UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

No. 10 Civ. 5236 (RJS)

DAVID GOODMAN,

Plaintiff,

VERSUS

CITY OF NEW YORK, *et al.*,

Defendants.

No. 11 Civ. 3432 (RJS)

MICHAEL DOHERTY,

Plaintiff,

VERSUS

CITY OF NEW YORK, *et al.*,

Defendants.

MEMORANDUM AND ORDER
September 26, 2011

RICHARD J. SULLIVAN, District Judge:

Plaintiffs in these factually-similar cases are former New York City police officers and military reservists who, at various periods during their employment with the New York City Police Department ("NYPD"), were summoned to active duty. Plaintiffs have asserted individual claims alleging that Defendants violated the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301, *et seq.* ("USERRA"), by failing to correctly calculate Plaintiffs' pension benefits. Specifically, Plaintiffs argue that Defendants' determination of Plaintiffs' pension payments should have taken into account the overtime and night shift differential pay that Plaintiffs would

have earned had they not been deployed to active duty.

Before the Court are Defendants' motions to dismiss Plaintiffs' complaints pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. For the reasons that follow, Defendants' motions are denied.

I. BACKGROUND

A. Statutory Framework

Congress enacted USERRA in 1994 to "clarify, simplify, and, where necessary, strengthen the existing veterans' employment and reemployment rights provisions." *Gummo v. Vill. of Depew, NY*, 75 F.3d 98, 105 (2d Cir. 1996) (internal quotation marks omitted). Specifically, in passing USERRA, Congress sought "(1) to encourage noncareer service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers . . . ; (2) to minimize the disruption to the lives of persons performing service in the uniformed services as well as to their employers . . . ; and (3) to prohibit discrimination against persons because of their service in the uniformed services." 38 U.S.C. § 4301.

Among the protections provided by USERRA are provisions related to the pension benefits a servicemember receives from his civilian employer. *See* 38 U.S.C. § 4318. As a general matter, § 4318 of USERRA provides that a servicemember's pension benefits will continue to accrue while he is on active duty:

> Each period served by a person in the uniformed services shall, upon reemployment . . . be deemed to constitute service with the employer . . . for the purpose of determining the nonforfeitability of the person's accrued benefits and for the purpose of determining the accrual of benefits under the plan.

Id. § 4318(a)(2)(B). To that end, USERRA requires an employer to make contributions to the pension fund of a deployed reservist "in the same manner and to the same extent the allocation occurs for other employees during the period of service." *Id.* § 4318(b)(1).

To determine the amount that an employer is required to contribute to a servicemember's pension plan while he is on active duty, USERRA provides as follows:

> [T]he employee's compensation during the period of service described in subsection (a)(2)(B) shall be computed--
>
> > (A) at the rate the employee would have received but for the period of service described in subsection (a)(2)(B), 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).

B. Facts[1]

Plaintiffs are retired military reservists and NYPD officers who are members of the New York City Police Pension Fund (the "Pension Fund"). (*Goodman* Compl. ¶¶ 8-9, 15; *Doherty* Compl. ¶¶ 8-9, 14.) The Pension Fund requires contributions by the employee and the employer in an amount that constitutes a percentage of the employee's income. *See* New York City Police Pension Fund, *About PPF*, available at http://www.nyc.gov/html/nycppf/html/about/about_ppf.shtml (accessed September 9, 2011) ("Pension Fund Website"). According to the Complaint, while employed by the NYPD, Plaintiffs regularly worked overtime and night shifts, for which they received extra pay. (*Goodman* Compl. ¶ 12; *Doherty* Compl. ¶ 11.) On several occasions during their employment with the NYPD, Plaintiffs were called to active duty. (*Goodman* Compl. ¶ 11; *Doherty* Compl. ¶ 10.) During each period of active service, the NYPD continued to pay Plaintiffs their base salaries, and contributions were made to Plaintiffs' pension funds based on this rate of pay.

