

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

MADELINE REED, RONALD SUMTER, STEPHANIE PEMBERTON, and
CYNTHIA SPENCE, on behalf of themselves and all other similarly situated
pension plan participants, and on behalf of the J-CAP PENSION PLAN,

Plaintiffs,

**Civ. Action No. 18-cv-3114
(AMD)(JO)**

v.

QUEENS VILLAGE COMMITTEE FOR MENTAL HEALTH FOR JAMAICA
COMMUNITY ADOLESCENT PROGRAM, INC., Plan Administrator, The J-
Cap Pension Plan; DIANE GONZALEZ, NILDA RUIZ, NANCY BRINN,
Fiduciaries, The J-Cap Pension Plan; DELAWARE CHARTER GUARANTY
AND TRUST COMPANY, d/b/a/ Principal Trust Company,

Defendants.

**FIRST AMENDED CLASS ACTION COMPLAINT UNDER
ERISA FOR BREACH OF FIDUCIARY DUTY; INJUNCTIVE,
AND OTHER REMEDIAL AND APPROPRIATE EQUITABLE
RELIEF**

PRELIMINARY STATEMENT

1. Plaintiffs' claims arise under ERISA, 29 U.S.C. § 1001 et seq. The plaintiffs are participants in the defined contribution pension plan (pension plan), that their employer, the Queens Village Committee for Mental Health for Jamaica Community Adolescent Program, Inc. (Queens Village), sponsored for its employees. Queens Village also is the plan's administrator and named fiduciary.

2. Queens Village states that it is a non-profit 501(c)(3) corporation primarily engaged in residential treatment programs in Jamaica, New York, for the treatment of drug and alcohol abusers. Queens Village acquired land and constructed a residential treatment facility in Jamaica, Queens.

3. Queens Village receives funds in the form of grants from the New York State Office of Alcohol and Substance Abuse Services (OASAS), its main funding source. Queens Village also receives revenue from welfare, other governmental agencies, private contributions, and from other sources.

4. For the 2008-2010 pension plan years, the terms of the pension plan required Queens Village to contribute 7% of each participant's compensation (up to the social security earnings limit, and a higher percent of compensation for earnings above that limit) with Queens Village into the pension plan on their behalf, to be allocated to their individual accounts. The OASAS grant provides some or all of the funding for the pension plan contributions that Queens Village estimated it would have to make each year.

5. Queens Village failed to make all or almost all of its required contributions into the pension plan for the 2008-2010 pension plan years. For each of those plan years, Queens Village was required to contribute approximately \$200,000 per year into the plan. For subsequent plan years through at least the 2016 plan year, on information and belief, Queens Village failed to contribute the amount it was required by the terms of the plan, and by law, to contribute into the plan for that plan year.

6. On the pension plan's annual report to the U.S. Department of Labor (Form 5500 SF) for the 2009 plan year and for all subsequent pension plan years, Queens Village concealed

its failure to make those required contributions. The instructions for completing the annual report stated that contributions not made in one year had to be included as a required contribution on the report for the next plan year. The requirement carried over until the money was paid into the pension plan.

7. On the 5500 SF annual report for the 2009 plan year and for all subsequent plan years, Queens Village failed to list the contributions not made for any prior year as a required contribution in each subsequent year. In each of those plan years, participants eligible for a contribution did not receive the amounts that should have been allocated to their accounts, as well as the earnings that timely contributions would have produced for their accounts.

8. For some plan years after the 2010 plan year, Queens Village also failed to provide the Trustee, Delaware Charter Guaranty and Trust Co., conducting business as Principal Trust Co. (“Principal”) with the information necessary to allow Principal to allocate any money contributed into the pension plan into the appropriate accounts in the plan, causing participants to lose contributions and earnings.

9. Queens Village owed the pension plan a debt for failing to make its contractually required pension plan contributions. The pension plan’s right to collect on that debt, a “chase in action,” is an asset of the pension plan. Rahm v. Halpin, 566 F.3d 286, 291 (2d Cir. 2009). When an employer fails to pay contributions into a plan and the plan’s fiduciaries do not pursue the claim, the Secretary of Labor generally files suit against the plan’s fiduciaries for failing to enforce the plan’s rights against the employer. Id., at 289-90.

10. Principal met with Queens Village and the three individually named fiduciaries at some point after contributions were due for the 2010 plan year in 2012. After learning that

Queens Village would not be enforcing the plan's right to payment for the unpaid contributions for the 2008-2010 plan years, Principal failed to alert the plan participants that Queens Village had no intention of enforcing the plan's right to payment of the unpaid contributions.

11. The Queens Village financial statements for its fiscal year ending on June 30, 2016, state that Queens Village paid off the mortgage on the building or buildings in which it operates the residential treatment facility, that it took out in 1998. On or about March 16, 2016, the Office of the City Register of the City of New York recorded a Satisfaction of Mortgage document, stating that as of February 29, 2016, Queens Village had satisfied its mortgage on the entire lot and building at 116-30 Sutphin Boulevard, Queens, New York. This land and the building are worth millions of dollars.

12. By early 2016, at the latest, Queens Village had assets available to pay or secure the payment of the money that it owed the pension plan. When Queens Village continued to fail to enforce the plan's right to payment, a co-fiduciary with respect to the J-CAP Pension Plan, Principal, then failed to bring a civil action against named fiduciary Queens Village for failing to enforce the plan's right to payment of the unpaid contributions, to recover the plan's loss. Queens Village had and has assets from which the plan's loss could be recovered.

13. This civil action is brought by the named plaintiffs on behalf of themselves and all participants (and their beneficiaries and estates) in the pension plan eligible for a contribution during any plan year starting in the 2008 plan year and through and including the 2016 pension plan year (on information and belief, the most recent plan year for which the due date for the employer's contributions has passed) for which a contribution is due and has not been fully paid (with all lost earnings), and on behalf of the pension plan itself, against the plan's administrator

and named fiduciary, the Queens Village Committee for Mental Health, and plan fiduciaries Diane Gonzalez, Nancy Brinn and Nilda Ruiz, and against Principal, the Plan trustee.

