IN THE CIRCUIT COURT FOR BALTIMORE CITY

ROBERT F. CHERRY, JR., *et al.* Plaintiffs, v. MAYOR AND CITY COUNCIL OF BALTIMORE CITY. Defendant.	)	Civil No. 24-C-16-004670

PLAINTIFFS' POST-TRIAL BRIEF

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I. INTRODUCTION

This Court has before it two separate claims. First, without consideration of the 2010 legislation, whether the Defendant Mayor and City Council of Baltimore City (the "City") breached its contract with members of the Fire and Police Employees' Retirement System of the City of Baltimore ("Plan") by failing to fund the Plan as required by its contractual obligations in Article 22 of the Baltimore City Code. There is ample evidence in this record to support this claim, including the City's failure to adopt the system actuary's recommendations to lower the post-retirement interest rate, the utilization of double smoothing to delay recognition of market losses, and the failure to make adequate annual contributions as required by Section 36(j)(4) to fund fully the Annuity Reserve Fund ("ARF") and the Pension Reserve Fund ("PRF") pursuant to the City's guaranty in Section 37. As a result of these failures, Plaintiffs seek a declaration that the members have a right to an adequately funded Plan and mandatory injunctive relief.

Second, the Court must determine whether Ordinance 10-306 ("10-306") was a reasonable modification of the promised benefits under the *Quinn* test. The City's principal justification for the modification was a desire to make the plan more "affordable and sustainable." However, the evidence is clear that, had the City been living up to its statutory funding obligations, as opposed to refusing years earlier to make required assumption changes to responsibly fund the Plan, the increase for FY2011 that the City asserted it could not afford would have been much less. Moreover, the *Quinn* test requires that the Court view the Plan modifications from the perspective of the employee (not the employer), asking whether the employee has essentially the disability and retirement plan for which he or she bargained. The answer here is an unequivocal "no." The members, after 10-306, must work longer and pay more to receive less. These types of changes are not reasonable under *Quinn*.

The City's actuary's attempt to explain away these facts was not worthy of belief. He

committed so many calculation errors that his conclusions are doubtful. On cross-examination, he admitted that his analysis was premised upon a statutory interpretation that was at odds with all prior Plan actuaries and Boards of Trustees over the last 40 years. Furthermore, his refusal to fund the ARF and the PRF, despite the guaranty in Section 37 and the requirement in Section 36(j)(4) to fund "negative earnings," is at odds with the City's obligations and, thus, like the rest of his opinions, should be disregarded.

Pension obligations under the Plan, as set out in Section 42, are contracts with each individual member, not with the unions or with the "average member." Here, each member of the putative class was harmed by the City's two contract breaches – failing to fund the Plan adequately and cutting benefits. These claims are both susceptible to class action treatment.

II. BREACH OF CONTRACT BY PLAN UNDERFUNDING

The City attempts to vilify the Plan's post-retirement gain-sharing feature (the "Variable Benefit" or "VB") to draw the Court's attention away from the City's decision not to fund the Plan responsibly in accordance with its obligations under the statutory framework. Tr., 10/29/18 AM (Defense counsel), at 84:20-86:1. While the City certainly breached its contract with Plan members in 2010 when it reduced promised benefits (*see* Section III *infra*), the first breach began in 2003 (and continued each year until 2010), when the City failed to make adequate Plan contributions, thereby creating an undisclosed net pension obligation ("NPO"). In so doing, the City diminished and impaired the promised benefits and breached its contract with each Plan member.[1]

A. The City's Refusal to Increase Its Annual Contributions

The statutory scheme requires the Board of Trustees ("Board") to engage an actuary to,

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[1] *See* First Amended Class Action Complaint at Declarations F and N, ¶¶ 223, 228, 232.

among other things, calculate the annual required contribution by the City. Ex. 1, § 33(m). The actuary also conducts periodic experience studies to evaluate Plan performance. *Id.* at § 33(m)-(p). As the actuaries from both sides testified, the contributions into the Plan, plus earnings, must equal the present value ("PV") of the benefits to be paid, plus expenses. Tr., 10/30/18 PM (England) at 31:10-22; Tr., 11/2/18 AM (Reese), at 108:9-15.

Immediately prior to the enactment of 10-306, the Plan had two interest rate assumptions for valuing liabilities:[2] 8.25% for pre-retirement and 6.8% for post-retirement. *Id.* at § 30(9). From 1983 to 2009, the pre- and post-retirement earnings assumptions were changed by statute several times in accordance with the Plan actuary's recommendation. Ex. 357. This was expected under the statutory scheme that required the actuary to evaluate periodically whether the funding assumptions were reasonable to meet the City's funding obligations. Ex. 1, § 33(o).

In February 2002, Plan actuary Rowe informed Executive Director Taneyhill that the Plan could not achieve a 6.8% return on post-retirement assets because the actual cost of taking assets from Plan earnings to pay VB increases was greater than the 1.45% differential between the expected return on pre-retirement assets and post-retirement assets then being employed. Ex. 6; Ex. 24, at 4; Ex. 256, at 8:1-26:7. Accordingly, beginning in 2003, Rowe recommended that the post-retirement earnings assumption be lowered. Ex. 256, at 26:22-32:9. At the same time, he advised that the payment of additional contributions by the City could be "phased in" over a period of years, so as to minimize immediate contribution increases for the City. Ex. 256, at 36:12-37:9, 42:11-18. But, Finance Director Gallagher would have none of it. He regularly

[2] Investment rate assumptions are generally the most important assumptions used to estimate the annual cost of retirement plans because, over time, investment earnings account for the majority of plan revenues. Ex. 25, at 2; Tr., 10/30/18 PM (England), at 31:17-32:7. Lower assumption rates assume that the plan will earn less money over time and, therefore, require a plan sponsor (here, the City) to make higher annual contributions to the plan. Ex. 25, at 2; Tr., 10/30/18 PM (England), at 89:17-90:9. Conversely, higher assumption rates permit the sponsor to contribute less money each year to fund the plan. *Id.*

informed the Board, through Taneyhill, that the City would not make additional contributions and directed the Board to not accept the actuary's recommendations from 2003-2008.[3] Tr., 10/30/18 AM (Fugate), at 33:2-36:7. This refusal was acceptable to then-Board Chairman Fugate, because he trusted that, as Plan sponsor, the City would live up to its funding obligations. *Id.* at 36:18-22. Later, in 2009, when Gallagher blamed the Board for the Plan's underfunding problems in testimony before the City Council, Fugate was surprised and believed that he had been betrayed by Gallagher. *Id.*, 36:8-38:8.

