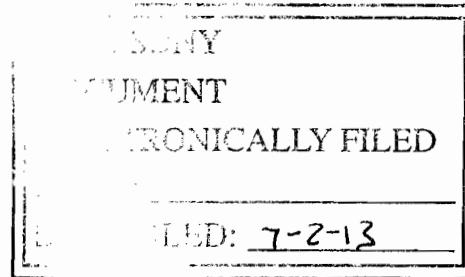


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



DAVID GOODMAN, *et al.*,

Plaintiffs,

-v-

CITY OF NEW YORK, *et al.*,

Defendants.

No. 10 Civ. 5236 (RJS)

ORDER CONDITIONALLY CERTIFYING THE SETTLEMENT CLASS AND SETTLEMENT SUB-CLASSES, PRELIMINARILY APPROVING THE SETTLEMENT AGREEMENT, APPROVING FORMS OF CLASS NOTICE AND SCHEDULING A FAIRNESS HEARING

On this 2nd day of July, 2013, the Court considered Plaintiffs' Unopposed Motion for Conditional Certification of the Settlement Class and Sub-Classes, Preliminary Approval of the Settlement Agreement, and Approval of the Forms of Class Notice (the "Motion"). All capitalized terms used in this Preliminary Order shall have the meaning as defined in the Settlement Agreement (the "Agreement"), which is incorporated herein by reference. After consideration of the Motion, the Agreement, and the exhibits attached thereto, as well as discussions with counsel held at a conference on June 28, 2013, this Court hereby concludes that the Motion should be **GRANTED**.

IT IS HEREBY ORDERED AND DECREED as follows:

A. Preliminary Approval of the Agreement

1. The Court has reviewed the Agreement, with all exhibits thereto, and preliminarily finds that the Agreement is reasonable, fair, just, free of collusion to the detriment of the

Settlement Class, and within the range of possible judicial approval, subject to the terms of the Agreement. The Court preliminarily approves the Agreement and specifically finds that: (i) the Agreement resulted from extensive arms-length negotiations by counsel well-versed in the legal and factual issues raised by the Litigation; and (ii) the settlement evidenced by the Agreement is sufficient to warrant Class Notice thereof to all putative Settlement Class Members, as well as a full hearing. The Court makes no finding in this Preliminary Order on the ultimate issues to be determined at the Fairness Hearing. The Court further specifically finds, on a preliminary basis, that:

a. The Agreement adequately addresses the claims of Settlement Class Members for injunctive relief;

b. The Agreement adequately addresses the claims of Settlement Sub-Class A for monetary recovery because it provides for any and all additional pension benefits owed to members of Sub-Class A as a result of recalculating their pensionable earnings during periods of Active Military Service that occurred during any time of their employment with the NYPD on or after September 11, 2001, in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301 *et seq.* (“USERRA”); and

c. The Agreement adequately addresses the claims of Settlement Sub-Class B for monetary recovery because it provides for any and all additional pension benefits owed to members of Sub-Class B with timely claims as a result of recalculating their pensionable earnings during periods of Active Military Service that occurred during any time of their employment with the NYPD on or after September 11, 2001, in accordance with USERRA.

B. Conditional Certification of the Settlement Class and Settlement Sub-Classes

2. Solely for the purposes of settlement, and pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, the Court provisionally finds as follows:

- a. the Members of the Settlement Class and Members of the Settlement Sub-Classes are so numerous that joinder of all Members would be impracticable;
- b. the Litigation and the Agreement raise questions of law and fact common to the claims of the Members of the Settlement Class and Members of the Settlement Sub-Classes;
- c. the claims and defenses of the Representative Plaintiffs are typical of the claims of the Settlement Class and Settlement Sub-Classes;
- d. in prosecuting the Litigation and negotiating and entering into the Agreement, the Representative Plaintiffs and their counsel have fairly and adequately protected the interests of the Settlement Class and Settlement Sub-Classes, and will fairly and adequately represent the interests of the Settlement Class and Settlement Sub-Classes in connection with the Agreement;
- e. there is no evidence that the interests of the Representative Plaintiffs and Class Members are at odds, or evidence of any potential or actual conflicts between Settlement Class Counsel and Class Members;
- f. the Settlement Class and Settlement Sub-Classes are ascertainable;
- g. the questions of law and fact common to the claims of the Members of the Settlement Class and Members of the Settlement Sub-Classes predominate over questions affecting only individual Members; and
- h. class adjudication of this case is superior to other available methods for fairly and efficiently adjudicating this controversy.

3. Accordingly, for purposes of settlement only, the Court conditionally certifies a Settlement Class of: All retired NYPD Uniformed Members of Service who performed Active Military Service on or after September 11, 2001 during their employment with the NYPD, or, if applicable, the beneficiary of a pension of a NYPD Uniformed Member of Service. Further, for purposes of settlement only, the Court conditionally certifies the following Sub-Classes:

a. Sub-Class A: All retired NYPD Uniformed Members of Service who performed Active Military Service on or after September 11, 2001 during their employment with the NYPD, and who received their First Pension Check on or after October 10, 2004 and no later than the Effective Date, or, if applicable, the beneficiary of the pension of such NYPD Uniformed Members of Service;

b. Sub-Class B: All retired NYPD Uniformed Members of Service who performed Active Military Service on or after September 11, 2001 during their employment with the NYPD, and who received their First Pension Check before October 10, 2004, or, if applicable, the beneficiary of a pension of such NYPD Uniformed Members of Service.

4. For settlement purposes only, the Court provisionally designates Plaintiffs David Goodman, Michael Doherty, and Robert Black as representatives of the Settlement Class and finds them fair and adequate representatives of the interests of the Settlement Class with claims typical of the Settlement Class. Further, Plaintiffs Goodman and Black are provisionally designated as representatives of Settlement Sub-Class A and are found to be fair and adequate representatives of Sub-Class A with claims typical of Members of Sub-Class A. Plaintiff Doherty is provisionally designated as representative of Settlement Sub-Class B and is found to be a fair and adequate representative of Sub-Class B with claims typical of Members of Sub-Class B.

5. For settlement purposes only, the Court appoints Preet Bharara, United States Attorney for the Southern District of New York, by Chief of the Civil Rights Unit and Assistant United States Attorneys Tara M. La Morte and Arastu K. Chaudhury, as Settlement Class Counsel because they meet all of the requirements of Rule 23(g) of the Federal Rules of Civil Procedure. The Court finds counsel to be experienced and skilled attorneys capable of fairly and adequately representing the interests of the Settlement Class and Settlement Sub-Classes. The

work that Representative Plaintiffs' counsel have performed both in litigating and settling this case demonstrates their skill and commitment to representing the Class's interests.

C. Form, Timing, and Dissemination of Settlement Class Notice and Appended Forms

6. The Parties have proposed a plan for giving notice to the Settlement Class Members by providing, through Defendants, the Representative Plaintiffs and Members of the Settlement Class the Class Notice and the Election to Opt Out of Settlement and Class Action form (attached to the Agreement as Exhibits 1 and 3) by first class mail to the address to which the Police Pension Fund transmits pension checks and sends pension-related correspondence. Members of Sub-Class B will also receive the Claim Certification Form for NYPD Retirees Who Received Their First Pension Check Earlier Than October 10, 2004 (attached to the Agreement as Exhibit 2). Additionally, the Parties have proposed that Settlement Class Counsel establish a specific electronic mail inquiry address, identified in the Class Notice, for the purpose of enabling Settlement Class Members to make inquiries with respect to the Agreement, obtain copies of the Class Notice and/or forms appended thereto, and respond to the Class Notice. Settlement Class Counsel is tasked to respond to inquiries of Settlement Class Members, pursuant to the electronic mail inquiry address or otherwise, as appropriate.

7. The Court approves, as to both form and content, the Class Notice (Agreement Ex. 1), the Election to Opt Out of Settlement and Class Action form (Agreement Ex. 3), and the Claim Certification Form for NYPD Retirees Who Received Their First Pension Check Earlier Than October 10, 2004 (Agreement Ex. 2), and finds that each meets the requirements of Rule 23 and due process, and constitutes adequate notice to the Settlement Class and Settlement Sub-Classes of the proposed settlement.

8. Accordingly, Defendants shall mail the Class Notice and the Election to Opt Out of Settlement and Class Action form, in the form annexed hereto as Exhibits 1 and 3, respectively,

via first class mail to the Representative Plaintiffs and all persons whom the Parties through their best efforts have been able to determine are Settlement Class Members, using the address to which the Police Pension Fund transmits pension checks and sends pension-related correspondence. Defendants shall complete mailing no later than forty-five (45) days of the date of this Preliminary Order. In addition, no later than forty-five (45) days of the date of this Preliminary Order, Defendants shall also mail the Claim Certification Form For NYPD Retirees Who Received Their First Pension Check Earlier Than October 10, 2004, in the form annexed hereto as Exhibit 2, via first class mail to Representative Plaintiffs Doherty and Black and all persons whom the Parties through their best efforts have been able to determine are Members of Settlement Sub-Class B, using the address to which the Police Pension Fund transmits pension checks and sends pension-related correspondence. Further, Settlement Class Counsel established a specified electronic mail inquiry address, identified in the Class Notice, for the purpose of enabling Settlement Class Members to obtain copies of the Class Notice and forms appended thereto, to respond to the Class Notice, and make inquiries with respect to the Agreement. It shall be the responsibility of Settlement Class Counsel to respond to inquiries of Settlement Class Members, pursuant to the electronic mail inquiry address or otherwise, as appropriate. Settlement Class Counsel shall maintain the electronic mail inquiry address until the Certifications described in section XII of the Agreement are served and filed.

9. In the event that, subsequent to the first mailing of the Class Notice and appended forms, the Class Notice and appended forms are returned to Defendants by the United States Postal Service with a forwarding address for the recipient, Defendants shall promptly re-mail the Class Notice and appended forms to the forwarding address provided, the Class Notice and appended forms shall be deemed mailed as of the date it is mailed for the second time, and Defendants will retain the forwarding address as the updated address.

10. If the Class Notice and appended forms are returned to Defendants by the United States Postal Service because the address of the recipient is no longer valid, Defendants shall make further attempts to ascertain a valid address for the recipient, using any additional contact information in Defendants' possession, including but not limited to any telephone or e-mail information, or a valid address ascertained by Settlement Class Counsel. If a valid address is ascertained, Defendants shall re-send the Class Notice and appended forms to such address within seven (7) days of receiving such information. If no additional address is ascertained, the Class Notice and appended form(s) shall be sent again to the last known address. In either event, the Class Notice and appended forms shall be deemed mailed as of the date it is mailed for the second time.

