STATE OF NEW YORK SUPREME COURT
COUNTY OF SCHENECTADY

MARY HARTSHORNE, *et al.*,

Plaintiffs,

v.

THE ROMAN CATHOLIC DIOCESE OF ALBANY, NEW YORK, *et al.*,

Defendants.

INDEX NO: 2019-1989

PLAINTIFFS' OPPOSITION TO DEFENDANTS ST. CLARE'S CORPORATION, ST. CLARE'S RETIREMENT INCOME PLAN, ROBERT PERRY AND JOSEPH F. POFIT'S MOTION TO DISMISS

ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

PAGE

CASES

RULES AND REGULATIONS

MISCELLANEOUS

Plaintiffs submit this Memorandum of Law in support of their Opposition to the Motion to Dismiss the Complaint,[1] filed by St. Clare's Corporation, St. Clare's Retirement Income Plan, Joseph F. Pofit, and Robert Perry (together "Corporate Defendants" or "Defendants") pursuant to Civil Practice Law and Rules (CPLR) §§ 3211(a)(1) and (a)(7). Plaintiffs request that the Court deny Defendants' motion.

PRELIMINARY STATEMENT

The employees of St. Clare's Hospital ("Hospital") tell their story as one "filled with passion and pride and a healing spirit that exemplifies the best in health care."[2] In exchange for years—in many cases, decades—of dedicated service to the Hospital and their community, the employees earned modest wages and benefits, including the promise of a pension upon retirement. They relied on that promise, both in working for the Hospital and planning for retirement. Even as the Hospital closed, they trusted that the church-run corporation and its leadership would look out for them. But on February 1, 2019, Defendants broke that trust: Plaintiffs' pensions were either slashed or eliminated. Plaintiffs seek to hold their former employer and its personnel to their promises.

Defendants now argue that they need not make good on their promises because: (1) although they made promises, these were not actually *binding* promises; (2) although the benefits were indisputably held for Plaintiffs in trust, Plaintiffs' claims for breach of trust do not detail how each individual and entity breached their trust; (3) their claims overlap; and (4) their

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[1] On January 10, 2020, Plaintiffs filed an amended complaint, to which this Opposition cites. The amended complaint ("FAC") contains additional plaintiffs and incorporates minor changes, but does not materially change the factual allegations.

[2] *Remember St. Clare's Hospital*, ST CLARE'S – THE PEOPLE'S HOSP.: 1949 TO 2008, https://www.rememberstclares.org/index.htm (last visited Jan. 21, 2020).

claims, filed less than a year after their pensions were cut or eliminated, come too late. None of these arguments are meritorious.

STATEMENT OF FACTS

St. Clare's Hospital opened in 1949 to great fanfare. Like its successor, St. Clare's Corporation, the Hospital was intimately connected with the Roman Catholic Diocese of Albany (the "Diocese"). *See* Pls.' Mem. L. Opp. Defs. Roman Catholic Diocese of Albany, New York, Bishop Edward B. Scharfenberger & Bishop Howard Hubbard's Mot. Dismiss 2-4. Within a decade of opening, the Hospital established a pension plan for its employees. FAC ¶ 23. In offering a pension, the Hospital promised Plaintiffs—former nurses, orderlies, laboratory technicians, clerical and housekeeping staff, and others—that once they retired, they would receive a monthly payment reflecting their accrued benefits. *Id.* ¶¶ 2, 54, 55. The Hospital also promised Plaintiffs that it would adequately fund the pension and that the pension payments were guaranteed up to the limit set by the Pension Benefit Guaranty Corporation ("PBGC"). *Id.* ¶¶ 49, 50.

In return for the promised pension, Plaintiffs accepted relatively low wages for their work. *Id.* ¶¶ 60, 106. Plaintiffs trusted the Hospital to keep its promises in part because they understood that it was affiliated with the church. *Id.* ¶ 108. As would any employee, Plaintiffs planned their lives and futures around the assumption that they would receive their pensions. *Id.*

The Hospital subsequently made a series of decisions that undercut the pension's financial footing. From about 1974 until about 1992, the Diocese and Hospital had treated the Plan as subject to the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§ 1001, *et seq*., a federal statute aimed at protecting employee pensions. FAC ¶ 61. Around

1992, however, the Diocese caused the Hospital to petition the Internal Revenue Service to exempt the pension from ERISA by deeming it a "church plan." *Id.* ¶ 62.

This ruling exempted the Hospital from ERISA's minimum funding requirements and from the obligation to pay into the PBGC insurance program. Free of federal safeguards, the Hospital cut its contributions to the pension. Beginning in 1998, the Hospital made nominal or no contributions to the pension, leaving it seriously underfunded. FAC ¶ 64. In 2005, Defendants froze the pension effective February 1, 2006, so that participants would not accrue any additional years of service for benefit calculation purposes. *Id.* ¶ 65. In announcing this change, Defendants assured Plaintiffs, all of whose benefits had vested by then, that they would receive their pension benefits. *Id.* ¶¶ 65-66.

