

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE BAKERY AND CONFECTIONERY  
UNION AND INDUSTRY INTERNATIONAL  
PENSION FUND PENSION PLAN

RAFAEL ALCANTARA, ALONSO GOMEZ,  
CELESTINO JUAREZ, VASILICHIA BABU,  
KHIM CHAND, ANGEL DE LA CRUZ,  
TESFAYE GHEBREMEDHIN, RATHIN DUTTA  
GUPTA, LUIS MEJIA, ANTONIO MEROLLA,  
ROLANDO MONTANO, RUSSELL NEUBERT,  
TAGLIARENISALVATORE, MUSOVIC SMAIL,  
JUAN F. TORRES, GARRETT SCHOL, GUY  
STALTER, ALMOND REID, PHILLIP ROGERS,  
MICHAEL J. D'ANTONIO, DONALD  
SCROGHAM, BRIAN K. FOWLER, SR., JOSEPH  
ALTAMORE, KENNETH KERN and MELVIN  
MENARD, Individually, and On Behalf Of All  
Others Similarly Situated,

Plaintiffs,

v.

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

Defendants.

Case No.: 11 Civ. 01471 (VB)  
Consolidated Lead Case  
ECF - Class Action

**PLAINTIFFS' CONSOLIDATED AMENDED  
CLASS ACTION COMPLAINT**

RAFAEL ALCANTARA, ALONSO GOMEZ,  
CELESTINO JUAREZ, VASILICHIA BABU,  
KHIM CHAND, ANGEL DE LA CRUZ,  
TESFAYE GHEBREMEDHIN, RATHIN DUTTA  
GUPTA, LUIS MEJIA, ANTONIO MEROLLA,  
ROLANDO MONTANO, RUSSELL NEUBERT,  
TAGLIARENI SALVATORE, MUSOVIC SMAIL,  
JUAN F. TORRES, Individually, and On Behalf Of  
All Others Similarly Situated,

Plaintiffs,

v.

BAKERY AND CONFECTIONERY UNION AND  
INDUSTRY INTERNATIONAL PENSION FUND  
PENSION PLAN, and BAKERY AND  
CONFECTIONERY UNION AND INDUSTRY  
INTERNATIONAL PENSION FUND BOARD OF  
TRUSTEES, as Plan Administrator,

Defendants.

Case No. 11 Civ. 01471 (VB)  
S.D.N.Y. Member Case

GARRETT SCHOL; GUY STALTER; ALMOND  
REID; MICHAEL D'ANTONIO; PHILLIP  
ROGERS; DONALD SCROGHAM; BRIAN K.  
FOWLER, SR.; and JOSEPH ALTAMORE,  
Individually, and on Behalf of All Others Similarly  
Situated,

Plaintiffs,

v.

BAKERY AND CONFECTIONERY UNION AND  
INDUSTRY INTERNATIONAL PENSION  
FUND, FRANK HURT, STEVEN V. BERTELLI,  
DAVID B. DURKEE, ANTHONY JOHNSON,  
ART MONTMINY, ROBERT OAKLEY,, RANDY  
D. ROARK, JOSEPH THIBODEAU, RICHARD  
B. COOK, DAN CRAIG, THOMAS G.  
KIRCHNER, JON McPHERSON, LOU  
MINELLA, JOHN WAGNER, JOHN DOE NO. 1,  
and JOHN DOE NO. 2, as Trustees of the Bakery  
and Confectionery Union and Industry International  
Pension Fund,

Defendants.

Case No.: 11 Civ. 0537 (JS) (AKT)  
E.D.N.Y. Member Case

Plaintiffs RAFAEL ALCANTARA, ALONSO GOMEZ, CELESTINO JUAREZ, VASILICHIA BABU, KHIM CHAND, ANGEL DE LA CRUZ, TESFAYE GHEBREMEDHIN, RATHIN DUTTA GUPTA, LUIS MEJIA, ANTONIO MEROLLA, ROLANDO MONTANO, RUSSELL NEUBERT, TAGLIARENI SALVATORE, MUSOVIC SMAIL, JUAN F. TORRES, GARRETT SCHOL, GUY STALTER, ALMOND REID, PHILLIP ROGERS, MICHAEL J. D'ANTONIO, DONALD SCROGHAM, BRIAN K. FOWLER, SR., JOSEPH ALTAMORE, KENNETH KERN, and MELVIN MENARD ("Plaintiffs"), individually and on behalf of all others similarly situated, by and through their undersigned attorneys, allege the following:

### **I. PRELIMINARY STATEMENT**

1. Plaintiffs, participants in the Bakery and Confectionery Union and Industry International Pension Fund (the "Plan"), bring this action on their own behalf and on behalf of all similarly situated participants, their beneficiaries and Estates, pursuant to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 *et seq.* ("ERISA"). They ask the Court, *inter alia*, to declare that the amendment to the Plan, effective July 1, 2010, which changes the rule that permits participants to "age into" eligibility for Plan G ("Golden 80") and Plan C ("Golden 90") violates ERISA's anti-cutback provision. They also seek to enjoin Defendants from enforcing the Plan's unlawful amendment and request the Court to order Defendants to bring the terms of the Plan into compliance with ERISA's requirements.

