

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

BRIDGIT CHRISTENSEN,)	
)	
Plaintiff,)	
)	CIVIL ACTION
v.)	FILE NO. _____
)	
CITY OF DECATUR, GEORGIA,)	
ANDREA ARNOLD, in her)	JURY TRIAL DEMANDED
individual and official capacities, and)	
CONNIE JACOBS-WALTON, in her)	
individual capacity,)	
)	
Defendants.)	

COMPLAINT FOR DAMAGES
AND INJUNCTIVE AND DECLARATORY RELIEF

COMES NOW BRIDGIT CHRISTENSEN, (“Plaintiff” or “Lt. Christensen”)
and hereby files her Complaint for Breach of Contract, Unconstitutional Impairment
of Contract, Breach of Fiduciary Duty, Fraud, Negligent Misrepresentation,
Promissory Estoppel, Violation of Equal Protection and Due Process, FMLA
Retaliation, Injunctive Relief, Declaratory Relief, and Damages, in order to obtain
her rightful contractual pension benefits upon retirement from her employment with
Defendant City of Decatur government (the “City”), and damages from the denial of
those benefits, on the following grounds:

INTRODUCTORY DESCRIPTION OF THE CASE

1.

This is an action for declaratory judgment and other relief by a longstanding current firefighter seeking immediate disability retirement, challenging Defendant City of Decatur’s June 14, 2019 purported “recalculation” of her vested retirement pension benefits despite the fact that she was already eligible and qualified for her full disability retirement benefits. The Decatur City Commissioners passed an ordinance amending the pension plan on June 3, 2019 that wiped out disability retirement benefits that were promised to Lt. Christensen—benefits from a plan that she had been contributing to for 19 years since her hire in 2000. The City then attempted to use this amendment to deny Lt. Christensen her disability retirement despite her being qualified in all respects to retire with Total and Permanent Disability and all accrued benefits. In addition, the justification that the City presented to the Pension Board and the City Commissioners for amending the pension plan was a complete fabrication with no basis in law or fact and nothing less than smoke and mirrors.

2.

Effective January 1, 1997, Defendant City of Decatur adopted an Amended and Restated Defined Benefit Retirement Plan (the “1997 Plan”), intended to be the

pension plan for all City employees, including public safety employees such as firefighters. The 1997 Plan was in effect at the time Lt. Christensen was hired by the City. During her employment, the 1997 Plan was subsequently amended various times, but up until 2019, those amendments did not alter the benefit formulas, calculations of pension benefits, or the actual benefit amounts payable to the participants in the plan at the time of retirement. (The 1997 Plan was restated in 2013, and for simplicity the plan in effect up until Plaintiff sought to retire will be referred to in this Complaint as the “Plan.”)

3.

Lt. Christensen is an experienced firefighter working for the City of Decatur having bravely served her community in that capacity for over 19 years. In 2016, Lt. Christensen incurred a serious spinal injury on a firetruck and filed for Workers’ Compensation. In early 2019, the City offered to settle the Workers’ Compensation case by allowing Lt. Christensen to retire with Total and Permanent Disability pursuant to the Plan. As confirmed in a letter written by her orthopedic surgeon on May 9, 2019, Lt. Christensen met the definition of having a Total and Permanent Disability under the Plan (and still does to this day). That letter was the last material step that Lt. Christensen and the City’s workers’ compensation attorneys needed to begin her retirement process.

4.

The Plan clearly states that public safety employees, including firefighters like Lt. Christensen, who are fully vested and have a Total and Permanent Disability resulting from employment, are entitled to a monthly retirement benefit that is the product of multiplying

(a) the number of Years of Benefit Service that the employee *would have earned if that employee had continued in employment until his/her Normal Retirement Date*, and

(b) 2% of her Final Average Earnings.

According to the Plan, Lt. Christensen would have earned 33 years of Benefit Service on her normal retirement date, and her Final Average Earnings was \$5,316.38 per month. *Based on the formula provided in the plan, at a minimum, Lt. Christensen is entitled to a benefit of \$3,508.81 per month.*

5.

In May 2019, Plaintiff requested a sum certain for what her monthly retirement benefit will be to immediately retire with Total and Permanent Disability. After receiving the run around and unreturned calls, Plaintiff finally received the City's purported calculation of her monthly benefit on June 14, 2019—11 days after the City passed the 2019 Amendment to the Plan and nearly

two months after Plaintiff was qualified for and requested her retirement benefits—in the stated sum of *\$405.51 per month. That sum is about 10% of what she is contractually entitled to under the Plan.*

6.

The Plan, including the implementing documents and City regulations related thereto, constituted a contract between Defendant City of Decatur and Plaintiff. City regulations bind the City to abide by any pension plan in effect at a given time. The City's denial of Lt. Christensen's vested disability retirement benefits violated its contract with Lt. Christensen and violated the Georgia Constitution's Impairments Clause, Ga. Const. of 1983, Art. I, Sec. I, Par. X. The June 3, 2019 ordinance purporting to amend the Plan in a way that eliminates Plaintiff's right to retire with Total and Permanent Disability and reduces the retirement benefit calculation for Lt. Christensen by 80 to 90% is therefore unlawful as applied to Plaintiff. Defendants acted to take away Plaintiff's vested property rights in her pension benefits without notice, a hearing, or a decision by a neutral decision maker, and thus they violated the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution. Moreover, by eliminating benefits for disabled employees, including disabled firefighters and police officers injured in the line of duty, and not eliminating

benefits for non-disabled employees, Defendants violated the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

7.

In addition, the City has discriminated against Lt. Christensen on account of her sex. Male firefighters with the City of Decatur were permitted to retire with Full Disability as recently as 2018 under nearly identical circumstances, the only difference being that Lt. Christensen is female. As such, Plaintiff also files this suit with a claim for sex discrimination under Section 1983 as a violation of the Equal Protection Clause.

8.

Furthermore, the City has engaged in unlawful retaliation in response to Plaintiff taking leave under the Family and Medical Leave Act (FMLA). When Lt. Christensen was told she would be retiring with merely 10% of what she is entitled, she withdrew her request to retire, received her planned spinal surgery, and took FMLA leave. Immediately following her FMLA leave, the City retaliated against her by continuing to refuse to pay her the benefits she is entitled to under the pension plan and by obstinately refusing to provide basic paperwork so that Lt. Christensen could maintain her EMS/CPR certifications (which precluded her from working part time with the use of these certifications). Moreover, the City has engaged in

retaliation prohibited by the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution based on Lt. Christensen's filing of a Charge with the Equal Employment Opportunity Commission ("EEOC") alleging sex discrimination in March 2020. City Manager Andrea Arnold and HR Director Connie Jacobs-Walton retaliated by again refusing to pay her the retirement benefit she is owed and prevented her from doing part time work for which she is qualified with her EMS/CPR certifications

9.

Finally, the City, Connie Jacobs-Walton, and Andrea Arnold are sued for numerous additional violations of Georgia law, including fraud and deceit, negligent misrepresentation, breach of fiduciary duty, and promissory estoppel based on their misrepresentations to both the Pension Board, the City Commissioners, and Plaintiff with respect to the purpose of the 2019 Amendment and the effect it would have on plan members, including Plaintiff.

10.

Ultimately, this case is about Defendants' unlawful denial of the adopted pension formula stated above for calculating Plaintiff's monthly retirement pension benefits, and for enforcement of the terms of the Plan through which Plaintiff requested to retire.

PARTIES

11.

Plaintiff Bridgit Christensen is, and was at all times herein, a citizen and resident of the state of Georgia. She is female.

12.

Defendant City of Decatur (the “City”) is a municipal corporation in the State of Georgia. The City is the employer of Plaintiff; has authority under Article 9, Section 2 of the Georgia Constitution effective July 1, 1983 to establish and maintain retirement or pension systems; and did so establish a defined benefit retirement/pension system for its City employees by adopting the 1997 Amended and Restated Retirement Plan (the “1997 Plan”). During her employment, the 1997 Plan was subsequently amended various times, but up until 2019, those amendments did not alter the benefit formulas, calculations of pension benefits, or the actual benefit amounts payable to the participants in the plan at the time of retirement. The 1997 Plan was restated in 2013, and for simplicity, the plan in effect up until Plaintiff sought to retire will be referred to in this Complaint as the “Plan.” Defendant City of Decatur’s obligations under the Plan include paying monthly benefits according to the formulas contained in that Plan, including the formulas applicable to employees seeking to retire who have a Total and Permanent

Disability Resulting from Employment. The City may be served by delivering a copy of the summons and complaint to Andrea Arnold, City Manager, 509 N. McDonough St., 2nd Floor, Decatur, GA, 30030; and by delivering a copy of same to Patti Garrett, Mayor and City Commissioner, at 509 N. McDonough St., Decatur, GA 30030.

