compensation” such as longevity pay, hazardous duty pay, clothing allowances and payments for unused vacation. Individual Plaintiffs and Class Members made contributions to the Massachusetts public pension system based on receipt of payments of “other compensation.”

34. In June 2009, the Massachusetts legislature passed and the Governor signed into law the Pension Reform Law which amends several provisions of the Massachusetts Retirement Law, G.L. c. 32.

35. Among other amendments, the Pension Reform Law changes the definition of “regular compensation” as of June 30, 2009. As a result, “regular compensation” is limited to “compensation received exclusively as wages by an employee for services in the course of employment by his employer.” Mass. Gen. L. 32, § 1 (eff. July 1, 2009). The Pension Reform Law also provides that “wages” shall not include “overtime, severance pay for any and all unused vacation and sick leave, early retirement incentives, or any other payments made as a result of giving notice of retirement,” nor shall it include: “housing, lodging, travel, clothing allowance, automobile expenses and job-related expense payments.” *Id.*

36. Plaintiff and Class Representative, Jack Gifford, is sixty-three (63) years of age with thirty-nine (39) years of creditable service in the Massachusetts public pension system. He has not yet retired and has no immediate plans to retire. However, when he does retire, the

pension benefit he long expected to receive under the prior legislative regime will be reduced as a result of the change in the definition of "regular compensation" in the Pension Reform Law. For example, the "other compensation" including, but not limited to, clothing allowance which Gifford has received and upon which he has paid contributions to the pension system for decades will no longer be considered in determining his retirement allowance.

37. Plaintiff and Class Representative, Joseph Gillespie, is forty-five (45) years of age and has twenty-eight (28) years of creditable service in the Massachusetts public pension system. He has not yet retired and has no immediate plans to retire. His pension will be reduced as a result of the change in the definition of "regular compensation" in the Pension Reform Law. For example, the "other compensation" including, but not limited to, clothing allowance which Gillespie has received and upon which he has paid contributions to the system for decades will no longer be considered by PERAC in determining his retirement allowance.

38. Plaintiff and Class Representative, Maura Flynn, is fifty-five (55) years of age and has thirty-two (32) years of credible service in the Massachusetts public pension system. She has yet to retire and she has no immediate plans to retire. Her pension will be reduced as a result of the change in the definition of "regular compensation" in the Pension Reform Law. For example, the "other compensation" including, but not limited to, clothing allowance which Flynn has received and upon which she has paid contributions to the system for decades will no longer be considered by PERAC in determining her retirement allowance.

39. Plaintiff and Class Representative, Edward Buckley, is fifty-seven (57) years of age and has thirty-five (35) years of credible service in the Massachusetts public pension system. He has yet to retire and he has no immediate plans to retire. His pension will be reduced as a result of the change in the definition of "regular compensation" in the Pension Reform Law. For

example, the “other compensation” including, but not limited to, clothing allowances which Buckley has received and upon which he has paid contributions to the system for decades will no longer be considered by PERAC in determining his retirement allowance.

40. Plaintiff and Class Representative, Bradford Tenney, is fifty-nine (59) years of age and has thirty-two (32) years of credible service in the Massachusetts public pension system. He has yet to retire and he has no immediate plans to retire. His pension will be reduced as a result of the change in the definition of “regular compensation” in the Pension Reform Law. For example, the “other compensation” including, but not limited to, clothing allowance which Tenney has received and upon which he has paid contributions to the system for decades will no longer be considered by PERAC in determining his retirement allowance.

41. Plaintiff and Class Representative, Edward Kelly, is thirty-five (35) years of age and has twelve (12) credible service in the Massachusetts public pension system. He has yet to retire and he has no immediate plans to retire. His pension will be reduced as a result of the change in the definition of “regular compensation” in the Pension Reform Law. For example, the “other compensation” including, but not limited to, clothing allowance which Kelly has received and upon which he has paid contributions to the system for decades will no longer be considered by PERAC in determining his retirement allowance.

42. Plaintiff and Class Representative, John T. Colbert, is forty-four (44) years of age and has twenty-two (22) years of credible service in the Massachusetts public pension system. He has yet to retire and he has no immediate plans to retire. His pension will be reduced as a result of the change in the definition of “regular compensation” in the Pension Reform Law. For example, the “other compensation” including, but not limited to, clothing allowance which

Colbert has received and upon which he has paid contributions to the system for decades will no longer be considered by PERAC in determining his retirement allowance.

43. Plaintiff and Class Representative, John F. Sciara, is fifty-eight (58) years of age and has thirty-three (33) years of credible service in the Massachusetts public pension system. He has yet to retire and he has no immediate plans to retire. His pension will be reduced as a result of the change in the definition of "regular compensation" in the Pension Reform Law. For example, the "other compensation" including, but not limited to, clothing allowance which Sciara has received and upon which he has paid contributions to the system for decades will no longer be considered by PERAC in determining his retirement allowance.

44. Plaintiff and Class Representative, Ronald Armstrong, is fifty-seven (57) years of age and has thirty-three (33) years of credible service in the Massachusetts public pension system. He has yet to retire and he has no immediate plans to retire. His pension will be reduced as a result of the change in the definition of "regular compensation" in the Pension Reform Law. For example, the "other compensation" including, but not limited to, clothing allowance which Armstrong has received and upon which he has paid contributions to the system for decades will no longer be considered by PERAC in determining his retirement allowance.

45. In addition, upon information and belief, in the future, PERAC will continue to require contributions from the Individual Plaintiffs and Class Members on receipt of stipends and other payments which prior to July 1, 2009 were deemed "other compensation," but PERAC will not consider such stipends and other payments when determining retirement allowances.