By May 2009, Taneyhill told Gallagher that the Board would have no choice but to accept Rowe's recommendation to lower the post-retirement earnings assumption when it met in October. Ex. 65. In an e-mail sent immediately thereafter, Taneyhill told the Budget Director's Deputy (copying Gallagher) that the required contribution for FY2011 would be $168 million. Ex. 374. When asked about the reason for the e-mail, Taneyhill said he was trying to give Gallagher a "kick in the pants" and emphasized the need for the Finance Director to do something to fund the Plan. Tr., 11/2/18 AM, at 81:17- 82:25. In October, the Board voted to adopt Rowe's recommendation to reduce the post-retirement earnings assumption from 6.8% to 5%. Ex. 129; Tr., 10/30/18 AM (Fugate), at 36:8-11.

Former Mayor Rawlings-Blake acknowledged that "it would be irresponsible" not to contribute the FY2011 amount calculated using the Board-recommended 5% rate, in the absence of a change in benefits. Ex. 275, at 24:13-25:13. Similarly, Taneyhill acknowledged that to not fund the Plan at 5% would diminish and impair benefits in violation of the City's statutory

[3] Had the City made its actuarially recommended contributions, the Plan would have been better funded when confronted with the market downturn in 2008, and the $64.5 million increase that the City hung over the City Council's head to encourage their acquiescence in cutting benefits in 2010 would have been significantly smaller. Indeed, if the City had followed the actuary's recommendations, it could have made moderate increases in its annual contribution (*i.e.*, $5 million in 2003) in good market years, thereby avoiding large increases. Ex. 256, at 36:12-37:4.

guarantee and contractual promise. Tr., 11/2/18 AM, at 30:23-31:7.

Based upon improved market performance in early 2010, it seemed likely that the Plan would pay a substantial VB increase to retirees in FY2011. Ex. 103, at 183:19-185:9; Ex. 67. After the 5% post-retirement interest rate was adopted by the Trustees, it was clear that the City would be required to increase its FY2011 Plan contribution by $64.5 million. Ex. 39, at 1. Premised upon the fact that the post-retirement interest rate would have to be changed to avoid diminishing and impairing promised benefits, City officials pressured the City Council to pass 10-306 to eliminate the VB provision by June 30, 2010 (before the expected VB increases would come due on July 1, 2010), so as to capture for the City the expected market gains to offset prior market losses. Ex. 43, at 8:3-6; Ex. 67.

B. The City's Decision to Double Smooth the Massive Tech Bubble Losses

In 2001, the Plan suffered significant investment losses (approximately $412 million) from the bursting of the "tech bubble," which created "negative balances" in the BIF and ERF.[4] Tr., 11/2/18 AM (Taneyhill), at 18:20-19:10. However, under the BIF/ERF provisions, the City was not statutorily obligated to fund the market losses until 2005, when the provisions sunsetted. Tr., 10/30/18 (Fugate), at 55:11-25. Despite knowing that it would have to address this investment loss, the City chose instead to use over $29 million from the ERF to eliminate its FY2002 contribution. Ex. 29, at 1. Continued additional investment losses in subsequent years created even larger deficits in the ERF.[5] Rather than begin to address these market losses right

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[4] In 1997, the City established the Employer Reserve Fund ("ERF") and Benefit Improvement Fund ("BIF") to provide for the reallocation of "excess" earnings held by the Plan. Tr., 10/30/18 AM (Fugate), at 24:8-25:17. The ERF was intended to reduce the required annual contribution of the City, while the BIF was intended to pay for benefit improvements for Plan members. *Id.* at 27:3-28:13.

[5] In total, the City took contribution holidays totaling $137 million. Tr., 10/30/18 (Fugate), at 27:9-17. The problem with contribution holidays is that Plan contributions are removed from the budget, requiring the City to cut budget items in order to pay its pension obligations when the contribution holidays come to an end.

away, the City put off recognition until 2005.[6] Tr., 11/2/18 AM (Taneyhill), at 23:8-29:4.

At the behest of Gallagher, in 2005 the City considered several alternatives to delay recognition of these market losses, ultimately using the questionable "double smoothing" technique and contributing only $848,000 in the first year toward the $412 million in market losses the Plan was carrying in the negative ERF balance. Ex. 198; Tr., 10/30/18 PM (England), at 43:14-44:22. The City's financial expert, Mr. Nadol, referred to this practice as "actuarial gimmickery [*sic*]" and "pixie dust." Tr., 11/5/18 PM, at 111:7-24. Whatever moniker is applied to the technique, it dramatically increased the Plan's and the City's risk (as Plan sponsor)[7] of further market losses.

C. The City's Failure to Responsibly Address the Great Recession Losses

In 2008 and 2009, the Plan suffered another significant market loss as a result of the Great Recession. Rather than acknowledging these new investment losses through increased contributions, the City chose to pass 10-306, which materially reduced its obligations to members so that it would never have to pay for these investment losses.

Article 22 (namely, Sections 36(j)(4) and 37) requires the City, as Plan sponsor, to make additional contributions to pay for market losses. As demonstrated at trial, the City failed to do so. Plan members have a right to require the City to meet its contractual obligation and to have an adequately funded Plan. Plan members are, therefore, entitled to injunctive relief directing

[6] Gallagher knew the Plan was not being properly funded, but failed to report an NPO in the City's public financial statements. Ex. 103, at 77:4-9; 85:1-22. During this time, the City falsely claimed in its Comprehensive Annual Financial Reports that it was fully funding the Plan and satisfying 100% of its Annual Required Contribution, (Ex. 103, at 90:13-92:3), when, in reality, the City was withholding approximately $205 million from the Plan.

[7] The City bears the responsibility for making up market losses in the Plan to ensure that there are sufficient funds in the Pension Accumulation Fund to address those losses. Tr., 10/31/18 AM (England), at 100:7-13. The City benefitted from nearly 20 years of a growth market and it did not have to increase its contribution to offset market losses or pay an increased contribution for an annual COLA adjustment for its retirees. However, when the markets turned – as they did in 2001-2002 – the City knowingly chose not to responsibly address its obligation. Ex. 256, at 47:25-48:6; Tr., 10/30/18 AM (Fugate), at 34:23-36:1.

the City to make adequate contributions that are reasonably required by actuarial valuation.