13.

Defendant Andrea Arnold is a citizen of the state of Georgia and at all times relevant to this Complaint was City Manager of the City of Decatur, Georgia and a member of the Retirement System Board of Trustees of the City of Decatur (the “Pension Board”). She is sued in her individual and official capacities. Ms. Arnold can be served with summons and Complaint at 153 Vidal Boulevard, Decatur, GA 30030.

14.

Defendant Connie Jacobs-Walton is a citizen of the state of Georgia and at all times relevant to this Complaint was Director of Human Resources of the City of Decatur, Georgia. She is sued in her individual capacity. Ms. Jacobs-Walton can be served with summons and Complaint at 1109 Lanford Circle SW, Lilburn, GA 30047.

JURISDICTION

15.

This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1343, and 42 U.S.C. § 1983. This Court has supplemental jurisdiction over claims arising under State law pursuant to 28 U.S.C. § 1367.

16.

The violations of Plaintiff's rights occurred in the Northern District of Georgia. Venue for this action in the Northern District of Georgia under 28 U.S.C. § 1391(b) is appropriate because a substantial part of the events or omissions, and the unlawful actions and practices which give rise to Plaintiff's claims occurred in this District.

ADMINISTRATIVE PROCEEDINGS

17.

Lt. Christensen filed a Charge of sex discrimination with the Equal Employment Opportunity Commission ("EEOC") on March 11, 2020.

18.

Lt. Christensen has not yet received a notice of a right to sue from the EEOC and therefore has not included any claims requiring exhaustion of administrative procedures with the EEOC, including claims under Title VII. Upon receipt of a

notice of right to sue letter she will amend her complaint to add counts consistent with her EEOC Charge.

RELEVANT FACTS

Background

19.

Lt. Bridget Christensen is a female firefighter who began working for the City of Decatur in August 2000. She is a mother of one-year old triplets.

20.

During her over 19 years with the City, she excelled at her job, and her performance reviews indicate that she consistently met or exceeded the City's expectations regarding her job performance, and she has been nominated for and received awards as a result of her tireless service.

21.

In March 2016, Plaintiff was promoted to Sergeant.

22.

On March 12, 2018, Plaintiff was promoted to Lieutenant.

23.

In July 2018, Plaintiff received the "Life Save" Award.

24.

Lt. Christensen has been contributing to her retirement through the City of Decatur Amended and Restated Retirement Plan since her hiring in August 2000.

25.

Lt. Christensen has been fully vested in the Plan (as defined by the terms of that Plan) since 2010.

26.

Plaintiff's constitutional rights in her pension benefits, under the Georgia Constitution, actually vested as soon as she began working for the City.

27.

Plaintiff's rights in her pension benefits further vested when she became totally and permanently disabled.

28.

The Plan, including implementing documents and City regulations related thereto, constituted a contract between Plaintiff and the City.

29.

City regulations and the Plan itself bind the City to abide by any pension plan in effect at a given time.

30.

There is no amending language in the Plan that allows for a diminishment or elimination of Plaintiff's accrued benefit entitlement. Previous amendments to the City of Decatur's pension plan were to conform the Plan to IRS and ERISA regulations and other laws and regulations for compliance purposes.

31.

The Plan recognizes that its Board of Trustees owe fiduciary duties to the Plan's members such as Plaintiff. For example, the Plan states in Section 9.3: "The City will indemnify and hold harmless the Board and each member and each person to whom the Board has delegated responsibility under this Article, from all joint or several liability for their acts and omissions and for the acts and omissions of their duly appointed agents in the administration of the Plan, **except for their own breach of fiduciary duty and/or willful misconduct.**"

32.

On December 7, 2016, Lt. Christensen was injured in the line of duty when riding in her firetruck.

33.

Due to her injury, Lt. Christensen filed a claim for Workers' Compensation.

34.

Following this injury, Lt. Christensen attempted to perform light duty work, but she ultimately required and received a spinal fusion surgery.

35.

In September 2018, Plaintiff's orthopedic surgeon, Dr. Cassinelli, drafted a letter to the City indicating that due to her injury, Plaintiff should only work light duty for the foreseeable future.

36.

In March 2019, following Lt. Christensen's Workers' Compensation deposition, the City offered to settle Plaintiff's Workers' Compensation case by allowing Lt. Christensen to retire with Total and Permanent Disability pursuant to the Plan instead of continuing to work light duty and receive workers' compensation payments. While this was a settlement proposal, Plaintiff was already precluded from doing her job due to her on-the-job injury and qualified to retire. **In order to begin her retirement, the City requested Lt. Christensen obtain a letter from her doctor indicating her disability as it pertained to her job description.**

37.

On May 9, 2019, Plaintiff's orthopedic surgeon, Dr. Cassinelli, drafted a letter to the City stating that he had reviewed Lt. Christensen's job description with the City (Firefighter/EMT-I & II) and that in his medical opinion—with or without the spinal fusion surgery— Lt. Christensen was “permanently precluded from performing the usual duties of this job in a safe and efficient manner,” and that she would “not be able to return to this line of work.”

38.

Plaintiff requested a sum certain for what her monthly retirement benefits would be to retire with Disability as the City offered. At that point, no one had told her what the amount would be.

39.

After unreturned calls and receiving the run around, on May 29 at 2:09pm Plaintiff emailed HR Director Connie Jacobs-Walton asking to talk in person about her requested retirement benefits.

40.

On Thursday, May 30, 2019, Plaintiff met with Ms. Jacobs-Walton to request her calculated monthly benefit in person. Ms. Jacobs-Walton told Plaintiff that she would need to formally request to retire with Total and Permanent

Disability in writing before her calculation could be processed—despite the fact that the City had already offered to permit Lt. Christensen to retire with Total and Permanent Disability under the Plan, that she was fully eligible and qualified to retire with her full benefits under that Plan, and that the City had already acknowledged that she was fully eligible and qualified to retire with her full benefits pending the determination by Dr. Cassinelli.

41.

Plaintiff wanted to know what her benefits would be effective immediately, especially since she was already eligible for those benefits as Plaintiff’s doctor had already made his determination in writing that Plaintiff was totally and permanently disabled. **But Ms. Jacobs-Walton told Plaintiff that she could not request to retire yet and that she would need to wait and request a date several weeks in the future.**

42.

Incidentally, Plaintiff and other firefighters and police officers received an email from another firefighter on the same day that Lt. Christensen had emailed Ms. Jacobs-Walton to schedule a meeting, May 29, 2019. (The email was sent hours *after* Plaintiff emailed Ms. Jacobs-Walton.) The email, sent at 4:30pm, stated that it was being sent “to inform you of changes that taken place (sic) with the

city's retirement plan," and explained that the Pension Board had voted to amend the disability provisions of the Plan based on representations from the City. Lt. Christensen mentioned this email to Ms. Jacobs-Walton at their meeting on May 30, 2019, and **Ms. Jacobs-Walton stated that she didn't know anything about the proposed amendment.**

43.

At the May 30, 2019 meeting, Lt. Christensen stated that she was glad the amendment wouldn't affect her (since the City had already offered to let her retire with Total and Permanent Disability under the Plan, because the City had already acknowledged that Plaintiff qualified for total and Permanent Disability under the Plan through her doctor's paperwork in May 2019, and because Plaintiff was vested with 19 years of service). **In response, Ms. Jacobs-Walton looked at Lt. Christensen, remained silent, and walked away.** Plaintiff forwarded the subject email to Ms. Jacobs-Walton at 11:20am on May 30, 2019.

44.

The firefighter who sent the email was then reprimanded for sending the email.

45.

On May 30, 2019, Plaintiff sent an email to Ms. Jacobs-Walton stating that she intended to retire with Total and Permanent Disability, and that—solely pursuant to Ms. Jacobs-Walton’s instructions—her “first day of retirement” would be July 1, 2019—despite the fact that she was already eligible for disability retirement under the Plan and qualified for those retirement benefits as soon as her doctor determined that she was totally and permanently disabled.

46.

In her May 30, 2019 email, Lt. Christensen included the May 9, 2019 letter from Dr. Cassinelli, and the receipt of this letter additionally confirmed that Lt. Christensen wanted to retire, was requesting to retire, and was fully eligible to retire.

47.

On Friday, May 31, 2019 at 9:47 a.m., Ms. Jacobs-Walton responded to Plaintiff’s request stating, “Received. I will forward the retirement application to you shortly.”