### **II. JURISDICTION AND VENUE**

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

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

4. Declaratory, equitable, and injunctive relief are authorized by 28 U.S.C. § 2201 and 2202, respectively, by Rules 57 and 65 of the Federal Rules of Civil Procedure and by ERISA §§ 502(a)(1)(B) and 502(a)(3), 29 U.S.C. §§1132(a)(1)(B) and (a)(3).

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

### **III. PARTIES**

#### **A. Plaintiffs**

6. Plaintiff Rafael Alcantara is a participant in the Plan within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7). He resides in Yonkers, New York. He worked in covered employment within the meaning of the Plan from 1993 to 2009, when he left covered employment as a vested participant.

7. Plaintiff Joseph Altamore is a resident of Shirley, New York. He was employed by Entemann's in Bay Shore, New York, in covered employment within the meaning of the Plan, between August 21, 1994 and December 2009. During that time, he held various positions with Entemann's, beginning as a general helper in production and ending as a first-class mechanic. Plaintiff Altamore is a participant in the Plan as defined under ERISA § 3(7), 29 U.S.C. § 1002(7).

8. Plaintiff Michael J. Antonio is a resident of Holbrook, New York. He worked in covered employment within the meaning of the Plan for over eighteen years: first with Herman's Star Bakery in North Lindenhurst, New York as a helper for three years, and then with Entemann's unionized workforce in Bay Shore, New York starting on April 26, 1978. Plaintiff D'Antonio held several positions at Entemann's, beginning as a general helper and ending as a "red circle" foreman on May 6, 1996; after which he assumed a management position at Entemann's. Plaintiff D'Antonio is a participant in the Plan as defined under ERISA § 3(7), 29 U.S.C. § 1002(7).

9. Plaintiff Vasilichia Babu is a participant in the Plan, within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7). He resides in Bronx, New York. He worked in covered employment within the meaning of the Plan from 1980 to 2009.

10. Plaintiff Khim Chand is a participant in the Plan, within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7). He resides in Queens, New York. He worked in covered employment within the meaning of the Plan from 1991 to 2009.

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

12. Plaintiff Brian K. Fowler, Sr. is a resident of West Babylon, New York. He was employed by Entemann's in Bay Shore, New York, in covered employment within the meaning of the Plan, for over twenty-two years, between August 24, 1986 and October 2008. During that time, he held various positions with Entemann's, beginning as a packer and ending as a mixer. Plaintiff Fowler is a participant in the Plan as defined under ERISA § 3(7), 29 U.S.C. § 1002(7).

13. Plaintiff Tesfaye Ghebremedhin is a participant in the Plan, within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7). He resides in Bronx, New York. He worked in covered employment within the meaning of the Plan from 1987 to 2009.

14. Plaintiff Alonso Gomez is a participant in the Plan, within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7). He resides in New York, New York. He worked in covered employment within the meaning of the Plan from 1989 to 2009.

15. Plaintiff Rathin Dutta Gupta is a participant in the Plan, within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7). He resides in Edison, New Jersey. He worked in covered employment within the meaning of the Plan from 1990 to 2009.

16. Plaintiff Celestino Juarez is a participant in the Plan, within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7). He resides in Bronx, New York. He worked in covered employment within the meaning of the Plan from 1987 to 2009.

17. Plaintiff Kenneth Kern is a resident of Tampa, Florida. He was employed by Interstate Bakeries, in covered employment within the meaning of the Plan for twenty-four years, between 1979 and 2003. Plaintiff Kern is a participant in the Plan as defined under ERISA § 3(7), 29 U.S.C. § 1002(7).

18. Plaintiff Luis Mejia is a participant in the Plan, within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7). He resides in Bronx, New York. He worked in covered employment within the meaning of the Plan from 1993 to 2009.

