IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

MICHAEL W. UNDERWOOD, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 13 CH 17450
	)	
CITY OF CHICAGO, a Municipal Corporation,	)	Hon. Neil Cohen
	)	
Defendant,	)	
	)	
and	)	
	)	
Trustees of the Policemen's Annuity and Benefit Fund of Chicago; Trustees of the Firemen's Annuity and Benefit Fund of Chicago; Trustees of the Municipal Employees' Annuity and Benefit Fund of Chicago; and Trustees of the Laborers' & Retirement Board Employees' Annuity & Benefit Fund of Chicago, *et al.*	)	
	)	
Defendants.	)	

DEENDANTS, TRUSTEES OF THE FIREMEN'S ANNUITY AND BENEFIT FUND OF CHICAGO AND THE TRUSTEES OF THE MUNICIPAL EMPLOYEES' ANNUITY AND BENEFIT FUND OF CHICAGO'S JOINT COMBINED MOTION TO DISMISS PLAINTIFFS' FOURTH AMENDED CLASS ACTION COMPLAINT BY PARTICIPANTS IN THE CITY OF CHICAGO'S ANNUITANT HEALTHCARE PLAN FOR DECLARATORY RELIEF PURSUANT TO, *INTER ALIA*, 735 ILCS 5/2-619

Defendant Trustees of the Firemen's Annuity and Benefit Fund of Chicago ("Fire Fund") and the Defendant Trustees of the Municipal Employees' Annuity and Benefit Fund of Chicago ("Municipal Fund") (and/or together "The Funds"), jointly move to dismiss Plaintiffs' Fourth Amended Class Action Complaint ("the Pleading") by Participants in the City of Chicago's Annuitant Healthcare Plan for Declaratory and other Relief Pursuant to, *inter alia*, 735 ILCS 5/2-619 and in support thereof, states, as follows:

INTRODUCTION/BACKGROUND

On January 13, 2016, the Underwood Plaintiffs ("Plaintiffs" or "Underwood") filed a seven count **Third Amended Class Action Complaint and Exhibits**, requesting judgment against the City of Chicago and the Defendant Pension Funds ("Defendants"), as follows:

> **Count I:** That the Defendants violated Article XIII, §5 of the State Constitution by diminishing the plaintiffs' pension benefits and by constitutionally impairing the plaintiffs' contractual rights pursuant to Article I § 16 of the 1970 Illinois Constitution.
>
> **Count II:** That the Defendant City of Chicago breached its contractual agreement to provide health insurance coverage for the annuitants of the defendant funds.
>
> **Count III:** That the Defendants are estopped by their own conduct from changing or terminating the healthcare coverage for the annuitants of the defendant funds.
>
> **Count IV:** That the Defendants violated the plaintiffs' healthcare property rights secured to them under the Fourteenth Amendment of the United States Constitution and actionable Under 42 U.S.C. § 1983.
>
> **Count V:** That the Defendants violated Article XIII § 5 of the Illinois State Constitution and impaired the plaintiffs' contractual rights in violation of Article I, § 10, cl. 1, of the Federal Constitution by changing or termination the plaintiffs' contractual healthcare rights.
>
> **Count VI:** That the City of Chicago violated the Illinois Constitution's Article I, § 2 equal protection clause in that it illegally discriminated between the August 23, 1989 **retirees** and the pre-August 23, 1989 **hirees** of the City in respect to its provision of healthcare benefits.
>
> **Count VII:** That the statutory amendments that purport to condition healthcare entitlement in a fund for a city of over 500,000 inhabitants to annuitants who participate "by reason of employment" by the City of Chicago are invalid (special or local legislation).