14. ERISA section 502(a)(2), 29 U.S.C. §1132(a)(2), authorizes this action by the participants in a representative capacity against the plan fiduciaries. L.I. Head Start Child Development Services, Inc. v. Economic Opportunity Council of Suffolk, Inc., 710 F.3d 57, 65-66 (2d Cir. 2013). The action by the participants for breach of fiduciary duty directly against named fiduciary Queens Village and plan fiduciaries Gonzalez, Brinn and Ruiz is authorized by ERISA section 502(a)(3), 29 U.S.C. §1132(a)(3). The claim against Principal, for co-fiduciary liability, is authorized by ERISA section 405(a), 29 U.S.C. §1105(a), and enforced through ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3). That co-fiduciary liability applies to any co-fiduciary which has actual knowledge of a breach of fiduciary duty by another fiduciary and fails to take reasonable steps to remedy the breach, and the other fiduciary had assets available from which any portion of the unpaid funds could be recovered. Silverman v. Mutual Benefit Life Insurance Co., 138 F.3d 98, and at 105 (2d Cir. 1998)((Jacobs and Meskill, concurring).

JURISDICTION AND VENUE

15. This Court has subject matter jurisdiction under ERISA section 502(e)(1), 29 U.S.C. § 1132(e)(1). This is a complaint by pension plan participants alleging violations by pension plan fiduciaries of provisions of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq. (“ERISA”).

16. Venue is proper in this district, under ERISA section 502(e)(2), 29 U.S.C. § 1132(e)(2). The Queens Village Committee for Mental Health operates the in-patient care

facility at 116-30 Sutphin Blvd., Jamaica, New York 11434-1527, in this district; the Queens Village Committee is listed in the Pension Plan's Summary Plan Description as the Pension Plan Administrator, at this address, and the participants were employed at this address. Breaches of fiduciary duty are alleged to have occurred in this district.

THE PARTIES

17. Plaintiff Madeline Reed was employed by Queens Village from 2004 through October, 2007 and then again from March, 2008 through December, 2015. She was employed first as an administrative assistant and then as a counselor to people with alcohol or drug addiction problems. She is a vested participant in the pension plan. She was entitled to a contribution to her account in the pension plan for each of the 2008-2014 plan years for her service with Queens Village during these years. She did not receive a contribution to her account in the plan for the 2008-2010 plan years, and did not receive the amount required to have been contributed to her account for the subsequent plan years.

18. Plaintiff Ronald Sumter worked approximately 20 years for Queens Village, from 1993 through August, 2014. He was employed as a counselor to people with alcohol or drug addiction problems. He is a vested participant in the pension plan. He was entitled to a contribution to his account in the pension plan for each of the 2008-2013 plan years for his service with Queens Village during those years. He did not receive the amounts required to have been contributed to his account for all or almost all of these plan years.

19. Plaintiff Stephanie Pemberton was employed by Queens Village as a counselor, and worked there from approximately 1996 through 2014. She was vested in her benefits in the

pension plan and was entitled to a contribution to her account for the 2008-2013 plan years for her service with Queens Village during those years. She did not receive the amounts required to have been contributed to her account for all or almost all of these plan years.

20. Plaintiff Cynthia Spence was employed by Queens Village as a food service supervisor, and worked there from November, 1996 through June, 2018. She was vested in her benefits in the pension plan and was entitled to a contribution to her account for each plan year from the 2008 plan year through the 2016 plan year for her service with Queens Village during those years. She did not received any contribution to her account in the plan for the 2008-2010 plan years, and did not receive the amounts required to have been contributed to her account for all or almost all of the subsequent plan years.

21. The J-CAP Pension Plan is an employee pension benefit plan, within the meaning of ERISA section 3(2)(A), 29 U.S.C. §1002 (2)(A), and a defined contribution pension plan within the meaning of ERISA section 3(34), 29 U.S.C. §1002 (34).

22. Defendant Queens Village Committee for Mental Health for Jamaica Community Adolescent Program, Inc. (Queens Village) is a 501(c)(3) non-profit corporation engaged primarily in residential treatment programs using the therapeutic community model to treat drug and alcohol abuses in Queens County, New York. Queens Village's primary place of business is at 116-30 Sutphin Blvd., Jamaica, New York 11434-1527.

23. Queens Village sponsors the J-Cap Pension Plan, an employee pension benefit plan within the meaning of ERISA section 3(2)(A), 29 U.S.C. §1002(2)(A), for its employees. The plan's summary plan description (SPD) states that Queens Village is the plan administrator, within the meaning of ERISA section 3(16)(A), 29 U.S.C. §1002 (16)(A); is responsible for

directly administering the plan, and is responsible for the day-to-day administration and management of the plan. Queens Village has the discretionary authority to appoint other persons as may be necessary to act on its behalf or assist it in performing these responsibilities. Queens Village is the named fiduciary of the pension plan, within the meaning of ERISA section 402(a)(2), 29 U.S.C. § 1102(a)(2).

24. Defendant Diane Gonzalez is and has been, at all pertinent times, the Chief Executive Officer of Queens Village. As chief executive, she is responsible for supervising the management, administration and operation of the organization, and has the authority to manage the finances of the organization.

25. Diane Gonzalez exercises authority and control over the pension plan asset consisting of the plan's chose in action (its right to payment of the debt that Queens Village owed the pension plan for the unpaid mandatory contributions).

26. As chief executive, Gonzalez has the authority to determine and control, among other matters, whether and under what circumstances Queens Village, in its capacity as pension plan administrator and named fiduciary of the plan would manage or dispose of the plan asset consisting of its chose in action for the unpaid contributions by:

- a. seeking to collect on the debt owed to the plan by employer-plan sponsor Queens Village for its unpaid contributions to the pension plan;
- b. applying to a federal court for guidance on collecting the unpaid pension plan contributions; and
- c. providing information to the plan trustee necessary for the plan trustee to determine how employer contributions to the pension plan should be allocated to the

participants' individual accounts in the plan.

27. Diane Gonzalez exercises control over whether conflicted fiduciary Queens Village applies to a federal court for guidance as to how it should exercise its fiduciary duty to collect on the debt that plan sponsor Queens Village, in its corporate capacity, owes the pension plan for the unpaid contributions and lost earnings.

28. Diane Gonzalez has the authority, as chief executive officer of Queens Village, to determine which of Queens Village's creditors would be paid and in what order, and whether fiduciary Queens Village, at any time, would seek to enforce the plan's chose in action against Queens Village in its corporate capacity. She has the authority and responsibility to decide whether and under what circumstances Queens Village should obtain a mortgage on its real property in order to obtain the cash necessary for Queens Village to pay the debt it owes the pension plan for the unpaid contributions and earnings lost by the participants on the unpaid contributions.