On July 12, 2007, Defendant Perry (then president and CEO of the Hospital) wrote a letter revealing that the pension was and for some time had been underfunded. FAC ¶ 68. He nonetheless stated that the underfunding was "not an emergency," that there was "time to find a way to fix the problem," and that he, "[a]s always," would "tell . . . the truth and do everything in [his] power to make it right." *Id.*

On February 25, 2008, Defendant Perry sent another letter to all employees explaining that the pension as it stood would not be able to pay all the promised benefits. FAC ¶ 70. Perry, who collected over $940,000 of personal income from the Hospital that same year (Naini Aff., Ex. A at 7), assured Plaintiffs that the pension's retirement age was being increased "in order to fully fund the pension." FAC ¶ 71.

At approximately this same time, in response to a mandate from New York State, the Hospital had begun the process of merging with another local hospital in 2008. FAC ¶¶ 69, 73.

As part of this process, the State infused $28.5 million into the Corporation for the specific purpose of funding the pension. *Id.* ¶ 77.

Defendants again assured pensioners that this infusion would cover their pensions. A letter sent out in 2009 confirmed that the pension "remain[ed] in full force and effect." FAC ¶ 78. Then, in 2016, a letter for the first time informed Plaintiffs the pension would run out of funds—between 2024 and 2028. FAC ¶ 82. This letter and another one that followed in 2017 still stated that Plaintiffs would receive their entire vested and accrued benefits until the pension's funds were depleted. *Id.* ¶ 84.

On October 11, 2018, Defendants abruptly notified over 1,100 pensioners, including Plaintiffs, that the pension would terminate in 21 days. FAC ¶ 87. About five months later, St. Clare's Corporation filed a petition for the Corporation's dissolution. *Id.* ¶ 5.

On February 1, 2019, forty of the Plaintiffs started receiving only 70% of the pensions they have earned; the remaining 132 have received nothing since that date. FAC ¶¶ 10-11. Plaintiffs filed their complaint on September 10, 2019.

LEGAL STANDARD

"When reviewing a defendant's motion to dismiss a complaint for failure to state a cause of action, a court must give the complaint a liberal construction, accept the allegations as true and provide plaintiffs with the benefit of every favorable inference." *Cortlandt St. Recovery Corp. v. Bonderman*, 31 N.Y.3d 30, 38 (2018) (citation omitted). The motion "must be denied if from the pleadings' four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law." *Gizara v. New York Times Co.*, 80 A.D.3d 1026, 1027 (3d Dep't 2011) (internal quotation marks and citation omitted).

Pleadings "shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense." CPLR § 3013. The Court of Appeals has cautioned that although claims for breach of fiduciary duty are subject to heightened pleading requirements, CPLR Rule 3016(b) requires only that Plaintiffs "allege the *basic facts* to establish the elements of the cause of action." *Pludeman v. N. Leasing Sys., Inc.*, 10 N.Y.3d 486, 492 (2008) (emphasis added).

"When the motion to dismiss is premised upon documentary evidence, such motion may be appropriately granted only where the documentary evidence utterly refutes [the] plaintiff's allegations, conclusively establishing a defense as a matter of law." *SUS, Inc. v. St. Paul Travelers Grp.*, 75 A.D.3d 740, 741 (3d Dep't 2010) (internal quotations marks and citation omitted).

ARGUMENT

I. Plaintiffs' Breach of Contract Claims Are Valid and Timely

A. Plaintiffs have alleged a plausible claim for multiple breaches of contract

Plaintiffs have amply pled a claim for multiple, independent breaches of contract by Defendants. Plaintiffs must show "(1) formation of a contract between plaintiff and defendant; (2) performance by plaintiff; (3) defendant's failure to perform; and (4) resulting damage." *Clearmont Prop., LLC v. Eisner*, 58 A.D.3d 1052, 1055 (3d Dep't 2009) (internal quotations marks and citation omitted). First, Plaintiffs allege facts proving the formation of a contract: they performed work in exchange for promised wages, which expressly include future pension benefits. *See* FAC ¶¶ 2, 10-11, 43, 92; N.Y. Lab. L. § 198-c;[3] *see also* Naini Aff., Ex. B at 1 (referring to "fringe benefits to which you are entitled") and 42 (describing the pension and stating that the employee "vest[s] after five years of service"); Naini Aff., Ex. C at 2 ("The cost [of the retirement plan] is paid in full by the hospital . . . . Employees become vested after five years of service"). The 2000 St. Clare's Retirement Income Plan ("2000 Plan" or "Plan") (Naini Aff., Ex. D), and the 2005 Summary Plan Description ("SPD") (Naini Aff. Ex., E) describe the specific contours of that promised pension.[4] FAC ¶¶ 49-55.

Second, Plaintiffs allege that they performed their obligations under the contract by working for at least five years for St. Clare's Hospital and fully vesting in their retirement benefits. FAC ¶¶ 9-11, 66. Third, they allege that Defendants failed to perform several, independent promises: to pay Plaintiffs their accrued benefits, guarantee benefits up to the PBGC's level, and fund the plan adequately. *Id.* ¶ 49-55, 99. Finally, Plaintiffs allege that damage resulted from each breach: they did not receive their promised, accrued benefits. *Id.* ¶¶ 10-11, 90, 100.