11. With respect to a Member of Sub-Class B whose address has not been deemed unknown, and who has not submitted to Defendants some form of written response to the Class Notice and appended forms by the date that is thirty (30) days before the Notice Deadline, Defendants shall send that Class Member a document (a) referencing the name of the Class Action; (b) stating that the Member received a Class Notice and appended forms in this action; (c) providing the address and contact information for Settlement Class Counsel; (d) stating the deadline to respond to the Class Notice and appended forms if the recipient desires to do so; and (e) stating that the Member can contact Defendants to receive an additional copy of the Class Notice and/or the appended forms.

12. Defendants shall send a "Cure Letter" to any Member of Sub-Class B who submits an improperly completed Claim Certification Form for NYPD Retirees Who Received Their First Pension Check Earlier Than October 10, 2004. The Cure Letter shall remind the member that he or she must submit properly completed forms and supporting documentation on a timely basis in order to be eligible for the relief provided by the Agreement for Members of Sub-Class B.

D. Class Action Settlement Procedure

13. For purposes stated and defined in the Agreement, the Court hereby sets the following dates and deadlines:

a. Deadline for mailing of Class Notice and appended forms: Friday, August 16, 2013;

b. Class Members wishing to opt out of the Agreement must submit the Election to Opt-Out of Settlement and Class Action form (Exhibit 3 hereto) to Defendants: The Opt-Out form must be postmarked no later than ninety (90) days from the date Class Notice is mailed to the Member;

c. Members of Sub-Class B who contend they are entitled to the injunctive and monetary relief set forth in section VI of the Agreement must submit a Claim Certification form for NYPD Retirees Who Received Their First Pension Check Earlier Than October 10, 2004 (Exhibit 2 hereto) and any supporting documents to Defendants. Such documents must be postmarked no later than ninety (90) days from the date Class Notice is mailed to the Member;

d. Members of the Settlement Class wishing to object to the Agreement must submit objections in accordance with paragraph 7.7 of the Agreement to Defendants. Objections and any supporting documents must be postmarked no later than thirty (30) days prior to the Fairness Hearing date.

14. The Court will hold a Fairness Hearing on January 13, 2014 at 4:30 p.m. at the United States District Court for the Southern District of New York, 40 Foley Square, New York, New York, Courtroom 905, to determine:

a. whether the Court should finally certify the Settlement Class and Settlement Sub-Classes and whether Representative Plaintiffs and Settlement Class Counsel have fairly and

adequately represented the Settlement Class and Settlement Sub-Classes such that the provisional designations of them should be finally approved;

b. whether the notification provided to the Settlement Class and Settlement Sub-Classes, including the Class Notice and the forms appended thereto, and the establishment of a specified electronic mail inquiry address for the purpose of enabling Settlement Class Members to obtain copies of the Class Notice and/or the forms appended thereto, to respond to the Class Notice, and to make inquiries concerning the Agreement, are in full compliance with the notice requirements under Rule 23 of the Federal Rules of Civil Procedure and due process;

c. whether the terms and conditions provided for in the Agreement should be finally approved by the Court as fair, reasonable, and adequate;

d. whether the Litigation should be dismissed on the merits and with prejudice, save the Court's retention of jurisdiction to enforce the Agreement; and

e. such other matters as the Court may deem necessary or appropriate.

15. Any Class Member who desires to object to final approval of the Agreement and/or the relief granted therein must file a written objection in accordance with paragraph 7.7 of the Agreement, and may appear at the Fairness Hearing either in person or through counsel and show cause, by the Objection Date (30 days prior to the Fairness Hearing date), why the Agreement should not be approved as fair, reasonable, and adequate, or why a Final Order should not be entered approving the Agreement; provided, however, that absent permission from the Court at the Fairness Hearing, in order to appear at the Fairness Hearing for purposes of arguing an objection, such Class Member must have served Defendants by first-class United States mail, his or her written objection as well as written notice to appear, so as to be postmarked by the Objection Date. Defendants shall be served at Law Department of the City of

New York, 100 Church Street, New York, New York 10007, ATTN: Goodman Class Action. A written objection should include the following:

- a. a statement of each objection asserted;
- b. a description of the basis underlying each objection;
- c. a statement of whether the objector intends to appear and argue at the Fairness Hearing, and if so, how much time the objector anticipates needing to present the objection;
- d. all exhibits and statements that the objector may offer during the Fairness Hearing; and
- e. a list of all witnesses that the objector may call to testify live during the Fairness Hearing, and a summary of their anticipated testimony.

16. Unless otherwise ordered by the Court, any Class Member who does not make his or her objection in the manner provided for in this Preliminary Order and by the Objection Date shall be deemed to have waived and be forever foreclosed and barred from asserting such objections.

17. One or both of the Parties shall file with the Clerk of the Court a memorandum in support of final approval of the settlement no later than fourteen (14) days prior to the Fairness Hearing date.

18. If the Court grants final approval of the Agreement, the Court will issue a Final Order and Judgment.

19. The Effective Date shall occur when all of the following events have taken place: the Court enters the Preliminary Order, the Court enters the Final Order and Judgment, and the time period for filing a notice of appeal of the Final Order pursuant to the Federal Rules of Appellate Procedure has expired or, if any appeal is filed, the mandate has issued following resolution of the appeal. With respect to performing recalculations of pensionable earnings and pension

benefits in accordance with the Agreement, Defendants shall first recalculate the pensionable earnings and pension benefits of the Representative Plaintiffs.

E. Miscellaneous Provisions

20. Unless and until the Court declines to enter the Final Order and a Party exhausts reconsideration or appellate review of the decision denying the Final Order, or the Parties fail to renegotiate a settlement and obtain Court approval of the renegotiated settlement, all discovery, motions, pleadings, and other activity in the Litigation affecting the Parties shall be stayed except to the extent necessary to effectuate the Agreement. Pending final determination of whether the Agreement should be finally approved and the Settlement Class and Settlement Sub-Classes finally certified, Members of the Settlement Class and Settlement Sub-Classes are hereby barred and enjoined from commencing or prosecuting any action asserting any Released Claims.

21. Non-substantive changes necessary to correct any inconsistency between the forms approved by the Court and the Agreement may be made by the mutual agreement of Settlement Class Counsel and Defendants' counsel.

22. If logistical problems arise with implementing this Preliminary Order, then the Parties shall bring such problems to the attention of this Court for resolution by subsequent order of this Court.

23. The Court hereby reserves the right:


a. to approve the Agreement, with such modifications as may be agreed to by the Parties thereto, without further notice; and

b. to adjourn the Fairness Hearing from time to time, by oral announcement at the time and date set for the Fairness Hearing, without further written notice to Settlement Class Members.

24. The parties shall abide by all terms of the Agreement.

SO ORDERED.

Dated: July 2, 2013
New York, New York



RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAVID GOODMAN, *et al.*,
Plaintiffs,

-v-

CITY OF NEW YORK, *et al.*,
Defendants.

No. 10 Civ. 5236 (RJS)

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into by and among the following Parties to the above-captioned action (the “Litigation”): Plaintiffs David Goodman, Michael Doherty, and Robert D. Black (collectively, the “Representative Plaintiffs”), on behalf of themselves and on behalf of the Settlement Class (as defined below), by and through their counsel of record in the Litigation, and Defendants City of New York, New York City Police Department (“NYPD”), and New York City Police Pension Fund (“PPF”) (collectively, “Defendants”), by and through their counsel of record in the Litigation. It is the intent of the Parties that this Agreement be a final and binding settlement in full disposition of all claims raised in this Litigation.

I. RECITALS

WHEREAS, on or about July 9, 2010, Plaintiff David Goodman (“Goodman”) commenced this action in the United States District Court for the Southern District of New York, alleging that the Defendants violated the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301, *et seq.* (“USERRA”), by failing to compute Goodman’s compensation for pension purposes during his periods of Active Military Service (as defined in

paragraph 2.1 below) to include all Pensionable Earnings (as defined in paragraph 2.17 below) Goodman would have received but for those periods of Active Military Service in a manner consistent with USERRA;

WHEREAS, USERRA defines the “uniformed services” to mean “the Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or national emergency,” 38 U.S.C. § 4303(16);

WHEREAS, USERRA defines “service in the uniformed services” to mean “the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty, and a period for which a person is absent from employment for the purpose of performing funeral honors duty as authorized by [10 U.S.C. § 12503] or [32 U.S.C. § 115],” 38 U.S.C. § 4303(13);

WHEREAS, on or about March 19, 2011, Plaintiffs Michael Doherty (“Doherty”) and Robert D. Black (“Black”) commenced separate actions in the United States District Court for the Southern District of New York, which raised substantially similar claims as those raised by Goodman;

WHEREAS, USERRA requires, *inter alia*, that “[f]or purposes of computing an employer’s [pension] liability under paragraph [38 U.S.C. § 4318(b)](1) or [an] employee’s contributions under paragraph [38 U.S.C. § 4318(b)](2), the employee’s compensation during the

period of service [in the uniformed services] shall be computed – (A) at the rate the employee would have received but for the period of [uniformed] service [], or (B) in the case that the determination of such rate is not reasonably certain, on the basis of the employee’s average rate of compensation during the 12-month period immediately preceding such period (or, if shorter, the period of employment immediately preceding such period),” 38 U.S.C. § 4318(b)(3);

WHEREAS, by decision and order dated September 26, 2011, this Court denied the Defendants’ motion to dismiss the complaints of Goodman and Doherty, holding that (1) “the most natural reading of [§ 4318(b)(3)] is that it includes all aspects of ‘the employee’s compensation’ that would have been received ‘but for’ his deployment, regardless of whether some or all of such compensation has in fact been paid”; (2) “the Court cannot find, as a matter of law, that Congress intended USERRA to exclude from pension calculations overtime and night shift pay that Plaintiffs would have earned ‘but for’ the service member’s deployment”; and (3) Doherty’s USERRA claim was not time-barred because the Veterans’ Benefits Improvement Act of 2008 (“VBIA”), 38 U.S.C. § 4327(b), eliminated statutes of limitations for USERRA claims that were “live” as of the passage of the statute on October 10, 2008, and Doherty’s claim was “live” as of that date, *see* Memorandum and Order dated Sept. 26, 2011;