46. The Massachusetts "retirement system creates a contractual relationship between its members and the State." Madden v. Contributory Retirement Appeal Bd., 431 Mass. 697, 720 N.E.2d 1095, 1098 (2000).

47. Plaintiffs and members of the putative class reasonably expected that once they began participating in the Massachusetts public pension system, the formula used to calculate their pensions would not be subject to change to their detriment so long as they remained participants in the Massachusetts public pension system and required contributions were made by them or on their behalf.

48. By extending the application of the Pension Reform Law to Massachusetts public pension members who were participating in the retirement system before July 1, 2009 and who have not yet retired, Defendants have breached their obligations to Plaintiffs and to all Class Members.

V. CLASS ACTION ALLEGATIONS

49. Class Representatives bring this class action individually and on behalf of the class of individuals who were PERAC members prior to July 1, 2009 who will retire on or after July 1, 2009 and whose pensions will be reduced as a result of Defendants' retroactive application of the change in the definition of "regular compensation" pursuant to the Pension Reform Law.

50. While the exact number of Class Members is not presently known, on information and belief, it exceeds several thousand individuals. As such, it is so numerous that joinder of individual members in this action is impracticable.

51. All Class Members will be seeking pension benefits from the Massachusetts public pension system. There are common questions of law and fact that relate to and affect all Class Members -- namely, whether changes made to the definition of "regular compensation" for

those who were participants in the Massachusetts public pension system before July 1, 2009 who have not yet retired are lawful.

52. The relief sought is common to all Class Members as set forth below in the section titled, "Relief Requested."

53. The claims of the named Class Representatives are typical of the claims of all Class Members, namely that Defendants are obligated to provide them with pension benefits calculated using the method that was specified by governing law when they became participants in Massachusetts public pension system, and that Defendants are without authority to unilaterally modify these benefits. There is no conflict between any Class Representative and any other class member with respect to this action.

54. The Class Representatives will fairly and adequately protect the interests of the Class. Attorneys for the Class Representatives are experienced and capable in the field of employee benefits and class actions.

55. This action is properly maintained as a class action under Fed. Rule of Civil Procedure 23(b)(2), in that Defendants have acted on grounds generally applicable to the class by unilaterally changing the formula to determine the Class Members' pension benefits, thereby making final injunctive relief or corresponding declaratory relief appropriate with respect to the class as a whole.

56. Alternatively, this action is maintainable as a class action under FRCP Rule 23(b)(3), as the common questions of law and fact described above predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

VI. CAUSES OF ACTION

COUNT I

Civil Rights Violation under 42 U.S.C. § 1983 (Defendants Patrick and Russo only)

57. Plaintiffs incorporate by reference all preceding allegations as though fully set forth here.

58. Plaintiffs and the putative members of the Class have a contractual relationship with the Commonwealth of Massachusetts, that provides for pension benefits calculated using the method specified by law when they were hired and became participants in the Massachusetts public pension system.

59. Moreover, Mass. Gen. Law c. 32, § 25 provides:

Effect of Amendments or Repeal. — The provisions of sections one to twenty-eight, inclusive, and of corresponding provisions of earlier laws **shall be deemed to establish and to have established membership in the retirement system as a contractual relationship under which members who are or may be retired for superannuation are entitled to contractual rights and benefits, and no amendments or alterations shall be made that will deprive any such member or any group of such members of their pension rights or benefits provided for thereunder**, if such member or members have paid the stipulated contributions specified in said sections or corresponding provisions of earlier laws.

Id. (emphasis added).

60. By retroactively applying the Pension Reform Law, including the amended definition of “regular compensation,” to individuals who were already participating in the Massachusetts public pension system but who had not yet retired, Defendants Patrick and Russo breached their contractual obligations to the Plaintiffs and the members of the putative class.

61. Defendants Patrick and Russo’s actions violate 42 U.S.C. § 1983, the Contract Clause of the United States Constitution, Article I, § 10, which prohibits states from enacting any law that retroactively impairs contract rights.

COUNT II

Declaratory Judgment (all Defendants)

62. Plaintiffs incorporate by reference all preceding allegations as though fully set forth here.

63. The Pension Reform Law, St. 2009, c. 21 (S.B. 2079), as described above, which creates a new pension calculation that applies to public employees who were already participating in the Massachusetts public pension system and who had not yet retired, constitutes an unconstitutional impairment of contract under Articles 1, 10 and 12 of the Declaration of Rights of the Constitution of the Commonwealth of Massachusetts. The Plaintiffs assert this claim pursuant to the Massachusetts Declaratory Judgment Act c. 231A.

VI. RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Certify this action as a class action, appoint Individual Plaintiffs Jack Gifford, Joseph Gillespie, Maura Flynn, Edward Buckley, Bradford Tenney, Edward Kelly, John T. Colbert, John F. Sciara, and Ronald Armstrong as Class Representatives, and appoint Lichten & Liss-Riordan P.C., Stember Feinstein Doyle & Payne LLC and Angoff Goldman Manning Wanger & Hynes P.C. as counsel for the Class.
- B. Declare that the pension benefits provided to Individual Plaintiffs and putative class members cannot be unilaterally modified by Defendants via the Pension Reform Law.
- C. Permanently enjoin Defendants from modifying pension benefits pursuant to the Pension Reform Law.
- D. Award to Plaintiffs and Class Members monetary damages or restitution (plus interest), as necessary, to restore them to the position in which they would have been but for Defendants' contractual violations.

- E. Award Plaintiffs their reasonable attorneys' fees and costs incurred in this action pursuant to 42 U.S.C. § 1988.
- F. Grant such further relief as may be deemed necessary and proper.

VII. Jury Demand

Plaintiffs request a jury trial of all issues so triable.

Respectfully submitted,

/s/ Harold L. Lichten

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Dated: July 2, 2009

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