48.

On June 3, 2019 at 2:18 p.m., Ms. Jacobs-Walton emailed Plaintiff the Retiree Package for her to complete. The City would not provide Plaintiff with the calculation of her monthly retirement income—despite the fact that Plaintiff was

already qualified and eligible to retire with Total and Permanent Disability as defined by the Plan, which was her right under the Plan.

49.

On or around June 6, 2019, Plaintiff took the printed forms to Ms. Jacobs-Walton, who told Plaintiff to fill them out but leave all of the numbers blank and that Plaintiff had to fill out those forms before she could get her retirement package. Plaintiff did as Ms. Jacobs-Walton instructed and submitted the forms that day.

The Benefit That Plaintiff Is Entitled to Receive

50.

The Plan clearly states that public safety employees, including firefighters like Lt. Christensen, who are fully vested and have a **Total and Permanent Disability resulting from employment**, are entitled to retire based on

(a) the number of **Years of Benefit Service** that the employee *would have earned if that employee had continued in employment until his/her Normal Retirement Date* and

(b) his/her **Final Average Earnings as of his/her Disability Retirement Date**.

51.

The plan defines “Total and Permanent Disability” as

wholly prevented, by a physical and/or mental condition, from performing the usual duties of the Participant's job in a safe and efficient manner, and that such condition is reasonably expected to result in death or to be of long continued and indefinite duration.

52.

As stated above, Lt. Christensen's orthopedic surgeon determined in early May 2019 that Lt. Christensen—with or without the spinal fusion surgery she ultimately received—was “permanently precluded from performing the usual duties of her job in a safe and efficient manner” and would “not be able to return to this line of work.” Her surgeon specifically made this determination after reviewing Lt. Christensen's job description from the City of Decatur (Firefighter/EMT-I & II) and treating her for over two years following her firetruck injury.

53.

As confirmed by her orthopedic surgeon on May 9, 2019, Lt. Christensen met the definition of having a Total and Permanent Disability under the Plan, and she met that definition at all relevant times, including the present.

54.

The Plan states that the **Normal Retirement Date** for public safety employees is the later of age 60 or his/her age on the date that the employee completes ten Years of Vesting Service.

55.

At all relevant times, Lt. Christensen had already vested ten years of benefit service, and her Normal Retirement Date would have been in 2033 when she reached age 60. This would have resulted in **33 Years of Benefit Service**.

56.

Plaintiff's **Final Average Earnings** as of her requested Disability Retirement Date—July 1, 2019—was **\$5,316.38 per month**.

57.

The formula for calculating Lt. Christensen's monthly retirement benefit is provided in the Plan:

Public Safety Employees. (A) multiplied by (B), as follows:

- (A) 2.0 percent of Participant's Final Average Earnings,
- (B) Participant's whole and partial Years of Benefit Service not in excess of 40.

58.

*Based on the formula provided in the plan, $(0.02 \times \$5,316.38) \times 33$ Years of Benefit Service = a monthly retirement benefit of **\$3,508.81**. At a minimum, this is the amount to which Lt. Christensen is entitled per month.*

The City Pulls a Bait and Switch
and Refuses to Pay Lt. Christensen Her Full Benefits

59.

As of June 14, 2019, Plaintiff had still not received the calculation of her monthly retirement benefit, so she emailed Ms. Jacobs-Walton to follow up. Ms. Jacobs-Walton responded with a calculation of Lt. Christensen's retirement benefits. Ms. Jacobs-Walton told Lt. Christensen that her retirement benefit would be ***\$405.51 per month.***

60.

Due to this overwhelmingly low sum, Lt. Christensen had no choice but to quickly retract her request to retire until she could understand how the City could renege on its contractual promise under her pension plan.

On June 3, 2019, the City Amended the Plan to Prevent Plaintiff
and Other Vested City Employees from Retiring with Total and Permanent
Disability

61.

On June 3, 2019, after Ms. Christensen had notified the City of her plan to retire with Total and Permanent Disability, the City of Decatur Commissioners voted to amend the Retirement Plan. Under the Amended Plan, employees may only receive *full* "Disability" retirement benefits if their disability resulted from their employment with the City and is considered "catastrophic."

62.

While Lt. Christensen's disability resulted from her employment with the City, her disability has not been deemed "Catastrophic."

63.

The June 3, 2019 Amendment states:

"[r]egardless of whether a non-Catastrophic Disability resulted from Employment, a Participant who is forced to retire because of a non-Catastrophic Disability will receive a monthly benefit in an amount based on his/her current Years of Benefit Service and Final Average Earnings and the applicable benefit formula under section 3.1(b) as of his/her Disability Retirement Date, i.e., his/her earned Accrued Benefit, *which amount will be reduced for early payment under Section 3.3, i.e., by ½ of 1 percent for each month by which his/her Benefit Commencement Date precedes his/her Normal Retirement Date.*"

64.

Based on the retirement benefit calculation sheet that Ms. Jacobs-Walton gave to Lt. Christensen, if Lt. Christensen were to retire on July 1, 2019 (despite the fact that she was already eligible to retire by May 2019 and had notified the City of her intent to do so), that date would have preceded her Normal Retirement Date by 164 months. Thus, according to the June 3, 2019 Amendment, Lt. Christensen's disability retirement benefit would be reduced by **82%** (164 times ½ percentage points).

65.

Despite claiming to Plaintiff on May 30, 2019 that she was ignorant of the anticipated June 3 Amendment, Ms. Jacobs-Walton sent a memo to City Manager Arnold *that same day* stating:

The City's current work related disability retirement benefit allows an employee with a disability resulting from employment and that prevents the employee from performing the duties of their job to retire and receive an immediate, unreduced disability benefit. The monthly benefit is calculated using the years of service the employee would have earned had the employee kept working until his or her normal retirement date. Regardless of the number of years the employee had worked for the City, one year or fifteen years, the benefit would be calculated as if they had worked for the City until age 65 or age 60, dependent upon being a non-public safety or public safety employee. The definition of disability only references an inability to perform the duties of the employee's current job, but does not consider if they could perform duties of any other job.

Concerns have been raised about inconsistencies of this benefit with the Internal Revenue Code and its definition of disability for retirement plan distributions as well as conflicts with the gratuities clause of the Georgia Constitution which prohibits the payment of an early, unreduced retirement benefit unless the employee is prevented from having any gainful employment.

It is recommended that the unreduced disability benefit be reserved for an employee who meets the disability criteria consistent with the Internal Revenue Code and the Georgia State Constitution.

The attached ordinance, O-19-XX, amends the City of Decatur Employees' Retirement Plan to address the issues raised above by:

- Adding a definition for Catastrophic Disability within Section 1.14 which provides for an employment related disability which would qualify for an unreduced retirement benefit.

- Amending Section 3.5 to address 1) determination of disability, 2) calculation of benefit for a catastrophic disability, 3) calculation of benefit for non-catastrophic disability which will be based on actual years of service and reduced for early payment, 4) form of payment, and 5) recovery from disability.

These changes protect our employees from an on-the-job injury that prevents them from ever having gainful employment by retaining the plan's disability retirement benefit and complies with federal and state regulations that limit such benefits to catastrophic disabilities.

The Board of Trustees of the City of Decatur Employees' Retirement System approved these revisions in May 2019 and adoption of the attached ordinance amending the retirement plan is recommended by the City Commission.

66.

At the Monday, June 3, 2019 City Commissioners meeting, Ms. Jacobs-Walton, echoing the language of her May 30 memo, explained the supposed purpose and effect of the amendment to the City Commissioners, despite the fact that Ms. Jacobs-Walton told Lt. Christensen on Thursday, May 30, 2019, that she knew nothing about the proposed amendment, and despite the fact that she remained silent and walked away when Lt. Christensen specifically explained her understanding that the amendment would not affect her benefits.

67.

On and leading up to May 30, 2019, Ms. Jacobs-Walton knew that the June 3 Amendment would be used to strip away Lt. Christensen's benefits, but she told Lt.

Christensen that she needed to wait to retire and that she must make her retirement effective on July 1, 2019 at the earliest. Ms. Jacobs-Walton did this because she knew the June 3 Amendment would take effect in a few days, and she wanted to hold Lt. Christensen back from seeking a retirement date before it took effect.

68.

On and leading up to May 30, 2019, Ms. Jacobs-Walton knew that the June 3 Amendment would be used to strip away Lt. Christensen's benefits, but she intentionally concealed this fact from Lt. Christensen when asked about it.

69.

