

FILED

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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. ___ : ___ - CV - ___ - ___

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
101 Army Pentagon,
Washington, D.C., 20310

Defendant.

COMPLAINT FOR DECLARATIVE/
INJUNCTIVE RELIEF AND MONETARY
DAMAGES

This 19th day of March 2024.

EXEMPLARY SERVICE

I am a 55-year-old Sergeant First Class with 17 years and two months of continuous active and unblemished service¹ (excluding the Personnel Actions referred to in this COMPLAINT). Prior to entering military service, I had a 14-year career as a Financial Advisor licensed with the Financial Industry Regulatory Authority (FINRA), also with an unblemished record.² I am concurrently a Military Whistleblower and being retaliated against. Given the recent unanimous Supreme Court Decision regarding Sarbanes-Oxley Act of 2002, especially 18 USC § 1514A, and its similarities to 10 USC § 1034, it is notable that my pristine record is being tarnished by Whistleblower retaliation from other Military Members who wish to obfuscate their multiple violations of our laws.

¹ See Enclosure 01, current military and civilian Biography tear-sheet, Michael J. Forbes.

² See Enclosure 02, resume, Michael J. Forbes.

This retaliation began 8 weeks after I was reviewed as

“...a top 15% NCO [Non-Commissioned Officer]³ with tremendous potential to excel. SFC [Sergeant First Class]⁴ Forbes ably served as both OIC [Officer-in-Charge]⁵ and NCOIC [NCO-in-charge]⁶ of the Brigade S2 Intelligence Section and revitalized our physical security programs; his performance validates his exceptional potential at the next level. Send to Master Leaders Course and promote to Master Sergeant ahead of peers,”⁷

by COLONEL Tavi N. Brunson (who would later be a direct retaliator against me), on October 3, 2022. I can easily provide my entire history of 15 Non-Commissioned Officer Evaluation Reports and 35 awards and decorations to prove that I had an “unblemished” career. I have also attached Character Reference Letters⁸ provided to BRIGADIER GENERAL Lawrence G. Ferguson and CAPTAIN Patrina Lowrie in my rebuttal to a General Order Memorandum of Reprimand (GOMOR)⁹ and the Relief-for-Cause (RFC, a Non-Commissioned Officer Evaluation Report or NCOER),¹⁰ respectively.

³ See Wikipedia, https://en.wikipedia.org/wiki/Non-commissioned_officer.

⁴ See Military-Ranks.org, “United States Army Rank Structure and Insignia,” for an easy reference for all Army ranks throughout this filing, <https://www.military-ranks.org/army>.

⁵ See Wikipedia, “Officer in Charge (OIC) – A commissioned officer in charge of an organization, facility or function, responsible for a group of Officers and Sailors in the organization.” <https://officerassignments.com/glossary-military-terms/>.

⁶ See Wikipedia, https://en.wikipedia.org/wiki/Non-Commissioned_Officer_in_Charge.

⁷ See Enclosure 03, DA Form 2166-8 (NCOER), thru August 31, 2022

⁸ See Enclosure 04, CW4(R) Dane A. Bergeron, CSM Aubrey L. Crenshaw, SGM(R) Anthony J. Armijo, SFC(R) Donald Bleyl, SFC Eric L. Salinas, SSG Valerie M. Hughes

⁹ See Enclosure 05, General Officer Memorandum of Reprimand, BRIGADIER GENERAL Lawrence G. Ferguson, May 30, 2023.

¹⁰ See Enclosure 06, Relief for Cause NCOER, CAPTAIN Patrina Lowrie, signed July 21, 2023

JURISDICTION

This complaint is brought under the provisions of the Privacy Act of 1974, but also involves violations by the United States Army of the First, Fourth, Fifth, and Thirteenth amendments to the U.S. Constitution and therein my Civil Liberties and Rights;¹¹ other Federal Laws that were violated are based in the Privacy Act of 1974,¹² with violations that span the Health Insurance Portability and Accountability Act (HIPAA) of 1996,¹³ the Evidence-Based Act of 2019;¹⁴ the Protection of Human Subjects Laws,^{15,16,17} the Military Whistleblower Protection Act (MWPA) of 1986,¹⁸ and three Presidential Executive Orders.^{19,20,21}

¹¹ *The Constitution of the United States: A Transcription*. National Archives, U.S. National Archives and Records Administration, January 1, 2024, www.archives.gov/founding-docs/constitution-transcript.

¹² 5 U.S.C. § 552a, “Privacy Act of 1974.”

¹³ See Public Law 104-191, HIPAA of 1996.

¹⁴ See 44 USC § 3572, section of PL 115-435, Foundations for Evidence-Based policymaking Act of 2018.

¹⁵ See 45 CFR 46, Office of the Secretary of Defense, “Protection of Human Subjects.”

¹⁶ See 32 CFR Part 219, Department of Health and Human Services, “Protection of Human Subjects.”