On July 21, 2016, the **Circuit Court of Cook County, Chancery Division**, the Honorable Judge Neil H. Cohen, ruled in respect to said seven count **Third Amended Class**

Action Complaint, as follows:

> **As To Count I:** (A) That the Korshak sub-class I annuitants; the Korshak Subclass 2 annuitants and the sub-class 3 annuitants are entitled to lifetime healthcare benefits under the 1983 and 1985 statutory amendments; and such benefits are protected benefits pursuant to Art. XIII, § 5 of the 1970 Illinois Constitution; (B) that the 1989, 1997 and 2003 statutory amendments were expressly time limited at their creation and specifically did not provide lifetime or permanent healthcare benefits because the annuitant participants after the effective date expressly agreed to the time limited healthcare benefits.
>
> **As To Count II:** That the Count II Breach of Contract claim is dismissed as to all Defendants, with prejudice, as lacking any factual or legal basis.
>
> **As To Count III:** That the Count III Estoppel claim, whether equitable or promissory estoppel, is dismissed, with prejudice, as to all Defendants as lacking any factual or legal basis.
>
> **As To Count IV:** That the Count IV U.S.C. § 1983 claim (*see* 7th Circuit) is dismissed as to all Defendants, with prejudice.
>
> **As To Count V:** That the Count V (and Count I) Impairment of Contract claim is dismissed as to all Defendants, with prejudice, in that the Defendants never passed a law to impair the Plaintiffs' "contractual rights."
>
> **As To Count VI:** That the Count VI Equal Protection claim is dismissed, with prejudice, because hirees before and after August 23, 1989 were not shown to be similarly situated and no rational basis can be shown to exist.
>
> **As To Count VII:** That the Count VII Special Legislation claim fails to state a claim and is dismissed, with prejudice, in that the General Assembly is permitted to make classifications based on population or territorial differences and the plaintiffs allege no facts that the relevant classification is arbitrary or lacking in rational basis.

Thereafter, on appeal, in the **Illinois Appellate Court, First Division, 162356**, the Honorable Justice Simon, with full concurrence of the Court, on June 29, 2017, delivered the judgments of the Court in respect to Judge Cohen's July 21, 2016 ruling on the said seven count **Third Amended Class Action Complaint**, as follows:

> **Appellate Court Judgment As To Count I:** (A) That the Pension Protection

clause, Article XIII §5, of the 1970 Illinois Constitution locked in the 1983 and 1985 (statutory amendments) fixed rate subsidies for any employee that began participating in the pension system by the time the 2003 Settlement was executed on April 4, 2003, 2003[1]. ¶¶ 60, 61, 62; and (B) that the settlements that held the 1987 *Korshak* litigation in abeyance from 1989 until 2013 (and the 1989, 1997 and 2003 statutory amendments related thereto) have no enduring effect as the Pension Protection clause, Article XIII, §5 of the 1970 Illinois Constitution, does not protect any term of those settlements because such settlements expired by their own terms as the parties agreed upon. ¶¶ 60, 61, 62.

Appellate Court Judgments As To Counts II; III, IV; V; VI And VII: That none of the retirees have a right to lifetime health coverage based upon contract, estoppel or any constitutional theory other than the Pension Protection Clause, Article XIII ¶ 5 of the 1970 Illinois Constitution relating to the limited fixed rate subsidies in the 193 and 1985 statutory amendments.

Appellate Court Remand: The Appellate Court remanded the case to the Circuit Court on the sole issue of finding "a workable solution to address how the subsidy would be funded." ¶ 64.

On August 3, 2017, Plaintiffs' Motion for Rehearing of said Illinois Appellate Court, First Division Judgments relating to Plaintiff's Third Amended Complaint aforesaid was **denied**. Moreover, on November 22, 2017, Plaintiffs' Petition for Leave to Appeal to the Illinois Supreme Court relating to the Appellate Court's Judgments as to the Plaintiff's Third Amended Complaint was **denied**.

Now, after the said Circuit Court Chancery Division rulings, with prejudice; and after the said Appellate Court final judgments aforesaid as to said Counts I through VII of Plaintiffs' **Third Amended Complaint**, the Underwood Plaintiffs on June 4, 2018, filed their **Fourth Amended Complaint** realleging the same identical Counts I through VII as follows:

Count I: That the Defendants violated Article XIII, §5 of the State Constitution by diminishing the plaintiffs' pension benefits and by

[1] Importantly, in reviewing the claim for healthcare benefits under the 1983 and 1985 amendments, the Appellate Court held that the issue was "moot" for the Korshak and Window subclasses because the City had agreed in writing to provide those annuitants with benefits above the subsidy levels provide for in the 1983 and 1985 amendments. ¶¶¶ 35, 42, 46.

constitutionally impairing the plaintiffs' contractual rights pursuant to Article I, § 16 of the 1970 Illinois Constitution.