III. BREACH OF CONTRACT BY REDUCING BENEFITS

Separate and apart from underfunding the Plan, the City breached its contract with Plan members by enacting unreasonable benefit-reducing legislation. This Court has already concluded that the elimination of the Variable Benefit feature constitutes a breach of contract as to Retirees and Eligibles. One of the questions for trial was whether the Plan modifications as to Actives constituted a breach of contract under the *City of Frederick v. Quinn*, 35 Md. App. 626 (1977) reasonableness test, which has previously been framed by this Court. *See* Memorandum Opinion, dated January 2, 2018 (docketed January 9, 2018; Paper No. 20/2), at 24-25.

The evidence demonstrated that 10-306 eliminated approximately one-third of the benefits promised to active employees without providing ***anything*** in return. Ex. 282. And while the question of reasonableness must be "considered from the individual viewpoints of the members," rather than through the eyes of the employer, *City of Downey v. Bd. of Admin., Pub. Emp. Retire. Sys.*, 47 Cal. App. 3d 621, 632 (1975), even the City did not view all of the changes to Actives' benefits as reasonable. Indeed, the former Mayor conceded that the impact of the tiered COLA on disabled retirees was not reasonable and should have been fixed by the City Council. Tr., 11/5/18 AM, at 84:21-85:9; 87:24-88:15.

A. The Plan Modifications Were Not Reasonably Intended to Preserve the Integrity of the Pension System by Its Actuarial Soundness

1. <u>The City Was Not Focused on Actuarial Soundness of the Plan</u>

Mr. England testified that actuarial soundness is an actuarial term of art that is comprised of five concepts: (1) the ability and willingness of the plan sponsor to make contributions to the plan; (2) the use of a reasonable funding method; (3) the use of reasonable assumptions (*i.e.*, investment return, mortality); (4) properly valuing all liabilities of the plan; and (5) the current

funding level of the plan. Tr., 10/30/18 PM, at 37:14-40:5. The City argues that 10-306 was enacted to improve the actuarial soundness of the Plan.[8] Tr., 10/29/18 AM (Defense counsel), at 75:2-5. However, while materially reducing contractual benefits can certainly make the Plan appear to be better funded, the evidence at trial did not support the City's position that 10-306 was designed to improve the actuarial soundness of the Plan, as defined by England.

The true purpose behind 10-306 had nothing to do with actuarial soundness and everything to do with protecting the City's bond rating that was at risk as a result of the City's underfunding of the Plan. While the bond rating may not have been discussed with City Council during its rushed consideration of pension reform in June 2010 (Tr., 10/29/18 AM (Defense counsel), at 77:11-23), the bond rating *was* on the minds of the City officials who ushered the benefit-reducing bill through the Council. Ex. 103, at 180:10-15; Ex. 275, at 102:10-103:1.

GASB, ASOP, the rating agencies, and other financial market constituencies were beginning to look at pension reporting and obligation disclosures in spring 2010, following an investigation that revealed significant misrepresentations by other pension plan sponsors. Tr., 11/5/18 PM (Nadol), at 111:14-112:24. Aware that it would have to disclose roughly $800 million of market losses that were not being responsibly addressed, City officials – led by Gallagher – committed to passing pension legislation that would eliminate the need to disclose the NPO, thereby protecting against a downgrade of the City's investment-grade bond rating.[9]

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[8] The City attempted at trial to show that the VB was broken, and that it needed to be eliminated in order to make the Plan actuarially sound. Tr., 10/30/18 AM (Defense counsel), 85:24-86:1. The VB was not, however, the problem. Indeed, the VB feature did not pay an increase for four years from 2000 to 2003, when the Plan had suffered significant losses (Ex. 312), so it could not have been a cause of those (or any other) underfunding issues and would not have presented any issues if the Plan was properly funded. Tr., 11/1/18 AM (Taneyhill), at 12:11-15:15.

[9] Of course, this explains why the City did not consider seriously the unions' 6-point proposal, a settlement offer that would have made the Plan more affordable without drastically cutting the promised benefits and would have kept the City's contribution below the amount the City paid in the FY2011 budget. Ex. 46. Mr. Sledgeski explained that he was initially confused as to why, having just negotiated a revised DROP benefit, the City was not willing to even

2. The Plan Modifications Were Intended to Eliminate the Unfunded Liabilities by Reducing the Cost of Benefits

The City sought to transform the Plan as quickly as possible to bring it in line with existing funding levels. Asked whether the City leadership group had made "an effort to craft the legislation [in a way] that made no changes to current members and retirees," then-Deputy Mayor Thomaskutty responded that they had no interest in taking that approach and, instead, were interested in seeing what "a defined contribution system [would] look like for the City of Baltimore . . . ." Ex. 107, at 196:6-21. He explained that Gallagher's "repeated refrain," with which Thomaskutty agreed, was "how do we bring the system back to health in the fastest most kind of responsible way." *Id.* at 127:19-128:3. The answer was to cut benefits.

The former Mayor confirmed that the administration's goal was *not* to preserve contract benefits to the greatest extent possible or to provide comparable benefits, but rather, was to shrink the City's contributions to a level it deemed affordable, without consideration of its existing contractual obligations. Ex. 275, at 48:13-16. The City's actuarial expert in 2010 admitted that he started devising new plan benefits with a "blank piece of paper." Ex. 276, at 45:9-18. While improving the funding level of a pension plan is an important objective, doing so by cutting benefits and requiring members to contribute more, but not requiring increased contributions by the City, can never be viewed as reasonable from the member's perspective.

B. The Plan Modifications Caused "Serious Detriment" to Plan Members

The thrust of the *Quinn* reasonableness test is whether the employee has essentially the same benefits that he or she was promised at employment. Thus, where no "comparable new advantages" are provided to an active employee, a modification to the pension plan is unlawful,

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attempt to reach agreement on other pension reforms. Tr., 10/30/18 AM, at 142:16-143:7. He would not understand why that was until this litigation revealed the City's true intent behind 10-306.

even though the modification is otherwise reasonable and would have resolved an otherwise "troubling" result. *Betts v. Bd. of Admin.*, 21 Cal. 3d 859, 867-68 (1978).

1. The Plan Modifications Caused A Significant Reduction in Benefits

It is undisputed that 10-306 (a) imposed a 66.67%-increase in employee contributions (from 6% to 10%), (b) extended the age for full retirement eligibility (from 20 to 25 years), (c) modified downward the formula for computing average final compensation (from 18 to 36 months), (d) extended the age for DROP2 eligibility, and (e) replaced the VB with a tiered 0/1/2 COLA tied to age (0% until 55, 1% at 55, and 2% at 65). *Compare* Ex. 1 *with* Ex. 3. Plaintiffs' actuaries calculated that the 2010 PV loss of these benefits for active Plan members totaled $438 million. Ex. 282, at 5. These cuts caused serious detriment to Plan members. Exs. 360, 361; Tr., 10/29/18 AM (Lake), 121:19-123:12; Tr., 10/29/18 PM (Cherry), at 27:7- 28:6.

