

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
ANDERSON DIVISION

KENNETH WALTON GEORGE, DENNIS)
REED BOWEN, CLYDE FREEMAN,)
GEORGE MOYERS, JIM MATTHEWS,)
and HENRY MILLER, on their own behalf)
and on behalf of a class of persons similarly)
situated,)

Plaintiffs,)

v.)

CASE NO.: 8:06-cv-00373-RBH

DUKE ENERGY RETIREMENT CASH)
BALANCE PLAN and DUKE ENERGY)
CORPORATION,)

Defendants.)

ANSWER OF DEFENDANTS DUKE ENERGY RETIREMENT CASH
BALANCE PLAN AND DUKE ENERGY CORPORATION

Duke Energy Retirement Cash Balance Plan ("Plan") and Duke Energy Corporation ("Company") the defendants herein, answer the complaint as follows:

FIRST DEFENSE

The defendants answer the numbered paragraphs of the complaint as follows:

1. The defendants admit that the named plaintiffs purport to bring a class action as alleged and described in paragraph 1 of the complaint, and to

invoke the Court's jurisdiction as alleged therein, but deny that the named plaintiffs have any actionable claims, that the named plaintiffs can maintain a class action, and each and every remaining allegation contained in paragraph 1 of the complaint.

2. Upon information and belief, the defendants admit the allegations contained in paragraph 2 of the complaint.

3. The defendants admit that venue would be proper in this district for actionable claims against the defendants but deny that any alleged breaches occurred and deny each and every remaining allegation contained in paragraph 3 of the complaint and show that the United States District Court for the Western District of North Carolina – Charlotte Division is a more convenient forum because substantially all relevant documents and witnesses are located there, and substantially all events about which the plaintiffs complain occurred there.

4. The defendants admit that to the extent that any plaintiff has an actionable claim he has standing to pursue that claim on his own behalf only, but deny specifically that any plaintiff who previously received a distribution of his entire accrued benefit under the Plan has standing to assert any claim under ERISA, that any cognizable claim under 29 U.S.C. § 1132(a)(1)(B) exists, and each and every remaining allegation contained in paragraph 4 of the complaint.

5. The defendants admit that to the extent that any plaintiff has an actionable claim he has standing to pursue that claim on his own behalf only, but deny specifically that any plaintiff who previously received a distribution of his entire accrued benefit under the Plan has standing to assert any claim under ERISA, that any cognizable claim under 29 U.S.C. § 1132(a)(1)(B) exists, and each and every remaining allegation contained in paragraph 5 of the complaint.

6. The defendants admit that to the extent that any plaintiff has an actionable claim he has standing to pursue that claim on his own behalf only, but deny each and every remaining allegation contained in paragraph 6 of the complaint.

7. The defendants admit that plaintiffs Freeman and Bowen pursued administrative remedies for certain claims under the Plan, but deny each and every remaining allegation contained in paragraph 7 of the complaint.

8. The defendants deny each and every allegation contained in paragraph 8 of the complaint.

9. Upon information and belief, the defendants admit the allegations contained in paragraph 9 of the complaint regarding citizenship, residency, and employment status, but deny each and every allegation regarding dates of employment and “early retirement,” which are not specific. Answering further,

the defendants state that plaintiff George was employed by Duke Energy, its predecessors, or affiliates from October 26, 1970 through December 31, 2003.

10. Upon information and belief, the defendants admit the allegations contained in paragraph 10 of the complaint regarding citizenship, residency, and employment status, but deny each and every allegation regarding dates of employment, which are not specific. Answering further, the defendants state that plaintiff Bowen was employed by Duke Energy, its predecessors, or affiliates from September 11, 1972 through November 30, 2003.

11. Upon information and belief, the defendants admit the allegations contained in paragraph 11 of the complaint regarding citizenship, residency, and employment status, but deny each and every allegation regarding dates of employment, which are not specific. Answering further, the defendants state that plaintiff Freeman was employed by Duke Energy, its predecessors, or affiliates from February 19, 1973 through November 30, 2003

12. Upon information and belief, the defendants admit the allegations contained in paragraph 12 of the complaint regarding citizenship, residency, and employment status, but deny each and every allegation regarding dates of employment, which are not specific. Answering further, the defendants state that plaintiff Moyers was employed by Duke Energy, its predecessors, or affiliates from June 6, 1960 through February 28, 1999.