Defendants' motion does not dispute Plaintiffs' performance, the resulting damages, or even the formation of a valid contract. Rather, Defendants argue that "Plaintiffs fail to identify a

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[3] Defendants argue that Plaintiffs cannot enforce New York Labor Law § 198-c through a private right of action. *See* Mem. L. Supp. Defs. St. Clare's Corporation, Joseph Pofit, Robert Perry, & St. Clare's Retirement Income Plan's Mot. Dismiss ("Corp. Defs. Mem.") at 14-15 n.10. Plaintiffs do not assert a private right of action under the statute but maintain that the promised retirement benefits are "benefits or wage supplements" under the statutory definition, as discussed further below.

[4] The 2011 Plan states that it only applies to individuals who have hours of service after its effective date of January 1, 2011, and that the rights of all others "shall generally be determined in accordance with the terms of the Plan as in effect on the date for which [they were] last credited with an Hour of Service." Pofit Aff., Ex. A at 1. No Plaintiffs had an hour of service after January 1, 2011, so the 2011 Plan does not apply to them. The operative Plan documents are, thus, the 2000 Plan and the 2005 SPD. Notably, the 2011 Plan also states, "Notwithstanding any other provision of the Plan to the contrary, a Participant's vested interest in his Accrued Benefit under the Plan on and after the effective date of this amendment and restatement shall be not less than his accrued benefit on the day immediately preceding the effective date." *Id.* Accordingly, even if the Court concludes that the 2011 Plan is relevant in some way, it cannot, by its own terms, diminish Plaintiffs' rights.

single *requirement* in any of the Plan documents that Defendants allegedly breached" and that "there are no contractual duties set forth in the Plan documents that align with Plaintiffs' allegations." Corp. Defs. Mem. at 13-14 (emphasis added). In other words, Defendants argue that none of their promises were binding because they ensured through drafting the Plan that they were free to ignore them. Indeed, Defendants claim that "the Corporation had no absolutely no obligation to make any pension benefits to any Plan participants." *Id.* at 17. But for over 150 years, New York courts have held that "it would be just to neither party" to read a contract as "holding out illusory promises, couched in vague and deceptive terms, for the very purpose of enabling them to elude liability." *Hoffman v. Aetna Fire Ins. Co.*, 32 N.Y. 405, 415 (1865). The Court should hold Defendants to the binding promises Plaintiffs have identified.

1. Plaintiffs have identified multiple, independent promises in the Plan documents

In the 2000 Plan, Defendants promised not to reduce or discontinue accrued benefits unless the law required:

> No pension or other benefit granted prior to the time of any amendment or modification of the Plan shall be reduced, suspended, or discontinued as a result thereof, except to the extent necessary to enable the Plan to meet the requirements for qualification under the Code or the requirements of any governmental authority.

Naini Aff., Ex. D § 16.1. Likewise, the 2005 SPD[5] promises participants that in addition to Social Security and savings, "a third source [of retirement income] *will be* the St. Clare's Hospital Retirement Income Plan," which includes "a monthly Plan Benefit *for life*."[6] Naini Aff., Ex. E at 1 (emphasis added). It promises that while the Employer may terminate the Plan:

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[5] The Court of Appeals has treated summaries of benefits as expressions of employment contract obligations in the context of employee benefit plans. *See Matter of Consol. Mut. Ins. Co.*, 77 N.Y.2d 144, 148-49 (1990).

[6] The SPD includes the phrase "subject to the Plan terms and conditions," but does not provide a copy of the Plan. Naini Aff., Ex. E at 1.

> [N]o modification, suspension or termination of the Plan may reduce any Plan Benefits you have already accrued. Should the Plan be terminated, you will not earn any additional benefits, but you will be 100% vested in your Accrued Plan Benefit at the time of the Plan's termination.

Id. at 21.

The Plan itself likewise uses mandatory, unqualified language to set forth when participants are entitled to benefits. Naini Aff., Ex. D, Art. V; FAC ¶ 49. It provides that participants "*shall be eligible* for a normal retirement benefit" once they have vested in their benefits. *Id.* § 5.1 (emphasis added). It states that "a Participant's vested interest in his Employer Derived Benefit *shall be at all times* 100 percent" and sets out a simple chart promising that this 100% vesting occurs after 5 years of credited service. *Id.* § 7.1 (emphasis added). Likewise, it promises that an eligible participant "*shall receive payment of such benefit.*" *Id.* Art. IX (emphasis added).

In addition, the SPD assures participants that should the Plan be terminated, their benefits may be reduced *only* if the law requires or their pension amount "exceeds the amount covered by the PBGC." Naini Aff., Ex. E at 18-19. The Plan refers to Title IV of ERISA—the statutory section containing the PBGC's guaranty—as an overarching limitation on Defendants' ability to curtail contributions or benefit payments. Naini Aff., Ex. D §§ 13.1, 16.2.

After receiving the "church plan" exemption from ERISA, Defendants promised to follow actuarial advice and adhere to ERISA to ensure that the Plan was sufficiently funded. The Plan promises that contributions will be "based on the advice of the Actuary," *id.* § 13.1, and the SPD states that the amount of contributions to the pension fund are "actuarially determined," Naini Aff., Ex. E at 21. The Plan also repeatedly incorporates ERISA standards, and the SPD describes participants' "rights and protections under . . . ERISA." *Id.* at 21-22. Additionally, the SPD states that "ERISA imposes obligations on the people responsible for operating the Plan" and refers to participants' ability to enforce those obligations. *Id.* at 22. The Plan's incorporation of Title IV of ERISA also requires Defendants to ensure that *all vested benefits* are paid when terminating the plan. *See* 29 U.S.C. § 1341.