Count II: That the Defendant City of Chicago breached its contractual agreement to provide health insurance coverage for the annuitants of the Defendant funds.

Count III: That the defendants are estopped by their own conduct from changing or terminating the healthcare coverage for the annuitants of the Defendant funds.

Count IV: That the Defendants violated the plaintiffs' healthcare property rights secured to them under the Fourteenth Amendment of the United States Constitution and actionable Under 42 U.S.C. § 1983.

Count V: That the Defendants violated Article XIII, § 5 of the Illinois State Constitution and impaired the plaintiffs' contractual rights in violation of Article I, § 10, cl. 1 of the Federal Constitution by changing or termination the plaintiffs' contractual healthcare rights.

Count VI: That the City of Chicago violated the Illinois Constitution's Article I, § 2 equal protection clause in that it illegally discriminated between the August 23, 1989 retirees and the pre-August 23, 1989 hirees of the City in respect to its provision of healthcare benefits.

Count VII: That the statutory amendments that purport to condition healthcare entitlement in a fund for a city of over 500,000 inhabitants to annuitants who participate "by reason of employment" by the City of Chicago are invalid (special or local legislation).

STANDARDS

Defendants may, within the time for pleading, file a motion for dismissal of the action or for other appropriate relief upon any of the following grounds: 735 ILCS 5/2-619(a)(4) that the cause of action is barred by a prior judgment; and 5/2-619(a)(9) that a claim asserted against the defendant is barred by other affirmative matters avoiding the legal effect of or defeating the claim. The purpose of a Section 2-619 motion to dismiss is to dispose of law and easily proved issues of fact at the outset of litigation. *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 367 (2003). An affirmative matter is something in the nature of a defense, which negates the cause

of action completely. *Glisson v. City of Marion*, 168 Ill. 2d 211, 220 (1990). A Section 2-619 motion to dismiss admits the sufficiency of the complaint, but asserts an affirmative defense or other matter that avoids or defeats that claim. *Barber v. American Airlines, Inc.*, 241 Ill. 2d 450, 455 (2011).

Further, the doctrine of *res judicata* provides that a final judgment on the merits rendered by a court of competent jurisdiction bars any subsequent actions between the same parties or their privies on the same cause of action. *Hudson v. City of Chicago*, 228 Ill. 2d 462, 467 (2008); also, *res judicata* bars not only what was actually decided in the first action, but also what could have been decided. *Id.* at 469; *Rein v. David A. Noyes & Co.*, 172 Ill. 2d 325, 334-35 (1996); Ill. Sup. Ct. Rule 273.

Further still, the *law of the case* doctrine bars re-litigation of an issue already decided in the same case. *People v. Tenner*, 206 Ill. 2d 381, 395 (2002). Rulings on points of law made by a court of review are binding in that case upon remand to the trial court and on subsequent appeals to that same reviewing court unless a higher court has changed the law. *Emerson Electric Co. v. Aetna Casualty & Surety Co.*, 352 Ill. App. 3d 399, 417 (1st Dist. 2004). The purpose of the *law of the case* doctrine is to protect settled expectations of the parties, ensure uniformity of decisions, maintain consistency during the course of a single case, effectuate proper administration of justice, and bring litigation to an end. *Id.* at 417. The doctrine encompasses not only the appellate court's explicit decisions, but those issues decided by necessary implication. *Reich v. Gendreau*, 308 Ill. App. 825, 829 (1999). When an appellate court reverses and remands the cause with a specific mandate, the only proper issue on a second appeal is whether the trial court's order is in accord with the mandate. *Foster v. Kanuri*, 288 Ill.

App. 3d 796, 799 (1st Dist. 1997).

