

STATE OF RHODE ISLAND  
PROVIDENCE, SC.

SUPERIOR COURT

RHODE ISLAND PUBLIC EMPLOYEES'  
RETIREE COALITION, RHODE ISLAND  
AFT/R LOCAL 8037, ROGER  
BOUDREAU, MICHAEL CONNOLLY,  
KEVIN SCHNELL, RHODE ISLAND  
COUNCIL 94, AFSCME, AFL-CIO,  
NATIONAL EDUCATION ASS'N –  
RHODE ISLAND, JOHN LAVERY,  
MICHAEL MCDONALD, JASON KANE,  
AMY MULLEN, SUSAN VERDON,  
RHODE ISLAND STATE ASSOCIATION  
OF FIRE FIGHTERS, RAYMOND  
FURTADO AND JAMES RICHARDS,

C.A. No. PC 15- 1468

*Plaintiffs,*

vs.

GINA RAIMONDO, in her capacity as  
Governor of the State of Rhode Island, SETH  
MAGAZINER, in his capacity as General  
Treasurer of the State of Rhode Island, and  
THE EMPLOYEES' RETIREMENT  
SYSTEM OF THE STATE OF RHODE  
ISLAND, by and through the RHODE  
ISLAND RETIREMENT BOARD, by and  
through Seth Magaziner, in his capacity as  
Chairman of the Retirement Board, and  
Frank J. Karpinski, in his capacity as  
Secretary of the Retirement Board, TOWN  
OF BARRINGTON, by and through Finance  
Director Kathy Raposa, TOWN OF  
MIDDLETOWN, by and through Finance  
Director Lynne Dible, AND TOWN OF  
SOUTH KINGSTOWN, by and through  
Finance Director, Patricia Sunderland,

*Defendants.*

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**COMPLAINT**

**I. PRELIMINARY STATEMENT**

In June and July 2012, several actions were filed challenging Public Law 2011, chapters

408 and 409, otherwise known as the Rhode Island Retirement Security Act of 2011 (“RIRSA”), an act that suspends and reduces retirement benefits of both vested and retired Rhode Island public employees. See Civil Action Nos. PC 12-3166, PC 12-3167, PC 12-3168 and PC 12-3579. These actions followed a 2010 challenge (PC 10-2859) to pension changes that reduced retirement benefits of vested state employees and public school teachers enacted in 2009 (P.L. 2009, ch. 68, art. 7, “the 2009 Act”) and 2010 (P.L. 2010, ch. 23, art. 16, “the 2010 Act”) (collectively referred to as the “pension cases.”).

All pension cases asked, among other things, that this Court declare RIRSA or the 2009 and 2010 Acts unconstitutional, under the Rhode Island Uniform Declaratory Judgments Act (“UDJA”), G.L. 1956 § 9-30-1 et seq., and alleged violations of the Contract Clause, Takings Clause, and Due Process Clauses of the Rhode Island Constitution.

On April 2, 2015, a settlement was announced between the parties in the above-referenced pension cases. This class action is being filed for purposes of implementing the settlement.

## **II. NATURE OF THE ACTION**

1. This is a civil action involving a legal controversy between the Plaintiffs and the Defendants.
2. The Plaintiffs seek the same relief against the Defendants.
3. Plaintiffs seek to certify the following Classes for purposes of settlement pursuant to Rule 23 of the Rhode Island Rules of Civil Procedure (“Rule 23”).
4. The Plaintiff Class shall consist of:

All persons (and/or their beneficiaries) who, on or before July 1, 2015, are receiving benefits or are participating in the State Employees, Teachers, or Municipal Employees retirement systems administered by the Employees Retirement System of Rhode Island (“ERSRI”) and all future employees, excepting only those individuals who on July 1, 2015, are participating in a municipal retirement system administered by ERSRI for municipal police officers in any municipality and/or for fire personnel of the City of Cranston.

5. The Plaintiff Class shall consist of the following subclasses:
  - A. State Employees and Teachers: Participants in the Teachers and State Employees Retirement System (“ERS”) who are employed on or before July 1, 2015 but who have not retired as of June 30, 2015 and all future employees.
  - B. Participants in the Municipal Employees Retirement System (“MERS”), other than police or fire units: Participants in MERS, other than police or fire units, employed on or before July 1, 2015, but who have not retired as of June 30, 2015 and all future employees.