29. Diane Gonzalez exercises discretionary authority or discretionary control respecting management of the pension plan in that she has the authority to determine the information that is provided to the plan trustee so that the trustee can allocate the yearly Queens Village contributions to the pension plan into the appropriate participant accounts in the plan.

30. Diane Gonzalez is a fiduciary of the pension plan, within the meaning of ERISA section 3(21)(A), 29 U.S.C. § 1002(21)(A).

31. Defendant Nancy Brinn is the Chief Operating Officer of Queens Village. On the 2002 Summary Plan Description, she is listed as a plan trustee, along with Thomas White, Jr.

32. On behalf of Queens Village in its capacity as Pension Plan Administrator, Brinn

signed and submitted the pension plan administrator's annual 5500 SF forms for the July 1, 2009-June 30, 2010 plan year and for the July 1, 2010-June 30, 2011 plan year.

33. In filling out line 12(b) on the Form 5500 SF, Brinn failed to follow the directions which stated, in pertinent part: "If there is an accumulated funding deficiency for a prior year that has not been waived, that amount should also be included as part of the contribution required for the current year." In not including the accumulated funding deficiency on the 5500 SF forms for the 2009 and 2010 plan years, Brinn and Queens Village concealed the failure by Queens Village to make the mandatory contributions for the pension plan years ending on June 30, 2009 and June 30, 2010.

34. In concealing that Queens Village had a debt for unpaid past required contributions to the plan, Brinn and Queens Village thereby concealed the plan asset consisting of the plan's chose in action (its right to collect the unpaid contributions) from plan participants. Brinn exercised authority and control over the pension plan asset consisting of the plan's chose in action (its right to payment of the debt that Queens Village owed the pension plan for the unpaid mandatory contributions).

35. Nancy Brinn exercised discretionary authority or discretionary control respecting management of the pension plan in concealing the failure of Queens Village to make its mandatory contributions to the pension plan on behalf of the pension plan's participants for the 2008-2010 plan years. Nancy Brinn is a fiduciary, within the meaning of ERISA section 3(21)(A), 29 U.S.C. §1002(21)(A), of the pension plan.

36. Defendant Nilda Ruiz is and has been, at pertinent times, the Chief Financial Officer of Queens Village. On behalf of Queens Village in its capacity as Pension Plan

Administrator, she signed and submitted the annual reports of the pension plan on Form 5500 SF, to the U.S. Department of Labor, for the plan year ending on June 30, 2012, through the plan year ending on June 30, 2017. She had the authority to fill out and sign the forms on behalf of plan administrator Queens Village.

37. In filling out line 12(b) on the Form 5500 SF, Ruiz failed to follow the directions which stated, in pertinent part: “If there is an accumulated funding deficiency for a prior year that has not been waived, that amount should also be included as part of the contribution required for the current year.”

38. On the 5500 SF forms filed with the Department of Labor that she signed, Ruiz did not reveal, and concealed that the Queens Village mandatory contributions to the pension plan for the plan years ending on June 30, 2009, 2010 and 2011 had not been made. In concealing that Queens Village had a debt for unpaid past required contributions to the plan, Ruiz and Queens Village thereby concealed the plan asset consisting of the plan’s chose in action (its right to collect the unpaid contributions) from plan participants. Ruiz exercises authority and control over the pension plan asset consisting of the plan’s chose in action (its right to payment of the debt that Queens Village owed the pension plan for the unpaid mandatory contributions).

39. Ruiz exercised discretionary authority or discretionary control respecting management of the pension plan in concealing the failure of Queens Village to make its mandatory contributions to the pension plan on behalf of the pension plan’s participants for the 2008-2010 plan years. Nilda Ruiz is a fiduciary, within the meaning of ERISA section 3(21)(A), 29 U.S.C. §1002(21)(A), of the pension plan.

40. On information and belief, prior to filing these 5500 forms for the plan years

ending on June 30, 2012 through June 30, 2017, Nilda Ruiz, Diane Gonzalez and Nancy Brinn all were aware of this requirement that accumulated funding deficiencies for any plan year had to be set forth as required contributions in the 5500 SF filed for the subsequent year, and all were aware that the accumulated funding deficiencies were not being listed. Gonzalez had the authority to direct Ruiz to include the cumulative funding deficiency on line 12(b) of the 5500 SF forms, but did not do so.

41. Employer contributions to the pension plan are sent to and held by the Plan trustee, Defendant Delaware Charter Guaranty and Trust Co. (Principal), in a trust fund. In a motion to dismiss (Doc. 32) filed in the related action in this court, Stokes, et al. v. Queens Village Committee for Mental Health for J-CAP, Inc., et al., No. 18-cv-3305 (EDNY), Principal admitted that it is a fiduciary of the J-CAP pension plan. Principal is a fiduciary, within the meaning of ERISA section 3(21)(A), 29 U.S.C. §1002(21)(A), of the pension plan, and a co-fiduciary, within the meaning of ERISA section 405(a), 29 U.S.C. § 1105(a), of named fiduciary Queens Village.

ALLEGATIONS OF FACT

42. Queens Village established its defined contribution pension plan for its employees in 1980.

43. The 2002 pension plan summary plan description (SPD) states that a person is eligible to participate in the pension plan after completing one year of service for Queens Village and attaining the age of 21.

44. That 2002 SPD states, in SECTION THREE:

Each year you are eligible to receive an Employer Contribution, QUEENS VILLAGE COMMITTEE FOR MENTAL HEALTH FOR J-CAP, INC. will contribute an amount equal to 7% of your Compensation up to the Taxable Wage Base, plus an amount equal to 5.7% of your Compensation above the Taxable Wage Base.

45. The Queens Village fiscal year started on July 1st and ended on June 30th. The pension plan similarly used a plan year which started on July 1 and ended on June 30th.

46. The Queens Village audited financial statements provide that for the fiscal year of July 1, 2007-June 30, 2008, the Queens Village pension plan contribution expense was \$202,851. For the fiscal year ending on June 30, 2009 (the 2008 plan year), that expense was \$216,057. No contribution has been made to the plan for that 2008 plan year.

47. The pension plan's form 5500 SF, for the 2009 pension plan year ending June 30, 2010, stated that the Queens Village required contribution for that year was \$212,193. That contribution was not made, and has never been made. On Line 12(b) of that form, which lists the required contribution for that plan year, Queens Village was required to include the amount that it was required to, but didnot, contribute for the 2008 plan year. Queens Village did not do so.