13. Upon information and belief, the defendants admit the allegations contained in paragraph 13 of the complaint regarding citizenship, residency, and employment status, but deny each and every allegation regarding dates of employment, which are not specific. Answering further, the defendants state that plaintiff Matthews has been employed by Duke Energy, its predecessors, or affiliates from July 24, 1972 through the present.

14. Upon information and belief, the defendants admit the allegations contained in paragraph 14 of the complaint regarding citizenship, residency, and employment status, but deny each and every allegation regarding dates of employment, which are not specific. Answering further, the defendants state that plaintiff Miller has been employed by Duke Energy, its predecessors, or affiliates from October 3, 1970 through the present.

15. The defendants admit that any plaintiff who did not receive a distribution of his entire accrued benefit under the Plan is a “participant” and that the plaintiffs are current or former employees of Duke Energy, but deny each and every remaining allegation contained in paragraph 15 of the complaint.

16. The defendants admit that Duke Energy is a North Carolina corporation qualified to do business and doing business in South Carolina

which may be served through its registered agent, but deny each and every remaining allegation contained in paragraph 16 of the complaint.

17. The defendants admit that the Plan is an entity that may be sued under 502(d)(1), but lack knowledge or information sufficient to form a belief as to the truth of what plaintiffs mean by the phrase “administrative offices,” and on that basis deny the allegations regarding the location of the “administrative offices” of the Plan, and deny that Duke Energy is the Plan administrator or trustee of the Plan and may be served on behalf of the Plan and each and every remaining allegation contained in paragraph 17 of the complaint. Answering further, the defendants show that the plan is administered in all material respects in Charlotte, North Carolina, substantially all relevant books and records relating to the Plan and its administration are maintained in Charlotte, North Carolina, and all Plan administrative personnel with material responsibilities are located in the Western District of North Carolina and are employed in Charlotte, North Carolina, as are substantially all persons with material knowledge concerning the allegations contained in the Complaint.

18. The defendants admit the allegations contained in paragraph 18 of the complaint.

19. The defendants admit that Duke Energy is an employer and Plan sponsor and is identified, among others, as a named fiduciary under the Plan, but deny that Duke Energy is a fiduciary with respect to any breach alleged herein and deny each and every remaining allegation contained in paragraph 19 of the complaint.

20. Paragraph 20 of the complaint is devoid of any allegation and purports to do nothing except characterize generally a statute without respect to any alleged fact or any entity in this case. The defendants therefore respond that the statute speaks for itself and must be read in its entirety, the paragraph calls for no answer from the defendants, and the defendants specifically deny any allegation or inference arising from the presence of the paragraph in the complaint.

21. The defendants admit that the named plaintiffs seek damages and purport to bring an action as described in paragraph 21 of the complaint, but deny that they may do so or recover any damages and deny each and every remaining allegation contained therein.

22. The defendants admit that the plaintiffs make a contention as set forth in paragraph 22 of the complaint, but deny the contention and deny each and every remaining allegation contained therein.

23. The defendants admit that the plaintiffs make a contention as set forth in paragraph 23 of the complaint, but deny the contention and deny each and every remaining allegation contained therein.

24. The defendants admit that the plaintiffs purport to bring the action as a class action as alleged in paragraph 24 of the complaint, but deny that the plaintiffs may do so, that the proposed putative class is proper, and each and every remaining allegation contained therein

25. The defendants admit that the plaintiffs purport to bring the action as a class action as alleged in paragraph 25 of the complaint, but deny that the plaintiffs may do so, that the proposed putative class is proper, that a class action is available, and each and every remaining allegation contained therein.

26. The defendants admit that the members of the described proposed putative class(es) and subclass would number in the hundreds, but deny that any such proposed putative class or subclass is proper, that any numerous class exists, and each and every remaining allegation contained in paragraph 26 of the complaint.

27. The defendants deny each and every allegation contained in paragraph 27 of the complaint, including specifically but not limited to subparts (a) through (n) thereof, and further deny any allegation or inference arising

from the characterization of the subparts as questions of law or fact common to all members of the defined class and subclass.

28. Upon information and belief, the defendants admit that the plaintiffs are over the age of 40, but deny each and every remaining allegation contained in paragraph 28 of the complaint.

