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PETER A. MOORE, JR., CLERK  
US DISTRICT COURT, EDNC  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
RALEIGH DIVISION

No. 5 24 -CV-176-BO

MICHAEL J. FORBES, )  
614 Northampton Rd., )  
Fayetteville, N.C., 28310, pro se. )  
)  
*Plaintiff,* )

v. )

THE UNITED STATES ARMY, )  
Christine E. Wormuth, )  
Secretary of the Army (SoA) )  
101 Army Pentagon, )  
Washington, D.C., 20310 )  
)  
*Defendant.* )

PLAINTIFF’S MOTION FOR  
EMERGENCY INJUNCTIVE RELIEF

This 19<sup>th</sup> day of March, 2024.

1. Plaintiff Michael J. Forbes, *pro se*, respectfully makes this motion for an emergency injunction as set below and for the reasons set below, and provided in the accompanying “Memorandum in Support of Plaintiff’s Motion for Emergency Injunctive Relief from the U.S Army Qualitative Management Board” (hereafter ‘Board’). Fed. R. Civ. P. 65(a) and any associated subsequent Administrative Separation. In accordance with 5 USC § 552a, due to the Defendant’s formal denial<sup>1</sup> of the Plaintiff’s formal redress request<sup>2</sup> for the amendment through rescission of two retaliatory Personnel Action documents,<sup>3,4</sup> the Plaintiff petitions for this expedited relief.

<sup>1</sup> See Enclosure i, Response to Request for Redress submitted 24 November 2023, Brigadier General Lawrence G. Ferguson, November 30, 2023.

<sup>2</sup> See Enclosure 16 of the COMPLAINT, “Request for redress IAW with (sic) UCMJ Article 138,” James M. Branham, Esq., November 24, 2023.

<sup>3</sup> See Enclosure 5 of the COMPLAINT, “General Officer Memorandum of Reprimand,” Brigadier General Lawrence G. Ferguson, May 30, 2023.

2. The Plaintiff is a 55 year old Sergeant First Class veteran with 17 years of continuous active and unblemished service. The Defendant has used Personnel Action documents stemming from a corrupted investigation, a General Order Memorandum of Reprimand (GOMOR) and a Relief for Cause, (RFC) Non-Commissioned Officer Evaluation Report (NCOER), in retaliation for multiple protected communications regarding the Plaintiff being ordered (mandated) to participate in third-party, corporate, behavioral health applications.
3. These two orders occurred preemptive of the fulfillment of lawful informed consent requirements. Once the Plaintiff exercised his 1<sup>st</sup> Amendment right to ask for the information he was denied the information. He did not have an opportunity use that information to exercise his legislated right make an informed consent decision whether to participate because the opportunity did not exist; the Plaintiff lacks fidelity, but suspects that Institutional Review Board requirements were likely not adhered to.
4. These questionable Personnel Action documents at issue serve to support a scheduled<sup>5,6</sup> Administrative Separation decision before the Board on April 15, 2024, Moreover, the merit of the Personnel Action documents' is being challenged in the Plaintiff's associated

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<sup>4</sup> See Enclosure 6 of the COMPLAINT, DA Form 2166-9-2, "Relief for Cause," Non-Commissioned Officer Evaluation Report, thru July 12, 2023.

<sup>5</sup> See Enclosure ii, Notification of Immediate Reenlistment Prohibition Restriction Code RET13 Transaction, U.S. Army Human Resources Command, October 23, 2023, (delivered October 31, 2023).

<sup>6</sup> See Enclosure iii, Notification of Immediate Reenlistment Prohibition Restriction Code RET13 Transaction, U.S. Army Human Resources Command, December 26, 2023, (delivered January 16, 2024).

COMPLAINT FOR DECLARATIVE / INJUNCTIVE RELIEF AND MONETARY DAMAGES.

5. The Defendant failed to implement or adhere to legislated safeguards prior to either of the orders, but notably the Human Performance and Wellness (HPW) Program order, severely violated the HIPAA Act by executing a premature order by willfully falsifying its official support, communicating it and ultimately implementing it. Safeguards in this program were not employed for all Soldiers until after the Plaintiff engaged in protected communications<sup>7</sup> (one of many with multiple agencies). The Plaintiff had discussions with three representatives at two echelons of the Army Human Research Protection Office (the Defense Health Headquarters, Falls Church, VA, via email and a local office at Fort Bragg, NC, in-person) from February 3 thru February 10, 2023 (two months later). This likely contributed to a subsequently implemented limited safeguard policy memorandum signed by the unit's Surgeon. The content of the limited safeguard memo significantly correlated to the substance of the Plaintiff's concerns with the government HPW Program.<sup>8</sup>
6. The limited safeguard memo could have prevented the subsequent retaliation that followed, had it been in place prior to the ordered execution of the program even though it is still not fully compliant with legislated informed consent requirements of the Privacy Act, Human Research Subject Laws and HIPAA, Department of Defense regulations and presidential orders. Even after that, the Plaintiff was retaliated against further. The

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<sup>7</sup> See Enclosure iv, email exchanges with AHRPO personnel, February 3 - February 10, 2023.

<sup>8</sup> See Enclosure 10 of the COMPLAINT, Memorandum signed by 528<sup>th</sup> Sustainment Brigade (Special Operations) (Airborne), Brigade Surgeon, MAJ (P) ROBERT C SAWYER, MD, dated February 23, 2023.

retaliation operation conducted may result in severe consequences to the Plaintiff, if left unchecked.

7. A complete list of the retaliation is located in the accompanying COMPLAINT; materiel and significant effects of the retaliation is as follows: 1) the loss of retirement and other benefits, 2) the loss of salary and entitlements for over 3 years, 3) the removal from the promotion list for MSG (E-8), 4) the enduring damage to the Plaintiff's career and reputation, and 5) the time and financial expenditure that has been and may be incurred to remediate and expose the violations of law that led to the retaliation.
  
8. WHEREFORE, Plaintiff respectfully requests the Court grant his Motion and issue an Expedited Injunctive Relief pending an adjudication decision on the jurisdiction and merits of the Plaintiff's claims in the associated COMPLIANT.

 3/19/24

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