

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IRVING LIEBLICH, individually and as a
representative of the Class,

Plaintiff,

-vs-

TEACHERS' RETIREMENT SYSTEM OF
THE CITY OF NEW YORK,

Defendant.

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: Index No.:
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:
: **CLASS ACTION COMPLAINT**
: **AND JURY TRIAL DEMAND**
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Plaintiff Irving Lieblich ("Plaintiff"), by and through his undersigned attorneys, alleges upon personal knowledge as to himself and his own acts and upon information and belief as to all other matters as follows:

NATURE OF THE CASE

1. Plaintiff brings this action on behalf of himself and a class of retired members of Defendant Teachers' Retirement System of the City of New York ("TRS") who received and will continue to receive lower regular pension payments from TRS because TRS excludes from Final Average Salary wages that Plaintiff and other teachers earned prior to retirement but which wages were not transferred or credited to Plaintiff and other teachers until the summer after retirement.

2. TRS is a qualified pension plan that provides its members with a rarity these days: a guaranteed, defined-benefit pension. TRS presently serves over 200,000 in-service teachers, retired teachers, and beneficiaries of teachers and others employed with or retired from the City School District of the City of New York (the "School District").

3. Like most government workers, teachers usually earn greater salaries with seniority. This means that teachers' final year's salary is almost always their largest salary in public service. In theory, this should prove beneficial to teachers at retirement because like most government pension plans, a significant component of TRS's regular pension concerns the retired member's earned salary over his final year of employment or average salary over a certain number of years of continuous employment.

4. Unlike most government workers, teachers work two five-month semesters: a fall semester from September through January and a spring semester from February through June. Teachers are still paid an annual salary, though, and earn it through working ten months (September through June) out of every year.

5. Rather than pay teachers their entire salary during the ten months per year that teachers work, the School District pays teachers semimonthly throughout the year, including over the summer months (July and August) when teachers are not working. Importantly, teachers *earn* this "summer pay" while working from September through June (including on a prorated basis for any partial work performed during the school year).

6. Because teachers work a September through June school year, the School District encourages prospective retirees to retire on July 1st every year after the school year has concluded. Unfortunately for Plaintiff and other TRS members, though, heeding this advice will result in significantly less pension payments for the rest of a retired teacher's life.

7. When teachers retire on July 1st TRS has always excluded and continues to exclude from TRS members' "Final Average Salary" or "Final Salary" the summer payments that Plaintiff and other TRS members earned over the course of their final year of employment with the School District. Rather than include the summer pay which was earned prior to

retirement, TRS excludes that pay from “Final Average Salary” or “Final Salary” and retirement benefit calculations.

8. Final Average Salary and Final Salary are critical in determining a teacher’s regular pension. Indeed, these determinations are the most important factors in determining a retired teacher’s regular pension. A lower Final Average Salary or Final Salary will always result in a lower regular pension. This can result in thousands of dollars in lost pension payments over the course of a retiree’s life.

9. Through this action, Plaintiff seeks to recover the damages that Plaintiff and other TRS members have suffered as a result of these practices and to prevent TRS from continuing these practices in the future.

JURISDICTION AND VENUE

10. This Court has jurisdiction over the subject matter of this action pursuant to Section 301 of the New York Civil Practice Law and Rules.

11. Venue is proper in this County because the claims herein arose in this County and TRS resides in this County. A substantial portion of the acts, omissions, determinations, and breaches alleged herein occurred in TRS’s New York, New York office.

12. All conditions precedent to this action have occurred, been performed, or have been waived.

PARTIES

A. Plaintiff

13. Plaintiff Irving Lieblich (“Plaintiff”) is a retired City School District of the City of New York school teacher and member of Defendant Teachers’ Retirement System of the City of

New York. Plaintiff is over the age of eighteen (18) and resides in Forest Hills, New York. Plaintiff is a member of the Class proposed below.

B. Defendant

14. Defendant Teachers' Retirement System of the City of New York ("TRS") is a public pension system serving over 200,000 in-service members, retired members, and beneficiaries of teachers and others employed with or previously retired from the School District of the City of New York. TRS is governed by the Administrative Code of the City of New York ("Administrative Code") and the New York State Retirement and Social Security Law ("Retirement and Social Security Law"). TRS administers a defined-benefit pension plan known as the Qualified Pension Plan in which all TRS members participate. TRS maintains its principal office in New York, New York.

CLASS ACTION ALLEGATIONS

15. Plaintiff brings this action pursuant to Article 9 of the New York Civil Practice Law and Rules on behalf of a class (the "Class") consisting of:

All retired members of the Teacher's Retirement System of the City of New York and their qualified beneficiaries who have had their earned final summer pay excluded from their Final Average Salary or Final Salary and who have been receiving improperly reduced regular pension payments as a result from May 28, 2011 through the present.

