

STATE OF NORTH CAROLINA

**FILED**

THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

COUNTY OF GASTON

2016 OCT 11 AM 9:50

12-CVS-1547

I. BEVERLY LAKE, JOHN B. LEWIS, OR, EVERETTE M. LATTA, PORTER L. McATEER, ELIZABETH S. McATEER, ROBERT C. HANES, BLAIR J. CARPENTER, MARILYN L. FUTRELLE, FRANKLIN E. DAVIS, ESTATE OF JAMES D. WILSON, BENJAMIN E. FOUNTAIN, JR., FAYE IRIS Y. FISHER, STEVE FRED BLANTON, HERBERT W. COOPER, ROBERT C. HAYES, JR., STEPHEN B. JONES, MARCELLUS BUCHANAN, DAVID B. BARNES, BARBARA J. CURRIE, CONNIE SAVELL, ROBERT B. KAISER, JOAN ATWELL, ALICE P. NOBLES, BRUCE B. JARVIS, ROXANNA J. EVANS, and JEAN C. NARRON, and all others similarly situated,

Plaintiffs,

vs.

STATE HEALTH PLAN FOR TEACHERS AND STATE EMPLOYEES, a corporation, formerly Known as the North Carolina Teachers and State Employees' Comprehensive Major Medical Plan, TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM OF NORTH CAROLINA, a corporation, BOARD OF TRUSTEES TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM OF NORTH CAROLINA, a body politic and corporate, JANET COWELL, in her official capacity as Treasurer of the State of North Carolina, and the STATE OF NORTH CAROLINA,

Defendants.

**ORDER GRANTING  
PLAINTIFFS' MOTION FOR  
CLASS CERTIFICATION**

**THIS MATTER** came on for hearing before the undersigned Superior Court Judge, specially assigned to this case pursuant to Rule 2.1 of the General Rules of Practice for the Superior and District Courts, on September 2, 2016 in Forsyth County, on Plaintiffs' Motion for Class Certification. The Court considered the pleadings, the discovery and other materials submitted by the parties, the authorities cited by the parties and the arguments of counsel.

The Court makes the following Finding of Facts and Conclusions of Law:

**FINDINGS OF FACT and CONCLUSIONS OF LAW**

1. There are twenty-six (26) named Plaintiffs in this action.
2. Each of the named Plaintiffs is a retired employee of the State of North Carolina.
3. Plaintiffs contend that as a term of their employment by the State of North Carolina, each was, after vesting, contractually entitled to a noncontributory "80/20" healthcare benefit for the entirety of their retirement and access to a partially contributory "90/10" healthcare benefit for the entirety of their retirement (hereinafter the "Retirement Health Benefits").
4. Plaintiffs further claim that Defendants breached this contract by unilaterally reducing or terminating these Retirement Health Benefits through the enactment of Session Laws 2009-16, 2011-96 and 2011-85.
5. The named Plaintiffs seek to represent as a class all retired state employees who they allege were contractually entitled to the Retirement Health Benefits.
6. A class exists as to the claims alleged in this action by the named Plaintiffs.
7. An issue of fact and/or law common to all Plaintiffs is whether they had employment contracts with the State as they allege and whether the State breached those contracts.
8. Each named Plaintiff and each member of the Class has a direct, compelling and genuine personal interest in the common issues of law and/or fact, which issues predominate over issues affecting individual members of the Class.

9. The named Plaintiffs, as representatives of the Class, can and will fairly and adequately represent the interest of all members of the Class.
10. There is no conflict of interest between the named representatives and the members of the Class.
11. For any members of the Class who reside outside of the jurisdiction, the named Plaintiffs can adequately represent their interests, in that the relief sought is of the same type for all members of the Class.
12. There are at least 222,000 retirees in the class, as defined below.
13. Due to the numerous members of the class, it would be difficult or inconvenient to join all of the members of the Class.
14. Due to the numerous members of the class, it would be impracticable to join all of the members of the Class.
15. The names and number of members of the Class are available to the State in records that it maintains. Said records have been produced to the Plaintiffs' counsel at the direction of this court in the form of a spreadsheet referred to previously as the "Class Spreadsheet."
16. The type of relief sought by the named Plaintiffs for themselves and for the members of the Class is the same.
17. It is judicially more efficient to resolve the issues of this action affecting the named Plaintiffs and the members of the Class in a class action than in individual actions.
18. Trial of individual actions for all of the named Plaintiffs and the members of the Class has the potential for inconsistent adjudications.

19. The named Plaintiffs and the members of the Class are represented by competent and established law firms with ample expertise and experience in class actions and complex civil litigation.
20. Adjudication of this matter as a class action will require administration, including but not limited to notice to class members.
21. Counsel for the named Plaintiffs are willing and able to provide notice to the Class.
22. The named Plaintiffs allege that, for at least a portion of the duration of their retirements, they did not receive the healthcare benefits that they contend they were and are contractually entitled to receive.
23. "Rule 23 of the North Carolina Rules of Civil Procedure should receive a liberal construction, and it should not be loaded down with arbitrary and technical restrictions." English v. Holden Beach Realty Corp., 41 N.C.App. 1, 9 (1979).

Based on the foregoing Findings of Fact and Conclusions of Law, it is therefore **ORDERED** that Plaintiffs' Motion for Class Certification be and is hereby **GRANTED** and the Court further decrees and orders as follows:

1. The Plaintiff Class shall consist of (1) All members (or their Estates or personal representatives if they have deceased since July 1, 2009) of the N.C. Teachers' and State Employees' Retirement System ("TSERS") who retired before January 1, 1988; (2) TSERS members (or their Estates or personal representatives if they have deceased since July 1, 2009) who retired on or

after January 1, 1988, were hired before October 1, 2006 and have 5 or more years of contributory service with the State and (3) surviving spouses (or their Estates or personal representatives if they have deceased since July 1, 2009) of (i) deceased retired employees, provided the death of the former plan member occurred prior to October 1, 1986; and (ii) deceased teachers, State employees, and members of the General Assembly who are receiving a survivor's alternate benefit under any of the State-supported retirement programs, provided the death of the former plan member occurred prior to October 1, 1986. .

2. Subject to further order, the Court appoints as Lead Class Counsel herein Michael L. Carpenter, of Gray, Layton, Kersh, Solomon, Furr & Smith, P.A., 516 S New Hope Rd, Gastonia, NC 28054 and Gary W. Jackson, of Rabon Law Firm, PLLC, 225 E. Worthington Avenue, Suite 100, Charlotte, NC 28203.
3. Subject to further order, the Court appoints as Class Administrators herein Michael L. Carpenter, of Gray, Layton, Kersh, Solomon, Furr & Smith, P.A., 516 S New Hope Rd, Gastonia, NC 28054 and Gary W. Jackson, of Rabon Law Firm, PLLC, 225 E. Worthington Avenue, Suite 100, Charlotte, NC 28203.
4. The members of the Class shall be given the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort of the parties. Prior to the issuance of this

Order, the Court issued an Order approving the form, procedure and timing of the requisite notice and reference is made thereto pursuant to Rule 10(c).

This the 6 day of October, 2016.

*Edwin G. Wilson, Jr.*

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Hon. Edwin G. Wilson, Jr.  
Designated Superior Court Judge (Rule 2.1)