19. Plaintiff Melvin Menard is a resident of Commerce City, Colorado. He was employed by Keebler Food Co. at its Denver, Colorado manufacturing plant, in covered employment within the meaning of the Plan for twenty-five years, between May 1976 and June 1, 2001, when

the company, acquired by Kellogg Co., closed the Keebler plant in Denver as part of a downsizing program. Plaintiff Menard is a participant in the Pension Plan as defined under ERISA § 3(7), 29 U.S.C. § 1002(7).

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

21. Plaintiff Rolando Montano is a participant in the Plan, within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7). He resides in Bronx, New York. He worked in covered employment within the meaning of the Plan from 1989 to 2009.

22. Plaintiff Russell Neubert is a participant in the Plan, within the meaning of ERISA § 3(7), 29 USC § 1002(7). He resides in Bronx, New York. He worked in covered employment within the meaning of the Plan from 1987 to 2009.

23. Plaintiff Almond Reid is a resident of Central Islip, New York. He was employed by Entemann's in Bay Shore, New York, in covered employment within the meaning of the Plan, for over twenty-six years, between August 1983 and October 26, 2009. During that time, he held various positions with Entemann's, beginning as a general helper and ending as a foreman. Plaintiff Reid is a participant in the Plan as defined under ERISA § 3(7), 29 U.S.C. § 1002(7).

24. Plaintiff Phillip Rogers is a resident of Bay Shore, New York. He was employed by Entemann's in Bay Shore, New York, in covered employment within the meaning of the Plan, for nearly twenty-one years, from May 1987 until April 2008, when he accepted a "buy-out" offer from Entemann's that the company was utilizing to downsize its workforce. While employed with Entemann's he held various positions, beginning as a packer and ending as a trailer loader. Plaintiff

Rogers is a participant in the Plan as defined under ERISA § 3(7), 29 U.S.C. § 1002(7).

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

26. Plaintiff Garrett Schol is a resident of Bay Shore, New York. He was employed by Entemann's Bakery ("Entemann's") in Bay Shore, New York, in covered employment within the meaning of the Plan, for over twenty-one years, between October 1976 and the end of December 1997, as a member of the company's unionized workforce. During that time, he held various positions with Entemann's, beginning as a rack loader in shipping and ending as a load foreman. In January 1998, Plaintiff Schol assumed a management position at Entemann's, a position he remained in until October 2007, when he retired on permanent disability. Plaintiff Schol is a participant in the Plan as that term is defined under ERISA § 3(7), 29 U.S.C. § 1002(7).

27. Plaintiff Donald Scrogam is a resident of Deer Park, New York. He was employed by Entemann's in Bay Shore, New York, in covered employment within the meaning of the Plan, for over twenty-three years, between August 11, 1985 and March 2008, as a member of the company's unionized workforce, when he accepted a "buy-out" offer from Entemann's that the company was utilizing to downsize its workforce. During that time, he held various positions with Entemann's, beginning as a production packer and ending as a production mixer operator. Plaintiff Scrogam is a participant in the Plan as defined under ERISA § 3(7), 29 U.S.C. § 1002(7).

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



29. Plaintiff Guy Stalter is a resident of Bohemia, New York. He was employed by Entemann's in Bay Shore, New York, in covered employment within the meaning of the Plan, for nearly twenty-seven years, from October 12, 1981 until April 2008, when he accepted a "buy-out" offer that Entemann's was utilizing to downsize its workforce. While employed, he held various positions with Entemann's, beginning as a general helper and ending as a warehouse receiver. Plaintiff Stalter is a participant in the Plan as defined under ERISA § 3(7), 29 U.S.C. § 1002(7).

30. Plaintiff Juan F. Torres is a participant in the Plan, within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7). He resides in Bronx, New York. He worked in covered employment within the meaning of the Plan from 1993 to 2009.

**B. Defendants and Fiduciary Status**

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

32. Defendant Bakery and Confectionery Union and Industry International Pension Fund Board of Trustees (the "Board of Trustees") and its members (listed below) are the Administrator of the Plan, within the meaning of ERISA § 3(16)(A)(i), 29 USC § 1002(16)(A)(i); Plan fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A); and the "named fiduciaries" of the Plan with the authority and control to manage the operation and administration of the Plan within the meaning of ERISA § 402(a), 29 U.S.C. § 1102(a). The Board of Trustees' offices are also located at 10401 Connecticut Avenue, Kensington, Maryland, 20895-3960.