Since Plaintiffs' retirement from the NYPD, each has received monthly payments from the Pension Fund. (*Goodman* ¶ 15; *Doherty* ¶ 14.) Each Plaintiff's monthly pension payment is calculated based on his rate of pay in either the thirty-six months preceding retirement or the twelve months preceding retirement, whichever is higher. *See* Pension Fund Website. Plaintiffs allege that they were deployed to active duty during the final thirty-six months of their employment with the NYPD and, accordingly, their pension payments do not reflect the extra pay they would have received had they not been deployed.

[1] The following facts, which are not in dispute, are taken from Plaintiffs' respective complaints as well as matters of which the Court may take judicial notice. *See Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007). In addition, the Court makes reference to the parties' memoranda of law, designated as follows: Defendants' opening brief in *Goodman* ("Defs.' Mem."); Plaintiff's opposition brief in *Goodman* ("Pl.'s Opp'n); Defendants' supplemental brief in *Doherty* ("*Doherty* Mem."); Plaintiffs' opposition brief in *Doherty* ("*Doherty* Opp'n); Defendants' reply brief in *Doherty* ("*Doherty* Reply").

II. Procedural History

Plaintiff Goodman commenced his action in this Court on July 9, 2010. Defendants moved to dismiss the complaint on October 8, 2010, and the motion was fully submitted as of November 19, 2010. On May 19, 2011, Plaintiff Doherty filed his complaint, advancing substantially similar allegations to those put forward by Plaintiff Goodman. Shortly thereafter, Defendants expressed their intention to move to dismiss the *Doherty* action. Due to the similarity of the two actions, and the fact that the parties in each action are represented by the same counsel, the Court deemed Defendants' contemplated motion to dismiss Doherty's complaint as made, and construed the briefing in the *Goodman* action as applying equally toward Defendants' motion to dismiss the *Doherty* action. The Court permitted the parties to make supplemental submissions, and, on July 8, 2011, Defendants submitted a brief in which they argued that, in addition to failing to state a claim under USERRA, Doherty's action is barred by the statute of limitations. Briefing on this issue was completed as of August 1, 2011. The Court thereafter held oral argument on August 19, 2011.

III. Standard of Review

On a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil

Procedure, the Court must accept all well-pleaded allegations contained in the complaint as true and draw all reasonable inferences in the plaintiff's favor. *See ATSI Commc'ns, Inc. v. Shaar Fund, Ltd.*, 493 F.3d 87, 98 (2d Cir. 2007); *Grandon v. Merrill Lynch & Co.*, 147 F.3d 184, 188 (2d Cir. 1998). To state a legally sufficient claim, a complaint must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility where the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. ---, 129 S. Ct. 1937, 1949 (2009). By contrast, a pleading that only "offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Id.* (quoting *Twombly*, 550 U.S. at 555). If the plaintiffs "have not nudged their claims across the line from conceivable to plausible, their complaint must be dismissed." *Twombly*, 550 U.S. at 570.

IV. DISCUSSION

A. Calculation of Plaintiffs' Pension Benefits

As stated above, Plaintiffs argue that Defendants failed to calculate Plaintiffs' pension benefits in accordance with USERRA, because the compensation rate that was used for this calculation did not include overtime and differential pay that Plaintiffs would have earned "but for the period of service."[2] *Id.* § 4318(b)(3)(A). To the extent that the amount of such compensation is not "reasonably certain," Plaintiffs argue that their pension benefits should be based on their average rate of compensation during the 12-month period immediately preceding their period of service. *See id.* § 4318(b)(3)(B). Defendants, referencing USERRA's legislative history as well as certain provisions of its implementing regulations, contend that the pension provisions of USERRA "contemplate a situation in which the employee was not paid at all during his or her period of military service" and, therefore, do not apply to Plaintiffs. (Defs.' Mem. at 8.)

The first step in the Court's analysis of USERRA's pension provisions "is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997). "The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Daniel v. Am. Bd. of Emergency Med.*, 428 F.3d 408, 423 (2d Cir. 2005); *accord Aslanidis v. U.S. Lines, Inc.*, 7 F.3d 1067, 1072-73 (2d Cir. 1993) ("[A] court should presume that the statute says what it means."). "If the words of a statute are unambiguous, judicial inquiry should end, and the law [shall be] interpreted according to the plain meaning of its words." *Aslanidis*, 7 F.3d at 1072-73 (citing *Rubin v. United States*, 449 U.S. 424, 430 (1981)).