2. Defendants' broken promises were binding

Defendants' suggestion that these promises were not actually promises, but non-binding descriptions of aspirational goals, is precluded by law. Pension payments are a deferred part of an employee's compensation for work performed. *See* Naini Aff., Ex. F at 8 ("the [pension fund] Trust was formed as part of the Corporation's employee compensation packages"). Labor Law § 198-c(2) defines "benefits or wage supplements" as including "retirement benefits."[7] The promise to provide a pension as part of an employment contract is binding. *See, e.g.*, *Scoville v. Surface Transit*, 242 N.Y.S.2d 319, 322 (Sup. Ct. N.Y. Cty. 1963). As *Scoville* explained, "Each plaintiff performed the acts and completed the service stipulated in the unrevoked, unmodified promise of their employer and under the modern view thereupon consummated a unilateral contract which vested in each an indefeasible right to the promised benefits." *Id.* at 321. That view only makes sense because "under our present economic system, an employer cannot offer a retirement system as an inducement to employment and . . . withdraw or terminate the program after an employee has complied with all the conditions entitling him to retirement rights thereunder." *Cantor v. Berkshire Life Ins. Co.*, 171 N.E.2d 518, 522 (Ohio 1960) (citing similar cases in other states); *see also Scoville,* 242 N.Y.S.2d 320 (employer was bound to pay pension "dangled before" employees as an inducement to employment).

[7] The New York Labor Law was enacted in 1967, only seven years before Congress enacted ERISA and preempted most state pension law. Therefore the precedent reflecting this view is relatively sparse, and the law of other jurisdictions taking a similar approach to modern New York law is informative.

To evade these obligations, Defendants invoke provisions in the Plan and Trust documents that Defendants claim (1) limit the liability of the employer and all affiliated companies[8] and individuals (Corp. Defs. Mem. at 17 (citing Pofit Aff., Ex. C ¶ 2.9 and Pofit Aff., Ex. A § 13.1)); (2) make contributions to the Plan and Trust discretionary (*id.* at 14 (citing Pofit Aff., Ex. C ¶ 3.1 and Pofit Aff., Ex. A § 13.2)); (3) limit benefits distributions if the plan is underfunded (*id.* at 17); and, (4) reserve the right to amend or terminate the Plan (*id.*). As a matter of law, however, such clauses do not change the binding nature of Defendants' compensation obligations. Neither a provision declaring a pension promise "voluntary and gratuitous" nor a reservation of the right to amend or terminate the plan permits an employer to "divest the employee of his rights" once vested. *Cantor*, 171 N.E. 2d at 522; *cf. Scoville*, 242 N.Y.S. 2d at 320-22 (employer must fulfill promises to pay pension benefits to vested employees despite going out of business). Neither the promise to pay vested benefits nor the promise to fund the plan in accordance with actuarial advice may be abrogated now that Plaintiffs have performed the requisite service.

Indeed, much of the language Defendants invoke as permitting them to evade their promises actually binds them to the particulars of payment. For instance, Plan § 16.2, which sets forth the priority of distribution of funds on termination, does not purport to limit payments to participants, but incorporates ERISA language allocating liability between the employer *and the PBGC. See* 29 U.S.C. § 1344. And Plan § 17.4, which makes benefits non-forfeitable on termination to the extent funded, does not enable Defendants to disturb accrued benefits. Instead, it uses the exact language of the Internal Revenue Code requirement that upon termination, plans must automatically deem vested and pay benefits to all employees who have accrued *any* service

[8] At the absolute minimum, the clause limiting liability does not apply to the Plan itself, which Plaintiffs named in the Complaint as a Defendant for complete relief.

if funding permits. 26 U.S.C. § 411(d)(3). Contrary to Defendant's claims, the Plan documents clearly convey a promise to pay a pension in exchange for wages. Defendants' attempt to self-limit liability is legally inoperative.

At best, rather than "utterly refut[ing]" Plaintiffs' contract claims, *SUS, Inc.* 75 A.D.3d at 741, the Plan documents may contain ambiguity. If so, core principles of contract law nonetheless warrant construing the contract's promises as binding. First, any ambiguity should be resolved in Plaintiffs' favor because Defendants drafted the Plan documents. *See, e.g.*, *Matter of Riconda*, 90 N.Y.2d 733, 740-41 (1997) (citing Restatement (Second) of Contracts § 206 (*contra preferentem* doctrine of interpretation against the drafter)). Second, reading the Plan documents to promise vested employees an optional, legally unenforceable pension would create an illusory promise—a heavily disfavored result. *Curtis Props. Corp. v. Greif Cos.*, 212 A.D.2d 259, 265-66 (1st Dep't 1995).