ARGUMENT

I. COUNTS I THROUGH VII AND THE PLAINTIFFS' FOURTH AMENDED COMPLAINT MUST BE DISMISSED IN ITS ENTIRETY PURSUANT TO 735 ILCS 5/2-619(A)(4) AND 5/2-619(A)(9)[2]

On January 13, 2016, the Underwood Plaintiffs filed a seven (7) count Third Amended Class Action Complaint against the City of Chicago and the Defendant Pension Funds. On July 21, 2016 this Court entered its rulings (with prejudice as to Counts II, III, IV, V, VI, and VII) as to each of the seven counts of said Third Amended Complaint. The Underwood Plaintiffs then timely appealed this Court's ruling as to each of said seven counts and on June 29, 2017, the Illinois Appellate Court, First Division, entered it's judgments as to each of said seven counts of the Third Amended Complaint. The Underwood Plaintiffs then timely filed their Petition for Rehearing before the said Appellate Court, which was denied on August 3, 2017. Thereafter, the Underwood Plaintiffs timely filed their Petition for Leave to Appeal to the Illinois Supreme Court, which was denied by the Supreme Court on November 22, 2017[3].

Thereafter, notwithstanding the plain and specific rulings by this Court and the final judgments of the Appellate Court as to each and every count of their Third Amended Complaint, the Underwood Plaintiffs on June 4, 2018, and contrary to law, filed an identical seven count Fourth Amended Complaint seeking virtually the same identical relief as claimed in their Third Amended Complaint, which counts and relief were already specifically and finally judicially

[2] The Funds note that the sole healthcare "benefit" under Count I recognized by the Appellate Court is the payment of monthly healthcare subsidies under the 1983 and 1985 statutory amendments to qualified Fund annuitants who joined the Funds prior to the April 4, 2003 execution date of the 2003 settlement and who are not members of the Korshak and Windows purported sub-classes. Any relief in Count I of Plaintiffs' Fourth Amendment Complaint that exceeds the Appellate Court Mandate must be dismissed by this Court pursuant to 735 ILCS 5/2-619(a)(4) and (a)(9); the doctrine of *Res Judicata*; and, the doctrine of *Law of the Case*.

[3] The Funds request the Court to take judicial notice as to the accuracy and veracity of the procedural posture of this case and the rulings that have been issued all pursuant to Ill. R. Evid. 201 (eff. Jan. 1, 2011).

ruled upon.

735 ILCS 5/2-619(a)(4) expressly provides that a cause of action is barred by a prior judgment. 735 ILCS 5/2-619(a)(4). In this instance, nothing could be more clear for this Court. Each cause of action and requested relief claimed in each count of the seven count Third Amended Complaint filed by the Underwood Plaintiffs was fully and finally adjudicated by the Illinois Appellate Court on June 29, 2017, constituting a legal bar to each said identical count and remedy again alleged and asserted in the Underwood Plaintiffs' identical Fourth Amended Complaint filed on June 4, 2018. Moreover, it is equally plain that the final adjudication judgments as to each of the Underwood Plaintiffs' seven count Third Amended Complaint entered by the Appellate Court on June 29, 2017, constitute "affirmative matters" defeating each of the identical claims and remedies alleged and asserted in the Underwood Plaintiffs' identical seven count Fourth Amended Complaint against the City of Chicago and the Defendant Pension Funds. 735 ILCS 5/2-619(a)(9). Accordingly, counts I through VII and the Underwood Plaintiffs' Fourth Amended Complaint must be dismissed in its entirety pursuant to 735 ILCS 5/2-619(a)(4) and 5/2-619(a)(9).

II. IN ADDITION, COUNTS I THROUGH VII AND THE PLAINTIFFS' FOURTH AMENDED COMPLAINT MUST BE DISMISSED IN ITS ENTIRETY PURSUANT TO THE DOCTRINE OF *RES JUDICATA*[4]

On January 13, 2016, the Underwood Plaintiffs filed a seven (7) count Third Amended Class Action Complaint against the City of Chicago and the Defendant Pension Funds. On July

[4] The Funds note that the sole healthcare "benefit" under Count I recognized by the Appellate Court is the City's obligation to pay certain monthly healthcare subsidies under the 1983 and 1985 statutory amendments to qualified Fund annuitants who joined the Funds prior to the April 4, 2003 execution date of the 2003 settlement and who are not members of the Korshak and Windows purported sub-classes. Any relief in Count I of Plaintiffs' Fourth Amendment Complaint that exceeds the Appellate Court Mandate must be dismissed by this Court pursuant to 735 ILCS 5/2-619(a)(4) and (a)(9); the doctrine of *Res Judicata*; and, the doctrine of *Law of the Case*.

