

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

**LOUIS P. CANNON  
3712 Seventh Street  
North Beach MD 20714**

**STEPHEN P. WATKINS  
8610 Portsmouth Drive  
Laurel MD 20708**

**ERIC WESTBROOK GAINEY  
15320 Jennings Lane  
Bowie MD 20721**

**GERALD G. NEILL  
29350 Rolling Acres Lane  
Mechanicsville MD 20659**

**SHEILA M. FORD-HAYNES  
13401 Marburg Lane  
Upper Marlboro MD 20772**

**HARRY LOUIS WEEKS, JR.  
4331 Castle Tower Court  
White Plains MD 20695**

**Plaintiffs and  
Class Representatives**

**v.**

**DISTRICT OF COLUMBIA  
Serve: Mayor Vincent C. Gray  
John A. Wilson Building  
1350 Pennsylvania Avenue NW  
Washington DC 20004**

**and**

**Office of the Attorney General  
Claims Unit, 6<sup>th</sup> Floor South  
441 4<sup>th</sup> Street NW  
Washington DC 20001**

**Defendant**

**Case Number:**

## **COMPLAINT**

The Plaintiffs Louis P. Cannon, Stephen P. Watkins, Eric Westbrook Gainey, Gerald G. Neill, Sheila M. Ford-Haynes, and Harry Louis Weeks, Jr., on behalf of themselves and all others similarly situated, hereby make this Complaint for monetary damages, as well as declaratory and declaratory relief.

### **PARTIES**

1. The Plaintiffs and members of the proposed Plaintiff Class are all natural persons who have retired from the District of Columbia government and who have been subsequently reemployed by the District of Columbia. The identities and contact information of all other members of the proposed Plaintiff Class are contained within the Defendant's employment records.

2. The Defendant is a municipal government capable of being sued.

### **JURISDICTION AND VENUE**

3. Each of the events complained of herein occurred within the District of Columbia.

4. Each of the Plaintiffs is a re-employed District of Columbia retiree entitled to retirement benefits made by the federal government under D.C. Code § 1-803.01.

5. This civil action is brought in part to enforce or clarify rights to such benefits.

6. The United States District Court for the District of Columbia shall have exclusive jurisdiction and venue, regardless of the amount in controversy, of: (1) Civil

actions brought by participants or beneficiaries pursuant to this chapter, and (2) Any other action otherwise arising (in whole or part) under this chapter or the contract. D.C. Code § 1-815.02(a).

7. No injunctive relief is sought by the Plaintiffs against the Secretary of the Treasury or the Pension Fund Trustee. D.C. Code § 1-815.02(d).

8. The Plaintiffs offer additional causes of action arising under the Fair Labor Standards Act, 29 U.S.C. § 201, *et. seq.*, including prayers for injunctive relief.

9. The United States District Courts have jurisdiction to restrain the withholding of payment of minimum wages found to be due under the Act. 29 U.S.C. § 217.

10. The Plaintiffs offer additional causes of action arising under 42 U.S.C. §1983 for being subjected to a deprivation of their rights, privileges, and/or immunities secured by the Constitution and applicable law, by persons acting under color of the authority of the government of the District of Columbia.

11. Under 28 U.S.C. §1331, the United States District Court shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States, including 42 U.S.C. §1983.

12. The Plaintiffs offer additional causes of action involving common law claims, including breach of contract, unjust enrichment, promissory estoppel, intentional or negligent misrepresentation, and detrimental reliance.

13. Under 28 U.S.C. § 1367, the United States District Court shall have shall have supplemental jurisdiction over all other claims that are so related to claims in the

action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

14. The Plaintiffs' common law claims are so related to the Federal law claims that they form part of the same case or controversy.

15. The Plaintiffs ask this Court to declare their rights and other legal relations.

16. Under the Declaratory Judgment Act, 28 U.S.C. § 2201 *et. seq.*, the United States District Court may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.

17. In accordance with D.C. Code § 12-309, by service of this Complaint, the Plaintiffs' attorney has given notice in writing to the Mayor of the District of Columbia of the approximate time, place, cause, and circumstances of the injuries sustained by the Plaintiffs within six months after such injuries were sustained. However, the Plaintiffs make no waiver of defenses against these notice requirements for any claim brought forth in a Federal venue and for any claim arising under Federal law. The Plaintiffs further assert the Defendant's good and sufficient actual and/or constructive prior notice of all claims.

