UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

Mark Berube, on behalf of himself and all others similarly situated, Plaintiff, vs. Rockwell Automation, Inc., the Rockwell Automation Employee Benefits Plan Committee, and John/Jane Does 1–20, Defendants.	Case No.: 2:20-cv-01783

DEFENDANTS' ANSWER TO THE COMPLAINT AND AFFIRMATIVE DEFENSES

Defendants Rockwell Automation, Inc. ("Rockwell") and the Rockwell Automation Employee Benefits Plan Committee (the "Committee") (collectively "Defendants"), by and through their attorneys, respectfully submit their answer to the Complaint filed by Plaintiff Mark Berube ("Plaintiff") as follows:

Unless expressly admitted, Defendants deny each and every allegation in the Complaint, including any allegations in the preamble, unnumbered and numbered paragraphs, titles, headings, subheadings, table of contents, Footnotes, exhibits, characterization of documents, and stricken paragraphs — and incorporate that denial into each and every response below. An admission to a portion of an allegation does not constitute an admission to the remainder of the allegation. Paragraph headings and titles are included for the purposes of organization and reference only. Any statutes, regulations, case law, documents, or data cited in the Complaint speak for themselves.

Plaintiff's inclusion of Footnotes throughout the Complaint does not comply with Federal Rule of Civil Procedure 10(b), requiring that allegations be stated "in numbered paragraphs, each limited as far as practicable to a single set of circumstances." As such, no response is required. To the extent a response is required, each Footnote is discussed in the relevant numbered paragraph below.

Defendants reserve the right to amend and supplement their Answer as appropriate or necessary.

INTRODUCTION

1. This is a class action against Defendant Rockwell Automation, Inc. ("Rockwell"), the Rockwell Automation Employee Benefits Plan Committee (the "Committee"), and the individual members of the Committee (collectively with Rockwell and the Committee, the "Defendants") concerning the failure to pay benefits under the Rockwell Automation Pension Plan (the "Plan") in amounts that are actuarially equivalent to a single life annuity ("SLA") to participants and beneficiaries receiving a joint and survivor annuity ("JSA"), as required by the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, et seq. ("ERISA"). By not offering JSA benefits that are actuarially equivalent to the SLA, Rockwell is causing retirees to lose part of their vested retirement benefits in violation of ERISA.

ANSWER:

Defendants admit only that Plaintiff has brought a putative class action against them. Defendants deny that that this litigation can or should be maintained as a class action, that Defendants have violated ERISA, and that Plaintiff is entitled to any relief. Defendants deny and disagree with Plaintiff's definition of "Committee" because Plaintiff fails to distinguish between the current and former members of the Employee Benefits Plan Committee, instead referring to

them collectively as the "Committee." Defendants deny any remaining allegations in Paragraph 1.

2. Rockwell sponsors the Plan for its employees. Generally, plan participants accrue pension benefits in the form of an annuity for the life of the participant. Participants can also receive their pension benefits in other forms, including—but not limited to—a JSA, which provides an annuity during the participant's life and then a percentage of that amount to the participant's spouse after the participant's death (50%, 66 2/3%, 75% and 100%).

ANSWER:

Defendants admit only that Rockwell sponsors the Plan for certain of its employees. The remaining allegations in Paragraph 2 purport to summarize or paraphrase terms of written plan documents, which speak for themselves. Defendants deny that Plaintiff has accurately or completely summarized the terms of the written plan documents. Defendants deny any remaining allegations in Paragraph 2.

3. ERISA requires that these JSA benefits be "actuarially equivalent" to the SLA Participants could select at the time they begin receiving benefits. Two benefit types are actuarially equivalent if the present value of the payment streams for each benefit are equal. See 29 U.S.C. § 1055(d)(1)(B) and (2)(A)(ii). The present value of an annuity is calculated by a formula that takes into account the participant's (and, where applicable, the beneficiary's) age and includes assumptions about mortality and a discount rate. The mortality assumption addresses the likelihood that each successive monthly payment will have to be made, and the discount rate takes into account the time value of money. To determine actuarial equivalence, the same factors (age,

mortality and discount rate) must be applied to each benefit stream, and the selected assumptions must be reasonable as of the date the calculation is performed.

ANSWER:

Paragraph 3 purports to summarize or paraphrase 29 U.S.C. § 1055(d)(1)(B) and (2)(A)(ii). Because Plaintiff does not quote directly from 29 U.S.C. § 1055(d)(1)(B) and (2)(A)(ii), Defendants deny that Plaintiff has accurately or completely summarized the law. The allegations in Paragraph 3 also consist of legal conclusions to which no response is required. To the extent a further response is required, Defendants deny the allegations in Paragraph 3.

4. The Plan attempts to conform to ERISA's actuarial equivalence requirements by using formulas to calculate the amount of various alternative benefit forms that are based on actuarial assumptions set out in the Plan document. For some of the subplans, these actuarial assumptions are specified; in others they are not. In either event, however, the selected mortality table and interest rate are used to calculate "conversion factors." The conversion factor is then applied to the normal form of benefit to determine the monthly amount a Participant will receive if he or she selects, for example, a JSA. However, the Plan's conversion factors are not based on ***reasonable*** *actuarial assumptions, because the assumptions used by the Plan have not been updated in decades and are no longer accurate. The monthly benefit amounts received by Plaintiff and other class members are less than the actuarial equivalent of the SLA they could have selected when compared to benefits calculated using* ***reasonable*** *actuarial assumptions.*

ANSWER:

The allegations in Paragraph 4 purport to summarize or paraphrase terms of written plan documents, which speak for themselves. Defendants deny that Plaintiff has accurately or

completely summarized the terms of the written plan documents. The allegations in Paragraph 4 also include legal conclusions to which no response is required. To the extent a further response is required, Defendants deny the allegations in Paragraph 4.

5. The Plan's outdated actuarial assumptions adversely impact the benefits Plaintiff and the Class receive because mortality rates have generally improved over time with advances in medicine and better collective lifestyle habits. People who retired recently are expected to live longer than those who retired in previous generations. Older mortality tables predict that people near (and after) retirement age will die at a faster rate than current mortality tables. As a result, using an older mortality table decreases the present value of certain benefits, such as JSAs, relative to SLAs, and — interest rates being equal — decreases the monthly payment retirees receive if they take their benefits in these alternative forms.

ANSWER:

Defendants deny the allegations in Paragraph 5.

6. The interest rate also affects the calculation. Using lower interest rates — mortality rates being equal — decreases the present value of benefits in forms other than an SLA.

ANSWER:

Defendants admit only that the interest rate may affect certain benefit calculations. Defendants deny any remaining allegations in Paragraph 6.

7. The Plan is comprised of several sub-parts which use different formulas to calculate "actuarially equivalent" benefits. For example, the Allen-Bradley Salaried and Represented Hourly Sub-Part (the "A-B Sub-Part") uses varying tabular conversion factors —

based on the age of the participant and the age of the spouse — to calculate conversion factors for determining most (i.e. 50%, 66 2/3% and 100%) JSA benefits. The Plan does not state the actuarial assumptions used to calculate the conversion factor for the 50%, 66 2/3% and 100% JSAs but they are lower than the conversion factors that would be generated by reasonable actuarial assumptions developed during the past decade, resulting in unreasonably low benefits. The factors used to calculate the 75% JSA under the A-B Sub-Part are based on the 1971 Group Annuity Mortality Table ("1971 GAM table") and a 7% interest rate, which also produce unreasonably low conversion factors and JSA benefits. The other sub-parts of the Plan likewise use actuarial assumptions (e.g. the 1984 Unisex Pension ("UP 1984 table")[1]) or fixed factors that generate benefit amounts that are less than the actuarial equivalent of the SLA participants could have taken at retirement, when compared to benefits calculated using reasonable actuarial assumptions. By using unreasonable actuarial assumptions — such as the 1971 GAM table and the UP 1984 table, which were developed over 40 years ago — to calculate conversion factors and JSA benefits, Defendants depress the present value of JSAs, resulting in monthly payments that are materially ***lower*** *than they would be if Defendants used up-to-date, reasonable actuarial assumptions and conversion factors. Defendants use unreasonable conversion factors and outdated mortality assumptions to pay benefits even though Rockwell uses current, updated assumptions in its audited financial statements to calculate the benefits Rockwell expects to pay retirees.*

[1] The UP 1984 table was published in 1976, and was based on data from 1965-1970. *See* Paul Jackson & William Fellers, The UP 1984 – A "Unisex" Mortality Table For Non-Insured Pension Plans, at 37 Table 10 (Aug. 26, 1976), available at https://www.actuaries.org/IACA/Colloquia/Sydney1976/Vol_1/Jackson_Fellers.pdf (last viewed April 1, 2019).

ANSWER:

Footnote 1 of the Complaint purports to summarize an article, which speaks for itself. Defendants deny that Plaintiff has accurately or completely summarized the article. The allegations in Paragraph 7 purport to summarize or paraphrase terms of written plan documents, which speak for themselves. Defendants deny that Plaintiff has accurately or completely summarized the terms of the written plan documents. The allegations in Paragraph 7 also include legal conclusions to which no response is required. To the extent a further response is required, Defendants deny the allegations in Paragraph 7.

8. By using flawed mortality assumptions (as explained further below), Defendants caused Plaintiff and other similarly situated Class members to receive less than they should each month, reducing the present values of their retirement benefits by thousands of dollars.

ANSWER:

Defendants deny the allegations in Paragraph 8.

9. Accordingly, Plaintiff brings this action on behalf of himself and the proposed Class, seeking, inter alia, payment of benefits improperly withheld, an Order from the Court reforming the Plan to conform to ERISA, recalculation and payment of benefits pursuant to the reformed Plan, as required under ERISA, and such other relief as the Court determines is just and equitable.