29. Upon information and belief the defendants admit that some of plaintiffs' counsel have handled ERISA, employment discrimination, and/or class actions, but deny each and every remaining allegation contained in paragraph 29 of the complaint.

30. The defendants deny each and every allegation contained in paragraph 30 of the complaint.

31. The defendants deny each and every allegation contained in paragraph 31 of the complaint.

32. The defendants deny each and every allegation contained in paragraph 32 of the complaint.

33. The defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 33 of the complaint pertaining to plaintiffs' awareness of other litigation or whether the plaintiffs foresee difficulties in managing the case as a class action, and

therefore deny those allegations and each and every remaining allegation contained in paragraph 33 of the complaint.

34. The defendants admit that the Duke Power Company, a predecessor to Duke Energy, established a pension plan in 1943. Defendants show that the pension plan was amended and restated numerous times and show that the plan documents, to the extent that they exist, speak for themselves. Defendants deny each and every remaining allegation contained in paragraph 34 of the complaint.

35. The defendants admit that a predecessor to Duke Energy periodically provided benefits statements to employees, which documents speak for themselves and must be read in their entirety and in context, but deny the plaintiffs' characterization of those documents. The defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation regarding the employees' understanding and therefore deny that allegation and each and every remaining allegation contained in paragraph 35 of the complaint.

36. The defendants deny each and every allegation contained in paragraph 36 of the complaint.

37. The defendants answer the allegations contained in paragraph 37 of the complaint as follows: any court ruling on the benefits plan of another

entity unrelated to these defendants, which ruling post-dated the actions of these defendants with respect to the Plan, has no application to or effect on these defendants or this action, and any written ruling speaks for itself and must be read in its entirety, and the defendants deny the plaintiffs' characterization thereof and any allegation or inference arising from the reference contained in the paragraph, any allegation or inference arising from the identification of another entity unrelated to these defendants, and each and every remaining allegation contained in paragraph 37 of the complaint. Answering further, the defendants state that five other District Courts have disagreed with the referenced decision, and that William M. Mercer, Inc. was the pension actuary and consultant for a predecessor to Duke Energy on employee benefits matters before the design of the Plan.

38. The first four sentences of paragraph 38 of the complaint are devoid of any allegation and purport to do nothing except characterize generally, and erroneously, types of benefits plans without respect to any alleged fact or any entity in this case. The defendants therefore respond that these allegations call for no answer from the defendants, and the defendants specifically deny any allegation or inference arising from the presence of the paragraph in the complaint. To the extent that the last sentence of paragraph 38 purports to relate to the Plan, the defendants show that benefits that have

accrued under the Plan are protected from reduction under 29 U.S.C. § 1054(g), and deny any inconsistent allegation therein.

39. Paragraph 39 of the complaint is devoid of any allegation and purports to do nothing except characterize generally, and erroneously, types of benefits plans without respect to any alleged fact or any entity in this case, but for a gratuitous reference to “Duke Power.” The defendants therefore respond that the paragraph calls for no answer from the defendants, and the defendants specifically deny any allegation or inference arising from the presence of the paragraph in the complaint. Answering further, the defendants deny that there was any partial termination of any Company benefit plan as the result of any act alleged in the complaint.

40. Paragraph 40 of the complaint is devoid of any allegation and purports to do nothing except characterize generally, and erroneously, effects of benefits plans changes without respect to any alleged fact or any entity in this case. The defendants therefore respond that the paragraph calls for no answer from the defendants, and the defendants specifically deny any allegation or inference arising from the presence of the paragraph in the complaint.

41. The defendants deny that any Defendant made any misleading statements or misrepresentations to any Plaintiff or “worker” and show that any document referenced in paragraph 41 of the complaint speaks for itself and

must be read in its entirety and in context, and that any statement referenced in paragraph 41 of the complaint speaks for itself and must be understood in its entirety and in context, and the defendants deny each and every remaining allegation contained in paragraph 41 of the complaint.

42. The defendants deny that they “misinformed” employees and answer that any statement or document referenced in paragraph 42 of the complaint speaks for itself and must be read in its entirety and in context, and deny the plaintiffs’ characterization thereof and deny each and every allegation contained in paragraph 42 of the complaint.

43. The defendants show that the Plan benefit formula was changed to a “cash balance” formula effective January 1, 1997 and answer that the Plan speaks for itself and must be read in its entirety and in context, but deny the plaintiffs’ characterization of the Plan or its effect on participants and each and every remaining allegation contained in paragraph 43 of the complaint.