16. Numerosity: The members of the class are so numerous that it would be impracticable to join them individually. While Plaintiff does not know the exact number of Class members at this time, Plaintiff believes there are tens of thousands of Class members whose joinder is impracticable. TRS's records contain sufficient information to determine the exact number and identity of persons in the Class.

17. Existence and Predominance of Common Questions: Common questions of law and fact exist as to all Class members and predominate over questions affecting only individual members. These common questions include, but are not limited to, the following:

a. Whether TRS excludes from teachers' Final Average Salary or Final Salary summer pay which was earned prior to retirement but which was deposited or cashed after retirement;

b. Whether TRS's practice of excluding from teachers' Final Average Salary or Final Salary summer pay which was earned prior to retirement but which was deposited or cashed after retirement breached the agreement between Plaintiff, the Class, and the TRS (memorialized in Articles 11, 14, and 15 of the Retirement and Social Security Law and Title 13 of the Administrative Code);

c. Whether TRS breached its duty of good faith and fair dealing by excluding from teachers' Final Average Salary or Final Salary summer pay which was earned prior to retirement but which was transferred or credited after retirement;

d. The amount of damages suffered by Plaintiff and the proposed Class; and

e. Whether TRS should be enjoined from continuing to exclude from teachers' Final Average Salary or Final Salary summer pay which was earned prior to retirement but which was transferred or credited after retirement.

18. Typicality: Plaintiff's claims are typical of the claims of the Class members because TRS uniformly excluded earned final summer pay from all retired TRS members' Final Average Salary or Final Salary which formed a substantial portion of the uniform formulas used to determine regular pensions.

19. Adequacy of Representation: Plaintiff will adequately represent and protect the interests of the Class and has no interests that conflict with or are antagonistic to the interests of the Class. Plaintiff has retained competent and experienced counsel in Squitieri & Fearon, LLP whose principals have over forty years of combined class action experience. Squitieri & Fearon, LLP will actively conduct and be responsible for prosecuting this litigation, including providing adequate resources, experience, and commitment to litigate this matter.

20. Superiority: A class action is superior to any other method available for the fair and efficient adjudication of this controversy because it would be impractical and unduly burdensome for each of the tens of thousands of Class members to bring separate actions. Moreover, individual litigation has the potential to result in inconsistent or contradictory judgments. A class action in this case presents fewer management problems and provides the benefits of a single adjudication, economies of scale, and comprehensive supervision by a single court.

21. Class certification is also appropriate because there is a readily identifiable class, on whose behalf this action can be prosecuted. Class members are readily ascertainable from TRS's records. A notice of pendency, or resolution, of this class action can be provided to class members by direct mail, email, published notice, or other similar means.

FACTUAL ALLEGATIONS

A. TRS's History and Purpose

22. TRS is one of the largest public pension systems in the United States.

23. TRS was established as of August 1, 1917 under Chapter 303 of the Laws of 1917 and is governed by the Administrative Code and Retirement and Social Security Law.

24. At all times relevant to this Complaint, TRS's pension plan has been a tax-qualified retirement plan under Section 401(a) of the Internal Revenue Code. TRS's pension plan is presently known as the "Qualified Pension Plan" or "QPP". The Qualified Pension Plan is a cost-sharing, multiple employer defined-benefit pension plan. The Qualified Pension Plan provides pension benefits to all teachers and administrative personnel employed by the New York City Department of Education (including the School District), and certain employees of New York City Charter Schools and the City University of New York.

25. TRS's Qualified Pension Plan provides members with the security of a guaranteed, defined-benefit pension.

26. TRS's Qualified Pension Plan provides a guaranteed retirement allowance to all members upon meeting certain age and service requirements.

27. TRS presently serves over 200,000 in-service members, retired members, and beneficiaries of teachers and others employed with or previously retired from the School District.

28. As of June 30, 2016, there were approximately 119,000 in-service members and approximately 84,000 retired members and beneficiaries receiving monthly benefits.

B. TRS Membership

29. TRS membership is mandatory for most New York City educators such as Plaintiff.

30. TRS membership is optional for certain City University of New York adjuncts and paraprofessionals employed by the Department of Education and participating Charter Schools.

31. Membership in TRS is comprised primarily of "teachers" pursuant to Title 13 of the Administrative Code. Sections 13-501(7)(a) and 13-501(8) of the Administrative Code

broadly define “teachers” to include the superintendent of schools, assistant superintendents, directors, principals, assistant principals, attendance teachers, “all regular and special teachers of the public day schools of the city,” “all employees of the [New York City] board of education appointed to regular positions in the service of the public schools at annual salaries,” teacher aides, various assistants and professionals, teacher-clerks, and clerical assistants.