The average VB provided retirees a 3% annual cost of living increase from 1983 to 2009, even with the City's unreasonable contribution levels during the last 7 years of that period. Ex. 312. The tiered COLA, however, provides no increase for many years following retirement. For active members who are unfortunate enough to suffer an injury on the job and are forced into a line-of-duty disability retirement, the loss of the annual 3% VB increase will have devastating effects, subjecting their pension benefit to the ravages of inflation without any protection. Tr., 10/29/18 PM (Houser), at 15:19-16:16. This fact alone renders the tiered COLA unreasonable.

2. Members Do Not Have Substantially the Program They Bargained for Because No Comparable Benefits Were Provided

"The comparative analysis of disadvantages and compensating advantages must focus on the particular employee whose own vested pension rights are involved." *Betts*, 21 Cal. 3d at 867-68 (internal citations omitted); *see also Frank v. Bd. of Admin.*, 56 Cal. App.3d 236, 245 (1976) ("The validity of attempted changes in pension rights is dependent upon the advantages or

disadvantages to the particular employee whose own vested pension rights are involved."). As such, "[b]enefits subsequently obtained by other employees cannot be considered to offset detriments imposed on those whose pension rights have accrued." *Frank*, 56 Cal. App. 3d at 245; *see also Packer v. Bd. of Ret. of Los Angeles Cty. Peace Officers' Ret. Sys.*, 35 Cal. 2d 212, 218 (1950) (allowing change only because it "would furnish a greater total benefit to the employee than he formerly had").

The City presented no evidence of comparable benefits to offset the multitude of benefit reductions for the members of the putative class.[10] The City's promise to guarantee COLA payments (Ex. 3, at §36A(j)) does not constitute a comparable benefit, given the City's apparent willingness to unilaterally walk away from its other statutory guarantees. In addition, the so-called "early retirement" provision (Ex. 3, at §34(a-2);(b-2)) is no benefit at all – as it provides employees who elect to retire after 20 years with a significantly reduced benefit (67.5% of what the pension would have been before 10-306), even though those same employees have been required to contribute a greater percentage of their wages to the Plan.

In the absence of comparable benefits, increased employee contributions, extended service requirements, reductions in post-retirement increases, and modifications to average final compensation each constitute a breach of the City's pension contract with its public safety employees. *See* Pre-Trial Brief, filed October 5, 2018 (docketed October 5, 2018; Paper No. 99/0) ("Plaintiffs' Pre-trial Brief"). And, because the benefit reductions were not offset by comparable new benefits, those changes under 10-306 are not reasonable, notwithstanding purported countervailing equities for the public welfare. *See Betts*, 21 Cal. 3d at 867-68.

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[10] The minimum benefit provision for widows (Ex. 3, at §34(s-1)) is not a comparable benefit, as the persons impacted by that benefit are not members of the putative class. It is also not numerically comparable.

3. <u>The City's "Affirmative Defense" Failed</u>

(a) *The Pension Reductions Were Not Justified by Countervailing Equities*

To the extent that the public welfare is a relevant consideration, the evidence at trial demonstrated that the drastic reductions to benefits were not justified by any countervailing equity for the public welfare. As Captain Lake testified, the movement of the retirement finish line from 20 to 25 years has taken a physical and emotional toll on members. Tr., 10/29/18 AM, at 122:16-123:12. And, the City's revocation of its promises in Article 22 has impacted adversely recruitment of police officers. Tr., 10/29/18 PM (Cherry), at 74:23-76:10. Unfortunately, the former Mayor indicated that the City leadership did not even consider how the benefit changes would impact recruitment, testifying that it was not "top of [her] consideration[s]" when she was pushing the benefit-reducing legislation. Ex. 277, at 131:16-22.

The benefits provided to Baltimore public safety workers were already lower than most surrounding jurisdictions – 10-306 made this disparity worse. While the PFM Report identified jurisdictions that have certain Plan provisions that superficially appear to be similar to the provisions in 10-306, an apples-to-apples comparison shows that the 10-306 benefit changes place Baltimore's police officers' and firefighters' benefits at the bottom of comparable public safety pension plans in Maryland.[11] Ex. 42, at 305. Tr., 11/1/18 AM (Lowman), at 84:15-85:21.

[11] With respect to post-retirement increases, no jurisdiction in Maryland has employed a tiered COLA benefit that is tied to age. As to employee contributions, only Howard County requires its public safety employees to pay contributions near what 10-306 requires, and Howard County permits its members to retire after 20 years and provides a 2% COLA to all of its retirees. Regarding service years for retirement, while Baltimore County and Montgomery County require certain of their public safety employees to work longer than 20 years to become retirement-eligible, those jurisdictions provide better benefits than the post-10-306 Plan, including post-retirement increases in excess of 3%. Similarly, those counties with a 36-month average final compensation formula (Anne Arundel, Howard, and Montgomery) allow their employees to retire after 20 years (except for Montgomery County police officers) and Montgomery County provides an annual COLA in excess of 3%. Ex. 335, Ex. D at 52-58

(b) *Affordability Is Not A Relevant Factor Under Quinn, But Even If It Were, the City Could Have Afforded Its Fiscal Year 2011 FPERS Contribution*

The City argues that the reductions to the benefits promised to Actives would be reasonable if the City could demonstrate that it could not afford to pay for the existing benefits. But, the terms "affordability" and "ability to pay" appear nowhere in *Quinn* or the California cases it relies upon in articulating the reasonableness standard. Of course, whether the government sponsor can afford its pension obligations is never the test, because reasonableness is examined from the perspective of the employee, not the employer. *Downey*, 47 Cal. App.3d at 632. And, ability to pay could never be a defense to the breach of a pension contract. If it were, then it would be a fallacy to call a statutory pension promise a "contract." Rather, it would be more accurate to call it a "mere gratuity" – which was rejected by *Quinn*. 35 Md. App. at 629.

Assuming, *arguendo*, that the *Quinn* test contemplates some measure of affordability, the City did not need to breach its contractual obligations to afford its Plan contributions. The City's justification for enacting 10-306 was that the VB was causing the City to make an additional $64.5 million contribution in FY2011, which it purportedly could not afford. Ex. 3, at 2; Ex. 42, at 21. The evidence revealed that the City was not facing bankruptcy and was not even facing a short-term funding crisis. *See, e.g.,* Ex. 103, at 27:17-22; Ex. 277, at 105:19-107:19.