WHEREAS, on or about August 2, 2012, the Representative Plaintiffs filed an amended class action complaint (the “Class Action Complaint”) alleging that the Defendants violated the USERRA rights of the Representative Plaintiffs and a class of similarly-situated current and retired NYPD Uniformed Members of Service (as defined in paragraph 2.14 below) who were called to active military duty during their employment with the NYPD on or after September 11, 2001 by failing to impute and calculate the pensionable earnings the members of service would have earned but for periods of Active Military Service in a manner consistent with USERRA;

WHEREAS, the Representative Plaintiffs to this Litigation seek, among other things, declaratory and injunctive relief on behalf of themselves and similarly-situated active and retired NYPD Uniformed Members of Service who have performed or will perform Active Military Service at some time on or after September 11, 2001, during their employment with the NYPD, as well as monetary relief and prejudgment interest on behalf of themselves and a sub-class of retired NYPD Uniformed Members of Service who performed Active Military Service on or after September 11, 2001, during their employment with the NYPD;

WHEREAS, Defendants timely answered the Class Action Complaint on or about August 27, 2012;

WHEREAS, Defendants admit in Paragraph 16 of their Answer that the City of New York's pension contributions made on behalf of NYPD Uniformed Members of Service during periods of Active Military Service "were not computed in the manner described" in Paragraph 16 of the Class Action Complaint (*see* First Amended Complaint, ¶ 16; Defendants' Answer to First Amended Complaint, ¶ 16);

WHEREAS, under USERRA, the pension calculation for any employee of any City agency, instrumentality, or other entity, who has been absent from employment due to a period of Active Military Service, must be based upon compensation "at the rate the employee would have received but for the period of service," including all Pensionable Earnings, or, "in the case that the determination of such rate is not reasonably certain, on the basis of the employee's average rate of compensation during the 12-month period immediately preceding [the employee's period of military service] (or, if shorter, the period of employment immediately preceding such period)," 38 U.S.C. § 4318(b)(3)(A)-(B);

WHEREAS, settlement negotiations with respect to the Litigation have taken place by and among the Representative Plaintiffs, Settlement Class Counsel (as defined below), and Defendants, pursuant to which the Parties have: (i) conducted a thorough investigation and analysis into the factual and legal issues involved in the Litigation; and (ii) reviewed voluminous documents, data, and other materials relevant to the claims contained in the Class Action Complaint;

WHEREAS, as a product of the negotiations, this Agreement embodies the terms and conditions of the settlement reached between the Representative Plaintiffs and the Settlement Class Members, and Defendants, subject to the Court's approval in a Final Order (as defined below); and

WHEREAS, the Parties and Settlement Class Counsel believe that the settlement set forth in this Agreement contains significant benefits for the Settlement Class, and further, that the settlement set forth herein is lawful, fair, reasonable, adequate, just, and in the best interests of the Settlement Class;

NOW, THEREFORE, for and in consideration of the foregoing recitals of mutual promises and covenants contained herein, it is agreed by and among the undersigned, on behalf of the Representative Plaintiffs, the Settlement Class, and Defendants, that the Litigation be fully and finally settled and compromised, subject to the approval of the Court and the following terms and conditions:

II. DEFINITIONS

As used in the Agreement, the following terms have the meanings specified below:

2.1 “Active Military Service” means “the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty, and a period for which a person is absent from employment for the purpose of performing funeral honors duty as authorized by [10 U.S.C. § 12503] or [32 U.S.C. § 115].” 38 U.S.C. § 4303(13). While NYPD Uniformed Members of Service who are military reservists are, from time to time, called to participate in training and other drills for the uniformed services, the Parties acknowledge that brief periods of service amounting to less than 5 days of continuous absence or less than 10 total days’ absence in a single calendar year may not materially affect the computation of a Class Member’s pension benefit amount. The Parties also acknowledge that USERRA generally obligates NYPD Uniformed Members of Service to provide the NYPD with advance notice of any Active Military Service that they perform or are scheduled to perform, 38 U.S.C. § 4312(a), and that, absent such notice, the NYPD may not have a record that Active Military Service was the reason for a particular absence.

2.2 “Class Action Complaint” means the First Amended Complaint – Class Action, filed in this Litigation on or about August 2, 2012.

2.3 “Claim Certification Form for NYPD Retirees Who Received Their First Pension Check Earlier Than October 10, 2004” means the form appended to the Class Notice that is submitted to Defendants by a Member of Sub-Class B (as defined below) in order to demonstrate his or her entitlement to receive the injunctive and monetary relief described in section VI of this Agreement, substantially in the form attached hereto as Exhibit 2.

2.4 “Class Notice” means the Notice of Proposed Settlement of Class Action and Fairness Hearing, which has been agreed upon by the Parties to be submitted to the Court for approval, substantially in the form attached hereto as Exhibit 1.

2.5 “Court” means the Honorable Richard J. Sullivan, United States District Court Judge for the Southern District of New York.

2.6 “Defendants” means the City of New York, the New York City Police Department (“NYPD”), and the New York City Police Pension Fund (“PPF”).

2.7 “Election to Opt-Out of Settlement and Class Action” means the form appended to the Class Notice that is submitted to Defendants by a putative Class Member (as defined below) who wishes to opt out of the Litigation and this Agreement, substantially in the form attached hereto as Exhibit 3.

2.8 “Effective Date” means the date by which all of the events and conditions specified in section XI of the Agreement have been met and have occurred.

2.9 “Fairness Hearing” means the hearing at which the Court will consider and decide whether to certify the Settlement Class and Settlement Sub-Classes, to approve this Agreement, to enter the Final Order (as defined below), and to make such other final rulings as are contemplated by this Agreement.

2.10 “Fairness Hearing Date” means the date set by the Court for the Fairness Hearing.

2.11 “Final Order” means the Order to be entered by the Court, which, *inter alia*, (i) certifies the class; (ii) approves the Agreement; (iii) retains jurisdiction to enforce the Agreement; and (iv) dismisses the remainder of the Litigation with prejudice without further motion, order, or action of the Court.

2.12 “First Pension Check” means the first disbursement of a retirement allowance, whether in the form of a paper check or electronic direct deposit, from PPF to an NYPD Uniformed Member of Service following his or her date of retirement.

2.13 “Notice Deadline” means the date 90 days after the Class Notice is mailed to the Settlement Class Members by Defendants.

2.14 “NYPD Uniformed Member of Service” means any employee of the NYPD who is eligible to receive a pension through the PPF.

2.15 “Objection Date” means the date, at least 30 days prior to the Fairness Hearing Date, set by the Court for objectors to file objections to the Agreement in accordance with paragraphs 7.2(i) and 7.6 of this Agreement.

2.16 “Other City Retirement Systems” means the New York City Employees’ Retirement System, the Teachers’ Retirement System of the City of New York, the New York City Board of Education Retirement System, and the New York Fire Department Pension Fund.

2.17 “Pensionable Earnings” means base salary, overtime, night shift differential, holiday pay, worked vacation, portal-to-portal, and allowable longevity payments.

2.18 “Preliminary Approval Date” means the date the Court signs the Preliminary Order (as defined below), which, *inter alia*, conditionally certifies the Settlement Class and Settlement Sub-Classes (as defined below); preliminarily approves this Agreement; approves the Class Notice and forms appended thereto and orders the mailing and publication of the Class Notice and forms appended thereto; and provisionally designates the Representative Plaintiffs as representatives of the Settlement Class and Preet Bharara, United States Attorney for the Southern District of New York, as counsel for the Settlement Class, by the Chief of the Civil Rights Unit.

2.19 “Preliminary Approval Hearing” means the hearing the Court may set, in its discretion, to consider, *inter alia*, whether to preliminarily approve this Agreement and conditionally certify the Settlement Class and Settlement Sub-Classes.

2.20 “Preliminary Order” means the order preliminarily approving the Agreement, conditionally certifying the Settlement Class and Settlement Sub-Classes, approving the forms of class notice, and scheduling a Fairness Hearing, to be entered by the Court.

2.21 “Release” means the release set forth in section IX of this Agreement.

2.22 “Representative Plaintiffs” means Plaintiffs David Goodman, Michael Doherty, and Robert D. Black.

2.23 “Settlement Class” means all retired NYPD Uniformed Members of Service who performed Active Military Service on or after September 11, 2001 during their employment with the NYPD, or, if applicable, the beneficiary of the pension of a NYPD Uniformed Member of Service described in this paragraph 2.23. The Settlement Class shall consist only of Sub-Classes A and B, as defined in paragraphs 2.27 and 2.29, and is not intended to include any other individuals.

2.24 “Settlement Class Counsel” means Preet Bharara, United States Attorney for the Southern District of New York, by the Chief of the Civil Rights Unit and Assistant United States Attorneys Tara M. La Morte and Arastu K. Chaudhury, 86 Chambers Street, 3rd Floor, New York, New York 10007, (212) 637-2746/2633.

2.25 “Settlement Class Member(s),” “Class Member(s),” or “Member(s) of the Settlement Class” means any individual who falls within the definition of the Settlement Class as set forth in paragraphs 2.23 and 2.25 through 2.30.

2.26 “Settlement Sub-Classes” means Sub-Class A and Sub-Class B.

2.27 “Sub-Class A” means all retired NYPD Uniformed Members of Service who are members of PPF and performed Active Military Service on or after September 11, 2001 during their employment with the NYPD, and who received their First Pension Check on or after October 10, 2004 and no later than the Effective Date, or, if applicable, the beneficiary of the pension of a NYPD Uniformed Member of Service described in this paragraph 2.27.

2.28 “Sub-Class A Member(s)” or “Member(s) of Sub-Class A” means any individual who falls within the definition of the Sub-Class A as set forth herein.

2.29 “Sub-Class B” means all retired NYPD Uniformed Members of Service who are members of PPF and performed Active Military Service on or after September 11, 2001 during their employment with the NYPD, and who received their First Pension Check before October 10, 2004, or, if applicable, the beneficiary of the pension of a NYPD Uniformed Member of Service described in this paragraph 2.29.

2.30 “Sub-Class B Member(s)” or “Member(s) of Sub-Class B” means any individual who falls within the definition of Sub-Class B as set forth herein.

2.31 Membership in PPF “Tier I”; “Tier II”; and/or “Tier 3/Tier 3 Revised Plan (also known as Tier 6).” As set forth in PPF’s Summary Plan Descriptions for each of the foregoing plans: NYPD Uniformed Members of Service appointed on or before June 30, 1973 are Tier I members of PPF; NYPD Uniformed Members of Service appointed from July 1, 1973 through June 30, 2009 are Tier II members of PPF; NYPD Uniformed Members of Service appointed from July 1, 2009 to March 31, 2012 are Tier 3 members of PPF; and NYPD Uniformed Members of Service appointed on or after April 1, 2012 are Tier 3 Revised Plan (also known as Tier 6) members of PPF.