- C. Participants in all fire MERS units, except for fire personnel of Cranston: Participants in all fire MERS units, except for fire personnel of Cranston, employed on or before July 1, 2015 but who have not retired as of June 30, 2015 and all future employees.
- D. Retirees: All retired members and beneficiaries of retired members who retired on or before June 30, 2015, who are receiving a retirement benefit under ERS or any MERS unit.

Please note: the following are not members of the Class or Subclasses: (1) non-retired participants in the City of Cranston's fire MERS pension systems and (2) non-retired participants in a police pension system for any Rhode Island municipality participating in MERS.

- 6. The Defendant Class shall consist of: All municipal entities that participate in the MERS and all municipal entities that employ teachers who participate in the state employees and teachers' ERS.

## **II. JURISDICTION**

- 7. Jurisdiction is founded in the Uniform Declaratory Judgments Act, G.L. 1956 § 9-30-1 et seq., and Rule 23.
- 8. Pursuant to the provisions of G.L. 1956 § 9-30-11 and Rule 24(d) of the Rhode Island Rules of Civil Procedure, the Attorney General of the State has been provided with a copy of this complaint.

## **III. THE PARTIES**

### **The Associational Plaintiffs**

- 9. The labor organizations and associations set forth below are participating in this lawsuit on behalf of their members. They seek, where their members are entitled to do so, and the claims for relief otherwise permit, the declaratory and injunctive relief set forth below.
- 10. Plaintiff, Rhode Island Public Employees' Retiree Coalition ("RIPERC") is an coalition of associations that represent individual retired state and municipal employees and retired public school teachers who are current beneficiaries of the ERS or MERS.
- 11. RIPERC's primary purpose is to advocate for the interests of retired Rhode Island public employees. The total membership of RIPERC's member associations is about 7,500 retirees.
- 12. Plaintiff, Rhode Island AFT/R Local 8037 is an association of retired public school employees who are current beneficiaries of ERS. RIAFT/R Local 8037 is a member of RIPERC and has about 2,500 members.
- 13. Plaintiff, Rhode Island Council 94, AFSCME, AFL-CIO ("Council 94") is a statewide

labor organization devoted to providing representation and advocacy for its membership. Its members include Rhode Island municipal and state employees who are participants in ERS and MERS. Its local affiliates serve as certified collective bargaining representatives for several thousand Rhode Island municipal and state employees.

14. Plaintiff, National Education Association – Rhode Island (“NEARI”) is a statewide labor organization devoted to providing representation and advocacy for its membership. Its members include Rhode Island state employees, public school teachers, and municipal employees who are participants in ERS and MERS. Its local affiliates service as certified collective bargaining representatives for several thousand Rhode Island state employees, public school teachers, and municipal employees.
15. Plaintiff, Rhode Island State Association of Fire Fighters (“RISAFF”) is a voluntary association of International Association of Fire Fighters (“IAFF”) local unions within the State of Rhode Island. The RISAFF is devoted to providing representation and advocacy for its membership. The members of the local unions that are affiliated with RISAFF and the IAFF are firefighter participants of MERS.
16. Each of the foregoing labor organizations and/or associations brings this action on behalf of its members and, for settlement purposes only, on behalf of the class more fully described below.

#### **The Individual Plaintiffs**

17. Plaintiff, Roger Boudreau (“Boudreau”) is a retired teacher from the Lincoln School Department and beneficiary of ERS since 2001.
18. Plaintiff, Michael Connolly is a retired municipal employee from the City of Woonsocket and beneficiary of MERS since 2008.
19. Plaintiff, Kevin Schnell is a retired firefighter from the Central Coventry Fire District and beneficiary of MERS.
20. Plaintiff, John M. Lavery is an employee of the State serving as a correctional officer training instructor at the Rhode Island Department of Corrections. He has been employed by the State since in or about 1996 and, as of September 30, 2009, had more than ten years of service.
21. Plaintiff, Michael P. McDonald is an employee of the State serving as a building construction inspector. He has been employed by the State since in or about 1980 and, as of September 30, 2009, had more than ten years of service. As of June 30, 2012, plaintiff McDonald had more than twenty years of service.
22. Plaintiff Jason Kane is an employee of the State serving as a community living aide. Plaintiff Kane has been employed by the State since in or about 2000, and as of June 30, 2012, had more than ten years but less than twenty years of service.