21, 2016 this Court entered its rulings (with prejudice as to Counts II, III, IV, V, VI, and VII) as to each of the seven counts of said Third Amended Complaint. The Underwood Plaintiffs then timely appealed this Court's ruling as to each of said seven counts and on June 29, 2017, the Illinois Appellate Court, First Division, entered it's judgments as to each of said seven counts of the Third Amended Complaint. The Underwood Plaintiffs then timely filed their Petition for Rehearing before the said Appellate Court, which was denied on August 3, 2017. Thereafter, the Underwood Plaintiffs timely filed their Petition for Leave to Appeal to the Illinois Supreme Court, which was denied by the Supreme Court on November 22, 2017.[5]

Thereafter, notwithstanding the plain and specific rulings by this Court and the final judgments of the Appellate Court as to each and every count of their Third Amended Complaint, the Underwood Plaintiffs on June 4, 2018, and contrary to law, filed an identical seven count Fourth Amended Complaint seeking virtually the same identical relief as claimed in their Third Amended Complaint, which counts and relief were already specifically and finally judicially ruled upon.

The Illinois Supreme Court plainly articulating the venerable Illinois Doctrine of *Res Judicata*, has repeatedly made it crystal clear that a final judgment on the merits rendered by a court of competent jurisdiction bars any subsequent actions between the same parties or their privies on the same cause of action; and not only what was actually decided in the first action, but also what could have been decided. *Hudson*, 228 Ill. 2d at 467; *Rein*, 172 Ill. 2d at 334-35. Here again, what could be more clear for this Court's consideration. On June 29, 2017, the Illinois Appellate Court entered final judgments as to each count of the Underwood Plaintiffs

[5] The Funds request the Court to take judicial notice as to the accuracy and veracity of the procedural posture of this case and the rulings that have been issued all pursuant to Ill. R. Evid. 201 (eff. Jan. 1, 2011).

seven count Third Amended Complaint. Consistent with the Doctrine of *Res Judicata*, those said final judgments: (a) were rendered on the merits of each count; (b) the Appellate Court is a court of competent jurisdiction; (c) each count of the Fourth Amended Complaint constitutes a subsequent claim and action; (d) between the same parties, and (e) the Fourth Amended Complaint expressly alleges and articulates the same identical claims and causes of action decided and finally disposed of in respect to the seven counts of the Third Amended Complaint. Accordingly, Counts I through VII and the Plaintiff's Fourth Amended Complaint must be dismissed in its entirety pursuant to the doctrine of *res judicata.*

III. IN ADDITION, COUNTS I THROUGH VII AND THE PLAINTIFFS' FOURTH AMENDED COMPLAINT MUST BE DISMISSED IN ITS ENTIRETY PURSUANT TO THE DOCTRINE OF THE *LAW OF THE CASE*[6]

On January 13, 2016, the Underwood Plaintiffs filed a seven (7) count Third Amended Class Action Complaint against the City of Chicago and the Defendant Pension Funds. On July 21, 2016 this Court entered its rulings (with prejudice as to Counts II, III, IV, V, VI, and VII) as to each of the seven counts of said Third Amended Complaint. The Underwood Plaintiffs then timely appealed this Court's ruling as to each of said seven counts and on June 29, 2017, the Illinois Appellate Court entered it's judgments as to each of said seven counts of the Third Amended Complaint. The Underwood Plaintiffs then timely filed their Petition for Rehearing before the said Appellate Court, which was denied on August 3, 2017. Thereafter, the Underwood Plaintiffs timely filed their Petition for Leave to Appeal to the Illinois Supreme

[6] The Funds note that the sole healthcare "benefit" under Count I recognized by the Appellate Court is the payment of monthly healthcare subsidies under the 1983 and 1985 statutory amendments to qualified Fund annuitants who joined the Funds prior to the April 4, 2003 execution date of the 2003 settlement and who are not members of the Korshak and Windows purported sub-classes. Any relief in Count I of Plaintiffs' Fourth Amendment Complaint that exceeds the Appellate Court Mandate must be dismissed by this Court pursuant to 735 ILCS 5/2-619(a)(4) and (a)(9); the doctrine of *Res Judicata*; and, the doctrine of *Law of the Case*.