ANSWER:

Defendants admit only that Plaintiff has brought a putative class action against them. Defendants deny that that this litigation can or should be maintained as a class action, that

Defendants have violated ERISA, and that Plaintiff is entitled to any relief. Defendants deny the remaining allegations in Paragraph 9.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because it is a civil action arising under the laws of the United States, and pursuant to 29 U.S.C. § 1332(e)(1), which provides for federal jurisdiction of actions brought under Title I of ERISA.

ANSWER:

Defendants admit only that Plaintiff purports to sue under ERISA. Defendants deny that Plaintiff has suffered any injury-in-fact and, on that basis, deny this Court has subject matter jurisdiction over this action.

11. This Court has personal jurisdiction over Defendants because they are headquartered, transact business, or reside in, or have significant contacts with this District, and because ERISA provides for nationwide service of process. Defendant Rockwell is headquartered in this District. Upon information and belief, the Committee and its respective members are also based in this District.

ANSWER:

Defendants admit only that this Court has personal jurisdiction over them, and that Rockwell is headquartered in this District. Any remaining allegations in Paragraph 11 are denied.

12. Venue is proper in this District pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because some or all the violations of ERISA occurred in this District and Defendants

may be found in this District. Venue is also proper in this District pursuant to 28 U.S.C. § 1391 because Defendants do business in this District and a substantial part of the events or omissions giving rise to the claims asserted herein occurred within this District.

ANSWER:

Defendants admit that Plaintiff purports to sue under ERISA. Defendants admit that Rockwell does business in this District, and Rockwell may be found in this District and, on that basis, admit venue is proper in this District. Defendants deny that that this litigation can or should be maintained as a class action, that Defendants have violated ERISA, and that Plaintiff is entitled to any relief.

PARTIES

Plaintiff

13. Plaintiff Mark Berube is a resident of Monroe, Georgia, and a Participant in the Plan. Mr. Berube worked for Rockwell (formerly Allen Bradley) for approximately 15 years before terminating from Rockwell in 2005 at age 50. He began receiving his pension in October of 2019. Mr. Berube is currently receiving a 50% JSA, with his wife as the beneficiary.

ANSWER:

Defendants lack knowledge and information sufficient to form a belief about Plaintiff's place of residence and therefore, deny that allegation. Defendants admit that Plaintiff is a participant in the B006 Sub-Part of the Plan. Defendants admit that Plaintiff worked for Rockwell from 1990 to 2005 and terminated employment from Rockwell in 2005 at the age 50. Defendants admit Plaintiff began receiving his pension from the B006 Sub-Part of the Plan in October 2019,

and is receiving a 50% JSA, with his wife as the beneficiary. To the extent not expressly admitted, any remaining allegations are denied.

Defendants

14. Rockwell is a manufacturer of industrial automation and information technology with its headquarters in Milwaukee, Wisconsin. Rockwell sponsors the Plan and is the Plan Administrator.

ANSWER:

Defendants admit the allegations in Paragraph 14.

15. The Committee has fiduciary responsibility for the administration and operation of the Plan. The Committee is a fiduciary of the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), because it exercises discretionary authority or control respecting the management of the Plan and authority or control respecting the management or disposition of its assets.

ANSWER:

Defendants admit that the Committee is a named fiduciary of the Plan. Defendants admit the Committee exercises discretionary authority or control respecting the management of the Plan. The allegations in Paragraph 15 also include legal conclusions regarding fiduciary status to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 15.

16. John/Jane Does 1 through 20, inclusive, are the individual members of the Committee responsible for controlling and managing the Plan. Their names and identities are not currently known.

ANSWER:

Defendants admit that the Committee is comprised of individual members who have changed from time to time. Defendants admit that Plaintiff may not know the names and identities of the individuals who served as members of the Committee during the putative class period. Such unnamed individuals cannot respond to the Complaint unless they are named and served. Except as expressly admitted herein, Defendants deny all remaining allegations in Paragraph 16.

APPLICABLE ERISA REQUIREMENTS

Pension Benefit Options Must Be Actuarially Equivalent

17. ERISA requires that benefits paid to Participants who do not die before beginning to receive benefits be in the form of a "Qualified Joint and Survivor Annuity" ("QJSA"), unless the Participant elects to waive the QJSA and affirmatively selects a different benefit form. 29 U.S.C. § 1055(a)(1) and (c)(1)(A)(i). To waive the QJSA, the Participant's spouse must consent in writing, although no consent is required if the Participant is not married at the time of retirement. 29 U.S.C. § 1055(c)(2). The QJSA is thus the default form of benefit.

ANSWER:

Paragraph 17 purports to summarize or paraphrase 29 U.S.C. §§ 1055(a)(1), (c)(1)(A)(i) and (c)(2). Because Plaintiff does not quote directly from 29 U.S.C. §§ 1055(a)(1), (c)(1)(A)(i) and (c)(2), Defendants deny that Plaintiff has accurately or completely summarized the law. The

allegations in Paragraph 17 contain legal conclusions to which no response is required. To the extent a further response is required, Defendants deny the allegations in Paragraph 17.

18. The QJSA for a married Participant must pay a survivor benefit worth at least 50 percent, but no more than 100 percent, of the benefit payable during the Participant's lifetime. 29 U.S.C. § 1055(d)(1). The QJSA for an unmarried Participant must be an annuity for the life of the Participant. 26 C.F.R. § 1.401(a)-20, A-25. ERISA requires that the QJSA under the Plan be actuarially equivalent to the SLA. See 29 U.S.C. § 1055(d)(1); 26 U.S.C. § 417(b).

ANSWER:

Paragraph 18 purports to summarize or paraphrase 29 U.S.C. § 1055(d)(1), 26 C.F.R. § 1.401(a)-20, A-25, and 26 U.S.C. § 417(b). Defendants deny that Plaintiff has accurately summarized the law. The allegations in Paragraph 18 contain legal conclusions to which no response is required. To the extent a further response is required, Defendants deny the allegations in Paragraph 18.

19. Pension plans must also offer participants at least one other form of survivor annuities, known as qualified optional survivor annuities ("QOSA"). See ERISA § 205(d)(2), 29 U.S.C. § 1055(d)(2); see also 26 U.S.C. § 417(g). A QOSA is similar to a QJSA, except that the QOSA's survivor annuity percentage must be: (a) greater than 75% if the QJSA's survivor annuity percentage is less than 75%; and (b) 50% if the QJSA's survivor annuity percentage is greater than 75%. ERISA requires that QOSAs be actuarially equivalent to the SLA. See ERISA § 205(d)(2)(A)(ii), 29 U.S.C. § 1055(d)(2)(A)(ii).

ANSWER:

Paragraph 19 purports to summarize or paraphrase ERISA § 205(d)(2), 29 U.S.C. § 1055(d)(2), and 26 U.S.C. § 417(g). Defendants deny that Plaintiff has accurately summarized the law. Defendants deny the allegations in the second sentence of Paragraph 19 describing the percentages associated with a QOSA. Defendants deny the allegations in the last sentence of Paragraph 19. The remaining allegations in Paragraph 19 consist of legal conclusions to which no response is required. To the extent a further response is required, Defendants deny the allegations in Paragraph 19.

20. ERISA also requires that defined benefit plans provide a qualified pre-retirement survivor annuity ("QPSA"). See ERISA § 205(a)(2), 29 U.S.C. § 1055(a)(2). A QPSA is an annuity for the life of the participant's surviving spouse (i.e., a beneficiary) if the participant dies before reaching the plan's normal retirement age. See ERISA § 205(e), 29 U.S.C. § 1055(e). A QPSA must be actuarially equivalent to what the surviving spouse would have received under the plan's QJSA. See ERISA § 205(e)(1)(A), 29 U.S.C. § 1055(e)(1)(A).

ANSWER:

Paragraph 20 purports to summarize or paraphrase ERISA §§ 205(a)(2) and 205(e), 29 U.S.C. §§ 1055(a)(2) and 1055(e). Defendants deny that Plaintiff has accurately summarized the law. The allegations in Paragraph 20 also consist of legal conclusions to which no response is required. To the extent a further response is required, Defendants deny the allegations in Paragraph 20.

21. Reorganization Plan No. 4 of 1978 transferred authority to the Secretary of the Treasury to issue regulations for several provisions of ERISA, including § 205 concerning alternative forms of benefits. See 92 Stat. 3790 (Oct. 17, 1978), codified at 29 U.S.C. § 1001.

ANSWER:

Paragraph 21 purports to summarize or paraphrase 29 U.S.C. § 1001. Because Plaintiff does not quote directly from 29 U.S.C. § 1001, Defendants deny that Plaintiff has accurately or completely summarized the law. The allegations in Paragraph 21 also consist of legal conclusions to which no response is required. To the further extent a response is required, Defendants deny the allegations in Paragraph 21.

22. The Treasury regulations for the Internal Revenue Code (the "Tax Code") provision corresponding to ERISA § 205 (26 U.S.C. § 401(a)(11)), similarly provide that a QJSA "must be at least the actuarial equivalence of the normal form of life annuity or, if greater, of any optional form of life annuity offered under the plan."[2] Indeed, the QJSA for married participants "must be as least as valuable as any other optional form of benefit under the plan at the same time." 26 C.F.R. § 1.401(a)-20 Q&A 16; see 26 C.F.R. § 1.417(a)(3)-1(c)(2)(iv) ("All other optional forms of benefit payable to the participant must be compared with the QJSA using a single set of interest and mortality assumptions that are reasonable and that are applied uniformly with respect to all such optional forms payable to the participant . . . .'). The regulations require these

[2] 26 C.F.R. § 1.401(a)-11(b)(ii)(2). The term "life annuity" includes annuities with terms certain in addition to single life annuities. As the Treasury Regulations explain, "[t]he term 'life annuity' means an annuity that provides retirement payments and requires that survival of the participant or his spouse as one of the conditions for payment or possible payment under the annuity. For example, annuities that make payments for 10 years or until death, whichever occurs first or whichever occurs last, are life annuities." 26 C.F.R. § 1.401(a)-11(b)(1)(i).

requirements regarding QJSAs apply "when the participant attains the earliest retirement age under the plan." 26 C.F.R. § 1.401(a)-20 Q&A 17.