48. Line 12(b) of the pension plan's form 5500 SF, for the 2010 pension plan year ending June 30, 2011, stated that the Queens Village required contribution for that year was \$187,000. That contribution was not made, and has never been made. Line 12(b) was required to have included the \$212,193 that had been required to have been made for the 2009 pension plan year ending on June 30, 2010, but which had not been made, and the amount that Queens Village had been required to contribute for the 2008 plan year, but did not.

49. Queens Village failed to make the contributions to the pension plan for each of the

2008, 2009 and 2010 pension plan years, that were required by the terms of the pension plan.

50. Effective for the pension plan year starting on July 1, 2011, the pension plan was amended to reduce the employer's contribution percentage from 7% to 1%.

51. Line 12(b) of the pension plan's Form 5500 SF for the 2011 pension plan year ending on June 30, 2012 stated that the contribution required for that plan year was \$32,063. Line 12(b) was required to include the amounts of the contributions that Queens Village was obligated to make for the 2008-2010 pension plan years, but which had not been made. Line 12(b) did not include those amounts.

52. Similarly, for all 5500 SF forms subsequently filed to the present, for the 2012 plan years to the most recently filed Form 5500SF, the amount filled in as the required employer contribution for that plan year did not include the amounts that had been previously required to have been contributed, but which had not been contributed, into the pension trust.

53. As pension plan administrator and named fiduciary, Queens Village has had a continuing obligation to enforce the plan's right to payment of the amount owed the plan by Queens Village in its capacity as plan sponsor and employer.

54. Queens Village has a continuing conflict of interest in determining whether to enforce the debt against itself. As a named fiduciary with a conflict of interest, Queens Village acted in its own self-interest in failing to seek independent advice from a court as to its obligation to enforce debt which it owed, in its capacity as employer and plan sponsor, to the pension plan. As the person who controlled the day-to-day actions of Queens Village, Gonzalez also had a conflict of interest in determining whether to enforce the plan's chose in action for the debt that she wanted to conceal from the plan participants, because she had used the money for other

corporate purposes. Gonzalez acted in her own self interest in failing to seek independent advice from a court as to the obligation of Queens Village to enforce the plan's right to payment of the money that it was owed by Queens Village.

The Queens Village Financial Statements

55. As a charitable organization, Queens Village was required to make an annual filing with the New York State Department of Law (Office of the Attorney General) on NYS Form CHAR 500. The annual filing included audited financial statements and a copy of IRS Form 990, the Return of an Organization Exempt from Income Tax, filed by Queens Village with the Internal Revenue Service (IRS).

56. The Queens Village Annual Filing for its 2008 fiscal year (July 1, 2008-June 30, 2009) included audited financial statements. For that year, Queens Village received the following government contributions and grants:

- a. New York State: \$6,228,752.00
- b. New York City: \$2,135,398.00
- c. Federal gov't: \$ 630,554.00

Queens Village had total revenues for that year of \$9,462,005.00. \$ 9,174,704.00 came from these government funding sources.

57. In note 5 to its financial statements for the 2008 fiscal year, Queens Village stated that its funding policy for the pension plan was to make contributions as they accrue.

58. In Note 10 to its financial statements for its 2008 fiscal year, Queens Village also stated that it is associated, through common management, with New Spirit II, Inc. (New Spirit),

another 501(c)(3) tax exempt organization, through a management agreement.

59. On information and belief, Diane Gonzalez has served as chief executive officer of New Spirit while serving as chief executive officer of Queens Village; Nancy Brinn has served as chief operating officer of New Spirit while serving as chief operating officer of Queens Village, and Nilda Ruiz has served as chief financial officer of New Spirit while serving as chief financial officer of Queens Village.

60. On information and belief, the application filed by Queens Village each year to New York State's Office of Alcohol and Substance Abuse Services (OASAS) included an estimate of the contribution to the pension plan that Queens Village would have to make that year to fund the pension benefits of plan participants. On information and belief, the New York State OASAS grant allocated money to be used to fund that Queens Village pension plan contribution for its employees.

61. As set forth in that 2008 annual filing, New Spirit II provides outpatient alcoholism and youth counseling and vocational services. Note 10 also provides that New Spirit II "has experienced recurrent operating losses over 11 of the last 12 years." On information and belief, New Spirit obtained funding over the years through grants that were separate from the grants that were obtained by Queens Village.

62. Note 10 also provides that Queens Village had a debt due from New Spirit II in the amount of \$447,638, and that this balance had been written down by a cumulative total of \$258,436.

63. Note 7 to the 2010 fiscal year filing with New York State provides that the cumulative balance of the New Spirit II debt to Queens Village of \$562,810 was written off

entirely by Queens Village.

64. Note 7 to the 2015 fiscal year financial statements indicated that in 2016, Queens Village forgave \$746,145 of the total debt of \$ 776,007 owed it by New Spirit, II.

65. The Queens Village Form CHAR500, for the 2014 fiscal year (July 1, 2014-June 30, 2015), signed on May 11, 2016 by Diane Gonzalez and Nilda Ruiz, and then filed with the New York State Office of the Attorney General, includes the Queens Village Form 990 (Income Tax Return). That Form 990 states that Queens Village Program Service Revenue was \$2,668,931. On information and belief, this revenue was unrestricted.

66. That Form 990 states that at the beginning of its fiscal year, Queens Village's net assets were \$3,279,717. By the end of that fiscal year, the net assets had increased to \$4,128,145. The financial report stated that the value of its unrestricted net assets were \$3,279,717 as of June 30, 2014, and \$4,128,145 as of June 30, 2015.

67. Queens Village's revenue, less expenses, for the year, was stated to be \$848,128. The book value of its buildings were reported, after accumulated depreciation of \$3,473,715, to be \$4,659, 861. The cost basis of the buildings was reported to be \$8,133,576.

68. The Queens Village Form CHAR500, for the 2015 fiscal year (July 1, 2015-June 30, 2016), signed on May 11,2017 by Diane Gonzalez and Nilda Ruiz, and then filed with the New York State Office of the Attorney General, includes the Queens Village Form 990 (Income Tax Return). In its 990 form, Queens Village listed Program Services Revenue of \$2,823,273. On information and belief, this revenue was unrestricted.