Court, which was denied by the Supreme Court on November 22, 2017. [7]

Thereafter, notwithstanding the plain and specific rulings by this Court and the final judgments of the Appellate Court as to each and every count of their Third Amended Complaint, the Underwood Plaintiffs on June 4, 2018, and contrary to law, filed an identical seven count Fourth Amended Complaint seeking virtually the same identical relief as claimed in their Third Amended Complaint, which counts and relief were already specifically and finally judicially ruled upon.

The *law of the case* doctrine bars re-litigation of an issue already decided in the same case. *People v. Tenner*, 206 Ill. 2d 381, 395 (2002). Rulings on points of law made by a court of review are binding in that case upon remand to the trial court and on subsequent appeals to that same reviewing court unless a higher court has changed the law. *Emerson Electric Co. v. Aetna Casualty & Surety Co.*, 352 Ill. App. 3d 399, 417 (1st Dist. 2004). The purpose of the *law of the case* doctrine is to protect settled expectations of the parties, ensure uniformity of decisions, maintain consistency during the course of a single case, effectuate proper administration of justice, and bring litigation to an end. *Id.* at 417. When an appellate court reverses and remands the cause with a specific mandate, the only proper issue on a second appeal is whether the trial court's order is in accord with the mandate. *Foster v. Kanuri*, 288 Ill. App. 3d 796, 799 (1st Dist. 1997).

Here, on June 29, 2017, the Appellate Court, First Division, entered its final judgments as to each count of the Underwood Plaintiffs' seven count Third Amended Complaint. Under the *Law of the Case* Doctrine, these Appellate Court judgments became binding on all points of law

[7] The Funds request the Court to take judicial notice as to the accuracy and veracity of the procedural posture of this case and the rulings that have been issued all pursuant to Ill. R. Evid. 201 (eff. Jan. 1, 2011).

raised in each of the said seven counts in the case both (a) on remand to this Court, and (b) also on any subsequent appeal to the same Appellate reviewing court. Accordingly, pursuant to the *Law of the Case* Doctrine, Counts I through VII and the Plaintiffs' Fourth Amended Complaint in its entirety must be dismissed.

IV. PURSUANT TO THE APPELLATE COURT MANDATE, THE SOLE REMAINING ISSUE FOR THIS COURT'S CONSIDERATION IS FINDING A "WORKABLE SOLUTION TO ADDRESS HOW THE SUBSIDY WOULD BE FUNDED." ¶64.

As this Court is aware, on June 29, 2017, the Appellate Court specifically held that Fund annuitants could not state a claim for healthcare benefits under the time-limited provisions under the 1989, 1997 and 2003 amendments to the Pension Code. The Appellate Court further held that those Fund annuitants hired on or before the execution date of the 2003 settlement are entitled to the specific monthly healthcare subsidy provided under the 1983 and 1985 amendments[8]. ¶¶35, 40. In reviewing the claim for healthcare benefits under the 1983 and 1985 amendments, the Appellate Court affirmed this Court's holding that the issue was "moot" for the Korshak and Window subclasses because the City had agreed in writing to provide those annuitants above the subsidy levels provided for in the 1983 and 1985 amendments. ¶¶¶35, 42, 46. The Appellate Court further held that Fund annuitants did not have a right to lifetime healthcare coverage based on contract, estoppel, or any constitutional theory. ¶63. In its review of what is actually protected under the 1983 and 1985 statutes, the Appellate Court is clear that participants of the respective Funds do not have an abstract, legal right to healthcare coverage and that the protected "benefit" under the Pension Protection Clause of the Illinois Constitution

[8] The Funds' position is that those annuitants must meet the qualifications of the 1983 and 1985 statutes. The 1983 statute states that only those participants who are in receipt of an age and service annuity are entitled to the monthly subsidy. Similarly, the 1985 statute states that only employee annuitants age 65 or older with 15 years of service at entitled to the monthly subsidy.

is solely the fixed-rate subsidy under the 1983 and 1985 amendments. ¶39.