ANSWER:

Paragraph 22 and Footnote 2 partially quote 26 C.F.R. §§ 1.401(a)-20 Q&A 16, 1.401(a)-11(b)(ii)(2) and 11(b)(1)(i). Defendants admit only that Plaintiff has quoted portions of 26 C.F.R. §§ 1.401(a)-20 Q&A 16, 1.401(a)-11(b)(ii)(2) and 11(b)(1)(i). However, Defendants aver that Plaintiff has omitted significant context. The allegations in Paragraph 22 also consist of legal conclusions to which no response is required. To the extent a further response is required, Defendants deny Plaintiff's characterization of 26 C.F.R. §§ 1.401(a)-20 Q&A 16, 1.401(a)-11(b)(ii)(2) and 11(b)(1)(i) in Paragraph 22.

23. ERISA does not require that pension plans offer lump sum distributions of vested benefits to retirees upon their retirement. See ERISA § 205(g), 29 U.S.C. § 1055(g). However, if plans offer a lump sum distribution as an optional benefit, ERISA § 205(g)(3), 29 U.S.C. § 1055(g)(3), requires the present value of the lump sum be determined using the applicable mortality table (the "Treasury Mortality Table")[3] and applicable interest rate (the "Treasury Interest Rate")[4] (collectively, the "Treasury Assumptions"), which are set by the Secretary of the Treasury (the "Secretary") pursuant to IRC §§ 417(e) and 430(h) and are based on current market rates and mortality assumptions. See 29 U.S.C. § 1055(g)(3)(B); 29 U.S.C. § 1083(h), 26 U.S.C. §§ 417(e) and 430(h).

[3] *See* 26 C.F.R. § 1.430(h)(2)-1.
[4] *See* 26 C.F.R. § 1.430(h)(3)-1.

ANSWER:

Defendants admit only that "ERISA does not require that pension plans offer lump sum distributions of vested benefits to retirees upon their retirement." Defendants deny the remaining allegations in Paragraph 23.

Reasonable Factors Must be Used When Calculating Actuarial Equivalence

24. "Two modes of payment are actuarially equivalent when their ***present values are equal*** *under a given set of assumptions." Stephens v. US Airways Group, Inc., 644 F.3d 437, 440 (D.C. Cir. 2011) (emphasis added) (citing Jeff L. Schwartzmann & Ralph Garfield, Education and Examination Comm. of the Society of Actuaries, Actuarially Equivalent Benefits 1, EA1 -24-91 (1991) ("Schwartzmann & Garfield").*[5]

ANSWER:

Paragraph 24 and Footnote 5 purport to quote *Stephens v. US Airways Group, Inc.,* 644 F.3d 437, 440 (D.C. Cir. 2011) and Merriam-Webster dictionary. Defendants admit only that Plaintiff has quoted a portion of *Stephens v. US Airways Group* and the Merriam-Webster dictionary. However, Defendants aver that Plaintiff has omitted significant context. Therefore, to the extent a response is required, Defendants deny Plaintiff's characterization of *Stephens v. US Airways Group* and the Merriam-Webster dictionary in Paragraph 24.

25. Under ERISA, "present value" must "reflect anticipated events." Such adjustments shall conform to such regulations as the Secretary of the Treasury may prescribe." ERISA § 3(27),

[5] According to Merriam Webster: "Equivalent" means "equal." *See* https://www.merriam-webster.com/dictionary/equivalent. "Equal" means the "same." https://www.merriam-webster.com/dictionary/equal

29 U.S.C. § 1002(27). The Secretary has prescribed several Regulations describing how present value should reasonably reflect anticipated events, including:

(a) The Regulation concerning QJSAs provides that "[e]quivalence may be determined, on the basis of consistently applied ***reasonable actuarial factors****, for each participant or for all participants or reasonable groupings of participants." 26 C.F.R. § 401(a)-11(b)(2) (emphasis added).*

(b) A plan must determine optional benefits using "a single set of ***interest and mortality assumptions that are reasonable*** *. . . . " 26 C.F.R. § 1.417(a)(3)-1(c)(2)(iv) (emphasis added).*

(c) The term actuarial present value means "actuarial present value (within the meaning of § 1.401(a)(4)-12) determined using ***reasonable actuarial assumptions****." 26 C.F.R. §1.411(d)-3(g)(1) (emphasis added).*

ANSWER:

Paragraph 25 quotes ERISA § 3(27), 29 U.S.C. § 1002(27) and 26 C.F.R. §§ 401(a)-11(b)(2), 1.401(a)(4)-12), 1.411(d)-3(g)(1), 1.417(a)(3)-1(c)(2)(iv). Defendants admit only that Plaintiff has quoted portions of ERISA § 3(27), 29 U.S.C. § 1002(27) and 26 C.F.R. §§ 401(a)-11(b)(2), 1.401(a)(4)-12), 1.411(d)-3(g)(1), 1.417(a)(3)-1(c)(2)(iv). However, Defendants aver that Plaintiff has omitted significant context. The allegations in Paragraph 25 also include legal conclusions to which no response is required. Therefore, to the extent a response is required, Defendants deny Plaintiff's characterizations of ERISA § 3(27), 29 U.S.C. § 1002(27) and 26 C.F.R. §§ 401(a)-11(b)(2), 1.401(a)(4)-12), 1.411(d)-3(g)(1), 1.417(a)(3)-1(c)(2)(iv) in Paragraph 25.

26. The Regulations also rely on the standards of the Society of Actuaries (the "SOA") for determining the present value of pension liabilities. See, e.g., 26 C.F.R. § 1.430(h)(3)-

1(a)(2)(C); IRS Notices: 2008-85, 2013-49, 2015-53, 2016-50, 2018-02; 82 Fed. Reg. 46388-01 (Oct. 5, 2017) ("Mortality Tables for Determining Present Value Under Defined Benefit Plans"), 72 Fed. Reg. 4955-02 (Feb. 2, 2007) ("Updated Mortality Tables for Determining Current Liability").

ANSWER:

Defendants deny that Paragraph 26 accurately describes the contents of the regulations and notices cited. The allegations in Paragraph 26 also include legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 26.

27. Like the Regulations and ERISA's definition of "present value," the Actuarial Standards of Practice ("ASOPs") issued by the Actuarial Standards Board ("ASB")[6] of the American Academy of Actuaries (the "Academy"), require actuaries to use "reasonable assumptions." See ASOP No. 27 , Para. 3.6 ("each economic assumption used by an actuary should be reasonable"). See also ASOP No. 35, Para. 3.3.5 ("Each demographic assumption selected by the actuary should be reasonable").

ANSWER:

Defendants deny that the ASOPs cited provide guidance as to the present value determinations at issue in this Complaint. Defendants deny the remaining allegations in Paragraph 27. Defendants deny the allegations in Footnote 6. Specifically, Defendants deny that the ASB serves to promulgate standards of practice for actuaries enrolled by the Joint Board for the

[6] The ASB, an independent entity created by the Academy in 1988, serves as the single board promulgating standards of practice for the entire actuarial profession in the United States. The ASB was given sole authority to develop, obtain comment upon, revise, and adopt standards of practice for the actuarial profession.

Enrollment of Actuaries (the government agency which regulates pension actuaries) to practice as pension actuaries, and therefore deny that the ASB promulgates standards for the "entire" actuarial profession. Defendants deny that the ASB was given "sole authority" with respect to standards of practice for the actuarial profession.

*28. Courts interpreting ERISA's actuarial equivalence requirements when calculating benefits have stated that "**special attention must be paid to the actuarial assumptions underlying the computations**." Pizza Pro Equip. Leasing v. Comm. of Revenue, 147 T.C. 394, 411 (emphasis added), aff'd, 719 Fed. Appx. 540 (8th Cir. 2018). As the court explained in Dooley v. Am. Airlines, Inc., each actuarial assumption used to calculate QJSAs, QOSAs and QPSAs must be reasonable:*

> *When the terms of a plan subject to ERISA provide that plan participants may opt to receive their accrued pension benefits in forms other than as a single life annuity, the amount payable to the plan participant under such circumstances must be "actuarially equivalent" to the participant's accrued benefits when calculated as a single life annuity. The term actuarially equivalent means equal in value to the present value of normal retirement benefits**, determined on the basis of actuarial assumptions with respect to mortality and interest which are reasonable in the aggregate.***

*Dooley v. Am. Airlines, Inc., 1993 WL 460849, at *10 (N.D. Ill. Nov. 4, 1993) (emphasis added); see also Dooley v. Am. Airlines, Inc., 797 F.2d 1447, 1453 (7th Cir. 1986) (citing expert testimony that "actuarial equivalence must be determined on the basis of reasonable actuarial assumptions.").*

ANSWER:

Paragraph 28 selectively quotes portions of *Pizza Pro Equip. Leasing v. Comm. of Revenue*, 147 T.C. 394, 411 (emphasis added), aff'd, 719 Fed. Appx. 540 (8th Cir. 2018) and *Dooley v. Am. Airlines, Inc.*, 1993 WL 460849, at *10 (N.D. Ill. Nov. 4, 1993). Defendants admit only that Plaintiff has quoted portions of *Pizza Pro Equip. Leasing v. Comm. of Revenue* and *Dooley v. Am.*

Airlines, Inc. However, Defendants aver that Plaintiff has omitted significant context. Therefore, to the extent a response is required, Defendants deny Plaintiff's characterizations of *Pizza Pro Equip. Leasing v. Comm. of Revenue* and *Dooley v. Am. Airlines, Inc*.