69. That Form 990 states that at the beginning of its fiscal year, the company net assets were \$ 4,128,145. By the end of that fiscal year, the company net assets had increased to

\$4,629,818. The financial report stated that the value of the company's unrestricted net assets were \$ 4,128,145 as of July 1, 2015, and \$ 4,629,818 as of June 30, 2016.

70. The company revenue, less expenses, for the year, was stated to be \$501,673. The book value of the company buildings were reported, after accumulated depreciation of \$3,677,054, to be \$4,456,522. The cost basis of the buildings was reported to be \$8,133,576.

71. On information and belief, the OASAS grants to Queens Village for its 2008 through 2010 fiscal years did not authorize Queens Village to take money provided by OASAS for the purpose of funding the contributions Queens Village was required to make to its pension plan and use it, instead, to pay current expenses of New Spirit or for any other corporate purpose. On information and belief, the funds provided by OASAS to Queens Village for the purpose of funding the pension plan were restricted funds that could be used only for the specific purpose of funding the pension plan.

72. On information and belief, for each fiscal year for which it received a grant from OASAS, Queens Village provides a report to OASAS of how it spent the funds provided by OASAS for that fiscal year. On information and belief, Queens Village has never stated to OASAS that it did not contribute into the pension plan all or some of the money that OASAS gave it for those 2008-2010 fiscal years and for future fiscal years through its 2016 fiscal year, to fund its contributions into the pension plan for those years.

73. On information and belief, the money provided by OASAS to Queens Village for the purpose of funding the contributions that Queens Village was required to make to the pension plan for the 2008-2016 pension plan years was used by Queens Village for the purpose of paying expenses incurred by New Spirit or for other Queens Village corporate purposes.

74. The Queens Village Form 990 filing included in its NYS CHAR 900 filing for its 2015 fiscal year stated that as of the end of its 2015 fiscal year, Queens Village had net assets of \$4,629,818.

75. Defendants Diane Gonzalez and Nancy Brinn have consistently failed to enforce the pension plan's right to payment from Queens Village of its debt to the pension plan for the purpose of covering up that the money provided Queens Village in grants to fund the mandatory Queens Village contributions to the pension plan was used to pay expenses incurred by New Spirit or for other Queens Village corporate purposes.

76. A required payment into the pension plan of approximately \$200,000 for each of the 2008-2010 fiscal years would have been a material expense of Queens Village. Any contributions that were required to have been made to the pension plan for a plan year but were not made would then become contributions that were required to be made in the next pension plan year. Any financial audit of the pension plan for any plan year from 2008-2016 would have had to include all due but unpaid contributions from all prior plan years as assets of the plan.

77. Queens Village has had the same firm auditing its books since its 2010 fiscal year (July 1, 2010-June 30, 2011). The notes to the Queens Village financial reports state each year what the pension plan expense was for the year. Yet since this firm started auditing the Queens Village financial statements, the auditor did not note in its auditor's report that Queens Village had failed to make required contributions in any of the 2008-2016 fiscal years. On information and belief, Queens Village failed to tell its independent auditor of these due but unpaid contributions to the pension plan.

78. The annual pension plan report (Form 5500 SF) that pension plan administrator Queens Village submitted each year was a material document that the auditor should have reviewed. Through the present, the earnings lost by plan participants on unpaid contributions for the 2008-2016 pension plan years, on information and belief, were likely substantial, given the rise in the stock market during this period and the likelihood that plan participants had invested at least some of their account balances in the stock market.

79. Instead, over the entire period and through the present, the auditor gave Queens Village an unqualified report that its financial documents fairly stated the financial position of the entity, without clarifying that the company owed the pension plan these unpaid contributions and lost earnings.

Queens Village Has Paid Off the Mortgage on the Building
Housing its In-Patient Treatment Program

80. In its NYS CHAR 900 filing for its 2015 fiscal year, ending on June 30, 2016, Note 10 indicated that the secured mortgage taken out by Queens Village in 1998 was due to be fully paid off by 2016, and that its debt service payments had been funded through its OASAS grants over the years. Note 2 to its financial statements stated that Queens Village had fully settled the mortgage payable.

81. On information and belief, Queens Village could have taken out another mortgage on this property, to obtain the funds necessary to make the pension plan and all participants whole for lost contributions and earnings. On information and belief, Queens Village could have done so in the years leading up to the full payoff of the mortgage. OASAS had been paying the

debt service on the mortgage through its grants from when the mortgage was first taken out.

82. On information and belief, Gonzalez and Queens Village did not ask OASAS to fund the additional payments that would have been due under another mortgage because doing so would have required Gonzalez to reveal to OASAS that the money provided by OASAS to fund the Queens Village contributions to the pension plan for the 2008-2010 plan years had not been put into the pension plan, but had been used for other purposes.

83. The Office of the City Register of the City of New York recorded a Satisfaction of Mortgage document, stating that as of February 29, 2016, Queens Village had satisfied its mortgage on the entire lot and building at 116-30 Sutphin Boulevard, Queens, New York. Shortly thereafter, on information and belief, Principal, a very large and sophisticated financial services company, knew or should have known that the mortgage on the building at 116-30 Sutphin Boulevard was fully satisfied. Queens Village continues to own the building at 116-30 Sutphin Boulevard, unencumbered by any mortgage.

In 2016, Queens Village Obtains A Large Amount of Money from
Verizon Corp. and Puts the Money Into a Television Show on Telemundo
Instead of Into the Pension Plan

84. On information and belief, Verizon Corp. paid Queens Village a large amount of money in 2016 so that it could put an antenna on the roof of the Queens Village building. In 2016, the Office of the City Register of the City of New York recorded a document showing that Queens Village had granted an easement with respect to air rights at its building located at 116-30 Sutphin Boulevard and had been paid \$392,000. On information and belief, instead of putting the money into the pension plan to fund the unpaid contributions, Gonzalez and Queens

Village used that money to fund a television show on Telemundo, entitled Salvando Vidas Con J-Cap.

Principal, The J-Cap Pension Plan Trustee

85. The 2011 SPD states that pension plan contributions are held under a trust fund and an annuity contract and that the trustee of the Plan is Principal.

86. Upon receiving information from Queens Village necessary to make the appropriate allocations, Principal is responsible for allocating the employer contribution into the individual accounts of the participants and the investment vehicles chosen by the participants.