23. Plaintiff Amy Mullen is an employee of the Town of Tiverton and Tiverton School Committee, serving as a teacher in the Tiverton public schools. As of June 30, 2012, Plaintiff Mullen had more than ten years but less than twenty years of service.
24. Plaintiff Susan Verdon is an employee of the Town of East Greenwich and the East Greenwich School Committee, serving as a non-certified employee in the East Greenwich public schools. As of June 30, 2012, Plaintiff Verdon had more than 20 years of service as of June 30, 2012.
25. Plaintiff James Richards is a firefighter currently employed by the Town of North Kingstown and is a participant in MERS.
26. Plaintiff Raymond Furtado is a firefighter currently employed by the Cumberland Rescue and is a participant in MERS.
27. Each of the foregoing individuals brings the action individually and, for settlement purposes only, on behalf of the class more fully described below.

#### **State Defendants**

28. Defendant, Gina Raimondo (“Governor”) is sued in her official capacity as the Governor of the State of Rhode Island.
29. Defendant Seth Magaziner (“Treasurer”) is sued in his official capacity as the General Treasurer of the State of Rhode Island. Pursuant to § 42-10-11 *et seq.*, the Treasurer has the responsibility for and control of state funds and the payment of state and municipal retirement benefits administered through the ERSRI. Pursuant to G.L. 1956 § 36-8-9, the Treasurer shall serve as *ex-officio* chairperson of the Rhode Island Retirement Board (“Retirement Board”) and custodian and treasurer of the funds of the ERSRI.
30. Defendant ERSRI is established and placed under the management of the Retirement Board pursuant to G.L. 1956 §§ 36-8-2 and 36-8-3. The Retirement Board is sued by and through its Chair, Seth Magaziner, and its Executive Director, Frank J. Karpinski, who, pursuant to G.L. 1956 § 36-8-9, is in charge of administration of the retirement system and serves as Secretary to the Retirement Board. The ERSRI and the Retirement Board are hereinafter referred to collectively as “the Retirement System.”
31. The Defendants listed in the three preceding paragraphs are hereinafter referred to collectively as the “State Defendants.”

#### **Municipal Defendants**

32. The Defendant, Town of Barrington is a municipal entity that participates in MERS and is sued by and through its Finance Director, Kathy Raposa.

33. The Defendant, Town of Middletown is a municipal entity that participates in MERS and is sued by and through its Finance Director, Lynn Dible.
34. The Defendant, Town of South Kingstown is a municipal entity that participates in MERS and is sued by and through its Finance Director, Patricia Sunderland.
35. The Defendants listed in the three preceding paragraphs shall hereinafter be collectively referred to as the “Municipal Defendants.” Each said municipality is sued on its own behalf and on behalf of a class, for purposes of settlement only, more fully described below.

#### **IV. FACTS**

##### **In General**

36. The State Retirement System is a creature of the Legislature and has been in existence since 1936. P.L. 1936, ch. 2334, codified at G.L. 1956 §§ 36-8-1 to 36-10.4. The System was originally created only for state employees.
37. In 1949, membership in the Retirement System was extended to teachers. P.L. 1948, ch. 2102, § 2, codified at G.L. 1956 § 16-16-1 et seq.
38. In 1951, the General Assembly enacted MERS for certain general municipal employees. P.L. 1951, ch. 2784, codified at G.L. 1956 § 45-21-1 et seq.
39. In 1968, membership in MERS, providing an alternative optional retirement plan for municipal police and fire fighters (“Optional Retirement for Members of Police Force and Fire Fighters”), later codified as G.L. 1956 §45-21.2.
40. The Retirement Board is responsible to administer the ERS and MERS (both the general and public safety) plans.
41. All the plans are mandatory contributory, defined benefit pension plans. The Retirement System requires each participant to contribute a statutorily set percentage of his or her annual salary. In exchange, participants are paid a fixed retirement allowance upon reaching statutorily defined age and service requirements (hereinafter, the “standards for retirement”).

