

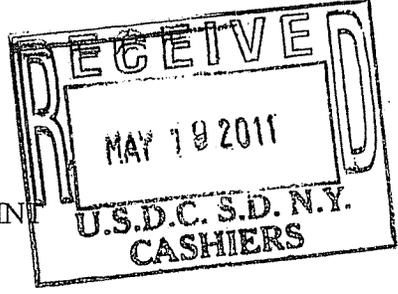
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ROBERT D. BLACK, :  
 :  
 Plaintiff, :  
 :  
 - against - :  
 :  
 CITY OF NEW YORK, NEW YORK :  
 CITY POLICE DEPARTMENT, and NEW :  
 YORK CITY POLICE PENSION FUND, :  
 :  
 Defendants. :  
-----X

COMPLAINT  
11 Civ. \_\_\_\_\_  
ECF CASE



Plaintiff Robert D. Black ("Black"), by his undersigned attorneys from the U.S.

Department of Justice pursuant to 38 U.S.C. § 4323, alleges as follows:

1. This civil action is brought pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301-4335 ("USERRA").

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 38 U.S.C. § 4323(b) and 28 U.S.C. § 1331.

3. Venue is proper in this district under 38 U.S.C. § 4323(c)(2) because defendants City of New York ("NYC"), New York City Police Department ("NYPD") and New York City

Police Pension Fund (“Pension Fund”) maintain their principal place of business in this district. Additionally, venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to this action occurred in this district.

#### PARTIES

4. Black is a former employee of NYPD who resides in Levittown, New York.

5. NYPD is located within the jurisdiction of this Court and is an employer within the meaning of 38 U.S.C. § 4303(4)(A) and 38 U.S.C. § 4323(i). NYPD is an agency of NYC.

6. NYC is located within the jurisdiction of this Court and is an employer within the meaning of 38 U.S.C. § 4303(4)(A) and 38 U.S.C. § 4323(i).

7. Pension Fund is located within the jurisdiction of this Court and is an employer within the meaning of 38 U.S.C. § 4303(4)(C) and 38 U.S.C. § 4323(i). Pension Fund is an agency of NYC that, pursuant to the Administrative Code of the City of New York, has the powers and privileges of a corporation.

#### FACTUAL ALLEGATIONS

8. Black joined the United States Coast Guard Reserves in 1990.

9. In 1984, Black began work at the NYPD. On October 27, 2000, Black was promoted to Sergeant, and was assigned to the NYPD’s Forensic Unit in Jamaica, Queens. Black retired from the NYPD on or about December 12, 2004.

10. Since 1990, Black has performed his U.S. Coast Guard Reserve duties and has been called to active duty. For example, from March 10, 2003 to August 12, 2003, Black was mobilized in support of Operation Enduring Freedom.

11. Throughout the time of his employment with NYPD, Black worked overtime

hours, for which he was compensated. The NYPD compensated Black for most of his overtime work by cash payments. The amount of compensation Black earned for working overtime hours depended upon, among other things, the time of day Black worked overtime hours.

12. During the periods of Black's active military service, NYPD employees had the opportunity to work, and did work, overtime hours. Had Black not been performing active military service, he would have been working overtime hours for NYPD.

13. Black is a member of the Pension Fund. The Pension Fund operates pursuant to Title 13, Chapter 2, Subchapter 2 of the Administrative Code of the City of New York. The Pension Fund is responsible for, *inter alia*, performing pension payment calculations. Since his retirement from the NYPD on December 12, 2004, Black is entitled to receive, and has been receiving, an annual pension paid in equal monthly installments.

14. The Pension Fund must compute Black's compensation during his periods of active service in order to determine Black's pensionable earnings, which serves as the basis for Black's annual pension benefit.

15. In performing the computations described in paragraph 14 of this Complaint, the Pension Fund did not take into account the compensation Black would have received but for his periods of military service, including but not limited to overtime hours and night differential pay.

16. In performing the computations described in paragraph 14 of this Complaint, to the extent the compensation Black would have received but for his periods of military service was not reasonably certain, the Pension Fund did not rely upon Black's average rate of compensation, including overtime hours with night differential pay as applicable, during the 12-month period immediately preceding his periods of military service (or, if shorter, the period of

employment immediately preceding such period).

17. NYPD is responsible for making pension contributions to the Pension Fund on behalf of the Pension Fund's members. The NYPD was responsible for making pension contributions on Black's behalf based on his pensionable earnings, including during the periods of Black's active military service.

18. NYC is responsible for making pension contributions to the Pension Fund on behalf of the Pension Fund's members. NYC was and is responsible for making pension contributions on Black's behalf based on his pensionable earnings, including during the periods of Black's active military service.

19. On or about October 18, 2010, in accordance with Section 4322(a)(1) of USERRA, Black filed a complaint against NYPD with the Veterans' Employment and Training Service of the United States Department of Labor.

20. NYC, NYPD and the Pension Fund violated Section 4318 of USERRA, among other ways, by failing to calculate Black's compensation for pension purposes during his periods of military service in accordance with the statutory commands.

21. As a result of the statutory violations committed by NYC, NYPD and the Pension Fund, Black suffered the loss of pension benefits in an amount to be determined at trial.

#### PRAYER FOR RELIEF

WHEREFORE, Black prays that the Court enter judgment against NYC, NYPD, the Pension Fund, and their respective officers, agents, employees, successors and all persons in active concert or participation with them, as follows:

A. Declare that the Pension Fund's method of calculating compensation during

periods of military service for purposes of determining liability for pension benefits is in violation of USERRA, 38 U.S.C. § 4318;

B. Declare that the Pension Fund miscalculated Black's compensation during the periods of his military service, for purposes of determining liability for pension benefits in violation of USERRA, 38 U.S.C. § 4318;

C. Declare that 38 U.S.C. § 4318 preempts any and all inconsistent NYC, NYPD, and Pension Fund rules, regulations, policies, and practices concerning the calculation of compensation during periods of military service and the calculation of pension benefits;

D. Order that the Pension Fund recalculate compensation during periods of military service in accordance with USERRA, 38 U.S.C. § 4318;

E. Order that the Pension Fund recalculate Black's compensation during the periods of his military service in accordance with USERRA, 38 U.S.C. § 4318;

F. Order that the Pension Fund calculate and inform Black of the amount of pension contributions owed by Black as a result of recalculating Black's compensation during the periods of his military service in accordance with USERRA, 38 U.S.C. § 4318;

G. Order that NYC, the NYPD and the Pension Fund remit to Black the additional pension benefits owed to him as a result of recalculating his compensation during his periods of his military service in accordance with USERRA, 38 U.S.C. § 4318;

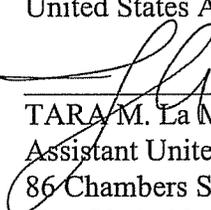
H. Award Black prejudgment interest on the amount of pension benefits due; and

I. Grant such other relief as may be just.

Dated: May 19, 2011  
New York, New York

PREET BHARARA  
United States Attorney

By: \_\_\_\_\_

  
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