On and leading up to May 30, 2019, Ms. Jacobs-Walton knew that the June 3 Amendment would be used to strip away Lt. Christensen's benefits, and she intentionally sent Lt. Christensen her retirement application less than two hours before close of business on the day that the ordinance would be voted on by the City Commissioners. Ms. Jacobs-Walton did this to try and prevent Lt. Christensen from submitting her application before the June 3 Amendment took effect.

70.

According to the Ordinance, the effective date of the June 3 Amendment is the day it was adopted: June 3, 2019.

71.

The City did not eliminate or reduce retirement benefits for employees who are not disabled.

72.

The City is attempting to apply this 2019 amendment to Lt. Christensen despite the fact that Lt. Christensen sought to retire prior to this amendment's adoption and that the City of Decatur is not permitted by law to reduce Lt. Christensen's retirement benefit that it is contractually obliged to pay.

73.

The City formulated and rushed through the 2019 amendment, knowing Lt. Christensen was seeking that benefit, in order to deprive her of the pension benefit.

74.

The City did not provide Plaintiff notice or a forum for Plaintiff to be heard at a reasonable time or in a reasonable manner prior to acting to take away her vested, substantive rights and benefits under the Plan.

75.

Through Ms. Jacobs-Walton and other City employees, the City acted in bad faith in its attempt to hoodwink Lt. Christensen into submitting her retirement

paperwork after the amendment was voted on so that it could make the argument that she was simply “too late.”

The City’s Stated Basis for the June 3 Amendment is Fraudulent
and Not Based in Fact or Law

76.

At all times relevant to this Complaint, the City and its agents’ asserted basis for amending the pension plan in the Pension Board meeting, described in the May 30 memo and at the June 3 City Commission meeting, had no good faith basis in fact or law.

77.

At the time the June 3 Amendment was recommended and adopted, the City knew that a municipality providing an early, unreduced retirement benefit for an employee disabled on the job and precluded from continuing to perform that job, is not a gratuity under Georgia law but a contractual agreement with consideration by the employee in the form of that employee’s labor for the employer.

78.

Over 70 years ago, the Supreme Court of Georgia stated that “The provisions ... requiring that peace officers pay a defined monthly sum into the fund, create a contractual relation, and the disability and retirement pay provided therein is not a gratuity but is adjusted compensation for services rendered” *Cole v. Foster*, 207 Ga.

416, 420 (4), 61 S.E.2d 814 (1950). *Dozens of other Georgia Supreme Court and Court of Appeals decisions have made the same determination over the past 70 years.*

79.

The Plan was restated in 2020 to incorporate the 2019 Amendment, and states that the purpose of the amendment was to comply with 26 U.S.C. Section 72(m)(7) of the Internal Revenue Code.

80.

At all times relevant to this Complaint, the City knew that no Internal Revenue Code section, including Section 72, restricts or limits a municipality from providing an early, unreduced retirement benefit for an employee disabled on the job and precluded from continuing to perform that job because of that disability, even though that employee is not prevented from having *any* gainful employment.

81.

26 U.S.C. Section 72(q) indeed applies to “premature distributions from annuity contracts,” such as public pension plans. Early/premature distributions from said plans are subject to a 10% tax penalty. Being “disabled” under Section 72(q)(2)(C) is an exception to the 10% penalty. The definition of “disabled” **for this purpose** is found in Section 72(m)(7):

For purposes of this section, an individual shall be considered to be disabled if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration. An individual shall not be considered to be disabled unless he furnishes proof of the existence thereof in such form and manner as the Secretary may require.

The obvious, exclusive applicability of this definition to Section 72 is made clear with the statute's qualifying preface, "For purposes of this section".

82.

There is no requirement anywhere in the Internal Revenue Code that someone receiving disability pension benefits must meet the Section 72(m)(7) definition of "disabled" in order to receive an accelerated award of creditable service such as that promised to Lt. Christensen under the Plan.

83.

To avoid any confusion, the Georgia Code specifically instructs the drafters and administrators of public pensions on what Internal Revenue Code sections and Federal Treasury Regulations their pension plans must conform with. Specifically, O.C.G.A. § 47-1-80.1(c) states that "The death and disability benefits provided by the plan shall be limited by the incidental benefit rule set forth in Section 401(a)(9)(G) of the federal Internal Revenue Code and Federal Treasury Regulation Section 1.401-1(b)(1)(i) or any successor to such regulation." To that end, Internal

Revenue Code Section 401(a)(9)(G) refers to death benefits, and Treas. Reg. § 1.401-1(b)(1)(i) expressly allows a public pension plan to provide for a pension due to disability—*without reference to Section 72(m)(7) or any other definition*. See Treas. Reg. § 1.401-1(b)(1)(i).

84.

Each basis provided to the Pension Board and the City Commissioners for amending the Plan was fraudulent and intentionally cooked up to prevent City employees from retiring with disability. This was done simply because the City did not want to pay what it owed to disabled employees.

The Final Step in the Plan’s Procedure
for Amending the Plan Was Never Taken

85.

Section 8.1 of the Plan enumerates the procedure for amending the Plan, a procedure which is binding on the City. The final step of this procedure states: “The City Commissioners then in office *will* adopt each amendment by placing their signatures thereon.” (emphasis added.)

86.

The City Commissioners never placed their signatures on the ordinance amending the Plan on June 3, 2019. Rather, only the City Clerk and the Mayor’s signatures appear on the ordinance. The City Commissioners never placed their

signatures on the ordinance amending the Plan at any other time or on any other document memorializing that amendment.

87.

The June 3, 2019 Amendment is null and void because the final step in the procedure was never taken.

The City Refuses to Fulfill its Contractual Obligation to Lt. Christensen

88.

Plaintiff emailed Ms. Jacobs-Walton on June 19 and July 22, 2019 to request meetings to discuss the City's benefit calculation and why it amounted to approximately *10%* of what she is entitled to under the Plan.

89.

On August 9, 2019, Plaintiff finally met with City Manager Andrea Arnold, Meredith Roark, and Ms. Jacobs-Walton, and all of them told Plaintiff that the City would not reevaluate her calculated monthly benefit.

90.

On September 25, 2019, Plaintiff finally received her spinal fusion surgery.

91.

Because she refused to retire with approximately 10% of the total retirement benefit that she is owed, Plaintiff took leave under FMLA following her surgery, and that leave ended in November 2019.

92.

At a meeting with City Manager Arnold and Ms. Jacobs-Walton on January 8, 2020, Ms. Arnold told Lt. Christensen that the City's pension plan "was never meant to be a disability plan. That's what Workers' Comp is for."

93.

Ms. Arnold is wrong. Workers' Compensation benefits are entirely separate from earned pension benefits, and Workers' Compensation benefits do not substitute for or replace pension benefits. Lt. Christensen has had a contract with the City for now 20 years to receive disability retirement benefits should she ever become Fully and Permanently Disabled. When that time came, the City broke its promise and breached the contract.

94.

In addition to presenting Lt. Christensen with this bogus, entirely unsupported number, the City threatened Lt. Christensen with termination if she did not, by March 13, 2020, either (a) accept this amount that violates the City's pension plan

or (b) apply for a position with the City as *a front desk attendant, HR generalist, after school counselor, swim instructor, tennis instructor, police officer, school crossing guard, swim team coach, tennis center program leader, lacrosse and soccer officials/scorekeeper*. These positions are in a completely different line of work and require completely different skill sets from career firefighter. Lt. Christensen's, disability precludes her from even considering most of these positions.

95.

As of the filing of this Complaint, the City has not terminated Lt. Christensen, but there is no job that she can do.

96.

At all times relevant, the City was a fiduciary with respect to the Plan and held a fiduciary duty to the employee participants in the Plan, including Plaintiff. This is evidenced by the fact that the City is identified as a fiduciary in the Plan itself.

Similarly Situated Males Retired with Full Disability

97.

In contrast to Plaintiff, in 2018, a fully vested, *male* firefighter working for the City of Decatur who had a spinal injury, surgery, and a similar determination of total disability by a doctor was permitted to retire with Total and Permanent Disability

under the same City of Decatur Retirement Plan at the full amount to which he was entitled.

98.

Like Plaintiff, the male comparator submitted his intent to retire in writing under the Plan.

99.

Like Plaintiff, the male comparator had held the same job duties as Plaintiff in all material respects and had the same supervisors as Plaintiff.

100.

Moreover, at least five other male, similarly situated firefighters employed by the City of Decatur were allowed to retire with Total and Permanent Disability in recent years.

The City Retaliates against Plaintiff for Taking FMLA leave

101.

While waiting for the City to fulfill its contractual obligation, Plaintiff sought work that she is qualified for in order to make ends meet while supporting her three infant children.