III. JURISDICTION AND VENUE

3.1 The United States District Court for the Southern District of New York has jurisdiction over the subject matter of this action and over the Parties to this case for the purpose of approving this Agreement and, if necessary, enforcing this Agreement.

3.2 Venue is proper in the United States District Court for the Southern District of New York for purposes of this Agreement and any proceedings related to this Agreement.

3.3 All statutory conditions precedent to the institution of this Litigation on behalf of the Representative Plaintiffs have been fulfilled.

IV. GENERAL INJUNCTIVE REQUIREMENTS

4.1 Upon the Effective Date, Defendants will take all reasonable steps necessary to calculate the compensation for pension purposes of all Members of Sub-Classes A and B—and any NYPD Uniformed Member of Service who performs or has performed Active Military Service during any time of his or her employment with the NYPD on or after September 11, 2001, and retires from the NYPD on or after the Effective Date—in accordance with USERRA. These calculations have the limited purpose of assisting in the recalculation of pension benefit amounts, and are not for purposes of back pay compensation, as USERRA does not require civilian employers to pay service members any compensation during periods of Active Military Service. Accordingly, for each Member of Sub-Classes A and B (and active NYPD Uniformed Members of Service in accordance with subparagraph (c) below), compensation for pension purposes during period(s) of Active Military Service must include the following:

a. Any cost of living adjustments or wage increases that become effective during a period of Active Military Service that the NYPD Uniformed Member of Service would have earned “but for” his or her period(s) of Active Military Service. 38 U.S.C. § 4318(b)(3)(A);

b. All compensation for all Pensionable Earnings that the NYPD Uniformed Member of Service would have earned “but for” his or her period(s) of Active Military Service, 38 U.S.C. § 4318(b)(3)(A). To the extent such compensation is “not reasonably certain,” it shall be determined based upon the average amount of Pensionable Earnings earned by the NYPD Uniformed Member of Service during the 12 months immediately preceding his or her period(s) of Active Military Service (or, if the period of employment was shorter than 12 months, the period of employment immediately preceding the period of Active Military Service), *id.* § 4318(b)(3)(B); the Parties acknowledge that some NYPD Uniformed Members of Service who earned night shift differential compensation prior to a period of Active Military Service may have, by virtue of certain work scheduling arrangements (sometimes referred to as “rotating night shift differential” or being “charted” for night shift differential), continued to receive that compensation throughout the period of service and that, to the extent such compensation was actually received by NYPD Uniformed Members of Service during periods of Active Military Service, it has already been included in the pensionable earnings figures that PPF uses to compute their pension benefit amounts.

c. With respect to active NYPD Uniformed Members of Service, Defendants must calculate Pensionable Earnings in accordance with USERRA, as described in this paragraph 4.1, for all periods of Active Military Service which are pending on or occur after the Effective Date. With respect to any prior periods of Active Military Service on or after September 11, 2001, from which the active NYPD Uniformed Member of Service returned to employment on or before the Effective Date, no such calculation or imputation of additional Pensionable Earnings shall be made unless the Member directs a written request for such calculation to PPF. While this paragraph provides for certain relief to active NYPD Uniformed

Members of Service, the Parties agree that they are not members of the Settlement Class or Sub-Classes A or B, but rather, the relief as described in this subparagraph applies to them pursuant to the General Injunctive Requirements set forth in this section IV.

4.2 Upon the Effective Date, the NYPD and PPF shall modify, consistent with the revised methodology set forth in paragraph 4.1, any agreement, practice, order, rule, regulation, or policy currently in place concerning: (1) the calculation of compensation of NYPD Uniformed Members of Service for pension purposes (*i.e.*, Pensionable Earnings) during their periods of Active Military Service, and (2) the calculation of their pension benefit to ensure consistency with the terms of the Agreement.

4.3 Upon the Effective Date, the NYPD and PPF shall take all reasonable steps necessary to train and educate all employees responsible for performing the calculation of Pensionable Earnings of NYPD Uniformed Members of Service during periods of Active Military Service concerning the revised methodology set forth in paragraph 4.1 of this section.

4.4 Upon the Effective Date, Defendants shall make this Agreement available to all active and retired NYPD Uniformed Members of Service on the NYPD's Military and Extended Leave Desk intranet site (<http://finest/cfml/benefits/finesthealth/html/meld/meld.html>); the NYPD retiree website (<http://www.nypd2.org/retirement/home.html>); and PPF's website (<http://www.nyc.gov/nycppf>).

4.5 Upon the Effective Date, Defendants shall publish their revised methodology for calculating compensation of NYPD Uniformed Members of Service for pension purposes during periods of Active Military Service on the NYPD's Military and Extended Leave Desk intranet site (<http://finest/cfml/benefits/finesthealth/html/meld/meld.html>); the NYPD retiree website (<http://www.nypd2.org/retirement/home.html>); and PPF's website (<http://www.nyc.gov/nycppf>).

4.6 Defendants shall achieve compliance with the foregoing paragraphs of this section within one year of the Effective Date.

4.7 Pursuant to 38 U.S.C. § 4311, Defendants shall not take any action against any person that constitutes retaliation or interference with the exercise of such person's rights under USERRA because such person gave testimony or assistance or participated in any manner in any investigation, proceeding, or hearing in connection with the Litigation, participated, or participates in any manner in connection with the monitoring or implementation of this Agreement, or sought, seeks and/or receives any monetary and/or non-monetary relief pursuant to this Agreement.

4.8 In addition to the foregoing general injunctive requirements concerning the NYPD and PPF, the City of New York will take all reasonable steps within its legal authority to advise the Other City Retirement Systems of the terms and injunctive relief agreed upon by the Parties in this Agreement; to request that the Other City Retirement Systems make any and all changes to their policies and practices that are necessary to conform them to the requirements of USERRA; and to similarly treat all other City of New York employees (who are active or retired members of the Other City Retirement Systems) who perform or have performed Active Military Service on or after September 11, 2001, during their employment with the City of New York, as set forth in this Agreement. The steps to be taken by the City of New York shall include, but are not limited to:

a. Notifying the Other City Retirement Systems about this lawsuit, this Agreement, and the requirements of 38 U.S.C. § 4318 of USERRA no later than 10 days after the Effective Date;

b. Issuing written legal guidance, via the Office of the Corporation Counsel, as counsel to the Other City Retirement Systems, within 30 days of the Effective Date, advising and formally recommending that each of the Other City Retirement Systems: (i) review its current policies and practices concerning calculation of the pensions of City employees who are members of the Other City Retirement Systems and perform or have performed Active Military Service, (ii) modify its policies and practices, as necessary, to ensure that they are consistent with USERRA and this Agreement, (iii) identify all existing retirees collecting pensions, who have performed Active Military Service on or after September 11, 2001 (“Other Relevant Pensioners”), (iv) recalculate the pensions of the Other Relevant Pensioners in accordance with paragraphs 4.1, 6.1, and 6.2 of this Agreement, *see* 20 C.F.R. §§ 1002.262(c), (d); 1002.265(c), (v) provide notice to the Other Relevant Pensioners of the effect of such recalculation, (vi) provide all existing and future pensioners an administrative process by which they may dispute the calculation of their pension benefits, similar to the process provided in this Agreement to the Class Members, and (vii) communicate the foregoing changes, as well as the steps of the administrative process for contesting the computation of pension benefits, to all their members (active or retired) who have performed Active Military Service. Defendants shall apprise Settlement Class Counsel of any and all actions, including no action, taken by the Other City Retirement Systems as a result of or in response to the legal guidance provided by Corporation Counsel within 30 days after such guidance is given.

c. Drafting and presenting resolutions to each of the Other City Retirement Systems’ Board of Trustees for consideration, in the event that the Other City Retirement Systems have not begun effecting changes to their respective systems that are materially consistent with the terms of this Agreement within 30 days of receiving the guidance from the

Corporation Counsel. Any such resolution shall be drafted in consultation with Settlement Class Counsel, and will not be presented to the Board of Trustees of any of the Other City Retirement Systems without authorization from Settlement Class Counsel. Any resolutions drafted and presented in compliance with this section must be presented within 90 days of the Effective Date, or at the next regularly scheduled meeting of each Other City Retirement System's Board of Trustees, if later, and must require each of the Other City Retirement Systems to take the actions in the Corporation Counsel's guidance to the Boards of Trustees and enumerated in paragraph 4.8(b), and otherwise apply the principles of this Agreement as to all other City of New York employees (who are active or retired members of the Other City Retirement Systems) who are not Class Members in this action, and recommend to the Boards of Trustees that they pass the resolutions in accordance with each system's governing statutes, rules, and regulations. Members of the Other Pension City Retirement Systems' Boards of Trustees who are acting on behalf of the City of New York (including representatives and appointees of the Mayor's Office and agency commissioners and their representatives, but not including members sitting in their capacity as union representatives rather than their capacity as City employees, or the teachers who are independently elected by Teachers' Retirement System of the City of New York membership to its Board of Trustees/Retirement Board) shall not take any steps to delay, block, hinder, or prevent the adoption of any resolution, regardless of originating source (including, but not limited to, resolutions presented pursuant to this paragraph), presented to any of the Boards of Trustees of the Other City Retirement Systems, to the extent such resolution is consistent with the terms of this Agreement.

V. SETTLEMENT CLASS AND SUB-CLASSES

5.1. Certification of Settlement Class. The Parties agree to the certification of the Settlement Class, as defined in paragraph 2.23 of this Agreement.

5.2. Certification of Sub-Class A. The Parties agree to the certification of the Settlement Sub-Class A, as defined in paragraph 2.27 of this Agreement.

5.3. Certification of Sub-Class B. The Parties agree to the certification of the Settlement Sub-Class B, as defined in paragraph 2.29 of this Agreement.