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

- a. **Defendant Frank Hurt**, Chairman of the Board of Trustees and President of The Bakery, Confectionery, Tobacco Workers, and Grain Millers International Union, AFL-CIO (the “Bakery Workers Union”), and a Union Trustee of the Plan;
- b. **Defendant Steven Bertelli**, a Vice President of the Bakery Workers Union, and a Union Trustee of the Plan;
- c. **Defendant David Durkee**, Secretary/Treasurer of the Bakery Workers Union, and a Union Trustee of the Plan;
- d. **Defendant Anthony Johnson**, a Vice President of the Bakery Workers Union, and a Union Trustee of the Plan;
- e. **Defendant Art Montminy**, a Vice President of the Bakery Workers Union, and a Union Trustee of the Plan;
- f. **Defendant Robert Oakley**, a Vice President of the Bakery Workers Union, and a Union Trustee of the Plan;
- g. **Defendant Randy D. Roark**, a Vice President of the Bakery Workers Union, and a Union Trustee of the Plan;
- h. **Defendant Joseph Thibodeau**, Executive Vice President of the Bakery Workers Union, and a Union Trustee of the Plan;
- i. **Defendant Richard B. Cook**, Secretary of the Board of Trustees and Vice President for Labor Relations of Hostess Brands, Inc., and an Employer Trustee of

the Plan;

j. **Defendant Dan Craig**, Vice President for Labor Relations of Sara Lee North America, and an Employer Trustee of the Plan;

k. **Defendant Thomas G. Kirchner**, Senior Director for Labor Relations of Kraft Foods, and an Employer Trustee of the Plan;

l. **Defendant Jon McPherson**, Vice President for Labor Relations of the Kellogg Company, and an Employer Trustee of the Plan;

m. **Defendant Lou Minella**, Vice President for Labor Relations of Stroehmann Bakeries, and an Employer Trustee of the Plan;

n. **Defendant John Wagner**, Vice President for Labor Relations of The Kroger Company, and an Employer Trustee of the Plan; and,

o. **Defendants John Does Nos. 1-10**, who are current and/or former members of the Board of Trustees whose identities are currently unknown to Plaintiffs and who participated in the adoption and/or the implementation of the amendment at issue herein.

#### **IV. CLASS ACTION ALLEGATIONS**

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

All participants in the Bakery and Confectionery Union and Industry International Pension Fund or, if deceased, their beneficiaries or Estates, who accrued (a) years of Covered Employment credits and (b) age credits towards eligibility for pension benefits under Plan C (also known as the “Golden 90”) or Plan G (also known as “Golden

80”), but who are rendered ineligible for pension benefits under Plan C or G by reason of Amendment Number Two to the Rules and Regulations of the Bakery and Confectionery Union and Industry International Pension Fund, as amended and restated January 1, 2010.

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

36. **Commonality.** There are questions of law common to all members of the Class, namely whether the amendment to the Plan’s Golden 80 and Golden 90 pension violates ERISA’s anti-cutback rule and/or whether its adoption and implementation violated ERISA’s fiduciary responsibility provisions and, if so, how to bring the Plans into compliance with ERISA. These and similar questions will focus exclusively on Defendants’ actions and entail consideration of Plan and ERISA provisions uniformly applicable to all Class members, rather than require an inquiry into the actions or circumstances of individual Plan participants. Each Class member’s rights will be determined on the basis of the same statutory and regulatory provisions. Consequently, Plaintiffs satisfy the “commonality” element of Rule 23(a) of the Federal Rules of Civil Procedure.

37. **Typicality.** Plaintiffs are members of the Class as defined above. They are affected by the same July 1, 2010 Plan amendment, and they assert the same legal theories under the same provisions of ERISA and Regulations promulgated thereunder with respect to that amendment.

Consequently, Plaintiffs satisfy the “typicality” requirement of Rule 23(a) of the Federal Rules of Civil Procedure.

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

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

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

## **V. FACTS**

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

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

43. The Plan’s Plan C (commonly known as the Golden 90) provision states that when a participant’s age (in years and months) and service (in years and months) equal 90, the participant is entitled to retire at the full benefit level, except that participants who commenced participation after December 3, 1998 must have a minimum of 10 years of service. See Rules and Regulations §§ 4.17-18.

44. The Plan’s Plan G (commonly known as the Golden 80) provision states that when a participant’s age (in years and months) and service (in years and months) equal 80, the participant is entitled to retire at the full benefit level, except that participants who commenced participation after December 3, 1998 must have a minimum of 10 years of service. See Rules and Regulations §§ 4.23-4.24.

45. At all relevant times prior to July 1, 2010, a participant who retired before normal retirement age could leave covered employment and receive his or her normal retirement age pension as soon as he or she “aged into” the necessary 90 or 80 years of combined age and service, without any reduction in the pension benefit due to receipt of the benefit before attaining normal retirement age and without ever returning to work in covered employment. See Rules and Regulations §§ 4.17, 4.18, 4.23, 4.24.