87. Principal knew that Queens Village had failed to make all or most of its required contributions into the plan for the 2008-2010 plan years for the benefit of plan participants, and had failed to make the full amount of required contributions in other plan years from the 2011 plan year through the 2016 plan year. Principal held at least one meeting at Queens Village with Gonzalez, Brinn, Ruiz, and a couple of other high-level employees of Queens Village about the lack of employer contributions for the 2008-2010 plan years. Gonzalez wanted the meeting to be confidential. Principal told Gonzalez, Brinn, Ruiz and the others at the meeting that Queens Village had made none, or almost none, of its required contributions into the pension plan for the 2008-2010 plan years, and that Queens Village had to make the contributions and pay back interest. On information and belief, the meeting occurred during the 2011-2012 pension plan year, after the due date for making contributions for the 2010 plan year ended on June 30, 2011, and at some point before the time passed for amending the pension plan and making it retroactive to the first day of the 2011 plan year, July 1, 2011, which would have been on or about

September 15, 2012.

88. On information and belief, Gonzalez refused to acknowledge responsibility for the failure of Queens Village to make the contributions, or that Queens Village had any obligation to have made those contributions, or that she or Queens Village had any obligation to enforce the plan's right to receive the contributions. Gonzalez there denied any responsibility for having Queens Village make those contributions.

89. On information and belief, Queens Village has not provided Principal with any written factual explanation why, through the present, those contributions and lost earnings were not made, or could not have been made. On information and belief, Principal has not sent any writing to the Queens Village Board of Directors, informing them of Queens Village's failure to make the required contributions.

90. On information and belief, when Queens Village did not make all of its required contributions for subsequent years from the 2011 plan year through the 2016 plan year, Principal made no effort to inform Queens Village or the U.S. Department of Labor, that Queens Village was continuing to fail to contribute the amounts that the pension plan required it to contribute, and the earnings on the unpaid contributions lost by the failure. Principal did not file a civil action against Queens Village to recover the unpaid contributions and lost earnings for the plan.

91. On information and belief, Principal did not file the civil action against Queens Village because it did not want to lose its business as trustee of the J-CAP pension plan, and because filing such a civil action would be very bad for its business once word got around that it had sued a plan sponsor with whom it had a contract to serve as a plan trustee, for the sponsor's unpaid contributions to its pension plan.

2017-2018 Communications with Queens Village

92. By letters dated December 8, 2017, to the Administrator of the J-Cap Pension Plan, on behalf of plaintiff Ronald Sumter and on behalf of class member Muriel Harris, attorney Christopher Dagg, Brooklyn Legal Services, asked the Administrator for, among other information;

a. Annual account statements for all years that Mr. Sumter and Ms. Harris worked in covered employment; and

b. For all relevant years in which no contributions were made to Mr. Sumter's account, [to] specify those years and provide a statement explaining the reasons no contributions were made.

93. By e-mail dated February 8, 2018, Maryann K. Geary, Executive Vice President of BPAS Plan Administration and Recordkeeping Services responded, with a copy to Nilda Ruiz. Geary wrote that required contributions for the plan years 2008, 2009 and 2010 were not made on account of a "business hardship." She did not further describe this "business hardship" and did not explain whether this hardship continued through the present.

94. She also wrote that the pension plan was going to go through the IRS Voluntary Correction Program to request a waiver for all or part of the contributions due for 2008, 2009, and 2010.

95. On Wednesday March 8, 2018, Attorney Dagg sent an e-mail to Geary, requesting an update. Ms. Geary responded by e-mail dated March 16th: "We are still working on the corrections for the plan. I will keep you posted as soon as we have a time frame."

The Express Terms of the IRS Program Do Not Authorize Any Such “Waiver”

96. Section 6.02 (1) of the IRS Voluntary Correction Program requires a plan to be restored “to the position to the position it would have been in had the failure not occurred, including restoration of current and former participants and beneficiaries to the benefits and rights they would have had if the failure had not occurred.” IRS Revenue Procedure 2016-51, 2016 IRS Lexis 586.

97. There is no such thing as “voluntary compliance” that puts a governmental seal of approval on cheating employees out of what they were promised in exchange for their labor, under any doctrine of “waiver” !

98. Further, where the plan sponsor is self-correcting a significant operational failure, section 9 of the Revenue Procedure provides that the last day of the correction period “is the last day of the second plan year following the plan year for which the failure occurred.”

99. For the 2010 plan year which ended on June 30, 2011, that would have been June 30, 2014. Thus, the plan sponsor is way out of time for any so-called “voluntary correction.”

100. The Geary response was a willful attempt to stall the participants.

CLASS ACTION ALLEGATIONS

101. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

102. Plaintiffs asserts their claims on behalf of the following class of participants: All participants in the pension plan during the 2008-2016 pension plan years who were eligible for but did not receive a timely contribution allocated to their accounts in the pension plan for at

least one of those plan years, and who were, have become, or still may become vested in their benefits under the plan, and their beneficiaries and estates.

103. Numerosity: The class is so numerous that joinder of all class members is impractical. As set forth in its Form 5500SF's, the pension plan had 85 participants at the beginning of the 2010 plan year, 76 at the end of the plan year, and 59 who had account balances at the end of the plan year. For its 2009 plan year, the plan had 96 participants at the beginning of the plan year, 80 at the end of the plan year, and 67 who had account balances at the end of the plan year.

104. For the 2013 plan year, the plan had 99 participants at the beginning of the plan year, 73 at the end of the plan year, and 71 who had account balances at the end of the plan year. For the 2016 plan year, the plan had 67 active participants at the beginning of the plan year, and 60 at the end of the plan year.

105. The members of the class can be objectively ascertained through the use of information contained in the pension plan's records because both Queens Village and Principal, which allocates the contribution to the accounts of individual participants, should know which participants were plan members entitled to receive a contribution for any or all of the plan years from the 2008 plan year through the 2016 plan year.

106. Typicality: Plaintiff's claims are typical of the class members' claims. All participants were treated the same when Queens Village failed to make its required contributions into the plan for those plan years. Certification is also desirable and proper because Plaintiffs will fairly and adequately protect the interest of the class they seek to represent. There is no conflict of interest between plaintiffs and any other member of the proposed class and the interest

of all members of the class is the same.

107. Adequacy: Plaintiffs will fairly and adequately protect the interests of the Class, as their interest is aligned with the Class that they seek to represent. They have retained counsel experienced in ERISA pension litigation. Plaintiff's attorneys Robert L. Liebross and Edgar Pauk are qualified, experienced and able to conduct the proposed class action litigation.