VI. ADDITIONAL INJUNCTIVE AND MONETARY RELIEF FOR THE SETTLEMENT SUB-CLASSES

6.1. Sub-Class A.

a. Following the Effective Date, Defendants shall recalculate the Pensionable Earnings of each and every Member of Sub-Class A for all period(s) of Active Military Service he or she performed on or after September 11, 2001 and during his or her employment with the NYPD and as a member of PPF, in accordance with paragraph 4.1 of this Agreement, then use the recalculated Pensionable Earnings to determine each member's revised Final Average Salary (as defined in PPF's Summary Plan Descriptions for each tier) and revised annual pension benefit, adjusted by the actuarial equivalent of any shortage resulting from additional employee pension contributions that the Member of Sub-Class A would have owed as a result of the recalculated Pensionable Earnings, in accordance with applicable federal pension laws and regulations, as well as state and city pension laws, to the extent such state and city laws are not inconsistent with USERRA. If the revised annual pension benefit computed pursuant to this paragraph 6.1(a) minus the existing annual pension benefit ("Net Annual Pension Change") for a Member of Sub-Class A is not greater than zero dollars, no further computations under this paragraph 6.1 shall be made with respect to such Member of Sub-Class A pursuant to the

Settlement Agreement, and the Member will continue receiving his or her existing annual pension benefit.

b. If the Net Annual Pension Change for a Member of Sub-Class A is greater than zero dollars, then Defendants shall calculate the Net Annual Pension Change multiplied by the number of years and fraction thereof that the Member of Sub-Class A has been retired (“Pension Owed”) and remit the Pension Owed to the Member of Sub-Class A, plus prejudgment simple interest at the rate of 3% per annum commencing for each part of the Pension Owed on the date such part should have been paid and ending at the end of the month preceding the Effective Date. Defendants shall remit monies owed via check(s) disseminated to members of Sub-Class A. Defendants shall further adjust the amounts to be distributed in Members’ prospective pension checks consistent with the calculation performed pursuant to paragraph 6.1(a) of this Agreement.

c. PPF shall remit any additional pension benefits owed to Members of Sub-Class A in accordance with the procedures described in section X of this Agreement.

d. Defendants shall achieve compliance with paragraph 6.1 of this section within one year of the Effective Date.

6.2 Sub-Class B

a. Following receipt of documentation demonstrating Active Military Service, as described above and as further described in 38 U.S.C. § 4312(f)(2), which shows that a Member of Sub-Class B performed Active Military Service subsequent to retirement as an NYPD Uniformed Member of Service such that a period of four years or less, exclusive of the time(s) the Member performed Active Military Service subsequent to retirement, passed between receipt of his or her First Pension Check and October 10, 2008, Defendants shall apply the terms

of paragraph 6.1 to that Member of Sub-Class B in the same manner applied to a Member of Sub-Class A. For such members of Sub-Class B, the entirety of paragraph 6.1 is incorporated into this paragraph 6.2 by reference.

6.3 Review of Calculations. Upon the request of Settlement Class Counsel, Defendants shall provide documents in a form acceptable to Settlement Class Counsel sufficient to show how Defendants performed the calculations done pursuant to this section and how it determined the recalculated amounts of Pensionable Earnings, employee pension contributions, and revised annual pension benefits described herein. Such documents shall be furnished within 20 days of a request, unless a longer period of time is agreed upon by the Parties.

6.4 Disputes Regarding Calculations. If a Class Member disputes the computation of his or her recalculated Pensionable Earnings after the Effective Date (a “Post-Effective Date Calculation Dispute”), that Class Member shall submit the Post-Effective Date Calculation Dispute in writing to Robert Sens-Castet (or his successor), Deputy Executive Director, New York City Police Pension Fund, 233 Broadway, 19th Floor, New York, NY 10279, referencing the caption of this lawsuit, *Goodman, et al. v. City of New York, et al.*, No. 10 Civ. 5236 (RJS) in the letter. Mr. Sens-Castet or his successor in conjunction with the Office of the Actuary shall resolve the Post-Effective Date Calculation Dispute within 45 days of receipt of notice of the dispute. If Mr. Sens-Castet or his successor does not resolve the dispute to the satisfaction of the Class Member, or 45 days transpires without resolution, then the Class Member may provide notice to Settlement Class Counsel, who then shall meet and confer in good faith with Counsel for Defendants regarding the Post-Effective Date Calculation Dispute as to the amount(s) owed to the Class Member pursuant to this Agreement. In the event that such disputes cannot be resolved by PPF or among counsel, such Post-Effective Date Calculation Dispute shall be

submitted to the Court for resolution, upon 15-day notice to the other Party. Defendants shall provide an explanation of the foregoing process in a manner that is readily available to all Class Members, including but not limited to through the NYPD's Military and Extended Leave Desk intranet site (<http://finest/cfml/benefits/finesthealth/html/meld/meld.html>); the NYPD retiree website (<http://www.nypd2.org/retirement/home.html>); and PPF's website (<http://www.nyc.gov/nycppf>).

VII. APPROVAL AND CLASS NOTICE

7.1 Claims Administration. Defendants shall be responsible for mailing the Class Notice and appended forms, as appropriate, to Class Members, collecting these forms, locating Class Members whose forms were returned by the United States Postal Service as undeliverable, and performing such other duties as are specified herein. Defendants shall divide the duties and responsibilities of the claims process as follows:

a. NYPD's Military and Extended Leave Desk has provided a list of the NYPD Uniformed Members of Service who took leaves of absence because of Active Military Service beginning September 11, 2001 through and including June 24, 2013, and will provide periodic updates to that data as needed;

b. PPF will provide Class Members' mailing addresses to which PPF currently transmits pension checks and other correspondence;

c. PPF will perform recalculations of Class Members' pensions based on the method described in paragraphs 4.1, 6.1, and 6.2 above;

d. PPF will remit any additional pension benefits owed to Class Members following recalculation by adjusting the amounts to be distributed in their prospective pension

checks as appropriate and by mailing checks for any back-pension benefits owed under this Agreement in accordance with paragraphs 6.1 and 6.2;

e. PPF and the New York City Law Department will work with the New York City Financial Information Services Agency (“FISA”) to gather Class Member compensation data necessary to PPF’s pension recalculations;

f. The New York City Law Department’s Operations Division will be responsible for mailing the Class Notice and appended forms, as appropriate, to Class Members, collecting these forms from Class Members and transmitting them to the Parties’ counsel, and notifying the Parties when or if there are Class Members whose forms are returned by the United States Postal Service as undeliverable; and

g. Defense Counsel will be responsible for transmitting Class Member forms, objections, or other documents, as required, to the Court. Settlement Class Counsel agrees to cooperate with Defendants and assist them in all reasonable ways possible in administering the claims process.

h. If Defendants allocate the responsibilities related to the Claim Administration process described in this paragraph 7.1 in a manner different from that provided for in paragraph 7.1, then Defendants shall notify Settlement Class Counsel within 2 business days of any such change. Further, such alternative allocation of responsibilities shall not affect the requirement to provide periodic reports set forth in paragraph 12.1.

7.2 Preliminary Order. Promptly after the execution of this Agreement, Representative Plaintiffs shall submit this Agreement to the Court and shall present to the Court, following review and approval by Defendants, an unopposed motion for entry of the Preliminary

Order, accompanied by a memorandum in support thereof which, among other things, asks the Court to:

- a. Conditionally certify the Settlement Class and Settlement Sub-Classes.
- b. Find that the Representative Plaintiffs fairly and adequately represent the interests of the Settlement Class and Settlement Sub-Classes and have claims typical of members of the Settlement Class and Settlement Sub-Classes and provisionally designate them as representatives for the Settlement Class and Settlement Sub-Classes.
- c. Find that counsel for Representative Plaintiffs fairly and adequately represent the interests of the Settlement Class and Settlement Sub-Classes, and provisionally designate them as Settlement Class Counsel.
- d. Order that the Agreement is preliminarily approved.
- e. Schedule a Fairness Hearing on the Agreement.
- f. Approve the Class Notice that has been agreed upon by the Parties and forms appended thereto.
- g. Order Defendants to mail, via first class mail, to all Representative Plaintiffs and Settlement Class Members, in accordance with the procedures set forth in paragraph 7.3 of this section, the approved Class Notice and forms appended thereto, as appropriate, within 45 days of the Court entering the Preliminary Order.
- h. Direct Settlement Class Counsel to establish a specific electronic mail address, which shall be identified in the Class Notice, for the purpose of enabling Settlement Class Members to obtain copies of the Class Notice and/or forms appended thereto, make inquiries with respect to the Agreement, and respond to the Class Notice. It shall be the responsibility of Settlement Class Counsel to respond to inquiries of Settlement Class Members,

pursuant to a specific electronic mail inquiry address or otherwise, as appropriate. Settlement Class Counsel shall maintain this specific electronic mail address described in this paragraph until the Certifications described in section XII of this Agreement are served and filed.

i. Provide that objections to the Agreement shall be heard at the Fairness Hearing and that objectors shall serve upon Defendants, by the Objection Date, written notice of their intention to appear and all papers in support of their objections, or else be deemed to have waived and be forever foreclosed and barred from asserting such objections, absent permission from the Court at the Fairness Hearing to state an objection notwithstanding a failure to provide written notice. No later than 20 days prior to the Fairness Hearing, Defendants shall file all objections and supporting papers received pursuant to these instructions in the manner prescribed by the Court.

7.3 Class Notice Process.

a. Within 30 days of submission of the Agreement and Preliminary Order for the Court's consideration and approval, as described in paragraph 7.2, Defendants shall provide Settlement Class Counsel with a list, in electronic form, of the names, addresses to which PPF sends pension-related correspondence, telephone numbers, and retirement dates of all Settlement Class Members. Neither Plaintiffs nor Settlement Class Counsel shall disseminate Class Members' addresses, telephone numbers, or retirement dates, or use that information for any purpose other than for the prosecution of this action or the administration of the terms of this Agreement.

b. Within 45 days of the Court's entry of the Preliminary Order, Defendants shall mail, via First Class United States mail, postage prepaid, the Class Notice and the appended form entitled "Election to Opt Out of Settlement and Class Action" to all Members of the

Settlement Class, and, with respect to Members of Sub-Class B, shall also include the form entitled "Claim Certification Form For NYPD Retirees Who Received Their First Pension Check Earlier Than October 10, 2004." The notice period shall be 90 days from the date of the mailing.

c. In the event that, subsequent to the first mailing of the Class Notice and appended form(s), the Class Notice and appended forms are returned to Defendants by the United States Postal Service with a forwarding address for the recipient, Defendants shall promptly re-mail the Class Notice and appended form(s) to the forwarding address provided, the Class Notice and appended form(s) shall be deemed mailed as of the second mailing, and Defendants shall retain the forwarding address as the updated address. In the event that, subsequent to the first mailing of the Class Notice and appended form(s), the Class Notice and appended form(s) are returned to Defendants by the United States Postal Service because the address of the recipient is no longer valid, *i.e.*, the envelope is marked "Return to Sender," Defendants shall make further attempts to ascertain a valid address for the recipient, *e.g.*, by attempting telephonic or e-mail contact (if such information is available), and using any additional contact information in Defendants' possession. If a valid address is ascertained by Settlement Class Counsel and provided to Defendants, Defendants will re-send the Class Notice and appended form(s) to such address within 7 days of receiving such information. If no additional address is ascertained, the Class Notice and appended form(s) shall be sent again to the last known address. In either event, the Class Notice and appended form(s) shall be deemed mailed as of the second mailing.

d. With respect to a Member of Sub-Class B whose address has not been deemed unknown, and who has not submitted to Defendants some form of written response to the Class Notice and appended forms by the date that is 30 days before the Notice Deadline,

Defendants shall send that Class Member a document (a) referencing the name of the Class Action; (b) stating that the Member received a Class Notice and appended forms in this action; (c) providing the address and contact information for Settlement Class Counsel; (d) stating the deadline to respond to the Class Notice and appended forms if the recipient desires to do so; and (e) stating that the Member can contact Defendants to receive an additional copy of the Class Notice and/or the appended forms. Nothing in this paragraph shall be construed to extend the deadline for responding to the Class Notice or appended forms.