The sole remaining issues for this Court's consideration pursuant to the Appellate Court Mandate are the subject of pending briefs before this Court. On June 15, 2018, the Funds filed their brief with respect to their position, based on the Appellate Court Mandate, that it is the City's responsibility to pay for the healthcare premium subsidies. (*See* ¶37: "[s]o being back at that point, ***the City is obligated*** to those retirees under the 1983 and 1985 amendments; ¶40: "[u]nder the 1983 amendment, ***the City is obligated*** to pay toward its retirees' healthcare $55 per month..."; ¶40: "[u]nder the 1985 amendment, ***the City is obligated*** to pay $25 per month for its municipal employees and laborers and retirement board employees...; ¶57: "[t]his opinion merely speaks to what ***the City is constitutionally obligated to provide***." (emphasis added)).

In addition, on July 13, 2018, the Funds filed their brief on the sole issue of whether the Funds have a responsibility to provide a group retiree healthcare plan for qualified Fund annuitants consistent with the Appellate Court Order. As noted in such brief, it is the Funds' position that the Appellate Court Mandate is clear in limiting the applicability of the 1983 and 1985 statutes solely to the right of Fund annuitants to receive a monthly subsidy payment paid by the City[9]. ¶39. The language in the Appellate Court's Mandate is clear, specific and binding on the parties. *See In Re Marriage of Ludwinski*, 329 Ill. App. 3d 1149, 152 (2002), "the mandate upon transmittal to the trial court, vests the trial court with authority only to take action that conforms with the mandate." Because the remaining issues for this Court's consideration are

[9] In that brief, the Funds also note that Plaintiffs filed a Motion to Reconsider the Appellate Court's June 29, 2017 Order and a Petition for Leave to Appeal in the Illinois Supreme Court addressing their position that the Appellate Court Order was incorrect in limiting the "benefit" to solely the monthly subsidies and that Fund annuitants also had a right to a healthcare plan provided by the Fund. The Appellate Court and Illinois Supreme Court's refusal to extend the benefit outlined in the Appellate Court's June 29, 2017 Order is the mandate in this case. This Court is barred from providing the relief that Plaintiff seeks in this Court after unsuccessfully seeking it in the Appellate Court and Illinois Supreme Court.

already addressed in pending briefs, this Court should dismiss Plaintiffs' 4th Amended Complaint in its entirety and proceed with implementing the clear direction provided in the Appellate Court Mandate.

CONCLUSION

The sole healthcare "benefit" recognized by the Appellate Court in its June 29, 2017 Order is the City's obligation to pay certain monthly subsidies to qualified Fund annuitants who joined the Funds prior to the April 4, 2003 execution date of the 2003 settlement and who are not members of the Korshak and Windows purported subclasses. ¶¶32, 40. Importantly, the Appellate Court noted that on remand that this Court is responsible for finding a "workable solution to address how the subsidy would be funded." ¶64. Plaintiffs' 4th Amended Complaint wholly ignores the Appellate Court Mandate and should be dismissed in its entirety.

For the aforementioned reasons, Defendant Trustees of the Firemen's Annuity and Benefit Fund of Chicago and the Defendant Trustees of the Municipal Employees' Annuity and Benefit Fund of Chicago respectfully request that this Honorable Court grant Defendants' Motion to Dismiss Plaintiffs' Fourth Amended Class Action Complaint in its entirety and with prejudice pursuant to 735 ILCS 5/2-619(4) and (9); the Doctrine of *Res Judicata*; and the *Law of the Case* Doctrine; and, for such other relief as the Court deems just and proper.

Respectfully submitted,

TRUSTEES OF THE FIREMEN'S ANNUITY AND BENEFIT FUND OF CHICAGO AND TRUSTEES OF THE MUNICIPAL EMPLOYEES' ANNUITY & BENEFIT FUND OF CHICAGO

By: /s/ Sarah A. Boeckman
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Date: July 27, 2018