44. The defendants admit that under the Plan, account balances were established for each active employee participant according to the terms of the Plan, which speaks for itself and must be read in its entirety and in context, but deny the plaintiffs’ characterization of the Plan and each and every remaining allegation contained in paragraph 44 of the complaint.

45. The defendants answer that the Plan speaks for itself and must be read in its entirety and in context, and deny the plaintiffs' characterization of the Plan and each and every remaining allegation contained in paragraph 45 of the complaint.

46. The defendants deny each and every allegation contained in paragraph 46 of the complaint.

47. The defendants answer that the referenced documents speak for themselves and must be read in their entirety, and deny the plaintiffs' characterization of the documents and each and every allegation contained in paragraph 47 of the complaint.

48. The defendants answer that the referenced documents speak for themselves and must be read in their entirety, and deny the plaintiffs' inferences and characterization of those documents and deny that the Plan was not funded for the time period set forth in paragraph 48 of the complaint and each and every remaining allegation contained in paragraph 48 of the complaint.

49. The defendants answer that the plan documents for the plan and any communications referenced in paragraph 49 of the complaint speak for themselves and must be read or considered in their entirety regarding the operation of that plan, but deny the plaintiffs' characterization of that plan and

each and every remaining allegation contained in paragraph 49 of the complaint.

50. The defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations regarding the alleged expectations of employees contained in paragraph 50 of the complaint, and therefore deny each and every allegation contained therein. Answering further, the defendants show that they communicated with the employees concerning the design and terms of the plan in writing on numerous occasions throughout the employees' careers, including that the plan could be amended, which communications speak for themselves and must be read in their entirety and in context

51. The defendants answer that the plan documents for the plan referenced speak for themselves and must be read in their entirety and in context regarding any early retirement benefit, and lack knowledge or information sufficient to form a belief as to the truth of the allegations regarding “senior workers” plans or motivations and therefore deny those allegations and each and every remaining allegation contained in paragraph 51 of the complaint. The defendants further show that the retirement decisions of “senior workers” would be based upon their individual factual circumstances.

52. To the extent that the allegations contained in paragraph 52 of the complaint pertain to the defendants, the defendants deny each and every

allegation, including specifically the allegation that the change to the cash balance formula “cut benefits.” Any other allegations contained therein are included merely for the sake of creating prejudice and do nothing except characterize generally, and erroneously, “cash balance conversion” and therefore call for no answer from the defendants and the defendants specifically deny any allegation or inference arising from the presence of the statements in the complaint.

53. Defendants show generally that a cash balance plan design provides for a more even accrual of benefits over an employee's working career than some other “traditional” pension plan designs, and otherwise respond that Paragraph 53 of the complaint is devoid of any allegation and purports to do nothing except characterize generally, and erroneously, types of benefits plans without respect to any alleged fact or entity in this case. The defendants therefore respond that the paragraph calls for no answer from the defendants, and the defendants specifically deny any allegation or inference arising from the presence of the paragraph in the complaint.

54. To the extent that the allegations contained in paragraph 54 of the complaint pertain to the defendants, the defendants deny each and every allegation, including specifically the allegation that the amendment to the Plan to add the cash balance formula resulted in a reduction in any accrued benefit

for any participant under the Plan. To the extent that the statements contained therein are devoid of any allegations regarding any entity in this case and purport to do nothing except characterize generally, and erroneously, “cash balance conversion” effects, the defendants respond that the paragraph calls for no answer from the defendants and the defendants specifically deny any allegation or inference arising from the presence of the statement in the complaint.

55. The defendants deny each and every allegation contained in paragraph 55 of the complaint, and answering further, state that the present value of the accrued benefit under the prior benefit formula for plaintiff Miller on December 31, 1996, immediately before the change to a “cash balance” formula, was \$59,581, and his opening account balance under the Plan on January 1, 1997, effective with the change to a “cash balance” formula, was \$128,776.

56. The defendants deny each and every allegation contained in paragraph 56 of the complaint.

57. The defendants deny each and every allegation contained in paragraph 57 of the complaint, including specifically the allegation that they “misinformed” any worker, and deny the plaintiffs’ characterization of the

referenced documents, which speak for themselves and must be read in their entirety and in context.