### **CLASS ACTION ALLEGATIONS**

18. The proposed Plaintiff Class is a class of persons so numerous that the joinder of all members is impracticable. FRCP 23(a). The proposed Plaintiff Class consists of all District of Columbia retired employees who participate in the United States Civil Service Retirement System, who have been reemployed after retirement by the

District of Columbia, and who are, have been or will be subject to a reduction in pay in offset of retirement benefits in violation of D.C. Code § 1-611.03(b).

19. The District of Columbia has identified 28 persons who are presently subject to the offset. There are believed to be potentially several hundred additional individual persons in the proposed Plaintiff class.

20. The Class Representatives are presently the subject to a reduction in pay in offset of retirement benefits in violation of D.C. Code § 1-611.03(b). Their interests are sufficiently similar to all other members of the proposed Plaintiff Class that they will fairly and adequately protect the interests of the other members. FRCP 23(a).

21. As detailed below, the Defendant has acted on grounds generally applicable to the proposed Plaintiff Class. FRCP 23(b)(2).

22. The causes of action involve questions of law and fact common to all members of the class. Questions regarding the rights of all members of the class predominate over any questions affecting only individual members and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. FRCP 23(b)(3).

### **RELEVANT FACTS**

23. The status of employees of the District of Columbia government has changed over the years as Congress has changed the nature of the local government. At least prior to the establishment of the Mayor-Commissioner form of government under Reorganization Plan No. 3 of 1967, *see* 32 F.R. 11669, 81 Stat. 948, Sec. 301 (1967), some employees of the District government were treated as federal officers for certain

purposes. *Lucas v. United States*, 268 F.3d 1089, 1091 (D.C. Cir. 2001) (citing *Reid v. Covert*, 351 U.S. 487, 489-90 (1956), *rev'd on other grounds* 354 U.S. 1 (1957); *Zinkhan v. District of Columbia*, 271 F. 542, 544-45 (D.C. Cir. 1921)).

24. The District of Columbia Home Rule Act provided that the Mayor of the District of Columbia would administer the personnel functions for District of Columbia government departments and agencies, and that personnel legislation enacted by Congress applicable to District of Columbia government employees would continue in force only until the Council of the District of Columbia enacted a District government merit system. D.C. Code § 1-204.22(3).

25. On October 31, 1978, the D.C. Council adopted the D.C. Comprehensive Merit Personnel Act, codified at D.C. Code § 1-601, *et seq.*, which became effective on March 3, 1979. *See Am. Fed'n of Gov't Employees v. Barry*, 459 A.2d 1045, 1048-49 (D.C. 1983).

26. In order to ensure continuity in retirement benefits, the Merit Personnel Act provided that such employees first employed before October 1, 1987, would continue to participate in the United States Civil Service Retirement System, *see* D.C. Code § 1-626.02; for employees hired on or after that date, District of Columbia retirement benefits would apply. *See id.* at § 1-626.03.

27. Each of the named Plaintiffs herein, and the members of the proposed Plaintiff class, was first hired by the District of Columbia government prior to October 1, 1987.

28. Each of the named Plaintiffs herein, and the members of the proposed Plaintiff class, retired from the District of Columbia government and receive United States Civil Service Retirement System benefits.

29. Each of the named Plaintiffs herein, and the members of the proposed Plaintiff class, was subsequent to their retirement, rehired by the District of Columbia.

30. Each of the named Plaintiffs herein, and the members of the proposed Plaintiff class, identified themselves to the District of Columbia as retired employees receiving United States Civil Service Retirement System benefits at the time of their applications for re-employment.

31. Prior to 2004, District of Columbia law provided that “the salary of any annuitant who first becomes entitled to an annuity under this subchapter, after November 17, 1979, and who is subsequently employed by the government of the District of Columbia shall be reduced by such amount as is necessary to provide that the sum of such annuitant’s annuity under this subchapter and compensation for such employment is equal to the salary otherwise payable for the position held by such annuitant.” D.C. CODE § 5-723(e).