102.

After her FMLA leave expired in November 2019, the City intentionally interfered with Lt. Christensen's ability to perform her work.

103.

For example, for years Plaintiff has held the highest certifications for EMS and CPR in the nation and in the state of Georgia. When Plaintiff sought to teach EMS and CPR part time, the City refused to provide proof that she was affiliated with the City of Decatur Fire Department so that she could maintain her certification to teach CPR and EMS instructor license. As a result, Lt. Christensen lost her certification to teach CPR and EMS instructor license at the end of 2019.

104.

By losing her certification to teach CPR and EMS instructor license, Lt. Christensen is precluded from teaching EMS and CPR classes. As a result, Lt. Christensen has lost significant income.

Andrea Arnold Retaliates against Plaintiff for Filing an EEOC Charge of Discrimination

105.

Following Plaintiff's filing of her EEOC Charge alleging sex discrimination on March 11, 2020, Defendant Andrea Arnold—in March 2020—continued to refuse to pay Plaintiff's pension benefits, continued to refuse to allow her to retire

with Total and Permanent Disability, and refused to provide the documents and signatures that are required for Plaintiff to do part-time work with her certification to teach CPR and EMS instructor license (the same documents that the City withheld at the end of 2019 and additional documents that Ms. Arnold began withholding after Plaintiff filed her EEOC Charge).

106.

Ms. Arnold was selectively favorable in her actions with respect to employees who have not filed EEOC Charges against the City, as compared to Ms. Arnold's retaliatory actions against Plaintiff described in the immediately preceding paragraph.

SUBSTANTIVE ALLEGATIONS

COUNT ONE

Breach of Contract (Against City of Decatur)

107.

Plaintiff hereby incorporates paragraphs 1 through 106 as if fully stated herein to support this count.

108.

The laws establishing the retirement plan administered by Defendant City of Decatur constitute an element of Plaintiff's contract of employment which contract

is legally binding on the Defendant.¹ It is black-letter Georgia law that governmental pension plans are to be “liberally construed” in favor of the pensioner.

109.

Defendant City of Decatur’s action in unlawfully diminishing Plaintiff’s/Petitioner’s pension benefits constitute breach of the governing contract of employment.

110.

The misrepresentations and maneuvering of Defendant and its employees, including Jacobs-Walton, to prevent Plaintiff from receiving her vested retirement benefits prior to the 2019 Amendment, deceived Plaintiff into believing that the City did not intend to shortchange Plaintiff’s monthly retirement benefits by approximately 90%. In fact, Defendants misled Plaintiff in an effort to string her along until after the 2019 Amendment was established. These false and misleading statements were calculated to intentionally breach the contract with Plaintiff by which Defendant City of Decatur was already bound.

¹ See *Teachers Retirement System of Georgia v. Plymel*, 2009 Ga. App.-Lexis 172 (2/19/2009) (citing *Parrish v. Employees Retirement System*, 260 Ga. 613, 398 S.E.,2d 353 (1990)); *Withers v. Register*, 246 Ga. 158, 159, 269 S.E.2d 431, 432 (1980).

111.

While the 2019 Amendment is unconstitutional as applied to Lt. Christensen and unenforceable as a means to diminish Lt. Christensen's monthly benefit as a matter of law, Defendants' misrepresentations regarding the pension plan change constituted breaches of their contractual duties to keep Plaintiff accurately informed of pension plan operations.

112.

Defendant Jacobs-Walton's misrepresentation that she knew nothing about the 2019 Amendment that was pending a vote by the City Commission at the time Lt. Christensen was seeking to retire with Total and Permanent Disability constituted a breach of the contract and of the covenant of good faith and fair dealing because the misrepresentation allowed Defendants to deceptively avoid calculating Lt. Christensen's benefit under the Plan.

113.

Defendant Andrea Arnold and Connie Jacobs-Walton's misrepresentative statement that the Plan was never meant to be a disability plan constituted a breach of the contract and of the covenant of good faith and fair dealing because the misrepresentations also allowed Defendants to deceptively avoid calculating Lt. Christensen's benefit under the Plan and recalculate it at a fraction of the agreed-

upon value of the benefit.

114.

Defendant's actions altered the benefit formulas, calculations of pension benefits, and the actual benefit amounts payable to the participants in the Plan at the time of retirement.²

115.

As a consequence of Defendant's ongoing breach of Plaintiff's employment contract, Plaintiff has suffered pecuniary damages by way of unlawfully diminished pension payments. Further, Plaintiff will continue to suffer greatly reduced monthly pension benefits at the time of retirement unless: (a) the City fulfills its contractual obligations to Lt. Christensen under the Plan prior to the 2019 Amendment—the operative Plan for Lt. Christensen's disability retirement; (b) full credit is given her for all the years of benefit service Plaintiff would have accumulated at age 65 (33 years); (c) the City accepts the May 9, 2019 determination of Plaintiff's orthopedic surgeon that she is Totally and Permanently Disabled; and (d) the City determines that Plaintiff is entitled to monthly retirement benefits as calculated in the Plan: a minimum of \$3,508.38 per month.

² *Borders v. City of Atlanta*, 298 Ga. 188, 200, 779 S.E.2d 279, 287 (2015)

116.

Defendant City of Decatur's refusal to pay Plaintiff her full entitlement under the Defined Benefit Plan constitutes a continuing breach of contract.³

117.

As a direct and proximate result of Defendant's breach of contract, Plaintiff has been damaged and is entitled to the relief set forth in the Prayer for Relief below, including the properly calculated payout of her retirement pension benefits.

COUNT TWO

Violation of Georgia's Constitution Prohibiting "Impairing the Obligation of Contract" (Against City of Decatur)

118.

Plaintiff hereby incorporates paragraphs 1 through 106 as if fully stated herein to support this count.

119.

Defendant is in violation of GA. Constitution, Art. 1, Sec. 1, Pgh X which prohibits "laws impairing the obligation of contract."

³ *Borders v. City of Atlanta*, 298 Ga. 188, 200, 779 S.E.2d 279, 287 (2015)

120.

On June 3, 2019, the City Commissioners adopted an ordinance to amend the Plan in a way that diminished the benefits available to all employees, including public safety employees such as firefighters and police officers, who sought to retire with Total and Permanent Disability under the Plan. This Plan was a pension contract between the City of Decatur and its employees, including Plaintiff, which was immediately effective on January 1, 1997. On June 3, 2019, Defendants thereafter purported to enact an ordinance to amend the Plan in a way that eliminated pension benefits to employees who sought to retire with Total and Permanent Disability.

121.

As the contractual obligation to its employees for inclusion in the Plan was made effective on the effective date of January 1, 1997, and because Plaintiff performed services for the City while the Plan was in effect, the benefits are constitutionally vested. In addition, according to the Plan, Plaintiff became further “vested” after 10 Years of Benefit Service (in 2010, according to the terms of the Plan). Moreover, Plaintiff triggered the contingency to receive accelerated benefits with credited years of service when she became disabled from her accident in 2016 as defined by the Plan, and this also vested her rights in those benefits.

122.

Because Plaintiff's rights in her benefits were vested, when Defendant City of Decatur amended the Plan to alter benefit formulas, alter calculations of pension benefits, alter the actual benefit amounts payable to Lt. Christensen at the time of retirement, and effectively eliminate entirely the Total and Permanent Disability benefit to which Plaintiff is entitled, Defendant violated the Georgia constitutional provision prohibiting the impairment of contracts.⁴

123.

This Court is authorized to declare as void and a nullity, Defendant City of Decatur's legislative amendment of the Plan to the extent it diminishes or eliminates Plaintiff's right to monthly benefits for Total and Permanent Disability as calculated in the Plan prior to the 2019 Amendment and otherwise impaired, and continues to impair, Plaintiff's pension contract.

124.

As a direct and proximate result of Defendant's violation of the Impairment Clause of the Georgia Constitution, Plaintiff has been damaged and is entitled to the relief set forth in the Prayer for Relief below.

⁴ *Borders v. City of Atlanta*, 298 Ga. 188, 200, 779 S.E.2d 279, 287 (2015)

COUNT THREE

Actual Fraud: Fraud and Deceit (Against City of Decatur, Connie Jacobs-Walton)

125.

Plaintiff hereby incorporates paragraphs 1 through 106 as if fully stated herein to support this count.

126.

Based on the facts incorporated into this count, Defendant Connie Jacobs-Walton made multiple representations to Plaintiff about her retirement benefits and the process for receiving them, including by telling Plaintiff that she had to wait until July 1, 2019 to retire and by her silence when asked about the effect of the 2019 Amendment on Plaintiff's benefits. At the time she made these representations, Jacobs-Walton knew they were false, as evidenced by the fact that Jacobs-Walton was one of the engineers behind the 2019 Amendment. Jacobs-Walton made these representations with the intent to deceive and injure Plaintiff by denying her 90% of her retirement benefits.