58. The defendants deny each and every allegation contained in paragraph 58 of the complaint.

59. The defendants deny each and every allegation contained in paragraph 59 of the complaint.

60. The defendants answer that the Plan documents define the benefits provided thereunder and speak for themselves and must be read in their entirety and in context regarding “contribution” or “pay” credits and “interest” credits, and deny each and every remaining allegation contained in paragraph 60 of the complaint.

61. The defendants deny each and every allegation contained in paragraph 61 of the complaint.

62. The defendants deny each and every allegation contained in paragraph 62 of the complaint.

63. The defendants deny each and every allegation contained in paragraph 63 of the complaint.

64. The defendants admit the allegations contained in paragraph 64 of the complaint.

65. The defendants answer that the Plan speaks for itself and must be read in its entirety and in context and deny that the plaintiffs' edited and redacted representation of the Plan's contents as set forth in paragraph 65 of the complaint is an accurate representation of the entirety of the Plan and deny each and every remaining allegation contained in paragraph 65 of the complaint.

66. The defendants answer that the Plan speaks for itself and must be read in its entirety and in context deny that the plaintiffs' edited and redacted representation of the Plan's contents as set forth in paragraph 66 of the complaint is an accurate representation of the entirety of the Plan and deny each and every remaining allegation contained in paragraph 66 of the complaint.

67. The defendants answer that the Plan speaks for itself and must be read in its entirety and in context and deny that the plaintiffs' edited and redacted representation of the Plan's contents as set forth in paragraph 67 of the complaint is an accurate representation of the entirety of the Plan and deny each and every remaining allegation contained in paragraph 67 of the complaint.

68. The defendants answer that the Plan speaks for itself and must be read in its entirety and in context and deny each and every remaining allegation contained in paragraph 68 of the complaint.

69. The defendants deny each and every allegation contained in paragraph 69 of the complaint.

70. The defendants deny each and every allegation contained in paragraph 70 of the complaint.

71. The defendants deny each and every allegation contained in paragraph 71 of the complaint.

72. The defendants deny each and every allegation contained in paragraph 72 of the complaint.

73. The defendants deny each and every allegation contained in paragraph 73 of the complaint.

74. The defendants deny each and every allegation contained in paragraph 74 of the complaint.

75. The defendants deny each and every allegation contained in paragraph 75 of the complaint.

76. To the extent that the allegations in paragraph 76 of the complaint characterize errors as “numerous,” the defendants deny the allegation as the defendants understand and apply that characterization. To the extent that paragraph 76 of the complaint is intended to allege that opening balance calculations contained errors that were not corrected, the defendants deny the allegation. For example, the Plan Administrator, on its own initiative, identified a component of eligible compensation that had been excluded from the eligible compensation originally reported for plaintiff Moyers by his employing

company and corrected that error, resulting in an increase in plaintiff Moyers' opening balance. The defendants deny each and every remaining allegation contained in paragraph 76 of the complaint.

77. Paragraph 77 of the complaint is devoid of any allegation and purports to do nothing except characterize generally, and erroneously, a statute without respect to any alleged fact or any entity in this case. The defendants therefore answer that the statute speaks for itself and must be read in its entirety and in context, the paragraph calls for no answer from the defendants, and the defendants specifically deny any allegation or inference arising from the presence of the paragraph in the complaint.

78. The defendants deny each and every allegation contained in paragraph 78 of the complaint, and deny the plaintiffs' characterization of the referenced documents and ERISA, which speak for themselves and must be read in their entirety and in context.

79. To the extent that the allegations contained in paragraph 79 purport to relate to the Plan, the defendants show that the Plan speaks for itself and deny any allegations inconsistent with the written terms of the Plan. To the extent that paragraph 79 of the complaint is devoid of any allegation and purports to do nothing except characterize generally, and erroneously, types of calculations without respect to any alleged fact or any entity in this case. The

defendants therefore respond that the paragraph calls for no answer from the defendants, and the defendants specifically deny any allegation or inference arising from the presence of the paragraph in the complaint.

80. The defendants deny each and every allegation contained in paragraph 80 of the complaint. Answering further, the defendants state that each participant's benefits calculation is an individualized application of the terms of the Plan.