7.4 Class Member Opt-Out.

a. Class Members may elect to “opt out” of the Settlement Class and thus exclude themselves from the Litigation, the Agreement, and the Settlement Class. Class Members who choose to do so must fully complete, properly execute, and timely mail to Defendants the form entitled “Election to Opt Out of Settlement and Class Action” attached to the Class Notice, per the instructions contained therein. Class Members who timely submit fully completed and properly executed Opt-Out Forms shall have no further role in the Litigation, and for all purposes they shall be regarded as if they never were either a party to the Litigation or a Class Member, and thus they shall not be entitled to any benefit as a result of the Litigation or this Agreement, nor will they have released any claims they may have against Defendants.

b. Defendants shall stamp the postmark date on the original of each Opt-Out Form that they receive and shall serve copies of each Opt-Out Form received in a given week on Settlement Class Counsel not later than the Friday (or last business day) of that week, by email. Defendants also shall, within 3 business days of the end of the Notice Deadline, file with the Clerk of Court stamped copies of any Opt-Out Forms. Defendants shall, within 1 business day of the end of the Notice Deadline, send a final list of all Opt-Out Forms to Settlement Class

Counsel by email. Defendants shall retain the stamped originals of all Opt-Out Forms and originals of all envelopes accompanying Opt-Out Forms in its files, and send duplicate copies of all such forms and envelopes to Settlement Class Counsel for their files.

7.5 Sub-Class B Recovery.

a. Class Members who do not Opt Out of the Settlement Class pursuant to paragraph 7.4(a) and who contend they are entitled to the additional injunctive and monetary relief set forth in section VI of this Agreement as Members of Sub-Class B, must fully and timely complete, execute and mail the form entitled “Claim Certification Form For NYPD Retirees Who Received Their First Pension Check Earlier Than October 10, 2004” (the “Claim Certification Form”) attached to the Class Notice, along with all supporting documentation, to Defendants, per the instructions therein. If a completed and properly executed Claim Certification Form and supporting documentation is not received by Defendants from a Sub-Class B Member and timely postmarked before the Notice Deadline, then that Sub-Class B Member will be deemed to have forever waived his or her right to receive the relief described in section VI of this Agreement, unless they properly submit an Opt-Out Form. However, any Sub-Class B Members who submit an improperly-completed Claim Certification Form or incomplete or incorrect supporting documentation shall be sent a “Cure Letter” by Defendants reminding them that they must submit properly-completed forms and supporting documentation on a timely basis if they wish for their pension benefits to be recalculated and any additional monies owed provided to them pursuant to the Agreement.

b. Defendants shall stamp the postmark date on the original of each Claim Certification Form that it receives and shall serve copies of each Form it receives in a given week on Settlement Class Counsel not later than the Friday (or last business day) of that week,

by email. Defendants shall, within 1 business day of the end of the Notice Deadline, send a final list of all Claim Certification Forms to Settlement Class Counsel by email. Defendants shall retain the stamped originals of all Claim Certification Forms and originals of all envelopes accompanying Claim Certification Forms in its files, and send duplicate copies of all such forms and envelopes to Settlement Class Counsel for their files.

c. Upon receipt from Defendants of a Claim Certification Form and supporting documentation, Settlement Class Counsel and Defendants' counsel shall meet and confer in good faith to determine whether the Sub-Class B Member is entitled to the injunctive and monetary relief described in section VI of this Agreement. In the event that counsel cannot resolve a dispute on this matter, such dispute shall be submitted to the Court for a final, non-appealable resolution, upon 15 days' notice to the other Party.

7.6 Unidentified Potential Class Members. If an individual comes forward who claims to be a Class Member who has not been sent the Class Notice, Defendants shall direct that individual to Settlement Class Counsel, who will initially review the claim to determine its validity, and if valid, whether the individual is a Member of Sub-Class A or B. If Settlement Class Counsel determines the claim is valid, Settlement Class Counsel will forward the claim with a certifying letter to Defendants, who shall mail the Class Notice and appended forms to the individual within 7 business days, in accordance with the procedures set forth in paragraph 7.3 of the Agreement. Such individuals shall be considered Class Members within the terms of this Agreement, and shall have the same opportunity as previously-identified Class Members to have their claims resolved under the terms of this Agreement. However, if such a Class Member comes forward after the Notice Deadline, the Parties agree and acknowledge that he or she may

be unable to timely file objections with the Court on or before the Objection Date and/or to participate in the Fairness Hearing.

7.7 Objections to Agreement.

a. Class Members who wish to file objections to the proposed settlement embodied in this Agreement by the Objection Date for consideration at the Fairness Hearing must first do so in writing. To be considered, such statement must be sent to Defendants via First-Class United States mail, postage prepaid, and postmarked by the Objection Date. Defendants shall stamp the date received on the original and send copies of each objection to Settlement Class Counsel by email on a weekly basis. Defendants shall also file the date-stamped originals of any and all objections with the Clerk of Court within 3 business days after the Objection Date.

b. Written objections should include the following: (1) a statement of each objection asserted; (2) a description of the basis underlying each objection; (3) a statement of whether the objector intends to appear and argue at the Fairness Hearing and, if so, how much time the objector anticipates needing to present the objection; (d) all exhibits and statements that the objector may offer during the Fairness Hearing; and (e) a list of all witnesses that the objector may call to testify live during the Fairness Hearing, and a summary of their anticipated testimony.

c. An objector also has the right to appear at the Fairness Hearing either in person or through counsel hired by the objector. An objector who wishes to appear at the Fairness Hearing must state his or her intention to do so at the time he/she submits his/her written objections. An objector may withdraw his/her objections at any time. Absent permission from the Court at the Fairness Hearing, no objector may appear at the Fairness Hearing unless he

or she has filed a timely objection that complies with the procedures provided in this section. Any Class Member who has submitted an Opt-Out Form is not permitted to submit objections to the Agreement.

d. The Parties may file with the Court written responses to any filed objections before the Fairness Hearing.

VIII. FINAL ORDER AND APPROVAL

8.1 Fairness Hearing. The Fairness Hearing shall be scheduled at the Court's convenience, and notice of the date shall be given pursuant to paragraph 7.2 of this Agreement.

8.2 Final Order. If the Court grants final approval of the settlement embodied in this Agreement, the Parties to this Agreement shall submit to the Court, for entry pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Final Order that will constitute a final and binding decision within the meaning of 28 U.S.C. § 1291, and that will:

a. Determine that the Litigation may be maintained as a class action on behalf of the Settlement Class and for settlement purposes;

b. Approve the Agreement as fair, reasonable, and adequate as to Members of the Settlement Class and Settlement Sub-Classes, and direct the consummation and performance of the terms of this Agreement;

c. Find that Goodman, Doherty, and Black, as representatives of the Settlement Class and Settlement Sub-Classes, fairly and adequately represent the interests of the Settlement Class and Settlement Sub-Classes, find that they have in fact fairly and adequately represented the interests of the Settlement Class and Settlement Sub-Classes, and approve designation of them as Representative Plaintiffs;

d. Find that Settlement Class Counsel is adequate, qualified, experienced and competent to conduct this Litigation and to protect the interests of the Settlement Class and Settlement-Sub-Classes, find that Settlement Class Counsel in fact has fairly and adequately represented the interests of the Settlement Class and Settlement Sub-Classes, and approve designation of him as Settlement Class Counsel;

e. Approve the relief set forth in sections IV and VI as lawful, fair, reasonable, and adequate to the Settlement Class and Settlement Sub-Classes;

f. Permanently enjoin all Settlement Class Members who do not opt out from pursuing and/or seeking to reopen claims that have been released by this Agreement;

g. Affirm the approval of the Class Notice and appended forms as satisfying the requirements of due process and other applicable law; and

h. Retain jurisdiction of all matters relating to the modification, interpretation, implementation, effectuation, enforcement, and administration of the Agreement and Final Order, which jurisdiction may be called upon by filing a motion to enforce for alleged failure to comply with the terms of the Agreement, and provide that the Parties may conduct discovery under the Federal Rules of Civil Procedure for the purpose of determining compliance with this Agreement or defending against a claim of non-compliance.

IX. THE RELEASE

9.1 Full and Final Release. As of the date of entry of the Final Order, Representative Plaintiffs and all Settlement Class Members, on behalf of themselves, their heirs, executors, personal representatives, administrators, successors, assigns, and attorneys, hereby release and discharge Defendants, their successors or assigns, and all present and former officials, employees, representatives and agents of Defendants (“Released Parties”) from any and all

claims, liabilities and/or causes of action which Representative Plaintiffs and all Settlement Class Members have or may have against any of the Released Parties based on any violation of USERRA alleged in the Amended Complaint. This release and discharge of claims is subject only to the Defendants' compliance with the terms of the Agreement and Final Order.

X. DISTRIBUTION OF MONETARY BENEFIT

10.1 Distribution of Monetary Benefit to Class Members. Defendants shall distribute all monies owed pursuant to this Agreement to Class Members using the same methods and procedures by which pension payments are disseminated and distributed pursuant to applicable federal, state, and city pension laws, to the extent such state or city laws are not inconsistent with USERRA.

XI. CONDITIONS TO THE EFFECTIVE DATE

11.1 Conditions to the Effective Date. The Effective Date of the Agreement shall occur if and when all of the following events take place:

- a. The Court has entered the Preliminary Order, as required by paragraphs 2.20 and 7.2 of this Agreement;
- b. The Court has entered the Final Order, as required by paragraphs 2.11 and 8.2, above; and
- c. The time period for filing a notice of appeal of the Final Order pursuant to the Federal Rules of Appellate Procedure has expired or, if any appeal is filed, the mandate has issued following resolution of the appeal.