32. Plaintiff and all proposed Class members were or are teachers as defined by statute.

33. Plaintiff and the proposed Class are TRS retired members or beneficiaries.

34. All TRS members, including Plaintiff and the proposed Class, are members of TRS’s Qualified Pension Plan.

C. Contributions to TRS During Service

35. New York City and/or the Department of Education contribute(s) to TRS in amounts as provided by law.

36. If TRS members were required to contribute to the TRS Qualified Pension Plan while in-service (i.e., while working), any such contribution rates were based on annual wages earned during plan years.

37. Any required in-service pension contributions were automatically deducted from TRS members’ pay and these automatic contributions continued as long as required.

D. TRS is Contractually Required to Pay TRS Members a Regular Pension Based on *Earned Final Average Salary* or *Earned Final Salary*

38. Pursuant to Article V, Section 7 of the New York State Constitution, a contract exists between (a) the Plaintiff and the TRS and (b) the Class and the TRS concerning the retirement and pension benefits owed to Plaintiff and the Class as a result of Plaintiff’s and the Class’s former employment with and subsequent retirement from the School District.

39. The agreement between Plaintiff, the Class, and the TRS is memorialized in Articles 11, 14, and 15 of the Retirement and Social Security Law and Title 13 of the Administrative Code. These statutory provisions constitute the contract between the parties.

40. Upon retirement, TRS members are entitled to retirement benefits from TRS's Qualified Pension Plan, including a guaranteed monthly payment known as a regular pension. This regular pension is paid monthly to each TRS member for at least the entirety of his/her life. In exchange for a smaller regular pension amount, every TRS member also has the option to continue regular pension payments to his/her spouse in the event that the TRS member predeceases his/her spouse.

41. TRS members are divided into categories called "Tiers", including the following:

- a. Tier I consists of members who joined TRS prior to July 1, 1973;
- b. Tier II consists of members who joined TRS on or after July 1, 1973, but prior to July 1, 1976;
- c. Tier III consists of members who joined TRS on or after July 1, 1976, but prior to September 1, 1983; and
- d. Tier IV consists of members who joined TRS on or after September 1, 1983, but prior to April 1, 2012.

42. Regardless of Tier, the amount of each TRS member's regular pension is determined by two main components: the TRS member's (a) *earned* Final Average Salary or Final Salary, and (b) total service credit (the length of time the TRS member worked for a covered employer).

43. Tier I regular pensions are calculated by multiplying the member's years of service and the "annual salary *earnable*" during the year preceding retirement or the "average

annual salary *earnable* during any five consecutive years” selected by the member. N.Y.C. ADMIN. CODE §§ 13-501(18), 13-501(18-a), 13-554 (emphasis added).

44. Tier II regular pensions are calculated by multiplying the members’ years of service and “Final Average Salary”, defined as “the average salary *earned* by such a member during any three consecutive years which provide the highest average salary”. N.Y. RETIRE. & SOC. SEC. LAW §§ 442-43 (McKinney 2017) (emphasis added). Where, however, the “salary or wages earned during any year included in the period” exceeds the average of the previous two years by more than 20%, that excess amount is excluded from the salary computation. *Id.*

45. Tier III regular pensions are calculated by multiplying the members’ years of service (less fifty percent of a statutory social security benefit) and one-fiftieth of the member’s “Final Average Salary”, defined as “the average wages *earned* by such a member during any three consecutive years which provide the highest average wage.” N.Y. RETIRE. & SOC. SEC. LAW §§ 504, 512 (McKinney 2017). Where, however, any single year salary increase is greater than 10% over the previous two years, that excess amount is excluded from the salary computation. *Id.*

46. Tier IV regular pensions for members who retire with fewer than twenty years of credited service are calculated by multiplying the members’ years of service and one-sixtieth of the member’s Final Average Salary, defined as “the average wages *earned* by such a member during any three consecutive years which provide the highest average wage.” N.Y. RETIRE. & SOC. SEC. LAW §§ 604, 608 (McKinney 2017) (emphasis added). Where, however, any single year salary increase is greater than 10% over the previous two years, that excess amount is excluded from the salary computation. *Id.*

47. Tier IV regular pensions for members who retire with twenty or more years of credited service are calculated by multiplying the members' years of service and one-fiftieth of the member's Final Average Salary, defined as "the average wages *earned* by such a member during any three consecutive years which provide the highest average wage." N.Y. RETIRE. & SOC. SEC. LAW §§ 604, 608 (McKinney 2017) (emphasis added). Where, however, any single year salary increase is greater than 10% over the previous two years, that excess amount is excluded from the salary computation. *Id.*

48. Tiers I through IV are designed to provide retirees with a regular pension related to retirees' "actual *earnings*" and "regular compensation *earned*" during employment. Budget Report, Bill Jacket, L. 1971, ch. 503, at 10 (emphasis added); N.Y. RETIRE. & SOC. SEC. LAW §§ 501(24), 601(l) (McKinney 2017) (emphasis added).