Even if the Court does not believe that these principles conclusively resolve the matter, the proper course is to deny Defendants' motion and allow discovery to assess extrinsic evidence. *Matter of Consol. Mut. Ins. Co.*, 77 N.Y.2d at 148-49 (rejecting Defendants' reliance on ambiguous reservation of rights to claim that a promise for lifetime insurance benefits was subject to termination at the employer's discretion). There is more than enough extrinsic evidence to support Plaintiffs' interpretation of the Plan. Most notably, the Corporation's own statements in the corporate dissolution proceedings resolve any doubt over whether Defendants may withhold the contributions to the Plan and payment of benefits to employees. The Corporation has sworn that it has a valid debt of $53.5 million to the Trust, which is the mechanism by which they agreed to pay employees deferred wages. Naini Aff., Ex. G ¶¶ 9-10. Even if Defendants otherwise retained the discretion to refuse to make contributions, they chose not to exercise that discretion. Instead, they acknowledged in a verified pleading that the money needed to fully fund the plan is a valid debt. They may claim that they are unable to fulfill their obligations, but they may not contradict their sworn submission to this Court and pretend that the obligations do not exist.

B. Plaintiffs' breach of contract claims to recover their pension payments are timely

Defendants argue that Plaintiffs' contract claims concerning the reduction and repudiation of payments are time-barred. *See* Corp. Defs. Mem. 18-19. This argument is premised on a 2008 letter from Defendant Perry informing Plan participants that their retirement age was being increased to stabilize the Plan. *See id.* Neither the law nor the letter supports this argument.

To dismiss a complaint under CPLR § 3211(a)(5), a defendant must initially establish "that the time within which to commence the action has expired." *Franklin v. Hafftka*, 140 A.D.3d 922, 924 (2d Dep't 2016). The plaintiff then bears the burden of raising a question of fact as to whether the action was commenced within the limitations period. *Id.*

The statute of limitations for a breach of contract claim is six years. CPLR § 213(2). If a contract "provides for annual pension payments over a period of time," the statute of limitations "begins to run at the time of the failure to make each payment." *Medalie v. Jacobson*, 120 A.D.2d 652, 652 (1st Dep't 1986). Therefore, a plaintiff "can sue for any payments due within the six years prior to the commencement of the suit." *Bielecki v. Bielecki*, 106 A.D.3d 1454, 1455 (4th Dep't 2013); *see also Medalie*, 120 A.D.2d at 652; *cf. Phoenix Acquisition Corp. v. Campcore, Inc.*, 81 N.Y.2d 138, 141-42 (1993) (cause of action for breach of installment contract accrues at each instance of non-payment).

Plaintiffs' claim accrued on February 1, 2019, when St. Clare's Corporation first reduced or eliminated the payments owed to Plaintiffs. FAC ¶ 87. Because Plaintiffs filed the complaint on September 10, 2019, their contract claims are within the 6-year limitations period.

The Defendants' 2008 letter did not cause Plaintiffs' claims to accrue. Indeed, that letter unequivocally told Plaintiffs their benefits would not change, a message the Defendants repeatedly and misleadingly affirmed. *See* FAC ¶¶ 65, 68, 70-72, 78 (describing the Corporate Defendants' assurances regarding the pension benefits). The Corporate Defendants did not tell Plaintiffs until October 11, 2018, that they would receive reduced or no pensions, and the first claim did not accrue until the pensions were stopped or reduced on February 1, 2019. *See id.* ¶ 82. Plaintiffs' lawsuit to recover the pension they were promised is timely.

II. Plaintiffs Have Stated Valid Claims for Promissory Estoppel as an Alternative to Their Contract Claims

A. Plaintiffs may plead alternative theories of recovery under CPLR Rule 3014

Under CPLR Rule 3014, "[c]auses of action or defenses may be stated alternatively or hypothetically." CPLR R. 3014; *see* Siegel & Connors, N.Y. Prac. § 214 (6th ed. 2018) (stating that "[a]lternative pleading is . . . recognized and invited by CPLR 3014."). In cases involving a contract, a plaintiff can proceed on both a contract claim and a second theory of recovery where "there is a bona fide dispute as to the existence of a contract, or where the contract does not cover the dispute in issue . . . ." *Plumitallo v. Hudson Atl. Land Co., LLC*, 74 A.D.3d 1038, 1039 (3d Dep't 2010); *see also M/A-Com, Inc. v. State of New York*, 78 A.D.3d 1293, 1294 (3d Dep't 2010) ("under the general rule, claimants would be permitted to proceed on alternative theories at this pre-answer stage of the action" given a dispute about scope of contract (citation omitted)); *Man Advisors, Inc. v. Selkoe*, 174 A.D.3d 435 (1st Dep't 2019) ("plaintiff should be permitted to plead in the alternative, and its claim for fraud, [sic] should not be dismissed as duplicative of the breach-of-contract cause of action") (internal quotations and citation omitted); *Auguston v. Spry*, 282 A.D.2d 489, 491 (2d Dep't 2001) ("causes of action alleging breach of contract and unjust enrichment may be pleaded alternatively" pursuant to CPLR § 3014); *Strauss v. DiCicco*, 64 A.D.2d 979, 979-80 (2d Dep't 1978) (same). The bevy of cases the Corporate Defendants cite do not differ on this point; those cases did not involve a dispute concerning the validity or reach of the contract. Indeed, *Clark-Fitzpatrick v. Long Island R.R. Co*, on which Defendants rely, states that a quasi-contract claim is improper only where "the existence of [the contract] is undisputed, and the scope of [the contract] clearly covers the dispute between the parties." *Clark-Fitzpatrick, Inc. v. Long Island R.R. Co.*, 70 N.Y.2d 382, 389 (1987).