¹⁷ See 10 USC § 980. Limitation On [DoD] Use Of Humans As Experimental Subjects

¹⁸ See 10 USC § 1034. Military Whistleblower Protection Act of 1986

¹⁹ See MEMORANDUM M-10-23, “Guidance for Agency Use of Third-Party Websites and Applications,” Executive Office of the President, June 25, 2010, https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/memoranda_2010/m10-23.pdf.

²⁰ See MEMORANDUM M-10-22, “Guidance for Online Use of Web Measurement and Customization Technologies,” Executive Office of the President, June 25, 2010, https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/memoranda_2010/m10-22.pdf.

²¹ See Executive Order 12333, Ch. 2-10, “Human Experimentation,” December 4, 1981, https://media.defense.gov/2021/Jul/20/2002806826/-1/-1/0/19811204_1980_DOC_3984075_%20EO12333.PDF.

The issue of Exhaustion of Administrative Remedies

The JURISDICTION for this COMPLAINT in federal court is the Privacy Act of 1974,²² and the DoD Privacy Program,²³ under the analysis adopted in the 2nd Circuit Court ruling, *Diederich v. US Army*.²⁴ DoD Agency Officials twice attempted (via order) to willfully, knowingly, coercively, and unlawfully maintain (or collect and retain) my private, personally identifiable, behavioral health data using a novel third-party, corporate-surrogate concept without proper notice and requisite consent. Notably, *Guitard v. US Navy*, 967 F.2d 737²⁵ enumerated exhaustion doctrine exemptions may apply; all of which have merit to my case, as follows:

“(1) available remedies provide no ‘genuine opportunity for adequate relief’”²⁶ - The Qualitative Management Board prohibits “[c]orrespondence that criticizes or reflects on the character, conduct, or motives of any other Soldier will not be provided to the board,”²⁷ which does not allow me to argue that my behavior was appropriate when faced with the Army’s Privacy violations. Moreover, the open Inspector General Investigation relies on a similar affirmative defense²⁸ clause for a Commander to “automatically avoid liability”²⁹ and focus the burden on the IG investigator to prove animus, (this

²² 5 USC § 552a, “Privacy Act of 1974,” (g), (5),

²³ DoD 5400.11-R, “Department of Defense Privacy Program,” May 14, 2007.

²⁴ *Diederich v. US Army*, 878 F.2d 646 (2d Cir.1989)

²⁵ *See Guitard v. US Navy*, 967 F.2d 737.

²⁶ *Ibid.*

²⁷ *See* AR 635-200, Ch 16-11, (g) “Pre-Board Soldier Options,” (2), https://armypubs.army.mil/epubs/DR_pubs/DR_a/ARN40058-AR_635-200-001-WEB-3.pdf.

²⁸ *See* GUIDE TO INVESTIGATING MILITARY WHISTLEBLOWER REPRISAL AND RESTRICTION COMPLAINTS. Figure 2.1., April 18, 2017, https://www.dodig.mil/Portals/48/Documents/Programs/Whistleblower/Guide_to_Investigating_Military_Whistleblower_Reprisal/GuideToInvestigatingMilitaryWhistleblowerReprisalAndRestrictionComplaints.pdf.

²⁹ *See* Murray v. UBS SECURITIES, LLC AND UBS AG, REPLY BRIEF FOR PETITIONER, p. 8, para. 1.

diversion is what the Supreme Court ruled against, in <https://sprc.org/online-library/the-challenge-and-the-promise-strengthening-the-force-preventing-suicide-and-saving-lives>, see ‘animosity’ below).³⁰

“(2) irreparable injury may occur without immediate judicial relief”³¹ Irreparable damages have already occurred in loss of possible promotion wages and assets to address these violations and the retaliation that ensued; more damages of well over \$2 million will follow, given my age and lack of opportunity for another pension, if this is not curtailed,

“(3) administrative appeal would be ‘futile’”³² - There is no administrative appeal to a Qualitative Management Program (QMP) Board³³ and I cannot appeal to the QMP Board on the basis that the GOMOR and RFC are retaliatory due to exemption “(1)” above, nor can I engage any other venue to challenge the documents or the associated investigations (directly for that matter), prior to separation, and,

“(4) in certain instances a plaintiff has raised a ‘substantial constitutional question’”³⁴ - My complaint raised multiple substantial constitutional questions for myself and thousands of other Military members across all branches of our Department of Defense.

³⁰ See U.S. Supreme Court (Slip Opinion), OCTOBER TERM (2023), “Murray v. UBS Securities et.al., February 8, 2024.

³¹ See *Guitard v. US Navy*, 967 F.2d 737.

³² See *Guitard v. US Navy*, 967 F.2d 737.