E. TRS Members Earn a Year's Salary Through Working Two Five-Month Semesters

49. TRS members are all teachers.

50. All teachers in the School District work two five-month semesters every year: (a) a fall semester from September through January and (b) a spring semester from February through June.

51. All teachers in the School District are salaried employees that are paid over a twelve-month period from September through August for the work that they perform during the ten-month school year from September through June. That is, Plaintiff and the proposed Class *earn* one-year's salary by working a fall semester from September through January and a spring semester from February through June but are paid the full one-year's salary over a twelve-month period rather than over the ten-month period that they worked.

52. Plaintiff and the proposed Class *earned* any and all amounts paid to them over the summer (i.e., July and August) by working the previous September through June school year.

53. Teachers who do not teach for a full ten-month school year receive prorated payments during the summer months. The amount such a teacher receives is equal to the number of months the teacher did complete multiplied by one-tenth the summer pay the teacher would have received had the teacher worked a full school year.

54. Plaintiff and the proposed Class received their summer pay on the last day of every school year in June via either (a) five postdated paychecks which were not to be cashed until the date appearing on the paychecks dated on or about June 30, July 15, July 30, August 15, and August 31, or (b) direct deposit on or about June 30, July 15, July 30, August 15, and August 31.

55. Regardless of whether teachers were paid via check or direct deposit, teachers always received their summer paystubs from their employer in June, prior to retiring and prior to the school year ending.

56. The payment that Plaintiff and the proposed Class received from the School District during the summer months, including during the summer months after their retirement, was *not* (a) a “lump sum payment[] for deferred compensation, sick leave, accumulated vacation or other credits for time not worked,” (b) “any form of termination pay,” or (c) “any additional compensation paid in anticipation of retirement.” N.Y. RETIRE. & SOC. SEC. LAW § 431 (McKinney 2017).

57. Plaintiff and the proposed Class received paychecks or direct deposits from the School District during their final summer months (i.e., the summer months immediately following their retirement) in the exact same manner as they had during their final school year.

58. The paychecks that Plaintiff and the proposed Class received from the School District during the summer months, including the summer months immediately following their retirement, are *regular compensation earned* for teaching services previously rendered during the September through June school year.

F. The School District Encouraged Teachers to Retire on July 1st

59. The School District encouraged and continues to encourage teachers to retire on July 1st, after completing a full ten-month school year in June.

60. July 1st is the most common retirement date for school teachers.

61. Teachers who retire on July 1st allow the School District to gain crucial advanced insight into the School District's hiring needs for the next school year.

62. The end of January/beginning of February is the second most common retirement period for school teachers.

G. School Teachers Usually Earn a Greater Salary As They Gain Seniority

63. Like most public/government jobs, school teachers usually earn a greater salary with seniority.

64. Nearly all school teachers, including Plaintiff, earn(ed) the largest salary of their school teaching careers in their final year.

H. TRS Breached Its Contract With Plaintiff and the Proposed Class By Excluding Their Final Year's Summer Pay from Their Final Average Salary Which Lowers Plaintiff's and the Proposed Class's Regular Pension Amounts

65. At all times relevant, Plaintiff worked for the School District and was a TRS in-service member.

66. Plaintiff retired from the School District on July 1, 2011.

67. The TRS credited Plaintiff with 24.3 years of service with the School District.

68. Plaintiff is a member of Tier IV.

69. Plaintiff made any and all of his required in-service contribution payments before his retirement. The School District automatically deducted any required contribution payments from Plaintiff's salary.

70. Upon information and belief, all proposed Class members made any and all of their required in-service contribution payments because any required payments were automatically deducted from their salaries.

71. Plaintiff received his 2011 summer paystubs from the School District in June 2011 (prior to retiring). These paystubs indicated the dollar amounts and the dates that the School District and/or the Department of Education would electronically deposit Plaintiff's earned summer pay.

72. The School District and/or the Department of Education electronically deposited the final portion of Plaintiff's 2010-2011 school year salary in equal semimonthly payments in July 2011 and August 2011.

73. Upon information and belief, every Class member received the final portion of his/her final year's salary either through postdated paychecks in June (if they received their pay through checks) or through automatic deposits in July and August (if they received their pay through automatic deposits).

74. TRS has always excluded and continues to exclude Plaintiff's and the proposed Class members' final summer pay (i.e., the summer pay immediately following their retirement) from their Final Average Salary or Final Salary, improperly decreasing Plaintiff's and the proposed Class's regular pensions.