127.

Because Jacobs-Walton made these representations, Plaintiff relied on those representations when she requested the first day of her retirement to be July 1, 2019—*after* the 2019 Amendment was set to pass and did not request for the first

day of her retirement to be June 1, 2019—*before* the 2019 Amendment was set to pass. Plaintiff made that decision strictly relying on Jacobs-Walton’s representations that she must wait until July 1, 2019 and that the Amendment would have no effect on her benefits.

128.

As a direct and proximate result of Jacob-Walton’s false representations, Plaintiff suffered losses and damage when her retirement was drastically reduced by approximately 90% because it was calculated after the Amendment went into effect.

COUNT FOUR

Breach of Fiduciary Duty (Against City of Decatur, Andrea Arnold)

129.

Plaintiff hereby incorporates paragraphs 1 through 106 as if fully stated herein to support this count.

130.

The Plan recognizes that its Board of Trustees members owe fiduciary duties to the Plan’s members such as Plaintiff. For example, the Plan states in Section 9.3: “The City will indemnify and hold harmless the Board and each member and each person to whom the Board has delegated responsibility under this Article, from all

joint or several liability for their acts and omissions and for the acts and omissions of their duly appointed agents in the administration of the Plan, **except for their own breach of fiduciary duty and/or willful misconduct.**”

131.

Under Georgia law,

The assets of a public retirement or pension system shall be held in trust, and it shall not be possible at the time prior to satisfaction of all liabilities to plan members and their beneficiaries under the public retirement or pension system for any part of said assets to be used for, or diverted to, purposes other than for the exclusive benefit of plan members and their designated beneficiaries and for paying reasonable expenses of the public retirement or pension system and trust fund.

O.C.G.A. § 47-1-85.

132.

O.C.G.A. § 53-12-240(b) states: “Upon acceptance of a trusteeship, the trustee shall administer the trust *in good faith, in accordance with its provision and purposes.*” *Id.* (emphasis added). Trustees of public retirement systems are bound “by the common law duties of the trustee found in Title 53.” O.C.G.A. § 47-20-5.

133.

Title 47 of the Georgia Code relating to trusts expressly and specifically applies to the City. O.C.G.A. § 47-1-3. Under Title 47, “[t]he trustee *shall be accountable to the beneficiary* for the trust property. A violation by the trustee of any duty that the trustee owes the beneficiary shall be a breach of trust. O.C.G.A. §

53-12-300. A “beneficiary” means “a person for whose benefit property is held in trust, *regardless of the nature of the interest*, and includes any beneficiary, whether vested or contingent, born or unborn, ascertained or unascertained.” O.C.G.A. § 53-12-2.

134.

Trustees and beneficiaries can vary the requirements of Title 47 by the trust instrument except regarding certain terms, including, with respect to “the duty of a trustee to administer the trust and to exercise discretionary powers in good faith...” O.C.G.A. § 53-12-7(4). Additionally, parties to a trust cannot contract to “relieve the trustee of liability for a breach of trust committed in bad faith or with reckless indifference to the interests of the beneficiaries.” O.C.G.A. § 53-12-303(a).

135.

Because the City and its Board of Trustees are fiduciaries of the Plan, and identified themselves as such in the Plan, they had a fiduciary duty to Plaintiff as a Plan participant and beneficiary of the contract. Because City Manager Arnold was a Trustee of the Plan and member of the Board of Trustees of the Retirement System for the City of Decatur, as defined by the Plan, she had a specific fiduciary duty to Plaintiff as a Plan participant and beneficiary of the contract.

136.

By failing to disclose the proposed Amendment to the Plan and its immanent effect on Plaintiff as she was seeking to retire, by falsely representing to the City Commissioners that the Amendment was required in order to comply with the Internal Revenue Code and the Georgia Constitution, and by altering the benefit formulas, calculations of pension benefits, and the actual benefit amounts payable to the participants in the Plan at the time of retirement, these Defendants breached their fiduciary duties to Plaintiff.

137.

As a direct and proximate result of Defendants' breaches, Plaintiff suffered losses and damage when her retirement was drastically reduced by approximately 90% because it was calculated after the Amendment went into effect.

COUNT FIVE

Negligent Misrepresentation (Against City of Decatur, Connie Jacobs-Walton)

138.

Plaintiff hereby incorporates paragraphs 1 through 106 as if fully stated herein to support this count.

139.

Defendant Connie-Jacobs Walton made multiple representations to the City Commissioners about the purported need to amend the disability provisions of the pension plan in order to comply with the IRS and the Georgia Constitution. These representations were false, and it was foreseeable that the City Commissioners would rely on these misrepresentations in deciding whether to adopt the ordinance amending the Plan. It was also foreseeable that City employees injured on the job, and Plaintiff specifically, would be injured as a result of these misrepresentations.

140.

As a direct and proximate result of Jacob-Walton's false representations to the City Commissioners, Plaintiff suffered losses and damage when her retirement was drastically reduced by approximately 90% because it was calculated after the Amendment went into effect.

141.

Defendant Connie-Jacobs Walton also made multiple representations to Plaintiff about her retirement benefits and the process for receiving them, including by telling Plaintiff that she had to wait until July 1, 2019 to retire and by her silence when asked about whether the 2019 Amendment would affect Plaintiff's benefits. These representations were false. Because Jacobs-Walton made these

misrepresentations, Plaintiff relied on those misrepresentations when she requested the first day of her retirement to be July 1, 2019—*after* the 2019 Amendment was set to pass and did not request for the first day of her retirement to be June 1, 2019—*before* the 2019 Amendment was set to pass. Plaintiff made that decision strictly relying on Jacobs-Walton’s misrepresentations that she must wait until July 1, 2019 and that the Amendment would have no effect on her benefits.

142.

As a direct and proximate result of Jacob-Walton’s false representations, Plaintiff suffered losses and damage when her retirement was drastically reduced by approximately 90% because it was calculated after the Amendment went into effect.

COUNT SIX

Promissory Estoppel (Against City of Decatur)

143.

Plaintiff hereby incorporates paragraphs 1 through 106 as if fully stated herein to support this count.

144.

Defendant Connie-Jacobs Walton made multiple misrepresentations to Plaintiff about her retirement benefits and the process for receiving them, including

by telling Plaintiff that she had to wait until July 1, 2019 to retire and by her silence when asked about whether the 2019 Amendment would affect Plaintiff's benefits. Because Jacobs-Walton made these misrepresentations, Plaintiff relied on those misrepresentations when she requested the first day of her retirement to be July 1, 2019—*after* the 2019 Amendment was set to pass and did not request for the first day of her retirement to be June 1, 2019—*before* the 2019 Amendment was set to pass. Plaintiff made that decision strictly relying on Jacobs-Walton's misrepresentations that she must wait until July 1, 2019 and that the Amendment would have no effect on her benefits. Plaintiff's reliance was reasonable, at the very least, because Jacobs-Walton was the Director of Human Resources and the gatekeeper to Plaintiff's retirement.

145.

As a direct and proximate result of Jacob-Walton's misrepresentations, Plaintiff suffered losses and damage when her retirement was drastically reduced by approximately 90% because it was calculated after the Amendment went into effect. Because of Jacob-Walton's misrepresentations, the City is estopped from denying her the benefits in the Plan as they were to be calculated prior to the 2019 Amendment.

COUNT SEVEN

Respondeat Superior (Against City of Decatur)

146.

Plaintiff hereby incorporates paragraphs 1 through 106 as if fully stated herein to support this count.

147.

Because Jacobs-Walton and Andrea Arnold were acting within the scope of their employment and official duties, the City is liable for their actions as alleged in this Complaint.

COUNT EIGHT

Violation of the Equal Protection of the Law Pursuant to 42 U.S.C. Section 1983 (Against Andrea Arnold and Connie Jacobs-Walton in Their Individual Capacities)

148.

Plaintiff hereby incorporates paragraphs 1 through 106 as if fully stated herein to support this count.

149.

Defendants have subjected, caused to be subjected, and continue to subject Plaintiff to deprivation of the right to equal protection of the laws, as secured by the Fourteenth Amendment to the U.S. Constitution, by way of eliminating pension benefits for retirees who are disabled, including firefighters and police officers who

were disabled due to their service to the City, while simultaneously not eliminating the pension benefits of retirees who are not disabled.

150.