##### **The COLA**

42. On June 20, 1968, the General Assembly enacted its first law involving a COLA for already-retired state employees. P.L. 1968, ch. 231, codified at § 36-10-35.
43. In 1970, a COLA was added to state employees’ pension benefits for those who retired after January 1, 1968. The COLA enacted was an automatic annual 3 percent increase to the base pension benefit, not compounded. P.L. 1970, ch. 112, Art. X, § 1.

44. In 1970, a COLA was enacted for teacher participants, which essentially mirrored the state employee COLA, 3 percent automatic, annual, but not compounded. P.L. 1970, ch. 112, Art. X, § 2.
45. In 1981, the manner of calculating the COLA was changed to the benefit of state employees and teachers, from simple to compounded. P.L. 1980, ch. 237, § 1 (teachers) and P.L. 1980, ch. 237, § 2 (state employees).
46. In 1980, the General Assembly enacted G.L. 1956 § 45-21-52 which provided for an “Automatic Increase in Service Retirement Allowance” for MERS participants, as long as the legislative body of the city or town voted to extend the benefit to the respective employees. P.L. 1980, ch. 172, § 2.
47. Since enactment, the COLAs have been paid to all participants in a COLA plan, automatically and annually, providing substantial increases to base pension benefits over the life of retirement.

### **State Employee and Teacher Plan**

48. Prior to the enactment of the 2009 and 2010 Acts and/or RIRSA and its effective date of July 1, 2012, state employee participants were required to contribute 8.75% of each year’s compensation pursuant to G.L. 1956 § 36-10-1 to the Retirement System and public school teachers were required to contribute 9.5% of each year’s compensation pursuant to G.L. 1956 §16-16-22 to the ERS “as his or her share of the cost of annuities, benefits, and allowances.”
49. Prior to the enactment of the 2009 and 2010 Acts and/or RIRSA and its effective date of July 1, 2012, employees who made ten (10) years of payments to the Retirement System were thereby “vested” pursuant to G.L. 1956 §36-10-9 (state employees) and §16-16-12 (public school teachers) and entitled to the benefits of retirement upon reaching the standards for retirement.
50. Among the membership of the Plaintiffs Council 94 and NEARI are state employees and public school teachers who:
  - a. had at least ten (10) years of contributory service and were entitled to the benefits of retirement upon reaching the standards for retirement, including state employees and public school teachers, as of September 30, 2009;
  - b. had at least ten (10) years of contributory service and were entitled to the benefits of retirement upon reaching the standards for retirement, including state employees and public school teachers, as of June 11, 2010;
  - c. had at least ten (10) years of contributory service and were entitled to the benefits of retirement upon reaching the standards for retirement, including state employees and public school teachers, who, on the date of enactment of RIRSA and/or as of June 30, 2012: (i) did not satisfy the standards for retirement as they existed on

either said date, and (ii) did satisfy the standard of retirement as they existed on either said date but have not elected to retire and continue in active employment. These employees are hereinafter referred to as “the vested state employees and teachers.”

### **MERS Plan – General Employees**

51. MERS is an “Agent Multiple Employer Plan” (“AMEP”). As such, each participating city or town within MERS (hereinafter, “unit”) has its own allocated assets and liabilities. These assets are “pooled” for investment purposes, but are legally segregated to pay the pensions of each unit’s employees. These assets are not “fungible,” meaning they belong to the unit’s current and former employees.
52. Municipal employee participants are required to contribute at least 6% of each year’s compensation to the Retirement System. G.L. 1956 § 45-21-41.
53. Before RIRSA, MERS allowed retirement for people who have at least 10 years of service. General employees can retire at age 58 with 10 years of service, or at any time with 30 years of service. G.L. 1956 §45-21-16.
54. Municipal participants who made ten (10) years of payments to the Retirement System were “vested” pursuant to G.L. 1956 §45-21-16 and entitled to the benefits of retirement upon reaching the standards for retirement.
55. Among the membership of Council 94 and NEARI are general municipal employees who, as of the date of the enactment of RIRSA and/or on June 30, 2012, had at least ten (10) years of contributory service and were entitled to the benefits of retirement upon reaching the eligibility retirement, including municipal employees who on the date of enactment of the RIRSA and/or as of June 30, 2012, (a) did not satisfy the standards for retirement as they existed on either said date, and (b) did satisfy the standards for retirement as they existed on either said date but have not elected to retire and continue in active employment. These employees are hereinafter referred to as “the vested municipal employees.”
56. Also among the membership of Council 94 and NEARI are general municipal employees whose collective bargaining agreement (“CBA”) included specific obligations to pay for and provide a COLA, and employees of municipalities which promised to provide a COLA through a city or town resolution.
57. MERS participants who are eligible for a COLA must, in addition to their normal 6% mandatory contribution, contribute annually an additional 1% of their annual compensation to ERSRI.