The statutory language at the center of this dispute is USERRA's provision that, "[f]or purposes of computing an employer's

[2] Plaintiffs are not seeking back pay for the overtime and differential pay they allegedly would have received had they not been deployed. Indeed, a civilian employer is not required to pay servicemembers any compensation during periods of active duty. *See Monroe v. Standard Oil Co.*, 452 U.S. 549, 563 (1981). Rather, Plaintiffs are merely seeking that their pension benefits be based on the compensation they would have received had they not been on active service.

liability" to an employee's pension plan, "the employee's compensation during the period of service . . . shall be computed":

> (A) at the rate the employee would have received but for the period of 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.

38 U.S.C. § 4318(b)(3). The Court finds nothing in the plain language of these provisions to support Defendants' claim that Congress intended § 4318(b)(3) to apply only in a situation "in which the employee was not paid at all during his or her period of military service." (Defs.' Mem. at 8.) The statute explicitly directs employers to calculate a reservist's pension benefit "at the rate [of compensation] the employee would have received *but for* the period of service." 38 U.S.C. § 4318(b)(3)(A) (emphasis added). While this statutory provision would certainly be triggered in the event that a servicemember receives no compensation from his civilian employer while on active duty, there is nothing in the plain language of the statute to suggest that the provision is limited to such a circumstance. To the contrary, the most natural reading of this provision 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. *Id*. § 4318(b)(3).

Defendants argue, nevertheless, that the regulation promulgated under USERRA, 20 C.F.R. § 1002.267, is reflective of Congress's purported intention that USERRA's pension provisions apply only to reservists who were not compensated at all while on active duty. Specifically, Defendants highlight the regulation's instruction that "[w]here the employee's rate of compensation *must be calculated* to determine pension entitlement, the calculation must be made using the rate of pay that the employee would have received but for the period of uniformed service." (Defs.' Mem. at 8-9 (quoting 20 C.F.R. § 1002.267).) According to Defendants, because Plaintiffs were in fact compensated by Defendants during their periods of active duty, and because both Plaintiffs and Defendants made pension contributions based on this rate of compensation, there is nothing to calculate and USERRA's pension provisions are not triggered.

The Court is not persuaded, however, that the regulation's use of the phrase "must be calculated" compels the conclusion that USERRA's pension provisions are limited to servicemembers who were not paid at all while on active duty. To the contrary, the language of this regulation appears to apply naturally to the circumstances raised in this case – where an element of the employee's compensation, which by its very nature is uncertain, was not actually paid to the reservist and therefore "must be calculated." Indeed, the regulation's next provision explicitly contemplates a situation in which some or all of the servicemember's compensation is similarly indefinite: "[w]here the rate of pay the employee would have received is not reasonably certain, *such as where compensation is based on commissions earned*, the average rate of compensation during the 12-month period prior to the period of uniformed service must be used." 20 C.F.R. § 1002.267(b)(1) (emphasis added). The Court sees no meaningful difference between the example described in the regulation and the facts of

the case at bar. There is certainly no basis for concluding that the drafters of this regulation intended to articulate, in such a cryptic fashion, a distinction between employees who were paid a portion of their compensation while on active duty and those who were not. If Congress had intended to draw such a distinction, it could have done so with much greater clarity in the language of the statute itself.

Further, there is no merit to Defendants' argument that overtime and night shift differential pay should be excluded from pension calculations because they are "non-seniority benefits." (Defs.' Mem. at 12 (citing 38 U.S.C. § 4316(a)).) Defendants correctly note that § 4316 of USERRA provides certain protections to seniority benefits that it does not provide to non-seniority benefits. (*See* Defs.' Mem. at 12.) Citing the Fifth Circuit's decision in *Rogers v. City of San Antonio*, 392 F.3d 758 (5th Cir. 2004), Defendants argue that, because the right to receive overtime pay is a non-seniority benefit, it is improper to include such pay in the calculation of a servicemember's pensionable compensation. (Defs.' Mem. at 11-18.)