108. Commonality: Common questions of law and fact exist as to all class members and predominate over any questions solely affecting individual class members, including but limited to:

- a. the obligation of the pension plan administrator to enforce the plan's chose in action (the plan asset) against plan sponsor Queens Village for the unpaid contributions and lost earnings;
- b. the obligation of the pension plan administrator, and of Diane Gonzalez, both fiduciaries with a conflict of interest, to petition this federal court and seek guidance as to their obligation to enforce the plan chose in action against the plan sponsor, Queens Village;
- c. the legal significance of the concealment by plan administrator Queens Village acting through Nancy Brinn and Nilda Ruiz, on the 5500 form for the 2009 plan year through the present, of the failure of plan sponsor Queens Village to make the required contributions for the 2008-2010 plan years; and
- d. the obligation of co-fiduciary Principal to have filed a civil action against Queens Village to recover the unpaid contributions and lost earnings.

109. Class certification also is appropriate under Fed. R. Civ. P. 23(b)(1)(B) because adjudications of these legal issues with respect to individual class members, as a practical matter, would be dispositive of the interests of other plan participants or would substantially impair or impede their ability to protect their interests.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

ERISA Section 502(a)(2), 29 U.S.C. § 1132(a)(2), for which Relief is Authorized by ERISA section 409, 29 U.S.C. § 1109.

(Against fiduciaries Queens Village, Diane Gonzalez Nancy Brinn, and Nilda Ruiz)

110. Paragraphs 1-109 are incorporated by reference as if fully set forth herein.
111. ERISA Section 502(a)(2), 29 U.S.C. § 1132(a)(2), provides: A civil action may be brought by a . . . participant for appropriate relief under section 409.
112. ERISA section 409, 29 U.S.C. § 1109, provides, in pertinent part:
- (a) Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this title shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any or profits of such fiduciary which have been made through assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary. A fiduciary may also be removed for violation of section 411 of this Act.
113. When an employer fails to make contractually required contributions to a pension plan, the plan has an enforceable right to collect the unpaid contributions, and that enforceable

right is a plan asset. Rahm v. Halpin, 566 F.3d 286, 291 (2d Cir. 2009), citing United States v. LaBarbara, 129 F.3d 81, 88 (2d Cir. 1997).

114. Plan Administrator and named fiduciary Queens Village has continuously failed to enforce the pension plan's right to collect the unpaid contributions Queens Village, in its capacity as plan sponsor and employer, owed the pension plan, which Principal then would allocate into the individual accounts of all plan participants eligible to share in the allocation, in violation of ERISA section 502(a)(2), 29 U.S.C. § 1132(a)(2), and its duties under ERISA section 404(a)(1), 29 U.S.C. § 1104(a)(1).

115. Plan fiduciary Diane Gonzalez is and has been responsible for determining which of Queens Village's creditors would be paid or in what order, and had authority and control over the management of Queens Village. She has continuously failed to cause Queens Village, as named fiduciary, to enforce the plan's right to collect the unpaid contributions that Queens Village in its capacity as plan sponsor and employer owed the pension plan, in violation of her fiduciary duties of loyalty and prudence, in violation of ERISA section 404(a)(1), 29 U.S.C. § 1104(a)(1).

116. Plan fiduciaries Queens Village, Nancy Brinn and Nilda Ruiz concealed the failure of Queens Village to make mandatory employer contributions into the pension plan by failing to list the unpaid contributions for plan years 2008-2016 as required contributions on Form 5500SF, the pension plan's annual report to the Department of Labor, for each plan year subsequent to the plan year for which a required contribution was not made, in violation of their duties of prudence and loyalty, in violation of ERISA section 404(a)(1), 29 U.S.C. § 1104(a)(1). Queens Village, Brinn and Ruiz did this for the purpose of concealing that money given in grants

to Queens Village for the purpose of paying these contributions into the pension plan was used for other purposes. They also concealed that failure for the purpose of hiding their own roles and the role of Queens Village chief executive officer and plan fiduciary Diane Gonzalez in failing to cause plan sponsor and employer Queens Village to make its required contributions into the pension plan.

SECOND CLAIM FOR RELIEF

ERISA section 404(a), 29 U.S.C. § 1104(a), as enforced through
ERISA section 502(a)(3), 29 U.S.C. §1132(a)(3)

(Against fiduciaries Queens Village, Diane Gonzalez, Nancy Brinn, and Nilda Ruiz)

117. Paragraphs 1-116 are incorporated by reference as if fully set forth herein.

118. ERISA section 404(a)(1), 29 U.S.C. § 1104(a)(1), requires a plan fiduciary to discharge its duties with respect to a plan solely in the interest of plan participants and (A) for the exclusive purpose of providing benefits to participants; (B) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; (C) by diversifying the investments of the Plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and (D) in accordance with the documents and instruments governing the plan insofar as the documents and instruments are consistent with Title I of ERISA.

119. When an employer fails to make contractually required contributions to a pension plan, the plan has an enforceable right to collect the unpaid contributions and that enforceable

right is a plan asset. Rahm v. Halpin, 566 F.3d 286, 291 (2d Cir. 2009), citing United States v. LaBarbara, 129 F.3d 81, 88 (2d Cir. 1997).

120. Plan Administrator and named fiduciary Queens Village has continuously failed to enforce the pension plan's right to collect the unpaid contributions that plan sponsor Queens Village owed the pension plan, which Principal then would allocate into the individual accounts of all plan participants eligible to share in the allocation, in violation of ERISA section 502(a)(2), 29 U.S.C. § 1132(a)(2), and its duties under ERISA section 404(a)(1), 29 U.S.C. § 1104(a)(1).

121. Plan fiduciary Diane Gonzalez is and had been responsible for determining which of Queens Village's creditors would be paid or in what order, and had authority and control over the management of Queens Village. She has continuously failed to cause Queens Village, as named fiduciary, to enforce its right to collect the unpaid contributions that Queens Village in its capacity as plan sponsor owed the pension plan. She did so, at least in part, for the purpose of covering up her use of the money given in grants to Queens Village for the purpose of paying these contributions, for other purposes, in violation of her fiduciary duties of loyalty and prudence, in violation of ERISA section 404(a)(1), 29 U.S.C. § 1104(a)(1).