### **MERS Plan - Firefighters**

58. In 1968, the State enacted the statutory scheme providing for the Optional Retirement for Members of Police Force and Fire Fighters.

59. Upon the adoption of the optional police and fire provisions by an employer, G.L. §45-21.2-14(a) requires participants to contribute seven percent (7%) salary or compensation.
60. Prior to the enactment of the RIRSA, G.L. 1956 §45-21.2-5(2) provided that participants were eligible to receive a retirement allowance once they attain ten (10) years of service. These participants are thereby “vested” and entitled to the benefits of retirement upon reaching the standards for retirement.
61. Prior to the enactment of the RIRSA, G.L. 1956 § 45-21.2-22 provided participants the option for a twenty (20) year retirement allowance, regardless of age, equal to two and one-half percent (2½%) of final compensation multiplied by the years of total service to a maximum of seventy-five percent (75%) of final compensation. Upon the adoption of this provision by an employer, participants were required to contribute an additional one percent (1%) more than the contribution required in G.L. 1956 §45-21.2-14(a), above.
62. Plaintiffs Furtado and James are employees who, on June 30, 2012, had at least ten (10) years of contributory service and are thereby “vested” and entitled to the benefits of retirement upon reaching the standards for retirement.
63. The rights of the firefighter Plaintiffs to organize and engage in collective bargaining with their respective employers as to wages, rates of pay, hours, working conditions, and all other terms and conditions of employment (also known as mandatory subjects of bargaining) is lawfully protected under state labor relations laws.
64. Among the membership of the Plaintiff RISAFF are members whose CBAs include specific obligations to provide the retirement benefits referred to the preceding paragraphs, including but not limited to COLAs, both compounded and non-compounded, and who are thereby included within the “vested” employees, without regard to years of service. The terms and conditions of these negotiated retirement benefits are an integral part of their CBAs continuing to this day.

### **Retired Members of ERS and MERS**

65. As of June 30, 2011, there were 11,271 retired state employee and/or state employee beneficiaries and 10,347 retired teachers and/or teacher beneficiaries of ERS.
66. As of June 30, 2011, there were a total of 4,731 retired municipal employees who were or are beneficiaries of MERS (including either retired general employees or retired public safety employees and including those who are not in a COLA program).
67. Before enactment of RIRSA, substantially all retired state employees, teachers, and/or their beneficiaries were entitled to, and were receiving, the 3 percent automatic compounded COLA every January during their retirement.
68. Before enactment of RIRSA, substantially all municipal retirees who retired from employment with a municipal entity that adopted and/or collectively bargained a COLA

were receiving a 3 percent automatic non-compounded COLA every January during their retirement.

69. The COLA is a form of deferred compensation to which these retirees and/or beneficiaries were contractually entitled to be paid for the life of their retirement.

### **2009 and 2010 Changes to State Employee and Teacher Pension Benefits**

70. In 2009, the General Assembly of the State of Rhode Island enacted Public Law 2009, chapter 68, hereinafter “the 2009 Act,” which, upon information and belief, substantially altered the standards for retirement for the 2009 vested employees, to their substantial injury.
71. Among other things, the 2009 Act increased the time that the 2009 vested employees must remain in public employment in order to reach the standard age for retirement with at least ten years of service by as much as three additional years.
72. The 2009 Act reduced the total maximum percentage benefit achievable for some of the 2009 vested employees and required more years of service to achieve this reduced maximum.
73. The 2009 Act eliminated the availability of retirement based solely on years of service for some of the 2009 vested employees.
74. The 2009 Act was intended to substantially reduce and diminish the value of retirement benefits achievable by the 2009 vested employees.
75. Among the membership of Plaintiffs Council 94 and NEARI are the 2010 vested teacher and state employees referred to in Paragraph 50.
76. In 2010, the General Assembly of the State of Rhode Island enacted Public Law 2010, chapter 23, Article 16, hereinafter “the 2010 Act,” which, upon information and belief, substantially reduced the availability and amount of the COLA available to the 2010 vested employees, to their substantial injury.
77. Among other things the 2010 Act caps the availability of the COLA to apply only to the first \$35,000.00 of retirement allowance.
78. The 2010 Act substantially postpones the commencement of the COLA for some of the 2010 vested employees.
79. The 2010 Act was intended to substantially reduce and diminish the value of retirement benefits achievable by the 2010 vested employees.