46. At all relevant times prior to July 1, 2010, a surviving spouse whose participant spouse died before reaching the necessary 90 or 80 years of combined age and service could defer receipt of the pension benefit until the date when the participant would have “aged into” the

necessary 90 or 80 years of combined age and service and receive the normal retirement age pension at that time, without any reduction in the pension benefit due to receipt of the benefit before the participant would have attained normal retirement age. See Rules and Regulations § 6.04(d)(ii).

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

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

49. In recent years, thousands of Plan participants across the country have been laid off due to plant closings or reductions in force, or have accepted buy-out offers from unionized bakery companies as part of their downsizing programs. They have been unable to find work in Covered Employment and have no realistic prospect of ever again obtaining work in covered employment given their ages and the ever-growing scarcity of bakery jobs. Thus, absent the ability to “age into” eligibility, thousands of participants have no realistic chance of ever qualifying for a full pension under the Golden 80 or 90 provisions, and must either accept an actuarially-reduced pension, see Rules and Regulations §§ 4.05-4.06, or must wait until age 65 to receive a full pension.

50. Many of these workers have accepted buy-outs from their employers or otherwise left employment, including by reason of a layoff or plant closing, on the understanding that they would be eligible to qualify for their full pensions under the Golden 80 or 90 provisions upon

reaching the appropriate age that, summed with their years of service, would add up to the 80 or 90 “credits” needed to qualify.

51. Meeting the Plan C (Golden 90) and Plan G (Golden 80) requirements enables participants and their beneficiaries to obtain the full benefit level without returning to covered employment, and without deferring receipt of their benefits to normal retirement age. The removal of these long-standing established Plan criteria for those who retired before the Amendment, expecting and knowing they would be eligible for it, constitutes a retroactive reduction of a benefit that the Plaintiffs (and their beneficiaries) already accrued prior to the time they ceased to work in covered employment.

**VI. FIRST CLAIM FOR RELIEF**  
**(Unlawful Cutback of Benefits Accrued under Plans C and G**  
**as to Plan Participants Not in Covered Employment)**

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

53. This count alleges a violation of ERISA § 204(g), 29 U.S.C. § 1054(g) against all Defendants.

54. The Amendment, which became effective July 1, 2010, retroactively reduces the benefit already accrued by Plaintiffs and the absent members of the Class. Reducing this already accrued benefit violates ERISA’s anti-cutback provision, ERISA § 204(g), 29 U.S.C. § 1054(g). The Amendment significantly reduces the amount of the pension available to those who left covered employment before Plans C and G were changed and who did not meet their respective “age into” requirement by June 30, 2010 (as required by the Amendment).



**VII. SECOND CLAIM FOR RELIEF**  
**(Breach of Fiduciary Duty)**

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

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

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

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

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

58. Neither the Amendment itself nor any information provided to Plaintiffs or the members of the Class set forth the basis for the Amendment which, upon information and belief, was not adopted pursuant to Plan § 8.19(a) above. Although the Amendment may save the Plan money, that, in and of itself, is not a sufficient reason for the adoption and implementation of the Amendment.

59. If, in fact, the Plan needed to save money, something that Plaintiffs do not concede, there were ways to accomplish that end without diminishing benefits. For example, employers' contributions might have been increased.

60. As fiduciaries, the Trustees are obligated to act solely and exclusively in the interests of the Plan's participants and beneficiaries. Reducing Plan costs by the adoption and implementation of the Amendment, thereby adversely affecting Plaintiffs and other members of the Class who

worked in covered employment expecting to be able to age into the Plan C or Plan G benefit in the event of the termination of their covered employment, breached the Trustees' fiduciary duties.

**VIII. PRAYER FOR RELIEF**

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

- A. Certifying this action as a class action;
- B. Declaring that the Amendment violates ERISA § 204(g), 29 U.S.C. § 1054(g), and is thus void ab initio;
- C. Enjoining Defendants from enforcing the Amendment;
- D. Ordering Defendants to calculate the benefits of Plaintiffs and absent Class members pursuant to the Plan as if the Amendment not been adopted. as well as to provide make-whole payments plus interest to any Plaintiff or Class member already receiving pension benefits from the Plan;
- E. Awarding Plaintiffs
  - (1) their costs, disbursements and expenses herein;
  - (2) a case contribution award for having acted as Class Representatives;
  - (3) reasonable attorney's fees; and
- F. Awarding the Class such other and further relief as the Court may deem just, proper and equitable.

Dated: White Plains, New York  
August 24, 2011

By: /s/ William D. Frumkin

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