*29. Actuarial equivalence should be "cost-neutral," meaning that neither the plan nor the participants should be better or worse off if a participant selects a SLA or a JSA. See Bird v. Eastman Kodak Co., 390 F. Supp. 2d 1117, 1118–19 (M.D. Fla. 2005). "Periodically, the assumptions used [for actuarial equivalence] must be reviewed and modified so as to insure that they continue to fairly assess the cost of the optional basis of payment." Schwartzmann & Garfield at 11; see also Smith v. Rockwell Automation, No. 19-C-0505, 2020 WL 620221, * 7 (E.D. Wisc. Jan. 10, 2020) ("plans must use the kind of actuarial assumptions that a reasonable actuary would use at the time of the benefit determination.").*

ANSWER:

The allegations in Paragraph 29 consist of legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 29.

30. Section 203(a) of ERISA, 29 U.S.C. § 1053(a), provides that employees with at least 5 years of service have "a nonforfeitable right to 100 percent of [their] accrued benefit..." The Treasury Regulation for the Tax Code corresponding to ERISA § 203 (26 U.S.C. § 411), states that "adjustments in excess of reasonable actuarial reductions, can result in rights being forfeitable." 26 C.F.R. § 1.411(a)-4(a).

ANSWER:

Paragraph 30 purports to summarize or paraphrase ERISA §§ 203, 203(a), 29 U.S.C. § 1053(a), 26 U.S.C. § 411, and 26 C.F.R. § 1.411(a)-4(a). Defendants deny that Paragraph 30

accurately quotes from the ERISA section and regulation cited. The allegations in Paragraph 30 also consist of legal conclusions to which no response is required. To the extent a further response is required, Defendants deny the allegations in Paragraph 30.

SUBSTANTIVE ALLEGATIONS

I. THE PLAN

31. Rockwell originally established the Plan on October 10, 1945.[7] The Plan is an "employee pension benefit plan" within the meaning of ERISA § 3(2)(A), 29 U.S.C. § 1002(2)(A) and a defined benefit plan within the meaning of ERISA § 3(35), 29 U.S.C. § 1002(35).

ANSWER:

Defendants admit the allegations in Paragraph 31.

32. The Plan has 36 sub-plans, which cover the benefit plans of Rockwell's various businesses that merged into the Plan.[8] For purposes of calculating actuarial equivalent benefits, these sub-plans are categorized into eight separate parts (the "Sub-Parts"), which can be identified as: (a) Allen Bradley (i.e. the A-B Sub-Part); (b) Reliance Salaried and Motion Control; (c) Cleveland; (d) Reliance General; (e) Reliance Washington; (f) Reliance Dodge; (g) NA Transformer; and (h) ECA Sub-Part. Plaintiff is a participant in the A-B Sub-Part.

ANSWER:

The allegations in Paragraph 32 purport to summarize or paraphrase terms of written plan documents, which speak for themselves. Defendants deny that Plaintiff has accurately or

[7] *See* Rockwell Automation Pension Plan as Amended and Restated Effective as of January 1, 2013 (hereinafter the "Plan Document") at 1.
[8] Plan Document at Exhibit 1 "Sub-Plan Index."

completely summarized the terms of those documents. Defendants admit only that Plaintiff is a participant in the B006 Sub-Part of the Plan. Any remaining allegations in Paragraph 32 are denied.

33. For the A-B Sub-Part, the "Normal Form" of benefit for unmarried participants is either an annuity for the life of the participant with a minimum ten-year payout (a " 10YCLA"), if the participant terminates employment after his earliest retirement date, or a SLA, if the participant terminates before his earliest retirement date.[9] For purposes of Section 205 of ERISA, this normal form of benefit serves as the "QJSA" for unmarried participants.[10] The QJSA for ***married*** *participants is a 50% JSA. Participants who terminate after their earliest retirement date can choose to receive their pension benefits as a SLA, 10YCLA, 50%, 66 2/3%, 75% or 100% JSA. Participants who terminate before their earliest retirement can choose a SLA, a 50% or a 75% JSA. Plaintiff terminated before his earliest retirement date and began receiving benefits in the form of the Plan's QJSA for married participants — a 50% JSA.*

ANSWER:

The allegations in Paragraph 33 purport to summarize or paraphrase terms of written plan documents, which speak for themselves. Defendants deny that Plaintiff has accurately or completely summarized the terms of those documents. The allegations in Paragraph 33 also include legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 33 are denied.

[9] Sub-Plan for Salaried and Hourly Employees of Rockwell Automation, Inc. (Sub-Plan B006) Summary Plan Description (1/1/2011) at 19.
[10] *Id.*

34. The A-B Sub-Part has three formulas for converting the normal form of benefit to a JSA. The first formula is a table, that varies depending on the age of the participant and spouse at the time of retirement, which is used to convert the normal form of benefit for participants who terminate ***before*** *their earliest retirement date to a JSA (i.e. a table to convert the SLA to a JSA); the second also varies depending on the age of the participant and spouse at the time of retirement and is used to convert the normal form of benefit for participants who terminate* ***after*** *their earliest retirement date to a JSA (i.e. a table to convert the 10YCLA to a JSA). Neither the Plan nor the A¬B Sub-Part specifies the actuarial assumptions upon which the first and second tabular factors are based. The third formula is a series of tables for converting the SLA and the 10YCLA to the 75% JSA. The A-B Sub-Part states that these tables are based on the 1971 GAM table and a 7% interest rate.*

ANSWER:

The allegations in Paragraph 34 purport to summarize or paraphrase terms of written plan documents, which speak for themselves. Defendants deny that Plaintiff has accurately or completely summarized the terms of those documents. To the extent a response is required, the allegations in Paragraph 34 are denied.

35. Most of the remaining Sub-Parts of the Plan that identify the actuarial assumptions used to calculate JSA benefits use antiquated assumptions; the ones that do not list the assumptions used are based on conversion factors that were calculate using unreasonable assumptions.[11]

[11] The Reliance Salaried and Motion Control, Cleveland and Reliance General Sub-Parts use the UP 1984 table and a 6% interest rate; the Reliance Washington Sub-Part uses the UP 1984 table and a 6% interest rate except for conversions of the SLA to the 50% JSA (uses the 1971 GAM table and a 7.75% interest rate); the Reliance Dodge Sub-Part uses the UP 1984 table and a 7%

ANSWER:

The allegations in Footnote 11 purport to summarize or paraphrase terms of written plan documents, which speak for themselves. Defendants deny that Plaintiff has accurately or completely summarized the terms of those documents. Defendants deny the allegations in Paragraph 35 and Footnote 11.

II. The JSA Benefits Under the Plan Are Not Actuarially Equivalent to the SLA Participants Could Have Received.

A. Comparing a SLA to Other Forms of Benefits.

36. All of the Plan's JSAs are either "qualified joint and survivor annuities" ("QJSAs") or "qualified optional survivor annuities" ("QOSAs") under ERISA. As set forth above, ERISA requires that QJSAs and QOSAs be the "actuarial equivalent" of an SLA. See ERISA §§ 205(d)(1) and (2), 29 U.S.C. § 1055(d)(1) and (2).

ANSWER:

Defendants deny that all of the Plan's JSAs are either QJSAs or QOSAs. Paragraph 36 purports to summarize or paraphrase ERISA § 205(d), 29 U.S.C. § 1055(d). Defendants deny that the second sentence of Paragraph 36 accurately summarizes ERISA § 205(d), 29 U.S.C. § 1055(d). The allegations in Paragraph 36 also consist of legal conclusions to which no response is required.

---

interest rate except for conversions to the 50% JSA (uses a .90 conversion factor adjusted by .5% for each year of age differentiation between the participant and spouse); the NA Transformer Sub-Part uses a conversion factor of .85 for the 50% JSA and .75 for the 100% JSA and uses the UP 1984 table and a 6% interest rate for all other conversions; the ECA Sub-Part uses the 1983 Group Annuity Mortality Table for Males and an interest rate equal to the average yield rates on 20-year U.S. Treasury Bonds for the 36 months immediately preceding the Plan Year for which the present value is to be calculated. See Plan Document at Exhibit 4 "Actuarial Equivalence," 1-4.

To the extent a response is required, the allegations in Paragraph 36 regarding the Plan terms are denied.

37. As discussed above, two benefits are "actuarially equivalent" when the present values of their benefit streams are equal when calculated using the same, reasonable actuarial assumptions. To calculate actuarially equivalent benefits, you compare the present value of receiving an annuity for each benefit form (e.g., an SLA and a JSA) that pays the participant $1 annually until the participant's death, taking into account the participant's age (and, where applicable, the age of any contingent beneficiary), using reasonable actuarial assumptions concerning mortality and an interest rate. The present value for each benefit form is called an "annuity value" and the ratio of the forms' annuity values is called a "conversion factor." Multiplying one benefit amount by this conversion factor generates an actuarially equivalent benefit in the other form. The reasonableness of both the mortality and interest rate assumptions is critical to the calculation.

ANSWER:

Defendants deny the allegations in Paragraph 37.

38. The interest rate used to determine the present value of each future payment is designed to take into account the time value of money, meaning that money available now is worth more than the same amount in the future due to the ability to earn investment returns. The rate that is used is often called a "discount rate" because it discounts the value of a future payment.

ANSWER:

Defendants admit that an interest rate may be used in the calculation of a conversion factor, but deny that Paragraph 38 accurately describes the way the interest rate is determined or used in

the calculation of a conversion factor. Defendants admit that the term "discount rate" has, on occasion, been used colloquially in place of the term "interest rate" but deny any implications drawn therefrom.

39. An interest rate assumption used to determine an actuarially equivalent benefit must be reasonable based on prevailing market conditions, which "reflect anticipated events." See 29 U.S.C. § 1002(27). The interest rate may be broken into segments of short-term, medium-term and long-term expectations pertaining to each future payment. See, e.g., 29 U.S.C. §§ 1055(g)(3)(B)(iii), 1083(h)(2).