**2011 Changes to State Employee, Teacher,  
Municipal (General and Public Safety)  
and Retiree Pension Benefits**

80. In November 2011, the General Assembly enacted RIRSA, which substantially reduced the pension benefits (including the COLA) for all Plaintiffs and/or Plaintiffs' members.
81. Specifically, as it relates to active State Employees, Public School Teachers, Municipal Employees, and Firefighters:
- a. RIRSA changed the structure of the retirement program from a traditional defined benefit plan to a "hybrid plan" that has a smaller defined benefit plan and a supplemental defined contribution plan.
  - b. RIRSA forced vested employees eligible to retire but not retiring on June 30, 2012 to elect either to receive no further accrual towards retirement in their defined benefit plan, notwithstanding continued mandatory contributions, or to receive a reduced value for further services, thereby reducing the total maximum percentage benefit achievable for some of the vested employees and requiring more years of service to achieve this reduced maximum.
  - c. RIRSA permanently eliminated the COLA benefit promised to vested employees upon retirement.
  - d. RIRSA imposed a \$25,000 cap on the amount of benefit upon which the COLA would be paid.
  - e. Under RIRSA, COLAs will not be paid annually unless the plan at issue exceeds 80 percent funding. Until then, the COLA will be paid only every five years in retirement.
  - f. RIRSA reduces the amount of the COLA from 3 percent compounded to a COLA equal to the five-year smoothed investment return less (or minus) 5.5%, with the final COLA percentage to be between 0 to 4%, non-compounded, for all beneficiaries.
82. In addition to the above changes, RIRSA contains additional changes to the benefits of the Fire Fighters:
- a. For the defined benefit plan, RIRSA reduced the factor by which a municipal employee's pension benefit will be calculated, changing it from 2.5 percent of final average compensation (FAC) per year of contributory service, to 2 percent of FAC for every year of service after July 1, 2012.
  - b. RIRSA increased the FAC from either the highest three consecutive annual salaries or the highest year, depending upon the participating municipality, to now the highest five consecutive annual salaries.

- c. RIRSA increased the 20 year minimum service requirement to 25 years.
  - d. RIRSA added a minimum retirement age of 55 where previously there was none.
  - e. Even though the COLA has been drastically reduced, RIRSA maintains the mandatory 1 percent COLA contribution by MERS members.
  - f. RIRSA delays receipt of COLA (assuming the funded ratio is sufficient to trigger a COLA) for employees with less than 25 years of service until the month following their Social Security Normal Retirement Age.
83. Finally, RIRSA retroactively changed the terms of retirement for those who had already retired by:
- a. Terminating the pre-RIRSA COLA for all existing retirees beginning with the January 2013 COLA, and each succeeding year.
  - b. RIRSA does not allow, at any time, for the full restoration of the 3 percent COLA originally promised to the retirees and which existed for about 40 years.
  - c. RIRSA instead provides that no COLA will be paid annually to retired teachers and state employees until the “system” is 80 percent funded. The COLA will only return for state employee/teacher retirees under the same conditions as for state employees/teachers.
  - d. RIRSA provides that no COLA will be paid to MERS beneficiaries until the individual MERS plan to which the beneficiary belongs reaches 80 percent funding.
  - e. Even if the plans reach 80 percent funding (and thus, an annual COLA returns), RIRSA reduces the amount of the COLA in the same manner as it has impacted the state employees and public school teachers (applicable to the first \$25,000; reduced percentage that can fluctuate).
  - f. Until the system (ERS or MERS) is 80 percent funded, the significantly reduced COLAs will only be paid every five years.