81. The defendants admit that they responded to plaintiff George's request, and that they provided him with an individualized calculation that properly applied the terms of the Plan, but deny that plaintiff George's calculation is an example from which one can extrapolate or generalize about the calculations of others and deny each and every remaining allegation contained in paragraph 81 of the complaint.

82. The defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 82 of the complaint regarding that about which the plaintiffs are informed and believe about the requirements of the Plan, which speaks for itself and deny that the plaintiffs' characterization of Section 5.04(c) is correct.

83. The defendants deny each and every allegation contained in paragraph 83 of the complaint.

84. The defendants show that the Plan applies a pre-retirement mortality discount in accordance with its terms in calculating some lump sum distributions and deny each and every remaining allegation contained in paragraph 84 of the complaint.

85. The defendants deny each and every allegation contained in paragraph 85 of the complaint.

86. Paragraph 86 of the complaint is devoid of any factual allegation and purports to do nothing except state a general legal conclusion, which is erroneous and which does not require an answer from the defendants, and the defendants specifically deny each and every allegation or inference arising from the presence of the paragraph in the complaint.

87. The defendants admit that they did not treat the amendment of the Plan to add the cash balance formula as a partial termination of the Plan because it was not a partial termination. The defendants further show that Plan participants received distributions in accordance with the vesting provisions set forth in the Plan and deny each and every remaining allegation contained in paragraph 87 of the complaint.

88. Answering paragraph 88 of the complaint, which contains but a wholesale incorporation of the allegations in the preceding paragraphs of the

complaint, the defendants answer by way of incorporating their answers and defenses to each and every such paragraph.

89. The defendants deny each and every allegation contained in paragraph 89 of the complaint.

90. The defendants deny each and every allegation contained in paragraph 90 of the complaint.

91. The defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 91 of the complaint regarding that about which the plaintiffs are informed and believe about their entitlement to relief, show that any such belief is without any basis in fact or law, and therefore deny those and each and every remaining allegation contained in paragraph 91 of the complaint.

92. Answering paragraph 92 of the complaint, which contains but a wholesale incorporation of the allegations in the preceding paragraphs of the complaint, the defendants answer by way of incorporating their answers and defenses to each and every such paragraph.

93. The defendants admit that the Plan operated according to its terms and deny each and every allegation contained in paragraph 93 of the complaint.

94. The defendants deny each and every allegation contained in paragraph 94 of the complaint.

95. The defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 95 of the complaint regarding that about which the plaintiffs are informed and believe about their entitlement to relief, show that the belief alleged is without any basis in fact or law, and therefore deny those and each and every remaining allegation contained in paragraph 95 of the complaint.

96. Answering paragraph 96 of the complaint, which contains but a wholesale incorporation of the allegations in the preceding paragraphs of the complaint, the defendants answer by way of incorporating their answers and defenses to each and every such paragraph.

97. The defendants deny each and every allegation contained in paragraph 97 of the complaint.

98. The defendants deny each and every allegation contained in paragraph 98 of the complaint.

99. The defendants deny each and every allegation contained in paragraph 99 of the complaint.

100. The defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 100 of the complaint regarding that about which the plaintiffs are informed and believe about their entitlement to relief, show that the belief alleged is without any basis

in fact or law, and therefore deny those and each and every remaining allegation contained in paragraph 100 of the complaint.

101. Answering paragraph 101 of the complaint, which contains but a wholesale incorporation of the allegations in the preceding paragraphs of the complaint, the defendants answer by way of incorporating their answers and defenses to each and every such paragraph.

102. The defendants answer that the Plan speaks for itself and must be read in its entirety and in context regarding the calculation of credits, but deny the plaintiffs' characterization of the Plan as alleged in paragraph 102 of the complaint and each and every remaining allegation contained in paragraph 102 of the complaint.

103. The defendants deny each and every allegation contained in paragraph 103 of the complaint.

104. The defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 104 of the complaint regarding that about which the plaintiffs are informed and believe about their entitlement to relief, show that the belief alleged is without any basis in fact or law, and therefore deny those and each and every remaining allegation contained in paragraph 104 of the complaint.

105. Answering paragraph 105 of the complaint, which contains but a wholesale incorporation of the allegations in the preceding paragraphs of the complaint, the defendants answer by way of incorporating their answers and defenses to each and every such paragraph.