11.2 Failure to Achieve Effective Date. In the event the Court fails to enter the Final Order, the Litigation will resume unless (1) a Party seeks reconsideration or appellate review of the decision denying entry of the Final Order, or (2) the Parties attempt to renegotiate a

settlement and seek Court approval of the renegotiated settlement. In the event any reconsideration and/or appellate review are denied, or a mutually agreed-upon renegotiated settlement is not approved, the Litigation will proceed as if no settlement had been attempted. Notice will be provided to Class Members that the Agreement did not receive final approval and that, as a result, no payments will be made to Class Members under the Agreement. Such notice shall be mailed by Settlement Class Counsel via First Class United States Mail, postage prepaid, to the addresses used in mailing the Class Notice.

XII. CERTIFICATIONS AND MONITORING

12.1 Periodic Reports. Defendants shall provide quarterly reports to Settlement Class Counsel as to the progress of the remedial relief to the Representative Plaintiffs and Settlement Class Members under paragraphs 6.1 and 6.2, and the compliance with the other terms of this Agreement. For each quarterly report served on Settlement Class Counsel, Defendants shall simultaneously file a certificate of service with the Court. The quarterly reports shall include, but not be limited to, the following:

a. Providing the names of each individual in Sub-Class A whose pension has been recalculated pursuant to paragraph 6.1, the result of the calculations required under paragraph 6.1 relevant to that individual, the date that calculation was conducted, whether any amount owed has been remitted to that individual, and the amount and date of that remittance.

b. Providing the names of each individual in Sub-Class B whose pension has been recalculated pursuant to paragraph 6.2, the result of the calculations required under paragraph 6.2 relevant to that individual, the date that calculation was conducted, whether any amount owed has been remitted to that individual, and the amount and date of that remittance.

c. Providing the number of calculations pursuant to paragraph 6.1 and 6.2 conducted for each month since the Effective Date.

d. Providing the names of each individual who has filed a Post-Effective Date Calculation Dispute with the Defendants, the date that Post-Effective Date Calculation Dispute was received by the Defendants, the status of that Post-Effective Date Calculation Dispute, the date resolved if applicable, and the amount in controversy in that Post-Effective Date Calculation Dispute.

e. Providing the names of each individual claiming to be an Unidentified Potential Class Member under paragraph 7.6 and the status of that claim.

f. Providing a list of any agreement, practice, order, rule, regulation, or policy that the Defendants have modified in order to comply with paragraph 4.2, and a copy of any such modified agreement, practice, order, rule, regulation, or policy.

g. Providing a copy of the training materials produced in compliance with paragraph 4.3, the steps taken to train individuals in accordance with paragraph 4.3, and certifications by individuals so trained.

h. Providing a copy of any resolutions presented to any of the Other City Retirement Systems in order to comply with paragraph 4.8, the status of that resolution with respect to adoption by the Board of Trustees of that Other City Retirement System, and the anticipated date of adoption for each.

12.2 Final Certification of Compliance With Respect to Settlement Class. Upon Defendants' implementation of all the remedial relief to Representative Plaintiffs and Settlement Class Members under paragraphs 6.1 and 6.2, Defendants shall serve Settlement Class Counsel with a final written certification signifying that all remedial relief to Representative Plaintiffs and

Settlement Class Members has been implemented. Such final written certification shall set forth and include: the identity, by name and employee identification number, of each Representative Plaintiff and Settlement Class Member who received remedial relief under this Agreement, as well as a description of any monetary relief received or that will be received, as well as records and information evidencing implementation of all non-monetary remedial relief set forth in this Agreement. Defendants shall also file a version of this final written certification with the Court that redacts personal identifying information.

12.3 Final Certification of Compliance With Respect to General Injunctive Relief.

Upon Defendants' implementation of all the General Injunctive Relief addressed in section IV above, Defendants shall serve Settlement Class Counsel with a final written certification signifying that the General Injunctive Relief has been implemented. Such final written certification shall set forth and include: identification of the changes made to any agreement, practice, order, rule, regulation, or policy in order to comply with paragraph 4.2, and a copy of any resolutions passed by the Other City Retirement Systems in order to comply with paragraph 4.8, and documents sufficient to describe the implementation of the relief described herein at section IV. Defendants shall also file this final written certification with the Court.

12.4 Time For Compliance With This Agreement. Defendants shall comply with the terms of this Agreement no later than one (1) year after the Effective Date. This deadline may be extended by written agreement between the Settlement Class Counsel and Defendants' counsel.

XIII. MISCELLANEOUS

13.1 Attorney's Fees and Costs. All Parties shall bear their own costs and expenses of litigation, including attorneys' fees.

13.2 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with regard to the subject matter contained herein, and all prior and contemporaneous negotiations and understandings between the Parties shall be deemed merged into this Agreement. All of the exhibits and attachments to this Agreement are material and integral parts hereof and fully incorporated herein by reference.

13.3 Headings. Headings in this Agreement are for convenience only and shall not limit, expand, affect, or alter the meaning of any text.

13.4 Construction. The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. The terms and conditions of this Agreement are not intended to be, and shall not be, construed against any Party by virtue of draftsmanship.

13.5 Final Judgment. The Final Order constitutes the entry of final judgment within the meaning of Rule 54 of the Federal Rules of Civil Procedure on all claims asserted in this action. The Court retains jurisdiction over this matter, however, for the purpose of entering appropriate orders implementing, effectuating, enforcing, modifying, administering, and interpreting this judgment.

13.6 No Claims Based Upon Distribution. No Class Member shall have any claim against Settlement Class Counsel or Defendants or their counsel based on the distribution of financial benefits pursuant to this Agreement, so long as such distribution is made in accordance with this Agreement or further order of the Court.

13.7 Severability. Following the Effective Date, if any provision of this Agreement is held by a court of competent jurisdiction to be unlawful or unenforceable, the remaining portions of this Agreement will remain in full force and effect.

13.8 Amendment. Any modifications or amendments must be mutually agreed upon and memorialized in a writing signed by the Parties.

13.9 Further Action. Settlement Class Counsel, on behalf of the Settlement Class, represent that they have been expressly authorized by the Representative Plaintiffs to take all appropriate action pursuant to the Agreement to effectuate its terms and also are expressly authorized to enter into any modifications or amendments to the Agreement on behalf of the Settlement Class which they deem appropriate.

13.10 Representation to Execute. Each counsel or other person executing this Agreement on behalf of any Party hereby warrants that such person has the full authority to do so.

13.11 Execution. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

13.12 Disputes. The Parties shall attempt in good faith to resolve informally any dispute that may arise under this Agreement. If the Parties are unable to resolve the dispute, any Party may, upon 15 days' notice to the other Party, move the Court for a resolution of the disputed issue.

13.13 Binding Agreement. The terms of this Agreement are and shall be binding upon the present and future directors, employees, agents, administrators, heirs, successors, representatives, and assigns of the City of New York, the NYPD, and the PPF, and upon the heirs, successors, and assigns of the Representative Plaintiffs and Settlement Class Members.

13.14 Waiver. The Parties shall not appeal any portion of this Agreement or the related orders, including but not limited to, the Preliminary Order and the Final Order, and further

knowingly and voluntarily waive their rights to appeal any order by the Court in this case, including but not limited to the Preliminary Order and the Final Order.

Dated:

On behalf of Representative Plaintiffs and
Settlement Class Members:

PREET BHARARA
United States Attorney for the
Southern District of New York

On behalf of the Defendants:

MICHAEL A. CARDOZO
Corporation Counsel for
the City of New York

By:

TARA M. La MORTE
ARASTU K. CHAUDHURY
Assistant United States Attorneys
86 Chambers Street, 3rd Floor
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Tel. No. (212) 637-2746/2633
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By:

KERI R. McNALLY
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New York, NY 10007
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Fax No. (212) 788-8877
kmcnally@law.nyc.gov

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAVID GOODMAN, *et al.*,
Plaintiffs,

-v-

CITY OF NEW YORK, *et al.*,
Defendants.

No. 10 Civ. 5236 (RJS)

**NOTICE OF PROPOSED
CLASS ACTION SETTLEMENT**

TO: [NAME OF CLASS MEMBER]

DATED: _____, 2013

PLEASE READ THIS NOTICE CAREFULLY

This Notice relates to a proposed settlement of class action litigation.

The proposed settlement has been authorized by a federal court – the United States District Court for the Southern District of New York. It contains important information as to your right to participate in the settlement and to make a claim for payment or elect not to be included in the class.

Introduction

Retired uniformed members of service with the New York City Police Department (“NYPD”), David Goodman, Michael Doherty, and Robert Black, filed separate lawsuits alleging that the NYPD improperly calculated their pensionable earnings for the periods of time during which they were deployed to active duty with a uniformed military service, that is, the U.S. Army, Navy, Air Force, Marines, or Coast Guard (“Active Military Service”). The three lawsuits have been consolidated into a single lawsuit that is known as *Goodman et al. v. City of New York et al.*, No. 10 Civ. 5236 (RJS) (SDNY filed July 9, 2010). The Honorable Richard J. Sullivan, United States District Court for the Southern District of New York (the “Court”), is presiding over this case. The individuals who filed the lawsuit are called the “Plaintiffs.” The City of New York, the NYPD, and the Police Pension Fund (“PPF”) are called the “Defendants.”

The group of similarly-situated retired NYPD uniformed members of service that the Plaintiffs seek to represent in the case is referred to collectively as the “Class,” and its individual members, including potentially you, are “Class Members.” The Plaintiffs and the Class are represented by Preet Bharara, United States Attorney for the Southern District of New York, and other members of his Office.

Plaintiffs allege in the lawsuit that the NYPD failed to include likely overtime, night shift differential, and worked vacation compensation in the calculation of their pensionable earnings during periods when they were deployed to Active Military Service, which is in violation of the Uniformed Services Employment and Reemployment Rights Act (“USERRA”). USERRA requires that pensionable earnings include overtime, night shift differential, and worked vacation compensation that the uniformed member of service would have earned if he or she had not been deployed to Active Military Service.

If the amount of the overtime, worked vacation, or night-shift differential cannot be established with reasonable certainty, then USERRA requires that the likely compensation be calculated based on the average earnings from the 12 months prior to the uniformed member of service’s Active Military Service. Note USERRA does not require the uniformed member of service actually be paid the overtime, night shift differential, or worked vacation compensation that is imputed to their pensionable earnings, nor does the settlement agreement contemplate such payments.