## **V. CLASS ACTION AVERMENTS**

84. The membership of Plaintiff Council 94, NEARI, RIPERC and RIAFT/R includes both vested members of MERS and ERS as well as retired beneficiaries of ERS and MERS.
85. The Individual Plaintiffs themselves are either vested members of ERS and/or MERS or retired beneficiaries of ERS and/or MERS.
86. Certain of the Plaintiffs’ members and the Individual Plaintiffs were promised specific pension benefits including COLAs under implied in fact contracts with the State and/or certain

municipalities through collective bargaining.

87. The 2009 and 2010 Acts and/or RIRSA purport to impair the obligations of the contracts by permitting the State and/or municipalities to avoid the duty imposed by said contracts to provide the specific retirement benefits and COLAs promised upon substantial performance and/or by CBA.
88. The right to specific retirement and/or COLA payments provided in each contract vested upon substantial performance and/or retirement and constitutes a property interest held by each Individual Plaintiff and/or affected member.
89. The Municipal Defendants are all participating in MERS on behalf of employees.
90. The joinder of each affected state employee, teacher, municipal employee, retiree, and/or municipal entity is impractical.
91. The legal questions involved in this case are common among all Individual Plaintiffs and/or Members, specifically: Are the 2009 and/or 2010 Acts and/or RIRSA constitutional?
92. The legal issues are the same for all Municipal Defendants and the defenses to the action in this case are all common to the Municipal Defendants.
93. The issues and evidence that are to be presented in this case are typical among the named Plaintiffs and Municipal Defendants because each Plaintiffs' claim arises from the same course of events and the theory of liability against the State and/or municipal entities is the same among all Plaintiffs similarly affected.
94. The named representatives and counsel for the named Plaintiffs will fairly and adequately represent the proposed Plaintiff Class members as there are no conflicts in the types of relief to be granted or conflicts of interest between the named Plaintiffs, the proposed Plaintiff Class members and Plaintiffs' counsel.
95. The named representatives and counsel for the named Municipal Defendants will fairly and adequately represent the proposed Defendant Class Members as there are no conflicts in the types of defenses available or conflicts of interest between the named Defendants, the proposed Defendant Class members and Defendants' counsel.
96. In fact, over the past several years, the proposed Plaintiff Class Counsel has already been representing the Associational Plaintiffs, groups whose membership contains the named Plaintiffs and whose membership contains thousands of public employees similarly affected by the challenged enactments without conflict.
97. In fact, the proposed Defendants' Class Counsel are already representing approximately 35 municipal entities in the underlying pension cases.
98. All Class Counsel are qualified and experienced to handle this type of litigation and can represent the Plaintiffs, Plaintiff Class Members, Defendants, and Defendant Class Members fairly and adequately.

99. Class certification is appropriate under Rule 23(b)(1) and/or 23(b)(2) because the prosecution of separate actions by or against individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class.
100. Class certification is appropriate under Rule 23(b)(1) and/or 23(b)(2) because adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interest.

## **VII. PLAINTIFFS' CLAIMS**

### **Count I**

#### **Contract Clause of the R.I. Constitution (Article I, Section 12)**

101. Plaintiffs hereby incorporate by reference paragraphs 1 through 100 of the Complaint as if fully set forth herein.
102. The Rhode Island Constitution, Article I, Section 12 provides: "In order effectually to secure the religious and political freedom established by our venerated ancestors, and to preserve the same for our posterity, we do declare that the essential and unquestionable rights and principles hereinafter mentioned shall be established, maintained, and preserved, and shall be of paramount obligation in all legislative, judicial and executive proceedings. \* \* \*Section 12\* \* \* No ex post facto law, or law impairing the obligation of contracts, shall be passed."
103. The 2009 and 2010 Acts and/or RIRSA, in substantially impairing the contract rights of the vested employees and retirees, contravenes the Contract Clause of the Rhode Island Constitution, Article I, Section 12 and should be declared unconstitutional and its operations enjoined.

### **Count II**

#### **Due Process Clause of the R.I. Constitution (Article I, Section 2)**

104. Plaintiffs hereby incorporate by reference paragraphs 1 through 103 of the Complaint as if fully set forth herein.
105. The Rhode Island Constitution, Article I, Section 2 provides: "In order effectually to secure the religious and political freedom established by our venerated ancestors, and to preserve the same for our posterity, we do declare that the essential and unquestionable rights and principles hereinafter mentioned shall be established, maintained, and preserved, and shall be of paramount obligation in all legislative, judicial and executive proceedings. \* \* \*Section 2. Laws for good of whole -- \* \* \* Due process-- \* \* \* All free governments

are instituted for the protection, safety, and happiness of the people. All laws, therefore, should be made for the good of the whole; and the burdens of the state ought to be fairly distributed among its citizens. No person shall be deprived of life, liberty or property without due process of law \* \* \*.”