75. For example, TRS excludes the summer pay that Plaintiff *earned* for working September 2010 through June 2011 but which was not electronically deposited until July 2011 and August 2011. TRS has caused Plaintiff's Final Average Salary to be lower than it should have been had Plaintiff's summer 2011 pay been included. This, in turn, has caused Plaintiff to receive at least \$240.16 less per year in regular pension.

76. Specifically, Plaintiff's annual salary rates for his final three teaching years were as follows:

- a. An annual rate of \$85,426.00 for September 7, 2008 through June 29, 2009;
- b. An annual rate of \$85,426.00 for June 30, 2009 through October 2, 2009;
- c. An annual rate of \$86,590.00 for October 3, 2009 through November 1, 2009;
- d. An annual rate of \$90,054.00 for November 1, 2009 through October 30, 2010;
and
- e. An annual rate of \$93,656.00 for November 1, 2010 through September 6, 2011.

77. The School District uses a 360-day calendar when determining "per day" pay even though the annual salary still covers a 365-day calendar. Thus, 1,080 payments days can be used to calculate Plaintiff's Final Average Salary over three years (i.e., 3 x 360).

78. Alternatively, Plaintiff's Final Average Salary can be calculated by adding Plaintiff's final 72 semimonthly electronic deposits and dividing that amount by three.

79. Plaintiff's final 1,080 credited service/payment days and total earnings are as follows:

- a. Plaintiff earned 293 credit/payment days from September 7, 2008 through June 29, 2009 bringing his total earnings for that period to approximately \$69,527.27 ((293/360) x \$85,426.00);

- b. Plaintiff earned 93 credit/payment days from June 30, 2009 through October 2, 2009 bringing his total earnings for that period to approximately \$22,068.38 $((93/360) \times \$85,426.00)$;
- c. Plaintiff earned 28 credit/payment days from October 3, 2009 through November 1, 2009 bringing his total earnings for that period to approximately \$6,734.78 $((28/360) \times \$86,590.00)$;
- d. Plaintiff earned 360 credit/payment days from November 1, 2009 through October 30, 2010 bringing his total earnings for that period to \$90,054.00 $((360/360) \times \$90,054.00)$; and
- e. Plaintiff earned 306 credit/payment days from November 1, 2010 through September 6, 2011 bringing his total earnings for that period to approximately \$79,607.60 $((306/360) \times \$93,656.00)$.

80. TRS caused Plaintiff damages and continues to damage Plaintiff by excluding from Plaintiff's Final Average Salary the pay that Plaintiff earned for working September 2010 through June 2011 but that the School District did not electronically deposit until July and August 2011. This practice improperly decreases the number of credit/payment days at the \$93,656.00 per year rate and improperly increases the number of credit/payment days at the \$85,426.00 per year rate in Plaintiff's Final Average Salary.

81. Specifically, by excluding Plaintiff's summer 2011 pay at the higher rate, TRS improperly reduced Plaintiff's Final Average Salary to \$88,858.20 which, in turn, resulted in a \$32,498.87 annual regular pension for Plaintiff.

82. Including Plaintiff's 2011 summer pay, though, produces a Final Average Salary of approximately \$89,330.68. Multiplying Plaintiff's Final Average salary by 24.3 (Plaintiff's

years of service) and 0.02 (the Tier IV statutory rate) produces an unadjusted regular annual pension of \$43,414.71. Since Plaintiff chose the option to continue pension payments to his wife in the event that Plaintiff predeceases his wife, Plaintiff's annual regular pension is produced by multiplying Plaintiff's unadjusted regular annual pension (\$43,414.71) by 0.7541. Thus, Plaintiff's annual regular pension should be approximately \$32,739.03.

83. Plaintiff receives and will continue to receive approximately \$240.16 less per year in annual pension payments (\$32,739.03 - \$32,498.87) from TRS due to TRS's improper exclusion of Plaintiff's 2011 summer pay.

84. TRS breached its agreement with Plaintiff under Section 608 of the Retirement and Social Security Law which required TRS to use "one-third of the highest total wages *earned* by [Plaintiff] during any continuous period of employment for which [Plaintiff] was credited with three years of service credit" as Plaintiff's Final Average Salary. N.Y. RETIRE. & SOC. SEC. LAW § 608(b) (McKinney 2017) (emphasis added).

I. Plaintiff's and the Proposed Class's Final Summer Pay is Regular Earned Compensation

85. All of the payments that the School District electronically deposited in Plaintiff's account between September 2008 and August 2011 were *earned* for continuous work with the School District *prior* to Plaintiff's retirement on July 1, 2011.

86. TRS includes Plaintiff's 2008, 2009, and 2010 summer pay in Plaintiff's Final Average Salary but excludes Plaintiff's highest earning summer—summer 2011.

87. Likewise, TRS includes summer pay for all teachers in their Final Average Salary or Final Salary except for the teachers' final and highest earning summer pay.