B. The amended complaint amply sets forth the bases for Plaintiffs' promissory estoppel claims

To establish a promissory estoppel claim, Plaintiffs must show "(1) a clear and unambiguous promise, (2) reasonable and foreseeable reliance by the party to whom the promise is made, and (3) an injury sustained in reliance on the promise." *Fleet Bank v. Pine Knoll Corp.*, 290 A.D. 2d 792, 797 (3rd Dep't 2002) (citations omitted). Plaintiffs' complaint details the promises Plaintiffs relied on and the injuries they suffered from the Defendants' breach of those promises.

Plaintiffs allege that Defendants promised to maintain Plaintiffs' accrued pension benefits, to guarantee minimum payment by the PBGC if the Plan failed, and to fund the Plan according to actuarial and ERISA standards. *See supra* pp. 7-8 (describing the promises). The Complaint makes clear that Plaintiffs "continued to work at the Hospital before it closed" in reliance on the Defendants' promise not to cut or discontinue the accrued benefits. FAC ¶¶ 2, 106. As anyone in their position would, Plaintiffs "made decisions affecting their lives in reasonable reliance on the assumption that they would receive their pensions." *Id.* ¶ 108. This reliance was, of course, reasonable in and of itself, just as it is reasonable for an employee to assume that, if she works, her employer will pay her wages. *Cf. Scoville*, 242 N.Y.S. 2d at 320-21 (describing pension plan “dangled before” Plaintiffs to induce their service). Plaintiffs’ reliance on the Defendants was bolstered by the Defendants’ affiliation with the Diocese (FAC ¶ 108) and consistently reaffirmed by the Defendants’ assurances that they would provide Plaintiffs their accrued benefits. *See id.* ¶¶ 65, 68, 70-72, 78 (describing the Defendants’ assurances regarding the pension benefits).

The injuries Plaintiffs have started to suffer at the hands of the Defendants speak for themselves. Forty Plaintiffs have had their accrued benefits cut by nearly one-third, and 132 Plaintiffs are receiving nothing at all. *See* FAC ¶¶ 10-11.

In challenging Plaintiffs’ claim for promissory estoppel, Defendants limit their analysis of the promises to only three letters, sent in 2007, 2008, and 2009—then contend that because none of these letters contains a clear promise, Plaintiffs have not pled their promissory estoppel claim adequately. *See* Corp. Defs. Mem. at 22-23. This argument ignores the actual promises at issue: the promises to pay the vested benefits, provide a PBGC backstop, and fund the Plan. *See supra* pp. 7-8. These promises are contained not in the letters but in the Plan documents, the validity of which the Defendants do not dispute.

The Defendants further contend that Plaintiffs’ reliance was not reasonable because, they argue, the Plan documents condition payment of the pension on the Plan assets, and because annual letters the Corporation sent between 2014 and 2017 informed Plaintiffs that Defendants had underfunded the Plan. *See* Corp. Defs. Mem. at 23; Pofit Aff., Ex. D. This argument misses the point: Plaintiffs relied on the promised pension during the years that they were working, not just after the Hospital closed. In any event, as discussed above, *see supra* pp. 10-12, the Plan proviso the Corporate Defendants cite (Naini Aff., Ex. D. § 13.1) to claim that payment was conditional on the Plan having assets refers to allocation of liability with the PBGC, or, if it is intended as an exculpatory clause, is ineffective as a matter of law. Defendants may not invoke it to undercut the reasonableness of Plaintiffs' reliance.

Finally, the argument that the three letters could not provide a basis for reasonable reliance is both irrelevant and incorrect. First, Plaintiffs relied on the certainty of receiving pension payments even before the Plan was frozen in 2005 (FAC ¶¶ 2, 60, 105-106), so they need not show reliance on the three letters to plead promissory estoppel. Second, Plaintiffs made numerous financial decisions even after 2005 with the expectation that they would receive the pensions they had earned, so the letters do in fact provide a basis for reliance. *See id.* ¶ 108. As Plaintiffs have articulated Defendants' clear promises, their reasonable reliance on those promises, and the harm they continue to suffer, they have amply pled their promissory estoppel claims.

III. Plaintiffs' Breach of Fiduciary Duty Claims Are Sufficiently Particular, Timely, and Distinct from the Breach of Contract Claims to Withstand a Motion to Dismiss

A. Plaintiffs have pleaded a claim for breach of fiduciary duty with sufficient specificity

To establish a breach of fiduciary duty claim, Plaintiffs must show that: (1) a special relationship of trust was established with the defendants for their benefit; (2) defendants breached a duty ensured by that trust; and (3) they sustained injury because of that breach. *N.E. Gen. Corp. v. Wellington Adv.*, 82 N.Y.2d 158, 160-62 (1993); *accord EBC I, Inc. v. Goldman, Sachs & Co.*, 5 N.Y.3d 11, 19-22 (2005) (denying motion to dismiss breach of fiduciary duty claim based on allegation that underwriter had a fiduciary duty to investor and breached it by failing to disclose conflicts of interest). Plaintiffs must plead these claims "in detail." *Chiu v.*

Man Choi Chiu, 71 A.D.3d 621, 623 (2d Dep't 2010). However, the Court of Appeals has repeatedly emphasized that this standard merely requires Plaintiffs to "allege the basic facts to establish the cause of action." *Pludeman*, 10 N.Y.3d at 492.