106. The defendants answer that the Plan has been administered properly according to its terms, which yields results individualized and unique for each participant, and deny each and every allegation contained in paragraph 106 of the complaint.

107. The defendants deny each and every allegation contained in paragraph 107 of the complaint.

108. The defendants deny each and every allegation contained in paragraph 108 of the complaint.

109. The defendants deny each and every allegation contained in paragraph 109 of the complaint.

110. The defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 110 of the complaint regarding that about which the plaintiffs are informed and believe about their entitlement to relief, show that the belief alleged is without any basis in fact or law, and therefore deny those and each and every remaining allegation contained in paragraph 110 of the complaint.

111. Answering paragraph 111 of the complaint, which contains but a wholesale incorporation of the allegations in the preceding paragraphs of the complaint, the defendants answer by way of incorporating their answers and defenses to each and every such paragraph.

112. To the extent that the allegations contained in paragraph 112 of the complaint pertain to the defendants, the defendants deny each and every allegation. To the extent that the statements contained therein are devoid of any allegations regarding any defendant in this case and purport to do nothing except characterize generally a statute which speaks for itself and must be read in its entirety, the paragraph calls for no answer from the defendants, and the defendants specifically deny any allegation or inference arising from the presence of the statements in the complaint.

113. Paragraph 113 of the complaint is devoid of any allegation and purports to do nothing except characterize generally a statute without respect to any alleged fact or any entity in this case. The defendants therefore respond that the statute speaks for itself and must be read in its entirety, the paragraph calls for no answer from the defendants, and the defendants specifically deny any allegation or inference arising from the presence of the paragraph in the complaint.

114. The defendants deny each and every allegation contained in paragraph 114 of the complaint.

115. The defendants deny each and every allegation contained in paragraph 115 of the complaint.

116. The defendants deny each and every allegation contained in paragraph 116 of the complaint, including but not limited to subparts (a) – (c) thereof.

117. The defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 117 of the complaint regarding that about which the plaintiffs are informed and believe about their entitlement to relief, show that the belief alleged is without any basis in fact or law, and therefore deny those and each and every remaining allegation contained in paragraph 117 of the complaint.

118. The defendants deny that the plaintiffs are entitled to any relief whatsoever, including the relief they seek in the lettered parts and numbered subparts of their prayer for relief.

119. The defendants deny any allegation contained in any heading or subheading contained in the complaint, and deny each and every allegation contained in the complaint not specifically admitted above.

SECOND DEFENSE

The complaint fails to state a claim upon which relief can be granted to the extent that it does not allege each and every element of the causes of action or essential requirements of all procedural devices the plaintiffs assert therein, or to the extent that no such claims or devices exist.

THIRD DEFENSE

The Court lacks jurisdiction over the subject matter of the complaint to the extent that the allegations assert claims exclusively within the jurisdiction of the National Labor Relations Board.

FOURTH DEFENSE

The plaintiffs have failed to join necessary parties to this action.

FIFTH DEFENSE

Some or all of the named plaintiffs lack standing to pursue, on behalf of themselves and the alleged persons they purport and propose to represent, some or all of the claims alleged in the complaint.

SIXTH DEFENSE

The plaintiffs' claims are barred by applicable statutes of limitations. The defendants also give notice that the statutes of limitations or statutes of repose of the various states, to the extent that they are substantive, may be applicable.

SEVENTH DEFENSE

The plaintiffs' claims, including those of the alleged persons they purport and propose to represent, are barred to the extent of the operation of the Statute of Frauds.

EIGHTH DEFENSE

The plaintiffs' claims, including those of the alleged persons they purport and propose to represent, are barred to the full extent of the operation of accord and satisfaction.

NINTH DEFENSE

The plaintiffs' claims, including those of the alleged persons they purport and propose to represent, are barred to the full extent of the operation of estoppel.

TENTH DEFENSE

The plaintiffs' claims, including those of the alleged persons they purport and propose to represent, are barred to the full extent of the application of laches, of which the named plaintiffs are guilty.

ELEVENTH DEFENSE

The plaintiffs' claims, including those of the alleged persons they purport and propose to represent, are barred to the full extent of the operation of payment.

TWELFTH DEFENSE

The plaintiffs' claims, including those of the alleged persons they purport and propose to represent, are barred to the full extent of the operation of release.

THIRTEENTH DEFENSE

The plaintiffs' claims, including those of the alleged persons they purport and propose to represent, are barred to the full extent of the operation of waiver.