Defendants' selective favorable actions with respect to non-disabled Plan participants and not all Plan participants, under the Plan applicable to all Plan participants is "arbitrary and capricious," and a violation of the equal protection of the laws.

151.

Defendants have subjected, caused to be subjected, and continue to subject Plaintiff to deprivation of the right to equal protection of the laws, as secured by the Fourteenth Amendment to the U.S. Constitution, by way of eliminating her pension benefits, while simultaneously not eliminating the pension benefits of her male comparator who is similarly situated in all material respects.

152.

Defendants' selective favorable actions with respect to Plaintiff's male comparator, under the Plan applicable to all Plan participants, did not further an important government interest, nor did it do so by means that were substantially related to that interest, and thus Defendants' actions were a violation of the equal protection of the laws.

153.

Defendants have subjected, caused to be subjected, and continue to subject Plaintiff to deprivation of the right to equal protection of the laws, as secured by the Fourteenth Amendment to the U.S. Constitution, by way of retaliating against Plaintiff for exercising her statutory rights to complain about unlawful discrimination when she filed her Charge of Discrimination with the EEOC on March 11, 2020. Defendants' retaliation includes conduct that occurred in the very same month of March 2020: continuing to refuse to pay her pension benefits, continuing to refuse to allow her to retire with Total and Permanent Disability, and refusing to provide the documents and signatures that are required for Plaintiff to do part-time work with her EMS/CPR certifications.

154.

Defendants' selective favorable actions with respect to employees who have not filed EEOC Charges against the City, as compared to Defendants' retaliatory actions against Plaintiff, amounts to a separate and distinct violation of the equal protection of the laws.

155.

As a direct and proximate result of Defendants' violation of the Equal Protection Clause and 42 U.S.C. §1983, Plaintiff has been damaged and is entitled to the relief set forth in the Prayer for Relief below.

COUNT NINE

Violation of Due Process Pursuant to 42 U.S.C. Section 1983
(Against Andrea Arnold and Connie Jacobs-Walton in Their Individual
Capacities)

156.

Plaintiff hereby incorporates paragraphs 1 through 106 as if fully stated herein to support this count.

157.

Defendants have subjected, caused to be subjected, and continue to subject Plaintiff to deprivation of the right to due process, as secured by the Fourteenth Amendment to the U.S. Constitution, by way of eliminating her vested property rights to her pension benefits without providing her notice, some kind of hearing, or a decision by a neutral decision maker.

158.

As a direct and proximate result of Defendants' violation of the Due Process Clause and 42 U.S.C. §1983, Plaintiff has been damaged and is entitled to the relief set forth in the Prayer for Relief below.

COUNT TEN

FMLA Retaliation (Against City of Decatur)

159.

Plaintiff hereby incorporates paragraphs 1 through 106 as if fully stated herein to support this count.

160.

Following Plaintiff's FMLA leave in November 2019, Defendant City of Decatur retaliated against Plaintiff by sending a letter to Plaintiff in November 2019 threatening her with termination instead of permitting her to retire with Total and Permanent Disability as was her contractual right. Defendant's retaliation also includes refusing to provide the documents and signatures that are required for Plaintiff to do part-time work with her certification to teach CPR and EMS instructor licenses. As a direct result, Lt. Christensen lost her certification to teach CPR and EMS instructor licenses.

161.

As a direct and proximate result of Defendant's violation of the Family and Medical Leave Act, Plaintiff has been damaged and is entitled to the relief set forth in the Prayer for Relief below.

COUNT ELEVEN

Defendant City of Decatur's Purported Amendment of the Plan Affecting Plaintiff's Defined Benefit Plan Entitlements Is Null & Void for All Purposes

162.

Plaintiff hereby incorporates paragraphs 1 through 106 as if fully stated herein to support this count.

163.

Defendant City of Decatur and its City Commissioners have never validly adopted its purported June 3, 2019 Amendment, affecting Plaintiffs' Defined Benefit Plan entitlements under the Plan, because the City Commissioners then in office (or otherwise) never placed their signatures on the ordinance purporting to amend the Plan or on any other document memorializing that amendment. Because the City was bound to follow the Plan's procedures for adopting a valid amendment to the Plan, in the absence the City Commissioners' signatures, the June 3, 2019 Amendment is null and void for all purposes.

COUNT TWELVE

Declaratory Judgment (Against City of Decatur)

164.

Plaintiff hereby incorporates paragraphs 1 through 106 as if fully stated herein to support this count.

165.

Pursuant to 28 U.S.C. §2201, Plaintiff seeks relief from the uncertainty and insecurity arising from Defendant's acts and/or failures to act with respect to Plaintiff's lawful retirement entitlements and rights to her defined benefit pension plan and an accurate calculation of her monthly pension benefits. Without such declaratory relief by this Court, Plaintiff is without sufficient knowledge of her pension entitlements to make a decision regarding her retirement. Plaintiff is also without sufficient knowledge to arrange her financial affairs in retirement without this Court declaring her lawful entitlements and rights to her defined benefit pension plan and an accurate calculation of her monthly pension benefits.

166.

Pursuant to 28 U.S.C. §2201, this Court has the power to declare the rights and obligations of the instant parties, and to issue a declaration that has the force and effect of a final judgment or decree. Such declaratory relief is available

notwithstanding the availability of other adequate legal or equitable remedies. Pursuant to Fed. R. Civ. P. 38, issues of fact regarding a declaration of rights shall be triable by a jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for the following relief:

- A. That a jury trial be had on all issues so triable;
- B. Compensatory damages against the City of Decatur;
- C. Compensatory and Punitive damages against Defendants Arnold and Jacobs-Walton individually;
- D. Declaratory relief, including Declaratory Judgment on the procedural validity and constitutionality of Defendant City of Decatur's actions under the Georgia Constitution when it eliminated Plaintiff's disability retirement benefits;
- E. Injunctive relief to prevent Defendants from engaging in such discriminatory and retaliatory conduct in the future;
- F. Injunctive relief to prevent Defendants from continuing to deny Plaintiff her right to retire with Total and Permanent Disability under the Plan with a monthly benefit calculated without the 2019 Amendment;

- G. Costs incurred in bringing this action, including Plaintiff's attorneys' fees;
- H. Interest on all monetary awards; and
- I. Such other and further relief as the Court deems appropriate under the circumstances of this case.

Respectfully submitted this 21st day of October, 2020.

BUCKLEY BEAL, LLP

By: /s/Edward D. Buckley
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CIVIL COVER SHEET

The JS44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form is required for the use of the Clerk of Court for the purpose of initiating the civil docket record. (SEE INSTRUCTIONS ATTACHED)

I. (a) PLAINTIFF(S)
Bridgit Christensen

DEFENDANT(S)
City of Decatur, Georgia, Andrea Arnold, in her individual and official capacities, and Connie Jacobs-Walton, in her individual capacity

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF DeKalb
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS)
Edward D. Buckley and Andrew R. Tate
Buckley Beal, LLP
600 Peachtree Street NE, Suite 3900
Atlanta, GA 30308
edbuckley@buckleybeal.com; atate@buckleybeal.com;
(404) 781-1100

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION
(PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. GOVERNMENT PLAINTIFF
- 3 FEDERAL QUESTION (U.S. GOVERNMENT NOT A PARTY)
- 2 U.S. GOVERNMENT DEFENDANT
- 4 DIVERSITY (INDICATE CITIZENSHIP OF PARTIES IN ITEM III)

III. CITIZENSHIP OF PRINCIPAL PARTIES
(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)
(FOR DIVERSITY CASES ONLY)

- | PLF | DEF | | PLF | DEF | |
|----------------------------|----------------------------|---|----------------------------|----------------------------|---|
| <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | CITIZEN OF THIS STATE | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 | INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | CITIZEN OF ANOTHER STATE | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 | INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | CITIZEN OR SUBJECT OF A FOREIGN COUNTRY | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 | FOREIGN NATION |

IV. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- 1 ORIGINAL PROCEEDING
- 2 REMOVED FROM STATE COURT
- 3 REMANDED FROM APPELLATE COURT
- 4 REINSTATED OR REOPENED
- 5 TRANSFERRED FROM ANOTHER DISTRICT (Specify District)
- 6 MULTIDISTRICT LITIGATION - TRANSFER
- 7 APPEAL TO DISTRICT JUDGE FROM MAGISTRATE JUDGE JUDGMENT
- 8 MULTIDISTRICT LITIGATION - DIRECT FILE

V. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE - DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Unlawful retaliation in violation of the FMLA, 29 U.S.C. § 2601 et seq.; and sex discrimination in violation of the Equal Protection Clause of the Constitution of the United States asserted via 42 U.S.C. § 1983

(IF COMPLEX, CHECK REASON BELOW)

- 1. Unusually large number of parties.
- 2. Unusually large number of claims or defenses.
- 3. Factual issues are exceptionally complex.
- 4. Greater than normal volume of evidence.
- 5. Extended discovery period is needed.
- 6. Problems locating or preserving evidence.
- 7. Pending parallel investigations or actions by government.
- 8. Multiple use of experts.
- 9. Need for discovery outside United States boundaries.
- 10. Existence of highly technical issues and proof.