88. Accordingly, TRS has taken the position, through a long and deliberate course of action, that summer pay is *not* (a) a "lump sum payment[]" for deferred compensation, sick leave,

accumulated vacation or other credits for time not worked,” (b) “any form of termination pay,” or (c) “any additional compensation paid in anticipation of retirement.” N.Y. RETIRE. & SOC. SEC. LAW § 431 (McKinney 2017).

FIRST CLAIM FOR RELIEF
(Breach Of Contract)

89. Plaintiff repeats and realleges the allegations contained in all paragraphs of this Complaint as if fully set forth herein.

90. Plaintiff asserts this breach of contract claim against TRS on behalf of himself and the Class.

91. Pursuant to Article V, Section 7 of the New York State Constitution, a contract exists between (a) the Plaintiff and the TRS and (b) the Class and the TRS concerning retirement and pension benefits owed to Plaintiff and the Class as a result of Plaintiff’s and the Class’s former employment with and subsequent retirement from the School District.

92. The agreement between Plaintiff, the Class, and the TRS is memorialized in Articles 11, 14, and 15 of the Retirement and Social Security Law and Title 13 of the Administrative Code. These statutory provisions constitute the contract between the parties.

93. Plaintiff and the proposed Class adequately performed under the contract.

94. Plaintiff and the proposed Class performed by making any and all required in-service contribution payments to TRS and by performing their teaching and service requirements. Any required in-service contribution payments were automatically deducted from Plaintiff’s and the Class’s salaries by their employers and tendered to TRS.

95. TRS breached the contract between (a) TRS and Plaintiff and (b) TRS and the Class when TRS failed to include in Plaintiff’s and the Class’s Final Average Salary or Final Salary the summer pay that was *earned* prior to retirement.

96. Specifically, Section 608 of the Retirement and Social Security Law required TRS to use “one-third of the highest total wages *earned* by [Plaintiff] during any continuous period of employment for which [Plaintiff] was credited with three years of service credit” as Plaintiff’s Final Average Salary. N.Y. RETIRE. & SOC. SEC. LAW § 608(b) (McKinney 2017) (emphasis added). TRS breached Section 608 of the Retirement and Social Security Law when TRS excluded Plaintiff’s 2011 summer pay from Plaintiff’s Final Average Salary.

97. Plaintiff *earned* his 2011 summer pay *prior* to retiring on July 1, 2011 by working the Fall 2010 and Spring 2011 school semesters.

98. Likewise, TRS breached Title 13, Chapter 4 of the Administrative Code and Sections 443, 512, and 608 of the Retirement and Social Security Law when TRS excluded the Class’s final summer pay from their Final Average Salary or Final Salary because such summer pay was *earned* prior to each Class member’s retirement date. Each of these provisions required TRS to use final *earned* wages in determining Final Average Salary or Final Salary.

99. Proposed Class members *earned* their final summer pay prior to retiring.

100. TRS’s breach actually and proximately caused Plaintiff’s and the Class’s damages.

101. Plaintiff’s and the Class’s Final Average Salary or Final Salary is a significant component in computing their annual regular pension. A lower Final Average Salary or Final Salary necessarily results in a lower annual regular pension amount.

102. By excluding Plaintiff’s 2011 summer pay from Plaintiff’s Final Average Salary, TRS caused Plaintiff’s Final Average Salary to be at least \$472.48 less than it would have been had Plaintiff’s 2011 summer pay been included in Plaintiff’s Final Average Salary.

103. Put another way, including Plaintiff's 2011 summer pay in Plaintiff's Final Average Salary determination results in a Final Average Salary of at least \$89,330.68. Excluding Plaintiff's 2011 summer pay as TRS does, however, results in a Final Average Salary of \$88,858.20.

104. Plaintiff's regular pension should be \$32,739.03 per year. That is, if Plaintiff's 2011 summer pay is included in his Final Average Salary, Plaintiff's annual regular pension is \$32,739.03.

105. TRS pays Plaintiff a regular pension of only \$32,498.87 per year. Plaintiff has suffered damages in the amount of at least \$240.16 per year since his retirement on July 1, 2011 and will continue to be so damaged for the rest of Plaintiff's life or his wife's life if Plaintiff predeceases his wife.

106. Plaintiff prays for relief compelling TRS to pay damages, make restitution, and/or make good the losses by restoring to Plaintiff and the Class the difference between their annual regular pension with their final summer pay included and the annual regular pension amounts they received, plus interest, during the Class Period.

107. Plaintiff prays for a declaration that TRS's policy of excluding from Final Average Salary and Final Salary retired teachers' final summer pay which was earned prior to retiring is a breach of the agreement between TRS and the proposed Class (including Plaintiff) and violates Title 13, Chapter 4 of the Administrative Code of the City of New York and Sections 443, 512, and 608 of the New York Retirement and Social Security Law.