In reality, even at the nadir of the Great Recession, the City finances were far from dire. The City always paid its debts as they came due, and it had an undesignated fund surplus at the end of every fiscal year that carried over. Ex. 103, at 24:9-27:22. The City laid off 100 employees out of over 13,000 during the worst economic downturn in generations, but left at least 200 vacant but *funded* positions in its proposed budget. Ex. 103, at 31:4-34:22. Cutting benefits, Budget Director Kleine confirmed, was not a question of affordability, but rather, a budget choice. Ex. 104, at 79:16-80:5. Simply put, the City rewrote its Plan to bring the benefits

in line with what the City *wanted* to pay, not what it could afford to pay. Assuming that ability to pay is in the nature of an affirmative defense, the City did not meet its burden to show that its finances were so desperate that it could not pay its FY2011 contribution.

Perhaps the strongest evidence of the City's financial well-being is that, in May 2010, weeks before the adoption of 10-306, the major bond rating agencies reviewed the City's finances and gave the City an investment-grade AA- (S&P) and Aa2 (Moody's) bond rating. Ex. 104 at 53:15-55:1. Bond investors believed that the City was in sound financial shape, as they loaned the City *$90 million* at rates based upon its AA-/Aa2- bond rating. Ex. 275, at 35:11-37:5. Yet, in June 2010, when Gallagher presented the PFM Report to the City Council and claimed that it accurately depicted the City's deeply troubled financial circumstances (Ex. 43, at 7-9), he knew that the rating agencies had just reaffirmed the City's AA-/Aa2 bond rating in the midst of the Great Recession based upon a rating agency presentation that he led. Ex. 103, at 179:9-22. The City cannot explain away the duplicity: while Nadol and City officials were warning the City Council and the public that the City was facing devastating cuts and bankruptcy, the same officials were boasting to the rating agencies about the City's financial flexibility and ability to pay its debts. Tr., 11/5/18 PM (Nadol), at 117:2-19, 125:7-126:5.

The PFM Report and the 2010 rating agency presentation paint very different pictures of Baltimore's financial prospects. Both cannot be true. Nadol – the co-author of the PFM Report – testified that the rating agency presentation was accurate, thereby implicitly acknowledging that the City's overly pessimistic representations to the City Council were not. When confronted with evidence of the clear disparities between the two, Nadol admitted that the rating agency presentation did not include certain of the conflicting financial forecasts contained in the PFM Report, but claimed they were "consistent." Tr., 11/5/18, at 74:20-76:13. Even more telling,

Nadol was unable to explain why the 2010 Official Statement that the City used to sell its general obligation bonds did not contain a disclosure that the City would be unable to pay for "core services" if it had to pay for its Plan obligations. Tr., 11/7/18 (Nadol), at 29:11-35:13. Because the Official Statement must be accurate to avoid a violation of the federal securities laws, this omission is itself an admission by the City that Nadol's dire predictions were neither so imminent nor so severe that the City was required to disclose its alleged inability to pay for core services. Tr., 11/7/18 AM (Nadol), at 32:12-35:13.

Nadol was hired to support a political agenda aimed at persuading the City Council to cut promised pension benefits while his partner, Katherine Clupper, was aiding the City in marketing its bonds premised upon the City's true financial picture – a city that was withstanding the financial crisis quite well and was not facing bankruptcy or an inability to pay its pension obligations. Ex. 88; Tr., 11/5/17 PM (Nadol), at 125:7 -126:5; 11/7/18 AM (Nadol), at 13:14-14:17. Nadol's testimony must be recognized for what it was – an advocacy presentation that projected future concerns viewed from the nadir of the financial crisis. By the time 10-306 was being considered, the markets were telling a more optimistic story and the City was not willing or required to inform the market that it agreed with Nadol's dire predictions.[12]

C. The Measure of Damages to Actives

The measure of damages to Actives depends, in part, on each member's retirement date. Plaintiffs' actuaries ("Bolton") performed two illustrations for Captain Lake, one if he had been able to retire at the 20-year point as he wanted, and one if he works until 28 years. Tr., 11/1/18 AM (Lowman), 58:11-80:21; Tr., 10/29/18 AM (Lake), 122:10-12; Ex. 282, at ¶¶ 29-37.

[12] The record also established that it was not necessary to make drastic changes in a single budget year to cure the past history of underfunding. To the contrary, the City had a number of other choices at its disposal if, in fact, there was a budget problem. *See* Plaintiffs' Pre-trial Brief, at 17-19.

Reductions in Benefits Due to 10-306 for Cpt. Lake after 20 or 28 Years of Service*

Service at retirement	Reduction in Average Final Compensation	Reduction in Annual Annuity	Increase in Lump Sum from DROP	Additional Required Employee Contributions
20 years**	$5,358	$16,018	N/A	$12,421
28 years***	$20,316	$19,517	$17,949	$46,253

* Ex. 282; Tr., 11/1/18 AM (Lowman), at 65:4-8.
** Reese's report shows that, historically, 40% of the actives retired before 25 years of service. Ex. 330, at ¶ 85.
*** The refresh at 28 years for firefighters was valuable and a likely incentive to stay for 28 years.

In order to determine the expected losses as of June 30, 2010 to the Actives as a class, Bolton asked Cheiron – the Plan's current actuary – to perform two calculations of the PV of expected future benefits for the Actives as a whole, and separately for Captain Lake and Sergeant Cherry. Tr., 11/1/18 AM (Lowman), 58:11-80:14:24; Ex. 282, Appx. B, at 92, *et seq.* Cheiron's first calculations showed the PV of expected future benefits the year before 10-306 was enacted. That is, what did the Plan actuary calculate – using probabilities of various retirement dates, longevity, and expected increased compensation – as the PV of the pre-10-306 Plan for Active and Eligible employees as of June 30, 2010?

The second set of calculations showed the PV of expected future benefits immediately after 10-306 was passed. Ex. 282, at ¶ 123.

Losses to Active (non-eligible) Class (Ex. 282, at ¶123)

	Present Value of Benefits 6/30/2010		Present Value of benefit loss	Present value of extra employee contributions
	Pre-10-306	After 10-306		
Capt. Lake	$543,000	$381,000	$162,000	$25,000
Sgt. Cherry	$513,000	$393,000	$120,000	$11,000
Grandfathered	$458 million	$349 million	$109 million	$57 million
Non-grandfathered	$845 million	$575 million	$270 million	
Total benefit loss plus extra employee contributions				**$438 million***

(Note: numbers may not add due to rounding)
* $328 million of the loss is due to the change from VB to the 0/1/2% COLA.