ANSWER:

Defendants deny the first sentence of Paragraph 39. Defendants admit that it is possible to define an interest rate in segments. Any remaining allegations in Paragraph 39 are denied.

40. A mortality table is a series of rates which predict how many people at a given age will die before attaining the next higher age.

ANSWER:

Defendants deny that mortality tables make predictions, but admit that a mortality table reflects an assumption as to the percentage of people fitting into a particular classification who will die before reaching the next annual age. Any remaining allegations in Paragraph 40 are denied.

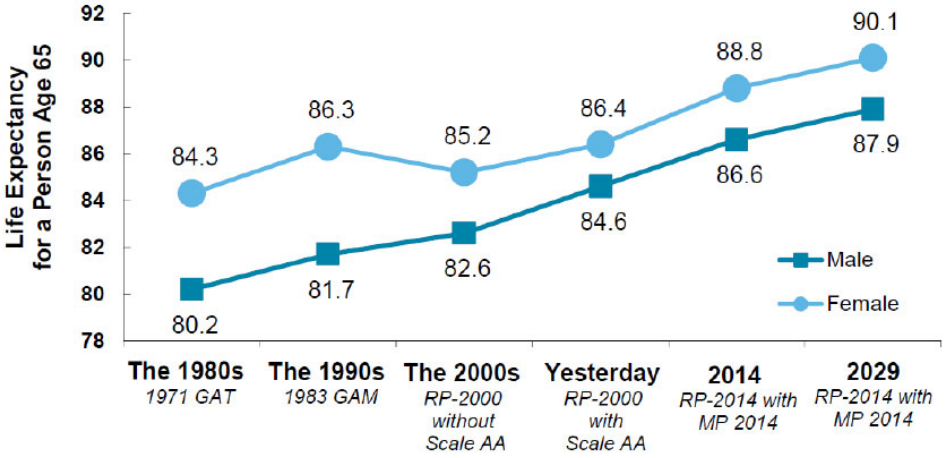
41. More recent mortality tables are "two-dimensional" in that the rates are based not only on the age of the individual but the year of birth. The Society of Actuaries ("SOA"), an independent actuarial group, publishes the mortality tables that are the most widely-used by

defined benefit plans when doing these conversions. The SOA published mortality tables in 1971 (the "1971 GAM"), 1976 (the "UP 1984"), 1983 (the "1983 GAM") 1994 (the "1994 GAR"), 2000 (the "RP-2000"), 2014 ("RP-2014") and 2019 (the "Pri-2012") to account for changes to a population's mortality experience.

ANSWER:

Defendants admit that the Society of Actuaries ("SOA") published mortality tables in or around 1971, 1983, 1976, 1994, 2000, 2014, and 2019 but deny the characterization that it was to account for changes to a population's mortality experience. Defendants admit that some mortality tables are two dimensional but deny the inference that such tables are widely used for the purpose of calculating conversion factors. Any remaining allegations in Paragraph 41 are denied.

42. Since at least the 1980s, the life expectancies in mortality tables have substantially improved as shown below:



Source: Aon Hewitt, Society of Actuaries Finalizes New Mortality Assumptions: The Financial and Strategic Implication for Pension Plan Sponsors (November 2014), at 1. According to this

paper, there have been "increasing life expectancies over time" and just moving from the 2000 mortality table to the 2014 table would increase pension liabilities by 7%.

ANSWER:

The allegations in Paragraph 42 purport to summarize a chart from an Aon Hewitt publication, which speaks for itself. To the extent a response is necessary, Defendants deny the characterizations of the chart, and the allegations in Paragraph 42.

43. Pursuant to Actuarial Standard of Practice No. 35, para. 3.5.3 of the Actuarial Standards Board,[12] actuarial tables must be adjusted on an ongoing basis to reflect improvements in mortality.[13]

ANSWER:

Defendants admit only that Actuarial Standard of Practice ("ASOP") No. 35 can be found at the cite in Footnote 13, but deny that Paragraph 43 accurately describes ASOP No. 35. Defendants deny that ASOP No. 35 relates to the calculation of actuarial equivalent factors at issue in this lawsuit. Defendants deny the allegations in Paragraph 43 and Footnote 12.

44. Accordingly, in the years between the publication of a new mortality table, mortality rates are often "projected" to future years to account for expected improvements in mortality. For example, in 2017, the Treasury Mortality Table was the RP-2000 mortality table

---

[12] Courts look to professional actuarial standards as part of this analysis. *See, e.g. Stephens v. US Airways Group, Inc.*, 644 F.3d 437, 440 (D.C. Cir. 2011) (citing Schwartzmann & Garfield, Education & Examination Comm. of the Society of Actuaries, Actuarially Equivalent Benefits 1, EA1–24–91 (1991)).

[13] Available at: http://www.actuarialstandardsboard.org/asops/selection-of-demographic-and-other-noneconomic-assumptions-for-measuring-pension-obligations/#353-mortality-and-mortality-improvement

adjusted for mortality improvement using Projection Scale AA to reflect the impact of expected improvements in mortality (the "2017 Treasury Mortality Table"). See IRS Notice 2016-50.[14] *In 2018, the Treasury Mortality Table was the RP-2014 mortality table projected to account for additional improvement in mortality rates that have occurred since 2014 (the "2018 Treasury Mortality Table"). See IRS Notice 2017-60.*[15]

ANSWER:

Defendants deny that Paragraph 44 accurately describes the construction of the Treasury Mortality Table. Defendants deny the characterizations and any remaining allegations in Paragraph 44.

45. For purposes of determining whether two benefits are "actuarially equivalent" under ERISA, the mortality assumptions used to calculate present value must be reasonable, which means that the selected mortality table must be updated and reasonable "to reflect anticipated events." 29 U.S.C. § 1002 (27). The Treasury Mortality Tables are updated and reasonable. See 26 C.F.R. § 1.417(a)(3)-1(c)(2)(iv).

ANSWER:

Defendants deny the allegations in Paragraph 45.

46. If the present value of a SLA and a JSA are equal when those present values are calculated using the same reasonable interest rate and mortality assumptions, the two benefits are actuarially equivalent.

[14] Available at: https://www.irs.gov/pub/irs-drop/n-16-50.pdf
[15] Available at: https://www.irs.gov/pub/irs-drop/n-17-60.pdf

ANSWER:

Defendants deny the allegations in Paragraph 46.

47. Using an antiquated mortality table to convert an SLA into a JSA will generally result in a lower conversion rate and lower benefit payments compared to the result that would be produced by using a reasonable, up-to-date mortality table.

ANSWER:

Defendants deny the allegations in Paragraph 47.

B. The Plan Does Not Use Reasonable Actuarial Assumptions to Calculate the Present Value of JSAs.

1. The A-B Sub-Part's Tabular Factors for 50%, 66 2/3% or 100% JSAs Do Not Provide Actuarial Equivalent Benefits

48. The A-B Sub-Part's conversion factors do not produce QJSAs or QOSAs that are actuarially equivalent to the SLA offered to a participant at the time she retires because the present values of those benefits are lower than the present value of the SLA.

ANSWER:

Defendants deny the allegations in Paragraph 48.

49. The A-B Sub-Part does not identify the actuarial assumptions upon which the tabular factors used to convert the SLA and 10YCLA to the 50%, 66 2/3% or 100% JSAs are based. Nevertheless, the conversion factors produced by these tabular factors are unreasonably low.

ANSWER:

Defendants deny the allegations in Paragraph 49.

50. The charts below illustrates the conversion factors and the benefits for a 60-year-old and a 65-year-old participant who earned an SLA of $1,000 per month who retired in 2018 using the A-B Sub-Part's tabular factors and the applicable Treasury Mortality Table for 2018 and the 3.75% discount rate that Rockwell used in its Form 10-k.

60-Year-Old at Benefit Commencement Date

Benefit Form	A-B Sub-Part's Conversion Factors	Monthly Amount Using A-B Sub-Part's Conversion Factors	Conversion Factors Using Updated Assumptions	Monthly Amount Using A-B Sub-Part's Conversion Factors	Monthly Difference	Percent Difference in Benefit Amount
SLA	N/A	$1,000.00	N/A	$1,000.00	N/A	N/A
50% JSA	.90	$905.20	.93	$938.93	$33.73	3.73%
66 2/3% JSA	.87	$877.90	.92	$920.20	$42.30	4.82%
100% JSA	.82	$828.60	.88	$884.89	$56.29	6.79%

65-Year-Old at Benefit Commencement Date

Benefit Form	A-B Sub-Part's Conversion Factors	Monthly Amount Using A-B Sub-Part's Conversion Factors	Conversion Factors Using Updated Assumptions	Monthly Amount Using A-B Sub-Part's Conversion Factors	Monthly Difference	Percent Difference in Benefit Amount
SLA	N/A	$1,000.00	N/A	$1,000.00	N/A	N/A
50% JSA	.88	$884.10	.92	$925.68	$41.58	4.70%
66 2/3% JSA	.85	$851.90	.90	$903.30	$51.40	6.03%
100% JSA	.79	$795.20	.86	$861.64	$66.44	8.36%

ANSWER:

Defendants deny the allegations in Paragraph 50.

51. Defendants application of these conversion factors based on unreasonable actuarial assumptions to calculate benefits for participants receiving 50%, 66 2/3% and 100% JSAs under the A-B Sub-Part results in benefits that are not actuarially equivalent to the participant's SLA and lower monthly payments than the participant should be receiving.

ANSWER:

Defendants deny the allegations in Paragraph 51.

52. As demonstrated above, the conversion factors Defendants use for the A-B Sub-Part are ***substantially lower*** *(i.e. worse for participants) than conversion factors generated using the updated mortality table and interest rate from Rockwell's Form 10-k.*

ANSWER:

Defendants deny the allegations in Paragraph 52.