32. On August 2, 2004, the District of Columbia City Council enacted D.C. Act 15-489, eliminating the reduction in pay of a District of Columbia government retiree who receives United States Civil Service Retirement System benefits and is subsequently rehired by the District of Columbia. D.C. CODE § 1-611.03(b), 51 D.C. REG. 8779. This law remains in effect today.

33. Each of the named Plaintiffs herein was rehired by the District of Columbia subsequent to the enactment of D.C. Act 15-489.

34. Each of the named Plaintiffs herein was paid their salary for their new District of Columbia government job without the D.C. Code § 5-723(e) reduction in offset of their annuity until 2012.

35. On December 7, 2011, the Washington City Paper reported that Plaintiff Louis Cannon and other District of Columbia retirees “have been improperly paid both a full pension and full salary for several years even though the D.C. Code prohibits that”.

Disaster Pay, WASHINGTON CITY PAPER, December 7, 2011.

<http://www.washingtoncitypaper.com/blogs/looselips/2011/12/07/disaster-pay/> (accessed January 26, 2012).

36. The Washington City Paper further reported that the Chief of Police of the District of Columbia Metropolitan Police Department recently provided raises to offset the offset that was about to be imposed upon them.

Commander Daniel Hickson, who oversees the MPD’s First District, saw his pay jump from \$129,999 to \$177,000. Lieutenant Jacob Major’s salary went from \$100,000 to \$136,050. And Bill Sarvis, a medical services manager who has only been on the job since March, had his salary go from \$125,000 to \$152,686. For Hickson and Major, their salaries now far eclipse what others of similar ranks are making.

*Id.*

37. None of the named Plaintiffs, and none the members of the proposed Plaintiff class, received any such pay raise.

38. On or about January 25, 2012 each of the named Plaintiffs learned that the District of Columbia had reduced the pay of each of their respective first pay periods of 2012 by such amount to offset such annuitant’s annuity from the salary otherwise payable for their positions. Some of the Plaintiffs received pay statements of zero dollars.

## COUNT I

### **Deprivation of a Property Interest**

39. The allegations set forth in Paragraphs 1 through 38 above are referenced and incorporated as if fully repeated herein.

40. By taking pay accrued to them in consideration of services rendered to the District of Columbia in direct violation of D.C. Act 15-489, the Defendant unlawfully deprived a property right vested upon the Plaintiffs. Such property interest has been taken absent any due process or compensation, in violation of the Fifth Amendment of the U.S. Constitution.

41. Such taking was the official policy of the District of Columbia government.

## COUNT II

### **Violation of the Fair Labor Standards Act**

42. The allegations set forth in Paragraphs 1 through 41 above are referenced and incorporated as if fully repeated herein.

43. The District of Columbia government is obligated to pay the federally mandated minimum wage to its employees as “the government of a State...[or] any agency of...a State. 29 U.S.C. §§ 203 (c), (x). *See Wilson-Jones v. Caviness*, 99 F.3d 203, 207 (6<sup>th</sup> Cir. 1996).

44. By reducing the Plaintiffs’ pay by such amount to offset the Plaintiffs’ annuity from the salary otherwise payable for their positions, the District of Columbia has

reduce the actual pay paid to the Plaintiffs below that of the federally mandated minimum wage, in violation of the Fair Labor Standards Act.

### **COUNT III**

#### **Deprivation of Equal Protection Under Law**

45. The allegations set forth in Paragraphs 1 through 44 above are referenced and incorporated as if fully repeated herein.

46. The District of Columbia government has reduced the pay of each of the Plaintiffs, and the members of the proposed Plaintiff Class, by such amount to offset such Plaintiffs' annuity, and the annuities of the proposed Plaintiff Class, from the salary otherwise payable for their positions.

47. The District of Columbia government has offset this offset for other similarly situated persons without a rational basis under law.

48. By the District of Columbia government enforcing this offset against the Plaintiffs, and the members of the proposed Plaintiff Class, but effectively negating the effect of the offset on other persons by simply giving them more money, the Plaintiffs, and the members of the proposed Plaintiff Class have been denied equal protection of the laws.

49. Such deprivation of equal protection of the laws was a direct result of an official policy of the District of Columbia government.