IV. THE MEASURE OF DAMAGES TO RETIREES AND ELIGIBLES

Bolton performed two sets of calculations for the retirees and eligibles: (1) actual

damages from VB losses from June 30, 2010 to June 30, 2017; and (2) prospective losses caused by the reduction of the expected COLA from the loss of the average VB going forward. As Lowman explained, calculating the pre-2017 losses involved several disputed assumptions.

A. The Variable Benefit Calculation Assumptions

1. True-up

The first dispute, over what was referred to as "true-up" during the trial, is whether the retiree reserves have first call on Plan assets. As discussed above, Section 37 makes the maintenance of the retiree reserves (defined in Sections 30(16) and (17) as the present value of the promised pension benefit) an obligation of the City. England explained how the retiree reserves have been trued-up by Plan actuaries since at least 1977. Tr., 10/30/18 PM, at 67:5-69:6, 115:19-117:5; Tr., 10/31/18 AM, at 77:1-5; Exs. 33, 143, 157.[13]

2. Annuity Conversion Rate

The second dispute is whether the annuity conversion rate – the interest rate used to convert the excess asset transfer (a dollar amount) into a percentage increase for each eligible retiree – was tethered to the post-retirement interest rate. The relevant Plan provision is Section 36A(b), which provides (at the second paragraph) that the increase is to be determined by "using the actuarial valuation assumptions on the June 30 preceding the effective date of the increase." Lowman testified that, in his actuarial opinion, this meant that the annuity conversion rate was "tethered" to the post-retirement interest rate in effect on the June 30 preceding the VB increase. Tr., 10/31/18 AM, at 147:20-148:8, 155:9-21. He also testified, without contradiction, that the

[13] Reese took inconsistent positions on true-up. In his theoretical closed plan in his first expert report, he started with a complete true-up, by moving all plan assets into the retiree-only closed plan. However, he then cut off most further true-up, defunding the retiree reserves. In cross-examination, Reese acknowledged that his views (as opposed to his calculations) on true-up were at odds with over 40 years of Plan interpretation by the Plan's actuaries and Boards. Tr., 11/2/18 PM, at 72:16-73:5.

Plan had applied such a tethered rate from the time the VB was adopted in 1983 until 2005.[14] From 2005-2007, Rowe calculated the VB at two different rates, the 6.8% tethered rate and a variety of lower rates reflecting a bond investment rate. During those years, the Board approved the lower rate, and paid out the lower VB increase.

3. Post-retirement Interest Rate

The third dispute is whether the proper post-retirement interest rate starting in FY2011 should have been 6.8% or 5.0%. The City's justification for enacting 10-306 and terminating the VB, as stated in the Legislative Findings, was that if the City did not enact 10-306, it would have to adopt the 5.0% assumption and contribute an additional $64 million annually. Ex. 3 at 2; Tr., 11/5/18 AM (Rawlings-Blake), at 40:15-41:1. Thus, the City's asserted reason for passing 10-306 is a de facto concession by the City that it was obligated to use the 5.0% rate to avoid diminishing or impairing promised benefits in breach of its contract with members.

In addition, the evidence showed that, at least by 2010, the 6.8% rate was actuarially unreasonable. Beginning with the 2007 AVR and continuing until 10-306 was passed, Rowe's actuarial certification specifically excluded the 6.8% post-retirement rate from the assumptions he certified as reasonable. England testified that was an extraordinary disclosure for an actuary, emphasizing the significance of Rowe's action. Tr., 10/30/18 PM, at 126:13-20.

Summary of Experience Studies and Actuarial Valuation Reports (AVR)

Experience Studies				
Year	Exhibit	Pages	Recommended change to post-retirement rate	Increase in City contribution due to rate change
2003	24	19 and 21	6.8% to 6.0%	$14.3 million*
2005	25	20 and 22	6.8% to 5.0%	$54.3 million
2008	26	23 and 25	6.8% to 5.0%	$61.5 million
* This is the total increase in City contribution due to all assumption changes.				

[14] Reese conceded that he also used the tethered rate. Tr., 11/2/18 AM, at 107:3-23.

Actuarial Valuation Reports				
Year	Exhibit	Pages	Paragraph	Observation
2007	37	6	2	Excludes 6.8% as reasonable assumption
2008	38	7	2	Excludes 6.8% as reasonable assumption
2009	39	7 to 9	All	Presents 6.8% and 5.0% rates – no certification as to reasonableness of 6.8%

Reese did not challenge Rowe's recommendation, conceding that he did not offer any opinion on whether 6.8% was reasonable. Tr., 11/2/18 PM, at 57:14-21. Reese acknowledged that, had he been asked to provide the actuarial certification provided by Rowe, he "might have" followed Rowe's path and excluded the 6.8% rate from any reasonableness certification. *Id.* at 60:22-61:1. Given that no actuary was or is willing to certify the 6.8% rate as reasonable, continued use of an unreasonable assumption would violate Sections 37 and 42, and require funding of the Plan consistent with the reasonable 5% rate.

4. Additional Contributions

The fourth dispute is whether the calculation of damages should be based on additional contributions that should have been made by the City. Bolton provided a breakout chart with each category of City contributions that should be considered in determining damages – *i.e.*, what the Plan funding would have looked like if 10-306 had not passed. Ex. 304; Ex. 282, at ¶¶ 128-29. There are two categories in dispute requiring consideration here: (1) whether the City should have continued using 6.8%; and (2) whether the City could, after 2010, continue to double smooth the tech losses from 2001-2002. The Plan funding requirements, and the City's obligations under Sections 37 and 42, indicate that the answer to both questions is a firm "no."