However, as noted above, Plaintiffs are *not* seeking to be compensated for the overtime and differential pay they did not earn while on active duty. Rather, Plaintiffs only seek to include this income in the *calculation of their pensionable compensation*. Accordingly, § 4316 does not apply and the seniority/non-seniority distinction is inapposite. Indeed, § 4316 explicitly exempts pension benefits from its treatment of non-seniority benefits. 38 U.S.C. § 4316(b)(6) ("The entitlement of a person to a right or benefit under an employee pension benefit plan is provided for under section 4318.").

Despite the plain language of the statute, Defendants point to isolated statements from USERRA's legislative history in support of their position that the pension benefit provisions at issue apply only to servicemembers who were not compensated by their employer while on active duty. Specifically, Defendants rely on a House Report that states, in relevant part:

> [USERRA's pension provisions] provide[] that if there is a need to use imputed earnings of an employee to calculate pension benefits *during a period when in fact there were no earnings because of the absence in military service*, the employee's preservice rate of pay will be used.

103 H. Rpt. 65 (1993) (emphasis added). Defendants argue that this piece of legislative history suggests that Congress *only* intended USERRA's pension provisions to "ensure that an employee absent for military duty will not lose contributions to his or her pension in a circumstance where the employer opts not to pay the employee during a period of military absence." (Defs.' Mem. at 9.)

Because the Court finds that USERRA's pension provisions are unambiguous, it need not consider the statute's legislative history. *See Barnhart v. Sigmon Coal Co., Inc.*, 534 U.S. 438, 450 (2002) (stating that "if the statutory language is unambiguous and the statutory scheme is coherent and consistent," then "[t]he inquiry ceases" (internal quotation marks omitted)); *Peralta-Taveras v. Attorney Gen.*, 488 F.3d 580, 584 (2d Cir. 2007) ("Legislative history is not to be used to 'beget' ambiguity in an otherwise unambiguous statute.") Nevertheless, a broader examination of USERRA's legislative history reveals a more varied

landscape than Defendants represent. As the bill's sponsor in the House of Representatives stressed, Congress' intent in passing USERRA was to "assure civilians called to the colors that they would not be disadvantaged while in service compared to workers whose lives were not similarly interrupted." 140 Cong. Rec. H91135 (daily ed. Sept. 13, 1994) (statement of Rep. Montgomery). Courts interpreting USERRA have consistently concurred with this notion, finding that the statute "is to be liberally construed in favor of those who served their country." *McGuire v. United Parcel Serv.*, 152 F.3d 673, 676 (7th Cir. 1998); *accord Hill v. Michelin N. Am., Inc.*, 252 F.3d 307, 312-13 (4th Cir. 2001) (USERRA "must be broadly construed in favor of its military beneficiaries"). Thus, even if the Court were to consider USERRA's legislative history, it would find that Congress' intention weighs strongly in favor of ensuring that a servicemember's pension is the same as if he had not been called to active duty.

Accordingly, 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 servicemember's deployment. Rather, whether Plaintiffs would have earned such variable compensation is an issue of fact that cannot be resolved without discovery.[3]

B. Statute of Limitations

Defendants also argue that Plaintiff Doherty's USERRA claims are barred by the four-year statute of limitations set forth in 28 U.S.C. § 1658(a). For purposes of this motion, the parties do not dispute that Doherty's claim accrued on January 27, 2007.[4] Thus, if the Court were to apply the four-year statute of limitations, Doherty's claim would have been time barred as of January 27, 2011 – four months prior to the commencement of his action. Doherty argues, however, that, pursuant to the Veterans' Benefits Improvement Act of 2008 ("VBIA"), 38 U.S.C. § 4327(b), his claim is timely.

USERRA, as originally enacted in 1994, did not specify a statute of limitations, providing instead that "no State statute of limitations shall apply to any proceeding under this chapter." 38 U.S.C. § 4323(i) (1994). While the plain language suggests that Congress did not intend for any statute of limitations – state or federal – to apply to USERRA, in practice courts have generally applied the four-year statute of limitations that attaches to any cause of action "aris[ing] under an Act of Congress enacted after [December 1, 1990.]" 28 U.S.C. § 1658(a); *see, e.g.*, *Middleton v. City of Chicago*, 578 F.3d 655, 661-62 (7th Cir. 2009).