53. While the amount of the loss suffered will vary depending on the ages of the participant and beneficiary at the time of retirement, all participants receiving JSAs under the A¬B Sub-Part are not receiving an actuarially equivalent form of benefit because the present values are not equal to that of the SLA they could have taken at the time they retired.

ANSWER:

Defendants deny the allegations in Paragraph 53.

54. Plaintiff terminated from Rockwell at age 50, before his earliest retirement date, and began receiving benefits when he was 64 years and 10 months old. If he had chosen to receive an SLA when he retired, it would have paid him $1,241.68 per month. The 50% JSA he receives pays $1,091.44 a month. If the 2018 Treasury Assumptions were applied, Plaintiff's benefit would

be $1,144.11, or $52.67 more per month than the benefit produced by using the A-B Sub-Part's tabular factors. By using these tabular factors — based on unreasonable, outdated actuarial assumptions — instead of the applicable Treasury Assumptions, Defendants reduced the present value Plaintiff's benefits at the time of his retirement by approximately $9,364.58.

ANSWER:

Defendants admit only that Plaintiff terminated from Rockwell at age 50, that he commenced his benefit at age 64 and 10 months, that his SLA would have been $1,241.68 per month at such date, and that he is receiving a 50% JSA which pays $1,091.44 per month. Defendants deny the remaining allegations in Paragraph 54.

55. Because Plaintiff's benefits were calculated using tabular factors based on unreasonable actuarial assumptions, Plaintiff has been harmed because he is receiving less each month than he would have received if the Plan and Sub-Parts used current, reasonable actuarial assumptions. Plaintiff, along with other participants and beneficiaries of the Plan, has been substantially damaged as a result of receiving benefits below an actuarially equivalent amount.

ANSWER:

Defendants deny the allegations in Paragraph 55.

2. The Actuarial Assumptions Used to Calculate the 75% JSA Under the A-B Sub-Part and Those Used to Calculate Benefits Under the Remaining Sub-Parts Do Not Provide Actuarial Equivalent Benefits.

56. Participants of the A-B Sub-Part that choose the 75% JSA and participants in the remaining Sub-Parts that receive JSAs do not receive benefits that are actuarially equivalent to the SLA they could have received when they retired.

ANSWER:

Defendants deny the allegations in Paragraph 56.

57. The tabular factors in the A-B Sub-Part for calculating the 75% JSA are based on the 1971 GAM table and a 7% interest rate. The same actuarial factors are used to calculate the value of an SLA for unmarried participants whose normal form of benefit is a 10YCLA. The remaining Sub-Parts use similarly unreasonable actuarial assumptions to calculate JSA benefits. Most use the UP 1984 table with a 6% interest rate or fixed, unreasonable conversion factors (e.g. Reliance Dodge Sub-Part: .90 for 50% JSA; NA Transformer: .85 for 50% JSA and .75% for 100% JSA).

ANSWER:

Defendants deny the allegations in Paragraph 57.

58. Using the 1971 GAM or UP 1984 mortality tables as the basis for conversion factors results in QJSAs and QOSAs that are lower than the actuarial equivalent of the SLA participants could select instead, because both mortality tables are severely outdated compared to contemporary mortality tables and do not "reflect anticipated events" (i.e. the anticipated mortality rates of participants).

ANSWER:

Defendants deny the allegations in Paragraph 58.

59. The 1971 GAM table and the UP 1984 table are more than 40 years old and do not incorporate improvements in life expectancy that have occurred since they were published. According to the Centers for Disease Control and Prevention, in 1970, a 65-year-old had an

average life expectancy of 15.2 years (16.8 years in 1984).[16] *In 2010, a 65-year-old had a 19.1-year life expectancy, a 26% increase (13% increase from 1984 to 2010). Accordingly, by 2010, the average employee would have expected to receive, and the average employer would have expected to pay, benefits for a substantially longer amount of time than in 1971 and 1984.*

ANSWER:

Defendants deny the allegations in Paragraph 59.

60. Using these outdated mortality tables decreases the values of JSAs relative to the SLA, thereby materially reducing the monthly benefits that participants and beneficiaries receive in comparison to the monthly benefits participants and beneficiaries would receive if the remaining Sub-Parts used updated, reasonable mortality assumptions. Participants who receive a JSA under the remaining Sub-Parts do not receive actuarially equivalent benefits.

ANSWER:

Defendants deny the allegations in Paragraph 60.

61. Defendants knew or should have known that the 1971 GAM and UP 1984 tables were outdated and that it was unreasonable to use them because they resulted in lower monthly benefits for participants and beneficiaries receiving a JSA.

ANSWER:

Defendants deny the allegations in Paragraph 61.

[16] See https://www.cdc.gov/nchs/data/hus/2011/022.pdf

62. Rockwell uses up-to-date actuarial assumptions when calculating pension costs in its audited financial statements that it prepared with the assistance of an independent auditor throughout the Class Period. Under Generally Accepted Accounting Principles ("GAAP"), mortality assumptions "should represent the 'best estimate' for that assumption as of the current measurement date."[17] In its Annual Report for the year ending September 30, 2015, Rockwell represented that it measured its liabilities under the Plan using the RP-2014, with the MP-2014 improvement scale, not the 1971 GAM or UP 1984 that it used to pay participants. Rockwell's 10-k filed on November 15, 2015 states:[18]

---

[17] As noted in a "Financial Reporting Alert" by Deloitte:

> Many entities rely on their actuarial firms for advice or recommendations related to demographic assumptions, such as the mortality assumption. Frequently, actuaries recommend published tables that reflect broad-based studies of mortality. Under ASC 715-30 and ASC 715-60, each assumption should represent the "best estimate" for that assumption as of the current measurement date. The mortality tables used and adjustments made (e.g., for longevity improvements) should be appropriate for the employee base covered under the plan. Last year, the Retirement Plans Experience Committee of the Society of Actuaries (SOA) released a new set of mortality tables (RP-2014) and a new companion mortality improvement scale (MP-2014). Further, on October 8, 2015, the SOA released an updated mortality improvement scale, MP-2015, which shows a decline in the recently observed longevity improvements. Although entities are not required to use SOA mortality tables, the SOA is a leading provider of actuarial research, and its mortality tables and mortality improvement scales are widely used by plan sponsors as a starting point for developing their mortality assumptions. Accordingly, it is advisable for entities, with the help of their actuaries, to (1) continue monitoring the availability of updates to mortality tables and experience studies and (2) consider whether these updates should be incorporated in the current-year mortality assumption.

Deloitte, Financial Reporting Considerations Related to Pension and Other Postretirement Benefits, Financial Reporting Alert 15-4, October 30, 2015 at 3. https://www2.deloitte.com/content/dam/Deloitte/us/Documents/audit/ASC/FRA/2015/us-aers-fra-financial-reporting-considerations-related-to-pension-and-other-postretirement-benefits-103015.pdf

[18] *See* Rockwell's 10-k for year ending September 30, 2015 at 64, available at: http://d1lge852tjjqow.cloudfront.net/CIK-0001024478/bda22102-db37-4637-b863-f90e77122e08.pdf

In October 2014, the U.S. Society of Actuaries released a new mortality table (RP-2014) and new mortality improvement scale (MP-2014). ***We used these mortality tables to measure our U.S. pension obligation as of September 30, 2015****. This change in mortality assumptions resulted in a $222.1 million increase to our projected benefit obligation. (Emphasis added).*

ANSWER:

Paragraph 62 and Footnotes 17 and 18 quote Generally Accepted Accounting Principles, Rockwell's 10-K, and a Deloitte Financial Reporting Alert. Defendants admit only that Plaintiff has quoted portions of GAAP, Rockwell's 10-K, and a Deloitte Financial Reporting Alert. However, Defendants aver that Plaintiff has omitted significant context. Therefore, to the extent a response is required, Defendants deny Plaintiff's characterization of GAAP, Rockwell's 10-K, and Deloitte's Financial Reporting Alert in Paragraph 62.

63. Rockwell has known since at least 2006 that its use of the 1971 GAM and the UP 1984 were out-of-date. Rockwell's Annual Report for the period ending September 30, 2006 states:

Additionally, in establishing our 2006 pension assumptions, we performed an actuarial experience study that changed other assumptions including retirement rate, employee turnover rate, and ***mortality rate as a result of utilizing the RP2000 table projected forward 10 years.***[19]

ANSWER:

Paragraph 63 quotes Rockwell's Annual Report for the period ending in September 30, 2006. Defendants admit only that Plaintiff has quoted a portion of Rockwell's Annual Report. However, Defendants aver that Plaintiff has omitted significant context. Therefore, to the extent a response is required, Defendants deny Plaintiff's characterization of Rockwell's Annual Report in Paragraph 63 and deny any remaining allegations in Paragraph 63.

[19] *See* Rockwell's 10-k for year ending September 30, 2006 at 29; available at http://d1lge852tjjqow.cloudfront.net/CIK-0001024478/5a1cd6ad-b128-4d4d-80a8-036dd82a3eec.pdf

64. Rockwell used updated mortality tables in its financial statements throughout the Class Period. In its audited financial statements, Rockwell used reasonable actuarial assumptions to report a greater liability for the benefits the Plan paid out to participants receiving JSAs calculated using the antiquated and unreasonable 1971 GAM and UP 1984 tables. There is no reasonable justification for Defendants to use old mortality tables that presume an early death and an early end to benefit payments in order to calculate unfairly low annual benefits for participants, while at the same time using an up-to-date, reasonable mortality table to project a longer duration of these very same annual benefit payments for annual financial reporting.

ANSWER:

Defendants deny the allegations in Paragraph 64.