122. Plan fiduciaries Nancy Brinn and Nilda Ruiz further concealed the failure of Queens Village to make mandatory employer contributions into the pension plan by failing to list the unpaid contributions for plan years 2008-2016 as required contributions on Form 5500 SF, the pension plan's annual report to the Department of Labor, for each plan year subsequent to the plan year for which a required contribution was not made, in violation of their duties of prudence and loyalty, in violation of ERISA section 404(a)(1), 29 U.S.C. § 1104(a)(1). Brinn and Ruiz did this for the purpose of concealing that money given in grants to Queens Village for the

purpose of paying these contributions into the pension plan was used for other purposes. They also concealed that failure for the purpose of hiding their own roles and the role of Queens Village chief executive officer Diane Gonzalez in failing to cause employer Queens Village to make its required contributions into the pension plan.

THIRD CLAIM FOR RELIEF

(Against Principal for Co-Fiduciary Liability, under ERISA section 405(a), 29 U.S.C. 1105(a), as enforced through ERISA section 502(a)(3), 29 U.S.C. §1132(a)(3))

123. Paragraphs 1-122 are incorporated by reference as if fully set forth herein.

124. ERISA section 405(a), 29 U.S.C. §1105(a), provides:

LIABILITY FOR BREACH BY CO-FIDUCIARY.

(a) **Circumstances Giving to Liability.** In addition to any liability which he may have under any other provision of this part [29 USCS §§ 1101 et seq.], a fiduciary with respect to a plan shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same plan in the following circumstances:

(1) if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach;

(2) if, by his failure to comply with section 404(a)(1) [29 USCS § 1104(a)(1)] in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled such other fiduciary to commit a breach; or

(3) if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

125. Principal, a co-fiduciary of named fiduciary Queens Village, knew that Queens Village was engaged in an ongoing breach of fiduciary duty in refusing to enforce the plan's right to payment of the debt that Queens Village in its capacity as employer and plan sponsor owed the pension plan for its unpaid contributions. On information and belief, after this Court's decision in Rahm v. Halpin, 566 F.3d 286, 291 (2d Cir. 2009), Principal, a sophisticated ERISA pension plan trustee, knew that Queens Village's ongoing failure to enforce the plan's right to payment of the debt owed the plan by Queens Village in its capacity as employer and plan sponsor, was a breach of fiduciary duty.

126. In early 2016, Queens Village had satisfied the mortgage on its very valuable asset, its building and property located at 116-30 Sutphin Boulevard, Jamaica, NY, 11434-1527, worth millions of dollars.

127. Upon satisfying the mortgage, Queens Village had a very valuable asset whose value exceeded the amount that Queens Village then owed the pension plan for unpaid contributions and lost earnings. Queens Village also then had unrestricted revenue each year in amounts of over two million dollars.

128. Principal breached its duties as a co-fiduciary of the pension plan in 2016 in failing to file a civil action against Queens Village for failing to enforce the plan's right to recover the debt owed by plan sponsor Queens Village.

129. Pursuant to ERISA section 410, 29 U.S.C. 1110, any provision in any agreement that Principal has with Queens Village, or any provision in any instrument, which purports to relieve Principal from responsibility or liability for any responsibility, obligation, or duty under ERISA section 405, 29 U.S.C. §1105, or under any other provision of Part Four of Title I of

ERISA, 29 U.S.C. §§ 1101 et seq., with respect to the J-CAP pension plan, is void as against public policy.

PRAYER FOR RELIEF

Wherefore Plaintiffs pray that the Court:

1. Certify the class and the claims for relief for class treatment;
2. Appoint Plaintiffs as Class Representatives;
3. Designate Robert L. Liebross, Esq., and Edgar Pauk, Esq. as counsel for the class;
4. DECLARE that plan administrator and named fiduciary Queens Village,

and Diane Gonzalez, Nancy Brinn, and Nilda Ruiz, and the trustee, Principal have breached the duties, obligations and responsibilities imposed on them by ERISA;

5. (A) DECLARE that the defendants Queens Village and Principal are jointly and severally liable to make the plan whole by restoring the amounts of the contributions that the plan would have received and the money those contributions would have earned in the individual accounts, but for their fiduciary breaches;

(B) ORDER Queens Village and Principal, jointly and severally, to make the plan whole by restoring the amounts of the contributions that the plan would have received and the money those contributions would have earned in the individual accounts, but for their fiduciary breaches; and restore to the plan any funds that Queens Village obtained or kept by failing to enforce the plan's right to payment;

(C) ORDER Queens Village to provide Principal with all information that Principal needs to allocate those funds, in the appropriate amounts, into the individual accounts of the plaintiffs and each class member; and

(D) DECLARE that Queens Village and Principal are jointly and severally liable to allocate the recovered contributions and lost earnings into the individual accounts of each plaintiff and each class member; and

(E) ORDER Queens Village and Principal to allocate the recovered contributions and lost earnings into the individual accounts of each plaintiff and each class member;

(F) ORDER Principal and Queens Village to provide an audit of all Contributions Required to have been made into the Plan by Queens Village for the Pension Plan year from 2008 (July 1, 2008-June 30, 2009) to the date of judgment; and an accounting for allocating those funds and lost earnings into the individual accounts of the plan participants;

6. ORDER Queens Village and Principal to freeze the accounts of Diane Gonzalez, Nancy Brinn, and Nilda Ruiz in the pension plan; and not to make any distribution of any part of their account balances in the plan; or in any way alienate any of their account balances in the plan, until and unless all plaintiffs and all members of the class are made whole;

7. ISSUE preliminary and permanent injunctions against Plan Administrator Queens Village, forbidding it from authorizing Diane Gonzalez, Nancy Brinn and Nilda Ruiz from having any authority or responsibility of any kind with respect to the pension plan, and against Diane Gonzalez, Nancy Brinn and Nilda Ruiz, forbidding them from taking any action of any kind on behalf of or with respect to the pension plan, pending further order of the Court;

8. ORDER the defendants, and each of them, to notify all class members that contributions required to have been made to their accounts in the pension plan for plan years from 2008 through 2016 were not made; that contributions for some or all of those years may not

LAW OFFICE OF ROBERT L. LIEBROSS
39 Broadway, Suite 1620
New York, NY 10006
212-566-2151
rliebross@liebrosslaw.com

Edgar Pauk, Esq.
Law Office of Edgar Pauk
1066 Union Street
Brooklyn, NY 11225
718-399-2023
lawoffice@edgarpauk.com

Attorneys for Plaintiffs