[3] Defendants' also argue that Plaintiffs are not entitled to pension credit for overtime and differential pay because Plaintiffs did not make contributions to their pensions based on this level of compensation. In each complaint, however, Plaintiff seeks an order that Defendants "calculate and inform [Plaintiff] of the amount of pension contributions owed by [Plaintiff] as a result of recalculating [Plaintiff's] compensation . . . in accordance with USERRA." (*Goodman* Compl. ¶ F; *Doherty* Compl. ¶ F.) The Court agrees that whether and how much each Plaintiff may need to contribute to his pension fund is a question of fact that cannot be resolved at this stage of the litigation.

[4] Doherty retired from the NYPD on January 4, 2004. Upon his retirement, Doherty was redeployed to active duty, where he remained until January 27, 2007. Pursuant to the Servicemembers Civil Relief Act, 50 App. U.S.C. § 526, Doherty's USERRA claim was tolled during this period of service. *See id.* § 526(a) ("The period of a servicemember's military service may not be included in computing any period limited by law, regulation, or order for the bringing of any action or proceeding in a court.")

On October 10, 2008, however, Congress enacted the VBIA, which definitively exempted claims brought under USERRA from any statute of limitations. The statute provides, in relevant part:

> If any person seeks to file a complaint or claim with . . . a Federal or State court under this chapter alleging a violation of this chapter, there shall be no limit on the period for filing the complaint or claim.

38 U.S.C. § 4327(b). Because Doherty's claim accrued on January 27, 2007, it was not time barred when the VBIA took effect. The parties dispute, however, whether the VBIA eliminated the statute of limitations for such "live claims," or whether it applies only to claims that accrued after its enactment.

Defendants cite to *Landgraf v. USI Film Prods.*, 511 U.S. 244 (1994), in support of their position that application of the VBIA to Doherty's claims would have an "impermissible retroactive [e]ffect." (*Doherty* Reply at 2.) In *Landgraf*, the Supreme Court formulated a two-prong test for courts to apply in cases where a federal statute enacted after the events giving rise to a suit has the potential to affect the outcome of the case. First, a court must examine the statute to determine whether Congress has "expressly prescribed the statute's proper reach." *Landgraf*, 511 U.S. at 280. If Congress has done so, the inquiry ends. *See id*. "When, however, the statute contains no such express command, the court must determine whether the new statute would have retroactive effect, *i.e.*, whether it would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed." *Id*. If so, then the traditional presumption against retroactivity applies and the statute must be construed "as inapplicable to the event or act in question." *Fernandez-Vargas v. Gonzales*, 548 U.S. 30, 37-38 (2006).

The plain language of the VBIA suggests that Congress clearly "prescribed the statue's proper reach" and intended for no statute of limitations to apply to claims such as Doherty's. As noted above, the VBIA applies to "any person" who "seeks to file a complaint or claim . . . with a Federal or State court." 38 U.S.C. § 4327(b). Defendants argue that this language "suggests that [the statute] applies prospectively" and, therefore, only includes claims that accrued after the VBIA's passage. (*Doherty* Mem. at 9.) While the language "seeks to file" does indeed suggest a prospective application, the activity that is the subject of such application is the *filing* of the complaint, not the underlying actions that gave rise to the claim. *See Vernon v. Cassadaga Vally Cent. Sch. Dist.*, 49 F.3d 886, 890 (2d Cir. 1995) ("[W]here as here, the new rule announces a period of limitations, the conduct to which it refers is the plaintiff's conduct relating to the filing of the claim and not the defendant's conduct giving rise to the claim."). Accordingly, the express language of the VBIA indicates that it applies to any plaintiff who, like Doherty, filed his complaint after the statute was enacted.