Plaintiffs and Defendants have agreed to settle the lawsuit subject to the approval of the Court. The Defendants have agreed to recalculate the pensionable earnings of all Class Members to determine if they would be entitled to an increase in their pension benefit amount as a result of the proper application of USERRA. The PPF will re-calculate the pensionable earnings of each Class Member and, taking into account the additional pension contributions owed by the Class Member as a result of the increased pensionable earnings, will appropriately adjust future pension benefits and pay the Class Member the past pension benefits owed. If the re-calculation results in no effect or a negative effect to the Class Member’s pension benefit, the PPF will not adjust the Class Member’s current pension benefit.

A copy of the proposed settlement can be found on-line at <http://www.justice.gov/usao/nys/pressreleases/June13/USERRASettlementAgreement.php>, and is available upon request through the United States Attorney’s Office for the Southern District of New York, contact information for which is provided at the end of this notice.

Your Legal Rights

If you are a retired NYPD uniformed member of service who performed Active Military Service on or after September 11, 2001, you are potentially a Class Member. If you are a Class Member then you have the following options:

- Be a Class Member and potentially receive the benefits of the proposed settlement
- Object to the proposed settlement as a Class Member
- Opt out of the Class and proposed settlement

Each of these options as well as other relevant information about the Class and your rights is explained in detail below.

Why Did I Receive This Notice?

You received this notice because NYPD and PPF records reflect that you are a retired NYPD uniformed member of service who was deployed to Active Military Service on or after September 11, 2001.

What Is a Class Action?

A class action is a lawsuit where one or more persons sue not only for themselves, but also for other people who have similar claims. These other people are known as Class Members. In a class action, one court resolves the issues for all Class Members, except for those who opt-out from the Class.

Why Is There a Proposed Settlement?

The lawyers for the Class – Preet Bharara, United States Attorney for the Southern District of New York, and other members of his Office – have extensively analyzed and evaluated the merits of the claims made against the Defendants in this case. Based on that analysis and evaluation, the lawyers for the Class entered into the proposed settlement. The United States Attorney's Office is satisfied that the terms and conditions of the proposed settlement are fair, reasonable, and in the best interest of the Plaintiffs and Class Members because the proposed settlement provides each Class Member with the full relief that they are entitled to under USERRA.

What Benefit Does a Class Member Receive As a Result of the Proposed Settlement?

The PPF will re-calculate in accordance with USERRA the amount of your pensionable earnings during periods of time you were deployed to Active Military Service. That is, the PPF will include the overtime, worked vacation, and night shift differential compensation that you would have likely earned if you had not been deployed to Active Military Service by taking the average rate of compensation for the overtime, worked vacation, and night-shift differential you earned in the 12 months prior to your deployment and add that average rate of compensation to your pensionable earnings during periods of deployment to Active Military Service. Then, the PPF will discount the additional pension contributions you would have owed as a result of the increased pensionable earnings from the amount owed to you. If the re-calculation results in an increase over your current pension benefit, the PPF will adjust your future pension benefit accordingly, and pay you for any past pension benefit owed with interest. Otherwise, if there is no increase over your current pension benefit, the PPF will not adjust your current pension benefit, and you will continue receiving your usual payments.

Do You Want to Be a Class Member and Receive the Benefits of the Settlement?

If you want to receive the benefits of the proposed settlement then you have to be a Class Member. In order to be a Class Member, you must be retired NYPD member of uniformed service who was deployed to active military duty with a uniformed military service, that is, the U.S. Army, Navy, Air Force, Marines, or Coast Guard, on or after September 11, 2001.

If you do not fit the foregoing description, then you are not a Class Member, and you have received this notice in error. If you do fit that description, then you are a Class Member, but whether you are eligible to recover under the proposed settlement depends on when you received your first pension benefit payment as described below.

Did You Receive Your First Pension Benefit Payment on or after October 10, 2004?

If you received your first pension benefit payment on or after October 10, 2004, then you do not have to do anything in order to receive the benefits of the proposed settlement. You will automatically be a Class Member who is eligible to recover unless you opt-out as described below.

Did you Receive Your First Pension Benefit Payment before October 10, 2004?

If you received your first pension benefit payment before October 10, 2004, then you may be ineligible to recover under the proposed settlement because the applicable statute of limitations prevents your recovery as a matter of law, **unless** you can show that you were deployed with a uniformed military service for a sufficient amount time *after you retired from the NYPD*.

In order to establish that you are eligible to recover under the proposed settlement you must complete the "Claim Certification Form for NYPD Retirees Who Have Received Their First Pension Check Earlier Than October 10, 2004" that is included with this notice. If you believe that the aforementioned Claim Certification Form has improperly been included with this notice or you have not received the Claim Certification Form but should have, then please contact the United States Attorney's Office for the Southern District of New York at the contact information provided at the end of this notice.

What Am I Giving Up If I Become a Class Member?

Unless you opt-out of the settlement as described above, you will be a Class Member, and you cannot sue, continue to sue, or be a party to a lawsuit against the Defendants for violating USERRA by improperly calculating your pensionable earnings.

What If I Do Not Like the Proposed Settlement?

If you remain a Class Member and for any reason do not believe the proposed settlement is fair, you will have an opportunity to be heard by the Court during the Fairness Hearing, which will occur on **January 13, 2014 at 4:30 p.m.**

In order to ensure that your concerns are addressed, please fill out the attached Objection Form and either email it to usany.userra@usdoj.gov or mail it to the address below by **December 16, 2013**.

ATTN: Goodman Class Action
Law Department of the City of New York
100 Church Street
New York, NY 10007

Include in or with the Objection Form a statement of each objection you have to the proposed settlement agreement and a description of the basis for those objections; a statement of whether you intend to appear at the fairness hearing, and if so, how long you anticipate you will need to present your objections; a copy of any exhibits or statements you wish the Court to consider at the Fairness Hearing; and a list of any witnesses you may call along with a summary of their anticipated testimony.

Do You Want to Opt-Out of the Proposed Settlement?

If you do NOT want to be a Class Member then you may opt-out of the class settlement by filling out and signing the attached "OPT-OUT FORM" and e-mailing it to usany.userra@usdoj.gov or mailing it to the address below by **November 14, 2013**:

ATTN: Goodman Class Action
Law Department of the City of New York
100 Church Street
New York, NY 10007

Note that if you decide to opt-out you will not receive any proceeds as a result of this settlement, and will have to enforce your own rights through the usual processes available to you.

What is the Difference between Opting-Out and Objecting?

Objecting is simply telling the Court that you do not like something about the proposed settlement. You can only object if you remain a Class Member. Opting-out is telling the Court that you do not want to be part of the Class. If you opt-out, you have no basis to object because the proposed settlement no longer affects you.

Do You Have Questions?

If you have any questions regarding the proposed settlement or your rights please do not hesitate to contact the United States Attorney's Office for the Southern District of New York by email, telephone or regular mail:

ATTN: Goodman Class Action
c/o Juliette Deen
United States Attorney's Office
86 Chambers Street, 3rd Floor
New York, New York
(212) 637-0840
usanys.userra@usdoj.gov

**CLAIM CERTIFICATION FORM FOR NYPD RETIREES WHO HAVE
RECEIVED THEIR FIRST PENSION CHECK EARLIER THAN
OCTOBER 10, 2004**

If you received your first pension check on or after October 10, 2004, you may ignore this form.

If you want to be a Class Member and received your first pension benefit payment before October 10, 2004, then you must have been deployed to active duty after your retirement, and the number of days spent on those deployments in total must be greater than or equal to the number of days between the date you received your first pension benefit payment and October 10, 2004.

Please provide documentation of your deployments with a uniformed military service after your retirement from the NYPD. You can provide any documentation that establishes your deployment, including, but not limited to:

- (1) DD (Department of Defense) 214 Certificate of Release or Discharge from Active Duty;
- (2) Copy of duty orders prepared by the facility where the orders were fulfilled carrying an endorsement indicating completion of the described service;
- (3) Letter from the commanding officer of a Personnel Support Activity or someone of comparable authority;
- (4) Certificate of completion from military training school;
- (5) Discharge certificate showing character of service;
- (6) Copy of extracts from payroll documents showing periods of service; or
- (7) Letter from National Disaster Medical System (NDMS) Team Leader or Administrative Officer verifying dates and times of NDMS training or Federal activation.

Please send documentation of your deployments after your retirement from the NYPD to the following address:

ATTN: Goodman Class Action
Law Department of the City of New York
100 Church Street
New York, NY 10007

If you have any questions regarding appropriately documenting your deployments, or other issues related to whether you are a Class Member, please contact the United States Attorney's Office for the Southern District of New York in the manner provided in the notice that came with this form.

Please sign and print your name below to acknowledge that you understand the instructions provided in this form, and return a copy of this form with your documentation by **November 14, 2013**.

NAME

SIGNATURE

OPT-OUT FORM
Goodman et al. v. City of New York et al., 10 Civ. 5236 (RJS)

In order to opt-out from the Class described in the Notice of Proposed Class Action Settlement, please fill out the form below, sign, and email it to usnys.userra@usdoj.gov or mail it to the address below by **November 14, 2013**:

ATTN: Goodman Class Action
Law Department of the City of New York
100 Church Street
New York, NY 10007

Name: _____

Address: _____

By signing below, I acknowledge that I have carefully read the Notice of Proposed Class Action Settlement that came with this form, and elect to opt-out from the Class described in that Notice. I further acknowledge that by opting out of that Class, I am not entitled to any of the benefits of the Class Action or bound by the proposed settlement entered into between the Class and the Defendants.

Signature

OBJECTION TO THE PROPOSED CLASS ACTION SETTLEMENT

Goodman et al. v. City of New York et al., 10 Civ. 5236 (RJS)

If you wish to object to the proposed settlement described in the Notice of Proposed Class Action Settlement, please fill out the form below, sign, and email it to usnys.userra@usdoj.gov or mail it to the address below by **December 16, 2013**:

ATTN: Goodman Class Action
Law Department of the City of New York
100 Church Street
New York, NY 10007

I, _____, am a Class Member in the above class action lawsuit. I have read the Notice of Proposed Class Action Settlement that came with this form. I have decided not to opt-out from the Class described in that Notice. I will/will not (circle one) appear at the Fairness Hearing, and would like _____ minutes to present my objection(s). I object to the proposed settlement for the following reason(s):

(Note: you may attach additional sheets of paper if necessary to fully describe your objection. You should also attach any exhibits or statements, and identify any potential witnesses that you may call at the Fairness Hearing)

Signature