5. Ratio of Funds

The fifth "quasi-dispute"[15] is whether the VB should be calculated using the excess return

[15] We use the term "quasi-dispute" because the calculations of every actuary connected to this case, including Reese and Rowe, used only the actual earnings on retiree assets, not phantom earnings.

only on actual assets in the ARF and PRF, or should be inflated to include phantom earnings, which the City argues renders the VB broken. Tr., 10/30/18 AM (Defense counsel), 85:24-86:1. Section 36A(c)(ii) provides that the VB is calculated by comparing the ratio of the ARF and the PRF to the four core funds. Both Bolton and Reese agree that the ARF and PRF are assets, not liabilities. Tr., 10/31/18 PM (Lowman), at 22:15-23:4; Tr., 11/2/18 AM (Reese), at 112:10-24. Reese agreed that his calculations of post-2010 increases were based only on the market value of the assets in the closed plan. Tr., 11/2/18 PM, at 72:7-12. "Excess earnings" are, therefore, limited by definition to the earnings on the actual assets in the retiree funds, and the City's claims about the ratio of these funds being greater than one is revealed for what it is: mere hypothetical absurdity. At bottom, the ratio is simply an accounting method used to allocate funds between accounts. Tr., 11/1/18 PM (Taneyhill), at 181:2-18; Tr., 11/2/18 AM (Taneyhill) at 21:22-22:10, 40:16-19. Lowman also explained how Rowe's November 17, 2009 projections of future VB increases only used returns on actual assets when the retiree funds (ARF and PRF) were less than 100% funded. Tr., 10/31/18, at 86:20-87:20; Ex. 223. Bolton, Reese, and Rowe all calculated VBs based only on actual assets, as the actuaries recognize that you cannot pay benefits based upon hypothetical assets. Tr., 10/30/18 PM (England), at 71:19-76:2; Tr., 11/2/18 AM (Reese), 113:6-115:8; Ex. 256 (Rowe), at 30:9-13.

B. Actual Losses through Fiscal Year 2017

After considering and addressing each of these factors, Bolton calculated the damages to Retirees and Eligibles through June 2017, based on the Plan's actual investment performance. The process is explained in Exhibit 282 at ¶¶ 124-132. The first step was to reconstruct the six funds and compute the January 2011 VB increase. Tr., 10/31/18 PM (Lowman), at 5:21-6:16. The next step was to back out the amount paid under the 0/1/2 formula. *Id.* at 6:16-6:21; 27:2-45:19; Ex. 307. The process then proceeded to the next year to calculate the City contribution,

back out the 0/1/2 payments,[16] and, based on actual investment performance, calculate the VB increase starting January 2012. Tr., 10/31/18 PM (Lowman), at 6:23-7:3; 51:8-11. This was done on a participant-by-participant basis, with a separate VB calculation for each eligible retiree. *Id.* at 7:3-8:18.

Given the dispute over the proper post-retirement interest rate, Bolton separately calculated the damages at 6.8% and 5.0%. *Id.* at 8:24-9:11. Lowman presented two sets of worksheets for the fund reconstructions. Exhibit 305 shows the results of the iterative process in reconstructing each fund, each year from FY2011 to FY2017, and the VB calculations for each of those years. *Id.* at 19:5-26:2.

The totals for the VBs that would have been paid, the amount of the 0/1/2 COLA actually paid, and the exclusion for retirees not in the class and the overpayments are all recorded for each year on Exhibit 308. *Id.* at 53:4-60:23. Exhibit 308 uses the 6.8% rate, and Exhibit 309 uses the 5.0% rate. *Id.* at 60:23-61:2. The following table summarizes the losses through FY2017 for individual Plaintiffs and for all Retirees and Eligibles collectively.

Losses due to change from VB to 0/1/2% COLA for Retirees and Eligibles*

	Loss (6.8%)	Loss (5.0%)	Additional employee contributions**
Mr. Houser	$43,337	$39,486	N/A
Mr. Sledgeski	$6,361	$6,708	$1,300
Mr. Williams	$23,820	$18,339	N/A
All	$89 million	$75 million	$2.1 million

* Ex. 282, Tables 12-17, at ¶¶ 72-85.

** Actual additional employee contributions for Mr. Sledgeski. Estimated future value of employee contributions for remaining Eligibles over post-10-306 career. Ex. 282, at ¶¶ 81, 87.

C. Expected Future Variable Benefit Increases

Calculating the expected average VB beyond 2017 requires two key inputs – an expected

[16] No retiree under age 65 received any increase in January 2011 and, thus, the first year COLA rate was 0/0/2.

average rate of return on investments and a standard deviation of expected investment returns. Bolton used an expected average rate of return of 7.9% and a standard deviation of 14.1%. These came from the Plan's investment advisor (Summit Strategies) in the last report prior to the adoption of 10-306.[17] Tr., 11/1/18 AM (Lowman), at 15:16-19; Ex. 182. Bolton then applied a Monte Carlo simulation with these inputs over 10,000 years. Tr., 11/1/18 AM (Lowman), at 16:18-18:1. This produced an average excess return of 3.71%. Bolton determined that, with fully funded retiree funds, this would produce an average return of 3.02%. *Id.* at 20:3-22:5; Ex. 282, at ¶ 99. This was based on the assumption that the retiree funds (as opposed to the entire plan) would be approaching full funding by 2018. However, as Lowman's testimony and Bolton II show, as long as the funding position of the retiree reserves does not get worse, the expected future VB will still handily exceed 2.0%. Ex. 282, at ¶ 99.

Reese's Report (Ex. 330) criticized aspects of the Bolton formula leading to the conversion of an expected excess return of 3.71% to an average 3.02% VB. To see whether the formula properly predicted VB increases, Bolton applied its formula to the excess asset transfers back to 1993 to see how VBs calculated using the Bolton formula to the actual excess return for each such year compared to the actual VBs calculated by the Plan. Bolton's formula produced an exact match. Tr., 10/31/18 PM (Lowman), 4:14-65:6; Ex. 282, Tables 3-9 at ¶¶ 32-65.

Lowman also compared his results to the results of Rowe's projections in November

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[17] The City took issue with the use of the projected standard deviation from immediately before the passage of 10-306, and cross-examined Lowman on Exhibit 185, a document apparently prepared by Summit for the Plan in late 2016. This exhibit does add to the analysis. It does not address the expected standard deviation of the actual asset mix in 2016 (or at any other time). Rather, it presents expected returns and standard deviations on the target mix of assets and a range of different revisions to the asset mix. There was no evidence demonstrating which, if any, of the various scenarios modeled by Summit were adopted. In addition, the exhibit did not disclose whether the bond portfolio transferred from the Paid-up Benefit Fund after 10-306 was included in the target. Tr., 11/1/18 PM (Lowman), at 40:13-15. The City could, in theory, change the asset mix to produce a lower standard deviation – to use an extreme example, investing the retiree funds solely in treasury bills. Reese used a standard deviation of 4.4% in his first report, which was entirely unrealistic. (Ex. 330). Tr., 11/1/18 AM (Lowman), 52:6-10.