## **Count IV**

### **Breach of Contract**

50. The allegations set forth in Paragraphs 1 through 49 above are referenced and incorporated as if fully repeated herein.

51. The Plaintiffs, and the members of the proposed Plaintiff Class, entered into contracts of re-employment with the District of Columbia government in which they agreed to provide good and valuable services in exchange for the salaries offered.

52. The Plaintiffs, and the members of the proposed Plaintiff Class, completed all of their obligations of the bargain, yet were deprived of such promised pay after they had provided their services.

53. The failure of the District of Columbia to pay the Plaintiffs, and the members of the proposed Plaintiff Class, for their services breached the express and implied provisions of their respective contracts of re-employment with the District of Columbia as well as implied covenants of good faith and fair dealing.

54. The Plaintiffs, and the members of the proposed Plaintiff Class, were injured as a direct and proximate cause of such breach by the District of Columbia.

## **Count V**

### **Unjust Enrichment**

55. The allegations set forth in Paragraphs 1 through 54 above are referenced and incorporated as if fully repeated herein.

56. If the Court finds no contract between the parties, the District of Columbia government has nevertheless retained a benefit, the Plaintiffs' pay, and the pay of the proposed Plaintiff Class, which in justice and equity belongs to them.

## **Count VI**

### **Detrimental Reliance/Promissory Estoppel**

57. The allegations set forth in Paragraphs 1 through 56 above are referenced and incorporated as if fully repeated herein.

58. The Plaintiffs, and the members of the proposed Plaintiff Class, entered into contracts of re-employment upon the District of Columbia government's promise to pay them the respective salaries indicated.

59. The Plaintiffs, and the members of the proposed Plaintiff Class, reasonably relied upon such promises.

60. The Plaintiffs, and the members of the proposed Plaintiff Class, relied upon such promises to their detriment.

61. The injustice to the Plaintiffs, and the members of the proposed Plaintiff Class, was not avoidable.

## **Count VII**

### **Intentional or Negligent Misrepresentation**

62. The allegations set forth in Paragraphs 1 through 61 above are referenced and incorporated as if fully repeated herein.

63. Agents of the District of Columbia falsely represented, or failed to disclose, to the Plaintiffs and the members of the proposed Plaintiff Class, that they would be subject to an offset for their federal annuities from the salary otherwise payable for their positions

64. Such misrepresentation or omission was material to their re-employment with the District of Columbia government.

65. The Plaintiffs, and the members of the proposed Plaintiff Class, reasonably relied upon the misrepresentation or omission to their detriment.

#### **Request for Declaratory and Injunctive Relief**

66. The allegations set forth in Paragraphs 1 through 65 above are referenced and incorporated as if fully repeated herein

67. The Plaintiffs, and the members of the proposed Plaintiff Class, are entitled to declaratory relief under 28 U.S.C. § 2201(a), wherein the Plaintiffs ask this Court to declare the offset upon their salaries, and the salaries of the proposed Plaintiff Class, to be unlawful.

68. The Plaintiffs ask this Court to maintain the *status quo* and enjoin the Defendant from making any further offset of the Plaintiffs' salaries and the salaries of the proposed Plaintiff Class. The Plaintiffs further ask the Court to direct the Court to return such offsets previously taken.

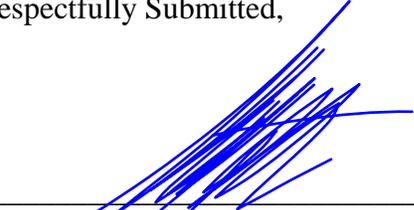
**WHEREFORE**, the Plaintiffs request the Court to find the Defendant's actions to be unlawful and injurious to the Plaintiff and the other members of the Plaintiff Class.

The Plaintiffs demand monetary damages exceeding twenty dollars, in an amount to be determined according to proof at trial, plus costs, interest and attorney's fees as provided by 29 U.S.C. § 216(b) and 42 U.S.C. § 1988.

The Plaintiffs further ask the Court to award such punitive damages as the Court finds necessary to appropriately punish the Defendant and deter similar misconduct in the future.

The Plaintiffs demand a jury trial on all issues so triable.

Respectfully Submitted,



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