Plaintiffs satisfy this standard. First, they have alleged a fiduciary relationship between each Defendant and themselves, arising from the Plan documents and their relationship of trust. The Complaint alleges that, as relevant to the Corporate Defendants, (1) St. Clare's Corporation is a named fiduciary under the Plan (FAC ¶ 113; *see also* Naini Aff., Ex. D § 14.1); (2) Joseph Pofit and Robert Perry were executive officers of the Corporation, and Pofit is chairman and president of the Corporation's Board of Directors (FAC ¶¶ 28-29); and (3) the trustees of the Trust are fiduciaries of the Trust, and are the same individuals as the Corporation's Board of Directors (excluding the Bishops) (*id.* ¶¶ 27, 49, 52).

The Complaint likewise specifies the Defendants' duties, working jointly in their role as fiduciaries of the Plan and Trust, based on both the express language of the document and the relationship created under the common law. Paragraph 52 spells out much of the documentary language articulating the Defendants' duty to administer the Plan and its assets for the exclusive benefits of employees and beneficiaries. FAC ¶ 52 (citing Trust Agreement § 2.2; Plan § 5; SPD).

The Complaint further explains, "In addition to the duties imposed by the Plan and Trust documents themselves, fiduciaries such as Defendants have the duty to act prudently, loyally, and honestly in the interests of the beneficiaries such as the plaintiffs." FAC ¶ 47 (citing Restatement (Second) of Trusts § 2). Count III lists duties inuring to all fiduciaries and contains a nonexclusive list of eighteen specific acts or omissions that Plaintiffs allege breached those duties, each readily traceable to the detailed facts alleged in the body of the Complaint. *Id.* ¶ 114.

That Complaint describes in painstaking detail the disloyalty, dishonesty, and imprudent judgments exercised by all Defendants, acting together, in the events leading up to the Plaintiffs' devastating financial losses. *Id.* ¶ 115-18. Taken together, these readily give Defendants notice of the relevant transactions or occurrences, the material elements at issue, and the "basic facts necessary to establish the cause of action." *Pludeman*, 10 N.Y.3d at 492.

Defendants quibble that Plaintiffs have unduly grouped defendants together by pleading a claim against all of them without identifying their individual conduct. Corp. Defs. Mem. at 24-26. The cases on which they rely, however, are inapposite. Many reject entirely conclusory allegations that do not even give reasonable notice of the relevant conduct—a deficiency Defendants have rightly refrained from raising here. *See, e.g.*, *Domus Arbiter Realty Corp. v. Bayrock Group LLC*, 2018 N.Y. Misc. LEXIS 5591, *4-5 (Sup. Ct. N.Y. Cty. 2018) ("The second cause of action is pleaded against all of the broker-defendants collectively and merely alleges, in a conclusory fashion, that '[they] knew about the underlying fraud and assisted the Sponsor-Defendants'"); *Norex Petroleum Ltd. v. Blavatnik*, 22 N.Y.S.3d 138 (Table), *14 (Sup. Ct. N.Y. Cty. 2015) ("Norex has plead neither 'facts giving rise to the fiduciary relationship' nor facts with sufficient particularity detailing the breach of the fiduciary relationship" by alleging that one defendant "'joined forces with'" others and has "'done everything in its power'" to keep dividends from plaintiffs). The specific factual allegations described in the Complaint place it firmly outside that category of deficient pleadings.

This case is also readily distinguishable from the cases Defendants cite involving a failure to identify the source of the alleged fiduciary relationship between each defendant and the plaintiffs. *E.g., CIFG Assur. N. Am., Inc. v. Bank of Am., N.A.*, 41 Misc.3d 1203(A), *3-4 (1st Dep't 2013) ("CIFG does not distinguish between the three sets of corporate defendants and the distinct roles they played as originators, sponsors, depositors, underwriters, and servicers, and does not identify what roles they played in the alleged fraud."); *Aetna Cas. & Sur. Co. v. Merchants Mut. Ins. Co.*, 84 A.D.2d 736, 736 (1st Dep't 1981) ("Aetna . . . has sued several defendants, including the primary insurer and its house counsel. Plaintiff alleges bad faith, breach of contract, investigative failures, malpractice and breach of duty . . . ."). Here, Plaintiffs allege that all Defendants worked together as part of the governing body of the Corporation and (other than the Bishops) of the Trust. Thus, they collectively had the same fiduciary duties to the same people emanating from the same documents and relationships. Most importantly, they took specifically identified actions and omissions *as a group*. Even if the Corporation's Board of Directors and the trustees of the Trust might otherwise have different duties, as described above, the relevant documents here assign the same duties to the same people and entities—and the directors and trustees *are the same people.*

Including separate allegations against each Defendant would be a matter of rote, repetitive recitation that would not aid Defendants or the Court in understanding the violations alleged. In any event, the Court of Appeals has explained that when "plaintiffs have not alleged specific details of each individual defendant's conduct, we have never required talismanic, unbending allegations. Simply put, sometimes such facts are unavailable prior to discovery." *Pludeman*, 10 N.Y.3d at 492. In this case, where the vast majority of the relevant facts and documents are in Defendants' control, the detailed history of the Plan's mismanagement and collapse alleged here is more than sufficient to survive a motion to dismiss.