CONTINUED ON REVERSE

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT \$ _____ APPLYING IFP _____ MAG. JUDGE (IFP) _____
 JUDGE _____ MAG. JUDGE _____ (Referral) NATURE OF SUIT _____ CAUSE OF ACTION _____

VI. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT - "0" MONTHS DISCOVERY TRACK

- 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
- 152 RECOVERY OF DEFAULTED STUDENT LOANS (Excl. Veterans)
- 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS

CONTRACT - "4" MONTHS DISCOVERY TRACK

- 110 INSURANCE
- 120 MARINE
- 130 MILLER ACT
- 140 NEGOTIABLE INSTRUMENT
- 151 MEDICARE ACT
- 160 STOCKHOLDERS' SUITS
- 190 OTHER CONTRACT
- 195 CONTRACT PRODUCT LIABILITY
- 196 FRANCHISE

REAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 210 LAND CONDEMNATION
- 220 FORECLOSURE
- 230 RENT LEASE & EJECTMENT
- 240 TORTS TO LAND
- 245 TORT PRODUCT LIABILITY
- 290 ALL OTHER REAL PROPERTY

TORTS - PERSONAL INJURY - "4" MONTHS DISCOVERY TRACK

- 310 AIRPLANE
- 315 AIRPLANE PRODUCT LIABILITY
- 320 ASSAULT, LIBEL & SLANDER
- 330 FEDERAL EMPLOYERS' LIABILITY
- 340 MARINE
- 345 MARINE PRODUCT LIABILITY
- 350 MOTOR VEHICLE
- 355 MOTOR VEHICLE PRODUCT LIABILITY
- 360 OTHER PERSONAL INJURY
- 362 PERSONAL INJURY - MEDICAL MALPRACTICE
- 365 PERSONAL INJURY - PRODUCT LIABILITY
- 367 PERSONAL INJURY - HEALTH CARE/ PHARMACEUTICAL PRODUCT LIABILITY
- 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

TORTS - PERSONAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 370 OTHER FRAUD
- 371 TRUTH IN LENDING
- 380 OTHER PERSONAL PROPERTY DAMAGE
- 385 PROPERTY DAMAGE PRODUCT LIABILITY

BANKRUPTCY - "0" MONTHS DISCOVERY TRACK

- 422 APPEAL 28 USC 158
- 423 WITHDRAWAL 28 USC 157

CIVIL RIGHTS - "4" MONTHS DISCOVERY TRACK

- 440 OTHER CIVIL RIGHTS
- 441 VOTING
- 442 EMPLOYMENT
- 443 HOUSING/ ACCOMMODATIONS
- 445 AMERICANS with DISABILITIES - Employment
- 446 AMERICANS with DISABILITIES - Other
- 448 EDUCATION

IMMIGRATION - "0" MONTHS DISCOVERY TRACK

- 462 NATURALIZATION APPLICATION
- 465 OTHER IMMIGRATION ACTIONS

PRISONER PETITIONS - "0" MONTHS DISCOVERY TRACK

- 463 HABEAS CORPUS- Alien Detainee
- 510 MOTIONS TO VACATE SENTENCE
- 530 HABEAS CORPUS
- 535 HABEAS CORPUS DEATH PENALTY
- 540 MANDAMUS & OTHER
- 550 CIVIL RIGHTS - Filed Pro se
- 555 PRISON CONDITION(S) - Filed Pro se
- 560 CIVIL DETAINEE: CONDITIONS OF CONFINEMENT

PRISONER PETITIONS - "4" MONTHS DISCOVERY TRACK

- 550 CIVIL RIGHTS - Filed by Counsel
- 555 PRISON CONDITION(S) - Filed by Counsel

FORFEITURE/PENALTY - "4" MONTHS DISCOVERY TRACK

- 625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
- 690 OTHER

LABOR - "4" MONTHS DISCOVERY TRACK

- 710 FAIR LABOR STANDARDS ACT
- 720 LABOR/MGMT. RELATIONS
- 740 RAILWAY LABOR ACT
- 751 FAMILY and MEDICAL LEAVE ACT
- 790 OTHER LABOR LITIGATION
- 791 EMPL. RET. INC. SECURITY ACT

PROPERTY RIGHTS - "4" MONTHS DISCOVERY TRACK

- 820 COPYRIGHTS
- 840 TRADEMARK
- 880 DEFEND TRADE SECRETS ACT OF 2016 (DTSA)

PROPERTY RIGHTS - "8" MONTHS DISCOVERY TRACK

- 830 PATENT
- 835 PATENT-ABBREVIATED NEW DRUG APPLICATIONS (ANDA) - a/k/a Hatch-Waxman cases

SOCIAL SECURITY - "0" MONTHS DISCOVERY TRACK

- 861 HIA (1395ff)
- 862 BLACK LUNG (923)
- 863 DIWC (405(g))
- 863 DIWW (405(g))
- 864 SSID TITLE XVI
- 865 RSI (405(g))

FEDERAL TAX SUITS - "4" MONTHS DISCOVERY TRACK

- 870 TAXES (U.S. Plaintiff or Defendant)
- 871 IRS - THIRD PARTY 26 USC 7609

OTHER STATUTES - "4" MONTHS DISCOVERY TRACK

- 375 FALSE CLAIMS ACT
- 376 Qui Tam 31 USC 3729(a)
- 400 STATE REAPPORTIONMENT
- 430 BANKS AND BANKING
- 450 COMMERCE/ICC RATES/ETC.
- 460 DEPORTATION
- 470 RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS
- 480 CONSUMER CREDIT
- 485 TELEPHONE CONSUMER PROTECTION ACT
- 490 CABLE/SATELLITE TV
- 890 OTHER STATUTORY ACTIONS
- 891 AGRICULTURAL ACTS
- 893 ENVIRONMENTAL MATTERS
- 895 FREEDOM OF INFORMATION ACT 899
- 899 ADMINISTRATIVE PROCEDURES ACT / REVIEW OR APPEAL OF AGENCY DECISION
- 950 CONSTITUTIONALITY OF STATE STATUTES

OTHER STATUTES - "8" MONTHS DISCOVERY TRACK

- 410 ANITITRUST
- 850 SECURITIES / COMMODITIES / EXCHANGE

OTHER STATUTES - "0" MONTHS DISCOVERY TRACK

- 896 ARBITRATION (Confirm / Vacate / Order / Modify)

*** PLEASE NOTE DISCOVERY TRACK FOR EACH CASE TYPE. SEE LOCAL RULE 26.3**

VII. REQUESTED IN COMPLAINT:

- CHECK IF CLASS ACTION UNDER F.R.Civ.P. 23 DEMAND \$ _____
- JURY DEMAND YES NO (CHECK YES ONLY IF DEMANDED IN COMPLAINT)

VIII. RELATED/REFILED CASE(S) IF ANY

JUDGE _____ DOCKET NO. _____

CIVIL CASES ARE DEEMED RELATED IF THE PENDING CASE INVOLVES: (CHECK APPROPRIATE BOX)

- 1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 2. SAME ISSUE OF FACT OR ARISES OUT OF THE SAME EVENT OR TRANSACTION INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 4. APPEALS ARISING OUT OF THE SAME BANKRUPTCY CASE AND ANY CASE RELATED THERETO WHICH HAVE BEEN DECIDED BY THE SAME BANKRUPTCY JUDGE.
- 5. REPETITIVE CASES FILED BY PRO SE LITIGANTS.
- 6. COMPANION OR RELATED CASE TO CASE(S) BEING SIMULTANEOUSLY FILED (INCLUDE ABBREVIATED STYLE OF OTHER CASE(S)):

- 7. EITHER SAME OR ALL OF THE PARTIES AND ISSUES IN THIS CASE WERE PREVIOUSLY INVOLVED IN CASE NO. _____, WHICH WAS DISMISSED. This case IS IS NOT (check one box) SUBSTANTIALLY THE SAME CASE.

/s/ Edward D. Buckley

October 21, 2020

SIGNATURE OF ATTORNEY OF RECORD

DATE