2009. Ex. 223, Tr., 10/31/18 PM, at 79:13-87:22. Lowman explained how Rowe projected the VB increases for the period 2010-2020 at 6.8% (with a 5.0% untethered annuity conversion rate) and at 5.0% (with a tethered rate). Tr., 10/31/18 PM,, at 85:6-23; Ex. 223, at 1, 7, 8. The VB projections are reduced initially because of the underfunding of the retiree funds. However, as the funding improves (despite the continuation of double smoothing, which by this time is beginning to bring greater contributions into the Plan), the average VB improves. Using Rowe's assumptions and methods (including the continuation of double smoothing) by 2020 at 5.0%, the retiree funds are close to fully funded (though not the active funds). Tr., 10/31/18 PM, at 83:6-84:8; Tr., 11/1/18 AM (Lowman), at 86:1-4. According to Rowe's projections, by 2020 the VB will average 5.9% every other year – a 2.95% annual average. Tr., 11/1/18 AM (Lowman), at 86:20-87:20; Ex. 223 at 7; Tr., 10/31/18 (Lowman), at 72:10-75:15. Indeed, even using 6.8% funding and 5.0% untethered annuity conversion rate, the retiree funds will have grown sufficiently to produce an average annual VB of 2.25% and climbing. Ex. 223 at 7. In addition, Rowe's 2009 projections of the funding of the retiree reserves are actually a little lower than the actual fund returns. Page 8 of Exhibit 223 gives Rowe's assumed earnings between 2010 and 2020 in the 8.25/8.75% range, whereas Table 9 in Bolton II (Exhibit 282 at ¶ 65) shows an actual investment return on the four core funds for the period 2010-2017 as above 10.7%. This means that, based on actual returns, the retiree reserves would be somewhat better funded than predicted by Rowe, increasing the VB amounts with higher investment returns.

Reese developed a considerably lower VB projection, both for the period from FY2011 to FY2017, and going forward. However, neither of Reese's illustrations are reasonable or appropriate. Both depend on defunding the retiree funds (ARF and PRF) in violation of the statutory promises not to do so and are infected with numerous math errors (some exceeding

$100 million). Reese's analysis starts with a theoretical repeal of Section 31(a) (membership requirement for all uniformed firefighter and police), a change for which he conceded the Plan did not provide, Tr., 11/2/18 PM (Reese), at 50:11-13, and that the City Council has never considered. *Id.* at 51:5-8. Under his closed plan, there will be no assets to pay pensions to retirees in 15 years, *id.* at 51:13-20 – in violation of the City's funding obligation in Section 37 and based upon actuarially unreasonable funding methods and assumptions. Pension payments to the retirees, if any, will depend on the City allocating funds in the annual budget for such payments. His closed plan precludes most (though not all) further true-up of the Plan from the City's annual contribution. *Id.* at 53:9-21. As his closed plan runs to insolvency, the VB also goes to zero. *Id.* at 55:20-23.[18] Reese also never came to grips with Bolton's calculation that, under the Reese closed plan, the City's annual contribution for both plans would have been $182 million, a number greater than the amount the City claimed in 2010 it could not afford to pay.

In Reese II, he does attempt to resurrect his failure to consider the cost of both plans in Reese I by constructing a different closed plan. In this model, he moves the $237 million in the Annuity Savings Fund from the closed plan to the new plan, further defunding the retiree plan, but adds in $893 million in actuarial value of assets (phantom assets unsupported by any actual assets) in order to make the retiree plan look overfunded and avoid any City contribution for FY2011 (notwithstanding the fact that this new model is running to insolvency even faster). Ex. 333, at 6, 8. This type of actuarial gimmickry does not warrant consideration and Reese's opinions should, therefore, be rejected.

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[18] In addition, the Reese reports contain calculation errors. His first report assumed that there would have been no VB increase in January 2011, an assumption that Reese candidly admitted was a mistake. Tr., 11/2/18 AM (Reese), at 138:16-24. In addition, in Reese's second report, $137 million in assets (earnings and contributions) simply vanish, appearing in neither plan. Tr., 11/1/18 AM (Lowman), at 110:15-111:12. There are numerous other computational errors discussed in Bolton III that Reese did not challenge in his subsequent report, and did not attempt to refute in testimony. Ex. 283, at ¶¶ 116-119.

V. DAMAGES ARE SUBJECT TO CLASS/SUB-CLASS TREATMENT

For the reasons discussed in detail in their Motion for Class Certification (filed February 15, 2018 (docketed February 16, 2018; Paper No. 45/0) ("Class Certification Motion")), Plaintiffs seek an order certifying this action pursuant to Rules 2-231(b)(1), (b)(2), and/or (b)(3) on behalf of a class consisting of all members and beneficiaries of the Plan as of June 30, 2010, (excluding all beneficiaries whose pension benefits were increased by 10-306), which may be comprised of three sub-classes – Retirees, Eligibles, and Actives. It is undisputed that this case should proceed as a class action with respect to liability. *See* Defendant's Response to Motion for Class Certification, filed March 19, 2018 (docketed March 20, 2018; Paper No. 45/1), at 2. The City argues that the Court cannot apply damages on a class basis due to the individualized nature of each Plaintiff's claim. But, the evidence presented at trial demonstrated that common questions predominated over individual damages inquiries and that class notice could be adequate when completed on an individualized basis, informing members of their individualized expected damages.[19] Thus, class treatment is appropriate for all aspects of this case.

Plaintiffs believe that the Court now has a record that allows for the provision of adequate notice and certification of the proposed class.

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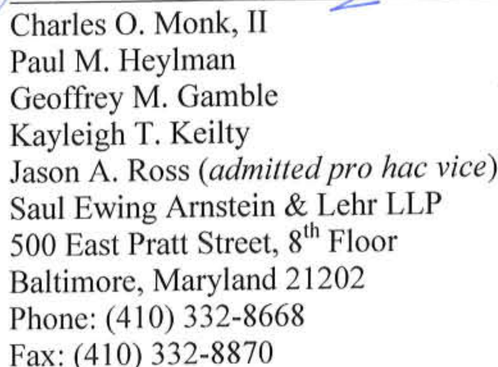
[19] At trial, Lowman provided the detailed process supporting his calculations of past VB increases owed (compared to the 0/1/2 COLA) from January 2011 through June 30, 2017, as well as future VB increases and damages suffered by Actives resulting from 10-306. Tr., 10/31/18 PM, at 4-64; Tr., 11/1/18 AM, at 54-78. Plaintiffs introduced excerpts from a spreadsheet[19] containing the calculations of the individual damages. Tr., 10/31/18 PM (Lowman), at 30:16-44:8 (damages for Plaintiff Williams); *id.* at 44:9-13 (damages for Plaintiff Houser); Ex. 282, at 5-6; Ex. 307.

Respectfully submitted,



Dated: November 16, 2018

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of November, 2018, a copy of Plaintiffs' Post-trial Brief is being served, via hand delivery and electronic mail, on:

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