106. The 2009 and 2010 Acts and/or RIRSA, in substantially impairing the contract rights of the vested employees and retirees, contravenes the Due Process Clause of the Rhode Island Constitution, Article I, Section 2 and should be declared unconstitutional and its operations enjoined.

### **Count III**

#### **Takings Clause of the R.I. Constitution (Article I, Section 16)**

107. Plaintiffs hereby incorporate by reference paragraphs 1 through 106 of the Complaint as if fully set forth herein.

108. The Rhode Island Constitution, Article I, Section 16 provides: “In order effectually to secure the religious and political freedom established by our venerated ancestors, and to preserve the same for our posterity, we do declare that the essential and unquestionable rights and principles hereinafter mentioned shall be established, maintained, and preserved, and shall be of paramount obligation in all legislative, judicial and executive proceedings. \* \* \* Section 16. Compensation for taking of private property for public use \* \* \* Private property shall not be taken for public uses, without just compensation. \* \* \*”

109. The 2009 and/or 2010 Acts and/or RIRSA, in substantially impairing the contract rights of the vested employees and retirees, contravenes the Takings Clause of the Rhode Island Constitution, Article I, Section 16 and should be declared unconstitutional and its operations enjoined.

WHEREFORE, Plaintiffs Pray This Honorable Court:

- a. Issue declaratory judgment declaring that the 2009 and 2010 Acts and/or RIRSA contravenes the Due Process, Contract and Takings Clauses of the Rhode Island Constitution, Article I, Sections 2, 12 and 16;
- b. Issue equitable relief including, but not limited to, a permanent injunction prohibiting the Defendants, including the ERSRI and the Retirement Board, from relying upon or applying the provisions of the RIRSA to vested employees and retirees, including those employees with at least ten years of contributory service on or before June 30, 2012, and/or already-retired employees, and to restore and make whole all retirement benefits diminished by application thereof;
- c. Issue equitable relief including, but not limited to, a permanent injunction prohibiting the Defendants, including the ERSRI and the Retirement Board, from

relying upon or applying the provisions of the RIRSA to employees within Plaintiffs' bargaining units that had, prior to November 18, 2011, collectively bargained for a COLA;

- d. Award Plaintiffs the costs of the suit;
- e. Award such other and further relief as the Court deems necessary and proper.

Plaintiffs,  
By their Attorneys,

/s/ Lynette Labinger

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Lynette Labinger, #1645  
Roney & Labinger, LLP  
344 Wickenden Street  
Providence, RI 02903  
(401) 421-9794  
labinger@ronney-labinger.com

/s/ Joseph F. Penza, Jr.

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Joseph F. Penza, Jr. #0607  
Olenn & Penza LLP  
530 Greenwich Ave.  
Warwick, RI 02886  
(401) 737-3700  
jfp@olenn-penza.com

/s/ Douglas L. Steele

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Douglas L. Steele, Esq.  
Woodley & McGillivary  
1101 Vermont Ave, NW, Suite 1000  
Washington, DC 20814  
(202) 833-8855  
dls@wmlaborlaw.com  
*Admitted Pro Hac Vice*

/s/ Thomas R. Landry

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Thomas R. Landry, #6148  
Krakow & Souris, LLC  
225 Friend Street  
Boston, MA 02114

(617) 723-8440  
tlandry@krakowsouris.com

/s/ Carly Beauvais Iafrate

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Carly Beauvais Iafrate, #6343  
129 Dyer Street  
Providence, RI 02903  
(401) 421-0065  
(401) 421-0964 (fax)  
ciafrate@verizon.net

/s/ Maame Gyamfi

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Maame Gyamfi, Esq.  
AARP Foundation Litigation  
601 E Street NW  
Washington, DC 20049  
(202) 434-2151  
mgyamfi@aarp.org  
*Pro Hac Vice Pending*

**Dated: April 13, 2015**