108. Plaintiff prays for an injunction requiring TRS to include final summer pay which was earned prior to retirement but which was paid after retirement in Plaintiff's and the Class's

Final Average Salary or Final Salary for the rest of Plaintiff's, the Class's, and, if applicable, their spouses' lives.

109. All conditions precedent to this breach of contract claim have occurred, been performed, or have been waived.

SECOND CLAIM FOR RELIEF
(Breach Of The Duty Of Good Faith And Fair Dealing)

110. Plaintiff repeats and realleges the allegations contained in all paragraphs of this Complaint as if fully set forth herein.

111. Plaintiff asserts this breach of the duty of good faith and fair dealing claim against TRS on behalf of himself and the Class.

112. Under New York law, a duty of good faith and fair dealing is implied in every contract.

113. Pursuant to Article V, Section 7 of the New York State Constitution, a contract exists between (a) the Plaintiff and the TRS and (b) the Class and the TRS concerning retirement and pension benefits owed to Plaintiff and the Class as a result of Plaintiff's and the Class's former employment with and subsequent retirement from the School District.

114. The agreement between Plaintiff, the Class, and the TRS is memorialized in Articles 11, 14, and 15 of the Retirement and Social Security Law and Title 13 of the Administrative Code. These statutory provisions constitute the contract between the parties.

115. The duty of good faith and fair dealing comprises any promises which a reasonable person in the position of the promisee would be justified in understanding were included in the contract.

116. Pursuant to the duty of good faith and fair dealing, TRS had a duty to not do anything which would have the effect of destroying or injuring the rights of the other parties to receive the fruits of the contract.

117. TRS breached its duty of good faith and fair dealing by excluding from Plaintiff's and the proposed Class's Final Average Salary or Final Salary Plaintiff's and the proposed Class's final and highest summer pay which was earned prior to retirement. In doing so, TRS improperly paid Plaintiff and the proposed Class a lower annual regular pension than they were owed. TRS has continued this course of conduct even after being notified of Plaintiff's claim that TRS was improperly excluding final summer pay from Final Average Salary.

118. TRS's breach of its duty of good faith and fair dealing actually and proximately caused Plaintiff's and the proposed Class's damages because a lower Final Average Salary or Final Salary always results in a lower annual regular pension amount.

119. Plaintiff prays for relief compelling TRS to pay damages, make restitution, and/or make good the losses by restoring to Plaintiff and the Class the difference between their annual regular pension with their final summer pay included and the annual regular pension amounts they received, plus interest, during the Class Period.

120. Plaintiff prays for a declaration that TRS's policy of excluding from Final Average Salary and Final Salary retired teachers' final summer pay which was earned prior to retiring is a breach of the duty of good faith and fair dealing.

121. Plaintiff prays for an injunction requiring TRS to include final summer pay which was earned prior to retirement but which was paid after retirement in Plaintiff's and the Class's Final Average Salary or Final Salary for the rest of Plaintiff's, the Class's, and, if applicable, their spouses' lives.

122. All conditions precedent to this breach of the duty of good faith and fair dealing claim have occurred, been performed, or have been waived.

THIRD CLAIM FOR RELIEF
(Declaratory Judgment)

123. Plaintiff repeats and realleges the allegations contained in all paragraphs of this Complaint as if fully set forth herein.

124. Plaintiff seeks declaratory judgment against TRS on behalf of himself and the proposed Class.

125. Through this claim, Plaintiff seeks a declaratory judgment that (a) TRS breached the agreement between TRS and the proposed Class (including Plaintiff) and (b) violated Title 13, Chapter 4 of the Administrative Code of the City of New York and Sections 443, 512, and 608 of the New York Retirement and Social Security Law by excluding from retired teachers' Final Average Salary or Final Salary the final summer pay which was earned prior to retiring.

126. Declaratory judgment will have a direct and immediate effect upon the rights of the parties because TRS improperly excludes final summer pay from Plaintiff's and the proposed Class's Final Average Salary or Final Salary and will continue to do so. Improperly excluding final summer pay from Final Average Salary reduces annual regular pensions.

127. Declaratory judgment will protect Plaintiff's and the Class's present and future rights concerning monthly regular pension payments.

128. All conditions precedent to this declaratory judgment claim have occurred, been performed, or have been waived.

FOURTH CLAIM FOR RELIEF
(Permanent Injunction)

129. Plaintiff repeats and realleges the allegations contained in all paragraphs of this Complaint as if fully set forth herein.

130. Plaintiff seeks a permanent injunction against TRS on behalf of himself and the Class.

131. Through this claim, Plaintiff seeks a permanent injunction requiring TRS to include final summer pay which was earned prior to retirement but which was deposited after retirement in Plaintiff's and the Class's Final Average Salary or Final Salary for the rest of Plaintiff's, the Class's, and, if applicable, their spouses' lives.