65. Since these two analyses measure the length of the very same lives and the very same benefit streams, they should use the same mortality assumptions. "ERISA did not leave plans free to choose their own methodology for determining the actuarial equivalent of the accrued benefit; rather we stated, '[i]f plans were free to determine their own assumptions and methodology, they could effectively eviscerate the protections provided by ERISA's requirement of actuarial equivalence.'" Laurent v. Price WaterhouseCoopers LLP, 794 F.3d 272 (2d Cir. 2015) quoting, Esden v. Bank of Boston, 229 F.3d 154, 164 (2d Cir. 2000). Although Defendants commonly used reasonable mortality tables in calculating actuarial present values, Defendants knowingly and wrongfully use the 1971 GAM and UP 1984 tables, which are several decades out-of-date, to calculate retirees' JSA benefits.

ANSWER:

Paragraph 65 selectively quotes *Laurent v. Price WaterhouseCoopers LLP,* 794 F.3d 272 (2d Cir. 2015). Defendants admit only that Plaintiff has quoted a portion of *Laurent v. Price WaterhouseCoopers.* However, Defendants aver that Plaintiff has omitted significant context. Therefore, to the extent a response is required, Defendants deny Plaintiff's characterization of *Laurent v. Price WaterhouseCoopers* in Paragraph 65. Any remaining allegations in Paragraph 65 are denied.

66. Rockwell updates the mortality assumptions used in its financial statements filed with the SEC to predict for its shareholders the potential costs associated with the Plan based on the SOA's publications and the "experience studies" that it conducts the measure life expectancies. For Plan participants, however, Rockwell converts participants' Normal Form of benefit to other forms of benefits using old, outdated mortality assumptions, ignoring the SOA, in order to reduce the amount it pays retirees.

ANSWER:

Defendants deny the allegations in Paragraph 66.

67. Defendants misrepresented to participants that the JSA benefits offered under the Plan are actuarially equivalent to the SLA those participants could have received to reduce the amount of benefits they paid participants.

ANSWER:

Defendants deny the allegations in Paragraph 67.

68. During the relevant period, Rockwell's use of the 1971 GAM, UP 1984 tables or unreasonably low fixed factors to calculate JSAs was unreasonable.

ANSWER:

Defendants deny the allegations in Paragraph 68.

69. Had the Plan used reasonable actuarial assumptions, such as the Treasury Assumptions, Plaintiff and the Class would have received, and would continue to receive, actuarially equivalent benefits that are greater than the benefits they currently receive.

ANSWER:

Defendants deny the allegations in Paragraph 69.

70. The chart below compares the amount that a Plan participant who is 65-years old (with a 65-year-old spouse) who accrued an SLA of $1,000/month would receive per month if she elected to receive her benefits in the form of a 50% JSA, using the 2018 Treasury Assumptions and some of the Plan's actuarial assumptions:

	UP-1984/6%	**2018 Treasury Assumptions**	**Percent Difference in Benefit Amount**
SLA	$1,000	$1,000	N/A
50% JSA	$900.07	$926.67	3.0%

ANSWER:

Defendants deny the allegations in Paragraph 70.

71. The differences in benefit amount between the 2018 Treasury Assumptions and the assumptions that Rockwell uses will vary depending on the Sub-Part and the ages of the participant and the beneficiary, participants and beneficiaries who receive JSAs under the Plan are not

receiving an actuarially equivalent form of benefit because the present value is not equal to that of the SLA that could have received.

ANSWER:

Defendants deny the allegations in Paragraph 71.

72. Discovery will likely show that Defendants use of unreasonable actuarial assumptions deprived retirees and their spouses of millions of dollars.

ANSWER:

Defendants deny the allegations in Paragraph 72.

73. Because the Plan used grossly outdated, unreasonable mortality tables throughout the relevant time period, the benefits paid to participants and beneficiaries who receive QJSAs, QOSAs are ***not*** *actuarially equivalent to what they would have received if they had selected an SLA, in violation of ERISA § 205(d)(1)(B), 29 U.S.C. § 1055(d)(1)(B) and ERISA § 205(d)(2)(A), 29 U.S.C. § 1055(d)(2)(A). Rather, the benefits payable under these forms of benefit are much lower than they should be.*

ANSWER:

Defendants deny the allegations in Paragraph 73.

CLASS ACTION ALLEGATIONS

74. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of himself and the class (the "Class") defined as follows:

> *All participants and beneficiaries of the Plan who are receiving the QJSA (except for those unmarried participants whose QJSA under the Plan is an SLA), a QOSA or a QPSA. Excluded from the Class*

are Defendants and any individuals who are subsequently determined to be fiduciaries of the Plan.

ANSWER:

Defendants admit only that Plaintiff has brought a putative class action against them. Defendants deny that that this litigation can or should be maintained as a class action, that Defendants have violated ERISA, and that Plaintiff is entitled to any relief.

75. The members of the Class are so numerous that joinder of all members is impractical. Upon information and belief, the Class includes thousands of persons.

ANSWER:

The allegations in Paragraph 75 consist of legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 75.

76. Plaintiff's claims are typical of the claims of the members of the Class because Plaintiff's claims and the claims of all Class members arise out of the same policies and practices as alleged herein, and all members of the Class are similarly affected by Defendants' wrongful conduct.

ANSWER:

The allegations in Paragraph 76 consist of legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 76.

77. There are questions of law and fact common to the Class and these questions predominate over questions affecting only individual Class Members. Common legal and factual questions include, but are not limited to:

A. *Whether the Plan and Sub-Parts provide QJSAs, QOSAs and QPSAs that are, in fact, actuarially equivalent to those that would be paid under an SLA;*

B. *Whether the Plan should be reformed to comply with ERISA; and*

C. *Whether Plaintiff and Class members should receive additional benefits based on the difference between the benefits they are receiving and the benefits they would be receiving if, on their benefit commencement date, their benefit had been actuarially equivalent to the SLA they could have taken.*

ANSWER:

The allegations in Paragraph 77 consist of legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 77.

78. Plaintiff will fairly and adequately represent the Class and has retained counsel experienced and competent in the prosecution of ERISA class actions. Plaintiff has no interests antagonistic to those of other members of the Class. Plaintiff is committed to the vigorous prosecution of this action and anticipates no difficulty in the management of this litigation as a class action.

ANSWER:

The allegations in Paragraph 78 consist of legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 78.

79. This action may be properly certified under either subsection of Rule 23(b)(1). Class action status is warranted under Rule 23(b)(1)(A) because prosecution of separate actions

by the members of the Class would create a risk of establishing incompatible standards of conduct for Defendants. Class action status is warranted under Rule 23(b)(1)(B) because prosecution of separate actions by the members of the Class would create a risk of adjudications with respect to individual members of the Class that, as a practical matter, would be dispositive of the interests of other members not parties to this action, or that would substantially impair or impede their ability to protect their interests.

ANSWER:

The allegations in Paragraph 79 consist of legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 79.

80. In the alternative, certification under Rule 23(b)(2) is warranted because Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive, declaratory, or other appropriate equitable relief with respect to the Class as a whole.

ANSWER:

The allegations in Paragraph 80 consist of legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 80.

81. In the alternative, certification under Rule 23(b)(3) is warranted because the questions of law or fact common to the members of the Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

ANSWER:

The allegations in Paragraph 81 consist of legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 81.

FIRST CLAIM FOR RELIEF
Declaratory and Equitable Relief
(ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3))

82. Plaintiff re-alleges and incorporates herein by reference all prior allegations in this Complaint.

ANSWER:

Defendants hereby incorporate their answers to Paragraphs 1 through 81 of the Complaint as if fully stated herein.

83. The Plan and all the Sub-Parts improperly reduce annuity benefits for participants and beneficiaries who receive JSAs below what they would receive if those benefits were actuarially equivalent to an SLA as ERISA requires.

ANSWER:

Defendants deny the allegations in Paragraph 83.

84. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes a participant or beneficiary to bring a civil action to: "(A) enjoin any act or practice which violates any provision of this title or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this title or the terms of the plan."

ANSWER:

Paragraph 84 quotes ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3). Defendants admit only that Plaintiff has accurately quoted a pertinent part of ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3). However, Defendants aver that Plaintiff has omitted significant context. Therefore, to the extent a response is required, Defendants deny Plaintiff's characterization of ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3) in Paragraph 84.

85. Pursuant to this provision, 28 U.S.C. §§ 2201 and 2202, and Rule 57 of the Federal Rules of Civil Procedure, Plaintiff seeks declaratory relief, determining that the Plan's established methodologies for calculating QJSAs, QOSAs and QPSAs violate ERISA because they do not provide a benefit that is actuarially equivalent to an SLA. By not providing an actuarially equivalent benefit, Defendants have violated Section 205 of ERISA, 29 U.S.C. § 1055.

ANSWER:

Defendants admit only that Plaintiff seeks declaratory relief. Defendants deny all rremaining allegations in Paragraph 85.

86. Plaintiff further seeks orders from the Court providing a full range of equitable relief, including but not limited to:

(a) re-calculation, correction, and payment of benefits previously paid for JSAs under the Plan and all Sub-Parts;

(b) an "accounting" of all prior benefits and payments;

(c) a surcharge;

(d) disgorgement of amounts wrongfully withheld;

(e) disgorgement of profits earned on amounts wrongfully withheld;

(f) a constructive trust;

(g) an equitable lien;

(h) an injunction against further violations; and

(i) other relief the Court deems just and proper.

ANSWER:

Defendants admit only that Plaintiff seeks equitable relief from the Court. Defendants deny that Plaintiff is entitled to any such relief and deny all remaining allegations in Paragraph 86 and its subparts.

SECOND CLAIM FOR RELIEF
For Reformation of the Plan and Recovery of Benefits Under the Reformed Plan
(ERISA § 502(a)(1) and (3), 29 U.S.C. § 1132(a)(1) and (3))

87. Plaintiff re-alleges and incorporates herein by reference all prior allegations in this Complaint.

ANSWER:

Defendants hereby incorporate their answers to Paragraphs 1 through 86 of the Complaint as if fully stated herein.

88. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes a participant or beneficiary to bring a civil action to: "(A) enjoin any act or practice which violates any provision of this title or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this title or the terms of the plan."

ANSWER:

Paragraph 88 quotes ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3). Defendants admit only that Plaintiff has quoted a part of ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3). However, Defendants aver that Plaintiff has omitted significant context. Therefore, to the extent a response is required, Defendants deny Plaintiff's characterization of ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3) in Paragraph 88.

89. The Plan and the Sub-Parts improperly reduce annuity benefits for participants and beneficiaries who receive QJSAs, QOSAs and QPSAs below what they would receive if those benefits were actuarially equivalent to an SLA as ERISA requires. By not providing an actuarially equivalent benefit, Defendants have violated Section 205 of ERISA, 29 U.S.C. § 1055.

ANSWER:

Defendants deny the allegations in Paragraph 89.

90. Plaintiff is entitled to reformation of the Plan to require Defendants to provide actuarially equivalent benefits.

ANSWER:

Defendants deny the allegations in Paragraph 90.

91. ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), authorizes a participant or beneficiary to bring a civil action to "recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan."

ANSWER:

Paragraph 91 quotes a portion of ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B). Defendants admit only that Plaintiff has quoted a part of ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B). However, Defendants aver that Plaintiff has omitted significant context. Therefore, to the extent a response is required, Defendants deny Plaintiff's characterization of ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B) in Paragraph 91.

92. Plaintiff is entitled to recover actuarially equivalent benefits, to enforce his rights to the payment of past and future actuarially equivalent benefits, and to clarify his rights to future actuarially equivalent benefits under the Plan following reformation.

ANSWER:

Defendants deny the allegations in Paragraph 92.

THIRD CLAIM FOR RELIEF
Breach of Fiduciary Duty
(ERISA §§ 1104 and 502(a)(3), 29 U.S.C. §§ 1104 and 1132(a)(3))

93. Plaintiff re-alleges and incorporates herein by reference all prior allegations in this Complaint.

ANSWER:

Defendants hereby incorporate their answers to Paragraphs 1 through 92 of the Complaint as if fully stated herein.

94. As one of the Plan's administrators, the Committee is a fiduciary of the Plan.

ANSWER:

Defendants admit the Committee is a named fiduciary of the Plan.

95. ERISA treats as fiduciaries not only persons explicitly named as fiduciaries under § 402(a)(1), 29 U.S.C. § 1102(a)(1), but also any other persons who in fact perform fiduciary functions. Thus, a person is a fiduciary to the extent "(i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan." ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A). This is a functional test. Neither "named fiduciary" status nor formal delegation is required for a finding of fiduciary status, and contractual agreements cannot override finding fiduciary status when the statutory test is met.

ANSWER:

The allegations in Paragraph 95 consist of legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 95.

96. The Committee and its members are fiduciaries for the Plan because they exercised discretionary authority and control over management of the Plan as well as authority and control over the disposition of Plan assets. In particular, they had authority or control over the amount and payment of benefits paid as JSAs, which were paid from Plan assets.

ANSWER:

Defendants admit the Committee is a named fiduciary of the Plan. Defendants deny the remaining allegations in Paragraph 96.

97. ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), provides that a fiduciary shall discharge its duties with respect to a plan in accordance with the documents and instruments governing the plan insofar as the Plan is consistent with ERISA.

ANSWER:

Paragraph 97 purports to summarize or paraphrase ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1). Because Plaintiff does not quote directly from ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), Defendants deny that Plaintiff has accurately or completely summarized the same in context. To the extent a response is required, Defendants deny the allegations in Paragraph 97.

98. The Plan is not consistent with ERISA because it calculates QJSA, QOSA and QPSA benefits that are less than the actuarial equivalent of an SLA, resulting in participants and beneficiaries illegally forfeiting and losing vested benefits in violation of ERISA.

ANSWER:

Defendants deny the allegations in Paragraph 98.

99. In following the Plan, which did not conform with ERISA, the Committee and its members exercised their fiduciary duties and control over Plan assets in breach of their fiduciary duties.

ANSWER:

Defendants deny the allegations in Paragraph 99.

100. ERISA imposes on fiduciaries that appoint other fiduciaries the duty to monitor the actions of those appointed fiduciaries to ensure compliance with ERISA. In allowing the

Committee to pay benefits that were not actuarially equivalent, in violation of ERISA, Rockwell breached its fiduciary duties to supervise and monitor the Committee.

ANSWER:

Defendants deny that Rockwell breached its fiduciary duties in any fashion. The remaining allegations in Paragraph 100 consist of legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 100.

101. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes a participant or beneficiary to bring a civil action to: "(A) enjoin any act or practice which violates any provision of this title or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this title or the terms of the plan."

ANSWER:

Paragraph 101 quotes ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3). Defendants admit only that Plaintiff has quoted a part of ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3). However, Defendants aver that Plaintiff has omitted significant context. Therefore, to the extent a response is required, Defendants deny Plaintiff's characterization of ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3) in Paragraph 101.

102. Pursuant to this provision, 28 U.S.C. §§ 2201 and 2202, and Federal Rule of Civil Procedure 57, Plaintiff seeks declaratory relief, determining that the Plan and Sub-Parts' established methodologies for calculating actuarial equivalence of JSAs violate ERISA because they do not provide an actuarially equivalent benefit.

ANSWER:

Defendants admit only that Plaintiff seeks declaratory relief. The remaining allegations in Paragraph 102 consist of legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 102.

103. Plaintiff further seeks orders from the Court providing a full range of equitable relief, including but not limited to:

(a) re-calculation, correction and payment of QJSA, QOSA and QPSA benefits previously paid under the Plan and Sub-Parts;

(b) an "accounting" of all prior benefits and payments;

(c) a surcharge;

(d) disgorgement of amounts wrongfully withheld;

(e) disgorgement of profits earned on amounts wrongfully withheld;

(f) a constructive trust;

(g) an equitable lien;

(h) an injunction against further violations; and

(i) other relief the Court deems just and proper.

ANSWER:

Defendants admit only that Plaintiff seeks equitable relief from the Court. Defendants deny any remaining allegations of Paragraph 103.

PRAYER FOR RELIEF

Defendants deny that Plaintiff is entitled to any relief sought in the Prayer for Relief.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff's claims are barred and must be dismissed, in whole or in part, because Plaintiff failed to exhaust administrative remedies under the Plan or to satisfy the statutory conditions precedent for his claims.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations and/or the doctrine of laches.

THIRD AFFIRMATIVE DEFENSE

Some or all of Plaintiff's claims may be barred, in whole or in part, by the doctrine of waiver.

FOURTH AFFIRMATIVE DEFENSE

Some or all of Plaintiff's claims may be barred, in whole or in part, by the doctrine of estoppel.

FIFTH AFFIRMATIVE DEFENSE

Some or all of Plaintiff's claims may be barred, in whole or in part, by release or payment.

SIXTH AFFIRMATIVE DEFENSE

Some or all of Plaintiff's claims may be barred, in whole or in part, by his lack of standing and this Court's lack of jurisdiction over Plaintiff's claims.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because the Complaint seeks relief that cannot be obtained under ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B) and seeks relief that is not appropriate equitable relief under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3).

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims for reformation under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3) are barred because there has been no fraud or mutual mistake.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims in Count III are barred, in whole or in part, because the acts upon which the Complaint is based are not fiduciary in nature and Defendants served no fiduciary function for the actions complained of and otherwise violated no fiduciary standard.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred because Plaintiff has not sustained any cognizable injury attributable to Defendants' conduct.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims, in whole or in part, fail to state a claim upon which relief can be granted.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because the Complaint seeks relief that is not permissible or consistent with 29 U.S.C. § 1054(g); 26 U.S.C. § 411(d)(6); 26 C.F.R. § 1.411(d)-3 and (d)-4. *See*, *e.g.*, *Stamper v. Total Petroleum, Inc*., 188 F.3d 1233, 1238 (10th Cir. 1999) ("Revenue Ruling 81-12 [1981-1 C.B. 228], which states that plan amendments may not change actuarial assumptions in a way that would reduce a participant's accrued benefits, was incorporated by REA § 301(a)(1) and (2), into the Tax Code (at 26 U.S.C. §§ 411 and 412) and ERISA (at 29 U.S.C. § 1054(g)).")

Defendants reserve the right to assert, and hereby give notice they intend to rely upon, any other defense that may become available or appear during discovery proceedings or otherwise in this case, and hereby reserve the right to amend their Answer to assert any such defense.

WHEREFORE, having fully answered the Complaint, Defendants request that the Court dismiss the same and enter judgment in their favor on all counts and claims in the Complaint, and Defendants further request an order awarding their costs and attorney fees pursuant to 29 U.S.C. § 1132(g), and such other relief as the Court deems proper.

Dated: April 26, 2021

Respectfully submitted,

Reinhart Boerner Van Deuren s.c.
1000 North Water Street, Suite 1700
Milwaukee, WI 53202

s/ Scott W. Hansen
Scott W. Hansen
shansen@reinhartlaw.com

Mailing Address:
P.O. Box 2965
Milwaukee, WI 53201-2965
Telephone: 414-298-1000
Facsimile: 414-298-8097

Alston & Bird LLP
950 F Street, NW
Washington, D.C. 20004-1404
Telephone (202) 239-3300
Facsimile: (202) 239-3333

David R. Godofsky
david.godofsky@alston.com
Emily Seymour Costin
emily.costin@alston.com

1201 West Peachtree Street, Suite 4900
Atlanta, GA 30309
Telephone: (404) 881-7000
Facsimile: (404) 881-7777

R. Blake Crohan
Blake.Crohan@alston.com

Counsel for Rockwell Automation, Inc. and The Rockwell Automation Employee Benefits Plan Committee