Moreover, even if the Court were to conclude that the statute was silent on this point, thus triggering analysis of the second *Landgraf* factor, the Court nevertheless finds that application of the VBIA to Doherty's claims would clearly not result in an impermissible retroactive effect. As noted above, application of a statute has a "retroactive effect" only where such application "would impair rights a party

possessed when he acted, [or] increase a party's liability for past conduct, or impose new duties with respect to transactions already completed." *Landgraf*, 511 U.S. at 280. Here, applying the VBIA to Doherty's USERRA claim does not impair any of Defendants' rights, because, at the time that the VBIA was enacted, Defendants could not have asserted the statute of limitations defense. Further, the VBIA plainly does not impose new duties or liabilities on Defendants, but merely extends the time in which a plaintiff may assert claims for violations of already-existing rights. *See Vernon*, 49 F.3d at 889 (noting that, as a general matter, applying a new or amended statute of limitations to a cause of action "filed after its enactment, but arising out of events that predate its enactment, generally is not a retroactive application of the statute"). Because the VBIA did not change the rights or duties of either party, Doherty's claim is not barred by the second prong of *Landgraf*.

Other courts that have considered this issue have likewise found that application of the VBIA to claims that were live at the time of its enactment did not have an impermissible retroactive effect. *See Andritzky v. Concordia Univ. Chicago*, 09-6633 (RWG), 2010 WL 1474582, at *4-5 (N.D. Ill. Apr. 8, 2010) (holding that USERRA claims accruing within four years of the VBIA's enactment are governed by the VBIA and are therefore not time barred); *Roark v. Lee Co.*, No 09-0402 (WJH), 2009 WL 4041691, at *5 (M.D. Tenn. Nov. 20, 2009) (same).

The cases cited by Defendants involve claims by plaintiffs that had *expired* prior to a revision of the applicable statute of limitations and are therefore inapposite. *See Middleton*, 578 F.3d at 657 (7th Cir. 2009) (finding plaintiff's USERRA claim time barred where it was filed thirteen years after it had accrued and prior to the VBIA's enactment); *In re Enter. Mortg. Acceptance Co. Sec. Litig.*, 391 F.3d 401 (2d Cir. 2004) (finding that Section 804 of the Sarbanes-Oxley Act, which extended the statute of limitations period for certain securities fraud claims, did not revive previously-expired claims). In contrast to these cases, here the VBIA did not result in the "resurrection of previously time-barred claims" and therefore does not "increase [a defendant's] liability for past conduct." *In re Enterprise*, 391 F.3d at 410; *see Andritzky*, 2010 WL 1474582, at *3-4 (distinguishing *Middleton* from a case in which a plaintiff's USERRA claim accrued within four years of the VBIA's enactment). As such, the retroactivity concerns raised by these courts are not applicable here.

Accordingly, the Court finds that Plaintiff Doherty's claim is not barred by the statute of limitations.

V. CONCLUSION

For the foregoing reasons, Defendants' motions to dismiss are denied. Accordingly, IT IS HEREBY ORDRED that, by October 19, 2011, the parties shall submit a joint letter, not to exceed five pages, providing the following information in separate paragraphs: (1) a brief description of any discovery that has already taken place, and that which will be necessary for the parties to engage in meaningful settlement negotiations; (2) a list of all prior settlement discussions, including the date, the parties involved, and the approximate duration of such discussions, if any; and (3) the estimated length of trial.

IT IS FURTHER ORDERED that, by October 19, 2011, the parties shall submit a proposed case management plan and

scheduling order, which is available at www.nysd.uscourts.gov/judge/sullivan.

IT IS FURTHER ORDERED that the parties shall appear for a status conference on October 28, 2011, at 9:30 a.m. in Courtroom 21C of the United States District Court for the Southern District of New York, 500 Pearl Street, New York, New York.

The Clerk of Court is respectfully directed to terminate the motions located at Doc. No. 11 in *Goodman v. NYC*, 10 Civ. 5236, and at Doc. No. 11 in *Doherty v. NYC*, 11 Civ. 3432.

SO ORDERED.

Dated: September 26, 2011
New York, New York

RICHARD J. SULLIVAN
United States District Judge

* * *

Plaintiffs are represented by Assistant United States Attorney Tara La Morte, United States Attorneys' Office for the Southern District of New York, 86 Chambers Street, New York, New York 10007.

Defendants are represented by Alicia Welch, New York City Law Department, Office of the Corporation Counsel, 100 Church Street, New York, New York 10007.