132. Plaintiff and the Class have a presently occurring and imminent right to monthly regular pension payments that will be improperly diminished if TRS is not barred from excluding final summer pay from Final Average Salary or Final Salary.

133. All conditions precedent to this permanent injunction claim have occurred, been performed, or have been waived.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

- a. Judgment/Order finding that TRS breached the contract and laws identified herein;
- b. Judgment/Order finding that TRS committed the acts and omissions alleged herein;
- c. Judgment/Order certifying this action as a class action;
- d. Judgment/Order appointing Plaintiff as Class Representative;

- e. Judgment/Order appointing Squitieri & Fearon, LLP as Class Counsel;
- f. Judgment/Order declaring that TRS breached the contract with Plaintiff and the Class and violated the laws and administrative codes identified herein;
- g. Judgment/Order awarding Plaintiff and the Class damages together with the maximum pre- and post-judgment interest permitted by law, in an amount to be proven at trial;
- h. Judgment/Order awarding Plaintiff a class representative incentive award;
- i. Judgment/Order requiring TRS to pay restitution to Plaintiff and the Class for their losses;
- j. Judgment/Order awarding Plaintiff and the Class their costs and expenses in this litigation, including reasonable attorneys' fees, experts' fees, and other costs and disbursements;
- k. Judgment/Order requiring TRS to include final summer pay which was earned prior to retirement but which was paid after retirement in Plaintiff's and the Class's Final Average Salary for the rest of Plaintiff's, the Class's, and, if applicable, their spouses' lives; and
- l. Judgment/Order awarding Plaintiff and the Class such other and further legal and equitable relief as may be just and proper in the circumstances.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury on all claims and issues so triable.

Dated: New York, NY
June 28, 2017

Respectfully submitted,

SQUITIERI & FEARON, LLP



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Attorneys for Plaintiff and the proposed Class

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

-----X
IRVING LIEBLICH, individually and as a representative,

Plaintiff/Petitioner,

- against -

Index No. _____

TEACHERS' RETIREMENT SYSTEM OF NYC

Defendant/Respondent.
-----X

**NOTICE OF COMMENCEMENT OF ACTION
SUBJECT TO MANDATORY ELECTRONIC FILING**

PLEASE TAKE NOTICE that the matter captioned above has been commenced as an electronically filed case in the New York State Courts Electronic Filing System ("NYSCEF") as required by CPLR § 2111 and Uniform Rule § 202.5-bb (mandatory electronic filing). This notice is being served as required by that rule.

NYSCEF is designed for the electronic filing of documents with the County Clerk and the court and for the electronic service of those documents, court documents, and court notices upon counsel and unrepresented litigants who have consented to electronic filing.

Electronic filing offers significant benefits for attorneys and litigants, permitting papers to be filed with the County Clerk and the court and served on other parties simply, conveniently, and quickly. NYSCEF case documents are filed with the County Clerk and the court by filing on the NYSCEF Website, which can be done at any time of the day or night on any day of the week. The documents are served automatically on all consenting e-filers as soon as the document is uploaded to the website, which sends out an immediate email notification of the filing.

The NYSCEF System charges no fees for filing, serving, or viewing the electronic case record, nor does it charge any fees to print any filed documents. Normal filing fees must be paid, but this can be done on-line.

Parties represented by an attorney: An attorney representing a party who is served with this notice must either: 1) immediately record his or her representation within the e-filed matter on the NYSCEF site; or 2) file the Notice of Opt-Out form with the clerk of the court where this action is pending. Exemptions from mandatory e-filing are limited to attorneys who certify in good faith that they lack the computer hardware and/or scanner and/or internet connection or that they lack (along with all employees subject to their direction) the operational knowledge to comply with e-filing requirements. [Section 202.5-bb(e)]

Parties not represented by an attorney: Unrepresented litigants are exempt from e-filing. They can serve and file documents in paper form and must be served with documents in paper form. However, an unrepresented litigant may participate in e-filing.

For information on how to participate in e-filing, unrepresented litigants should contact the appropriate clerk in the court where the action was filed or visit www.nycourts.gov/efile-unrepresented. Unrepresented litigants also are encouraged to visit www.nycourthelp.gov or contact the Help Center in the court where the action was filed. An unrepresented litigant who consents to e-filing may cease participation at any time. However, the other parties may continue to e-file their court documents in the case.

For additional information about electronic filing and to create a NYSCEF account, visit the NYSCEF website at www.nycourts.gov/efile or contact the NYSCEF Resource Center (phone: 646-386-3033; e-mail: efile@nycourts.gov).

Dated: 06/28/2017



Signature

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