

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

	)	
UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. _____
	)	
CITY OF BROCKTON, MASSACHUSETTS	)	
and COMMONWEALTH OF	)	
MASSACHUSETTS,	)	
	)	
Defendants.	)	
	)	

**COMPLAINT**

Plaintiff United States of America (“United States”), by and through its attorney, Carmen M. Ortiz, United States Attorney for the District of Massachusetts, alleges the following:

1. This civil action is brought pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301 – 4334 (“USERRA”).

**JURISDICTION AND VENUE**

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

3. Venue is proper in this district under 38 U.S.C. § 4323(c) because both Defendants are located in, and do business within, this judicial district.

4. Venue also is proper under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to this lawsuit occurred in this judicial district.

## **PARTIES**

5. Plaintiff is the United States of America.

6. Defendant City of Brockton (“City”) is a corporate governmental body and a political subdivision of the Commonwealth of Massachusetts, established pursuant to the laws of Massachusetts. The City is an employer within the meaning of 38 U.S.C. § 4303(4)(A).

7. Defendant Commonwealth of Massachusetts (“Commonwealth”) is an employer within the meaning of 38 U.S.C. § 4303(4)(A). Moreover, the Commonwealth of Massachusetts is a necessary defendant pursuant to Fed. R. Civ. P. 19(a)(1)(A) in that, upon information and belief, the Court cannot provide complete relief in its absence.

## **FACTUAL ALLEGATIONS**

8. Brian Benvie (“Benvie”) has been a member of the United States Army Reserve since 1980.

9. Benvie began his employment with the City’s police department as a patrolman in November 1996.

10. Benvie was called to active duty military service from May 2006 to September 2007.

11. In October 2006, while Benvie was on active duty military service in Iraq, a promotional examination for the position of sergeant was administered to City patrolmen.

12. Shortly after his return from active duty military service in September 2007, Benvie contacted the Commonwealth and arranged to make up the sergeants’ promotional exam that he missed while on active duty military service.

13. Benvie took the makeup exam on or about May 23, 2008 and received a score of 93, which placed him at the top of the promotional list, and was promoted to sergeant on or about July

10, 2008.

14. Benvie subsequently learned that another patrolman with a score lower than his had been promoted to sergeant on October 11, 2007.

15. Accordingly, Benvie requested that his promotion date be retroactively adjusted to October 11, 2007, the date he would have been promoted based on his score had he not been called to active duty military service.

16. The City rejected Benvie's request to have his promotion to sergeant adjusted retroactively.

17. On or about September 21, 2008, Benvie filed a complaint with the Department of Labor ("DOL") alleging that his rights under USERRA were violated.

18. DOL's Veterans Employment and Training Service investigated the complaint, found that it had merit, and attempted to resolve the complaint informally.

19. The City agreed to backdate Benvie's seniority to October 11, 2007, the date he would have been promoted but for his military service, and to provide Benvie with backpay in the amount of \$6,023.87.

20. Benvie applied to take the October 2008 lieutenants' promotional exam, purchased study materials, and invested considerable time studying for the exam.

21. On or about October 3, 2008, Benvie received a letter from the Commonwealth stating that he was not eligible to take the lieutenants' promotional exam. Benvie called the Commonwealth to ask why and was told he did not have the requisite one-year time-in-grade as a sergeant to take the promotional exam for the lieutenant position. Benvie explained that his promotion to sergeant was being retroactively adjusted to October 11, 2007, but he was still denied

permission to sit for the exam.

22. Another sergeant, with seniority less than Benvie based on Benvie's adjusted seniority date, was permitted to take the lieutenants' promotional exam on October 18, 2008.

23. On or about January 28, 2010, Benvie filed another complaint with DOL alleging that his rights under USERRA were violated.

24. By its conduct, the City and the Commonwealth have violated 38 U.S.C. §§ 4312-13, among other ways, by:

a. failing to recognize and give full effect to Benvie's retroactive promotion date to sergeant – the date he would have been promoted to sergeant but for his military service – thereby denying Benvie proper reemployment with the seniority, status, and benefits he would have enjoyed but for his military service; and

b. denying Benvie the opportunity to take the October 2008 lieutenants' promotional exam, thereby continuing to deny Benvie proper reemployment with the seniority, status, and benefits he would have enjoyed but for his military service.

25. All conditions precedent to the filing of this suit have been performed or have occurred.

**PRAYER FOR RELIEF**

The United States prays that the Court enter judgment against the City and the Commonwealth and grant the following relief:

a. declare that the Defendants' failure to recognize and give full effect to Benvie's retroactive promotion to sergeant was in violation of USERRA;

b. declare that the Defendants' denial of Benvie's request to take the October 2008 lieutenants' promotional exam was in violation of USERRA;

c. order Defendants to comply with USERRA by:

(1) providing Benvie with a makeup exam for the October 2008 lieutenants' promotional exam, including reasonable time to prepare for the exam;

(2) interfiling Benvie's score on the makeup lieutenants' promotional exam on the eligibility list that resulted from the October 2008 lieutenants' promotional exam;

(3) should his score merit it, assigning Benvie a certification for promotion date that corresponds to that of others who took the October 2008 exam and achieved the same or similar score; and

(4) should his score merit it, retroactively promoting Benvie to lieutenant with all of the rights, benefits (including, but not limited to, backpay), and seniority that Benvie would have enjoyed if he had been permitted to take the exam in October 2008 and had achieved the same score;

d. award Benvie prejudgment interest on the amount of lost wages and benefits found due; and

e. award such additional relief as justice may require, together with the costs and disbursements in this action.

Respectfully submitted,

PLAINTIFF  
United States of America

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