FOURTEENTH DEFENSE

The plaintiffs' claims, to the extent they seek equitable relief, are barred to the full extent of the operation of the doctrine of unclean hands.

FIFTEENTH DEFENSE

The plaintiffs' claims are barred, as are the claims of the alleged persons they purport and propose to represent, to the extent that they have failed to

exhaust their administrative remedies under the Employee Retirement Income Security Act, as amended 29 U.S.C. § 1001 et seq. (“ERISA”).

SIXTEENTH DEFENSE

The plaintiffs’ claims are barred, as are the claims of the alleged persons they purport and propose to represent, to the extent that the plaintiffs failed to file a timely administrative charge of discrimination including each and every such claim under the Age Discrimination in Employment Act, as amended, 29 U.S.C. § 621 et seq. (“ADEA”).

SEVENTEENTH DEFENSE

The plaintiffs’ claims are barred, as are the claims of the alleged persons they purport and propose to represent, to the extent that the plaintiffs failed to file a timely unfair labor practice charge including each and every such claim under the National Labor Relations Act, 29 U.S.C. § 151, et seq. (“NLRA”).

EIGHTEENTH DEFENSE

The plaintiffs’ claims are barred, as are the claims of the alleged persons they purport and propose to represent, to the extent that they seek the retroactive application of decisional law.

NINETEENTH DEFENSE

The plaintiffs have not pled that some or all of the alleged persons on whose behalf they purport to complain are similarly situated under the ADEA

and the Fair Labor Standards Act, as amended, 29 U.S.C. § 216(b) (“FLSA”), and they are not similarly situated.

TWENTIETH DEFENSE

The claims of the alleged persons on whose behalf the plaintiffs purport to complain are barred by failure to satisfy the opt-in requirements of 29 U.S.C. § 216(b). For each and every claim in the complaint arising under the ADEA, no class may be certified and no class action treatment accorded under Rule 23 of the Federal Rules of Civil Procedure.

TWENTY-FIRST DEFENSE

The claims of the alleged persons on whose behalf the plaintiffs purport to complain are barred to the extent that each such person did not file, or could not have filed, a timely charge of discrimination under the ADEA at the time a named plaintiff, if any, filed a timely charge of discrimination under the ADEA.

TWENTY-SECOND DEFENSE

For some or all of the claims in the complaint, there is no claim appropriate for class action treatment for the alleged “class” and “subclass” defined therein, the existence of which is expressly denied, and the plaintiffs have not satisfied and cannot satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure.

TWENTY-THIRD DEFENSE

The claims of alleged individuals included in the proposed class, the existence of which is expressly denied, are subject to individualized defenses, and class action treatment would violate the defendants' due process rights.

TWENTY-FOURTH DEFENSE

The acts of the defendants were taken in good faith, in actual conformity with, and in reliance on, applicable written administrative regulations, orders, rulings, approvals, or interpretations of governing federal agencies.

TWENTY-FIFTH DEFENSE

The acts of the defendants were based on reasonable factors other than age.

TWENTY-SIXTH DEFENSE

The plaintiffs and the alleged persons on whose behalf they purport to complain may not recover liquidated damages under the ADEA.

TWENTY-SEVENTH DEFENSE

Any alleged acts or omissions by the defendants were not willful, but were in good faith and based upon reasonable grounds for believing that the alleged act or omission was not a violation of the ADEA or any other applicable law. Neither did the defendants show reckless indifference to or disregard for the requirements of such laws.

TWENTY-EIGHTH DEFENSE

The plaintiffs' claims are barred by the doctrine of illegality to the extent that the relief sought would violate existing law.

TWENTY-NINTH DEFENSE

The plaintiffs' claims are barred by applicable doctrines barring relitigation of matters determined in administrative proceedings in which the Secretaries of the Treasury and Labor were or could have been parties.

THIRTIETH DEFENSE

The defendants reserve the right to amend the Answer to add appropriate defenses that become apparent through discovery.

WHEREFORE, having fully answered the complaint, the defendants respectfully urge the Court to dismiss the complaint in its entirety and to grant to the defendants such relief as the Court deems appropriate, including but not limited to their attorneys' fees and costs pursuant to 29 U.S.C. Section 1132(g)(1).

Respectfully submitted,

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