If the Court is nonetheless persuaded that Plaintiffs' Complaint lacks some important detail that they are able to know at this early date, the appropriate remedy is for Defendants to seek a bill of particulars or other discovery. As the Third Department explained in *Serio* *v. Rhulen*, 24 A.D.3d 1092, 1094 (3d Dep't 2005), "Defendants' purported desire to know the specific allegations as to each defendant can be sought via a demand for a bill of particulars and disclosure. Indeed, disclosure will undoubtedly result in a refining of the action. The lack of exact specificity at this procedural juncture, however, is not a ground for dismissal."[9]

B. Plaintiffs' breach of fiduciary duty claims do not duplicate their contract claims because the fiduciary duty claims arise from violations of the common law, not the contract

Courts have repeatedly affirmed that when a complaint alleges both of breach of contract and breach of fiduciary duty, the question to be answered when analyzing the claims for duplicativeness is not whether the claims are "premised upon the same facts and seek identical damage," Corp. Defs. Mem. at 26, but whether the fiduciary duty claim is grounded in an *independent duty*. "It is well settled that the same conduct which may constitute the breach of a contractual obligation may also constitute the breach of a duty arising out of the relationship created by contract but which is independent of the contract itself." *Mandelblatt v. Devon Stores,* 132 A.D.2d 162, 167-68 (1st Dep't 1987). Courts will not impose a fiduciary relationship where one does not exist, but "it is fundamental that fiduciary 'liability is not dependent solely upon an agreement or contractual relation between the fiduciary and the beneficiary but results from the relation.'" *EBC I,* 5 N.Y.3d at 20 (quoting Restatement (Second) of Torts § 874, Comment *b*)).

As discussed above, the Complaint identifies the Plan document sections and factual circumstances giving rise to fiduciary relationships between Plaintiffs and Defendants. *See supra* pp. 17-20. Fiduciaries, in turn, have various duties to beneficiaries, including the duties of loyalty, exclusivity of purpose, prudence, and disclosure. Restatement (Second) of Trusts

[9] At most, the appropriate remedy is not a dismissal with prejudice, but one with leave to replead. *Aetna Cas. & Sur. Co.*, 84 A.D.2d at 736.

§170(l) (loyalty and exclusivity); Restatement (Third) of Trusts § 77 (prudence, including the duty to monitor as explained in *Tibble v. Edison Int'l*, 575 U.S. 523 (2015)); *Matter of Hunter*, 753 N.Y.S.2d 675, 679 (Sup. Ct. Westchester Cty. 2002) (citing *Adair v. Brimmer*, 74 N.Y. 539 (1878)) (disclosure). These duties do not arise from the Plan documents, which identify St. Clare's Corporation as the named fiduciary without specifying duties of care (*see* Naini Aff., Ex. D § 14.1), but from the common law. They are therefore not duplicative of Plaintiffs' contract claims.

That the duties and claims differ is also clear from the different remedies Plaintiffs seek under each claim. If Plaintiffs prove their contract claims, they will seek compensation for the damages that have arisen from the Defendants' breach of its promises. And if Plaintiffs prove that the Defendants breached their fiduciary duties, they will seek funding of the Plan. To be clear, Plaintiffs do not seek a double recovery. Any duplicative recovery would presumably be offset. But the fact that there are two routes to being made whole—each grounded in an independent duty the Defendants had and violated—does not make their claims duplicative.

C. The breach of fiduciary duty claims against Defendant Perry are timely because they accrued in February 2019

The statute of limitations for breach of fiduciary duty is three years if the relief sought is purely monetary and six years if it is equitable. *IDT Corp. v. Morgan Stanley Dean Witter & Co.*, 12 N.Y.3d 132, 139 (2009). A breach of fiduciary duty claim accrues only once the damages arising from the breach are sustained. *Id.* at 140 (citing *Kronos, Inc. v. AVX Corp.*, 81 N.Y.2d 90, 94 (1993)). Plaintiffs' claims against Defendant Perry accrued in February 2019, when Defendants first reduced or repudiated their pension obligations. FAC ¶¶ 10-11. As a result, the claims are timely under the 3- and 6-year limitations periods.

Defendants' argument that the claims against Perry are time-barred relies on a misreading of the law. The repudiation rule Defendants cite concerns the *tolling* of the statute of limitations once the claim has already accrued. *See, e.g.*, *Matter of Therm, Inc.*, 132 A.D.3d 1137, 1138 (3d Dep't 2015) (explaining that "the statute of limitations for a claim alleging a breach of fiduciary duty is tolled until there has been an open repudiation by the fiduciary"); *Franklin*, 140 A.D.3d at 924 (analyzing "whether the statute of limitations was tolled pursuant to the fiduciary tolling rule or the 'repudiation rule'"). Moreover, the case Defendants cite is inapposite because, there, the repudiation and harm coincided. *See Matter of Twin Bay Vil., Inc.*, 153 A.D.3d 998, 1001 (3d Dep't 2017). Here, there is no need to analyze tolling because Plaintiffs' claims, which accrued in February 2019, are timely.

CONCLUSION

For these reasons, the Court should deny Defendants' Motion to Dismiss.