³³ See AR 635-200, b. “Policy.” (8) “A determination of denial of continued active service stemming from the QMP process is final. There are no appeal provisions because every NCO will be afforded complete due process prior to the NCO evaluation board convene date and consideration for continued active service.” June 28, 2021 https://armypubs.army.mil/epubs/DR_pubs/DR_a/ARN40058-AR_635-200-001-WEB-3.pdf.

³⁴ See *Guitard v. US Navy*, 967 F.2d 737.

Animosity

With respect to the open Inspector General (IG) office Reprisal/Retaliation investigation, the 100th Congress stated “[S]upervisors do not usually write down or tell other employees of their intent to take prohibited reprisal against an employee,”³⁵ and the Supreme Court quoted case law in their Sarbanes-Oxley ruling on February 8, 2024, that stated “the employers lack of ‘animosity’ is ‘irrelevant.’”³⁶ If ‘retaliatory intent’ or ‘animus’ is not necessary to prove Whistleblower retaliation in Corporate America, why do military Commanders get to escape to this affirmative defense³⁷ and avoid every ‘contributing factor’ element of retaliation as long as they comply with the following,

*[n]othing in this paragraph shall be construed to limit the ability of a commander to consult with a superior in the chain of command, an inspector general, or a judge advocate general on the disposition of a complaint against a member of the armed forces for an allegation of collateral misconduct or for a matter unrelated to a protected communication. Such consultation shall provide an affirmative defense against an allegation that a member requested, directed, initiated, or conducted a retaliatory investigation under this section?*³⁸

The Military Whistleblower Protection Act is silent on a burden of proof but the U.S. Army, IG School is not; they agree, “Testimony of an RMO [Responsible Management Official] containing a direct

³⁵ See “S. Rep. No. 413, 100th Cong., 2d Sess. 13 (1988); see also Petr. Br. 3-8,” *Murray v. UBS Securities, LLC and UBS AG*, No. 22-660, September 7, 2023.

³⁶ See *Bostock v. Clayton County*, 590 U. S. 644, 658, 663. Pp. 7–10.

³⁷ See 10 USC 1034 (b),(2), (C)

³⁸ See “Guide to investigation military whistleblower reprisal and restriction complaints” *DODIG.mil* (April 18, 2017), Figure 2.1., online at: https://www.dodig.mil/Portals/48/Documents/Programs/Whistleblower/Guide_to_Investigating_Military_Whistleblower_Reprisal/GuideToInvestigatingMilitaryWhistleblowerReprisalAndRestrictionComplaints.pdf.

admission of a motive for reprisal is rare.” To mitigate this they expressly give the following instruction to the IG Investigating Officer,

[t]herefore, IGs should structure interrogatories and gather evidence that establishes whether the RMO suffered embarrassment or negative consequence arising from the PC; whether the PC reflected poorly on the RMO’s organization; whether the RMO exhibited or expressed animosity toward the complainant for making the PC; or whether the RMO expressed animosity regarding the very idea of someone making a PC.”³⁹ (emphasis added)

This should not be the case, especially when, notwithstanding my pristine service record, the Brigade Commander’s investigation blatantly was based on allegations ‘found’ immediately following my military Whistleblower’s protected communications and my reported public assault to the Provost Marshall office (military police).⁴⁰ Without this court, I will never get to cross-examine the Brigade Commander’s level of “animus”⁴¹ due to the IG office’s sequestration of their investigations from me (the complainant) and the ‘get-out-of-jail-free-card’ affirmative defense (that was recently added to the Military Whistleblower Protection Act); regardless, the Supreme Court determined animus is moot for corporate Whistleblowers and persuasively that ‘contributing factor’ is the benchmark.

³⁹ See “The Assistance and Investigations Guide” *U.S. Army Inspector General School* (July 2021), Section 9-3 – Whistleblower Reprisal Elements of Proof, <https://ig.army.mil/Portals/101/TIGS/HOT%20ITEMS/Assistance%20and%20Investigations%20Guide.pdf>.

⁴⁰ See Enclosure 07, DA Form 2823, “Sworn Statement” of SFC Michael J. Forbes to PMO, December 14, 2022.

⁴¹ See only reference to the word “animus”(or derivatives) and no references to “retaliatory” or “intent” in DoDI 7050.09 (Uniform Standards for Evaluating and Investigating Military Reprisal or Restriction Complaints) “https://www.dodig.mil/Portals/48/DoDI%207050_09%20New%2010-12-2021_1.pdf, including 3.1 (g) (recommendation to close without investigation) and (5)(d)(3) (reasoning for determining to close the complaint)

I contend, it should be the benchmark for the military as well. If not, the substantiation rate in the Department of Defense will remain at a miniscule 2.41%⁴² of substantiated reprisal allegations and Commanders will be able to use the broad-based affirmative defense written into the Military Whistleblower Protection Act to circumvent the intent of the law (to restrict retaliation). Commanders will continue to use this defense to retaliate, without recourse, using the Qualitative Management Program to strip protected Soldiers of their careers.

It is too high of a standard to prove “each person involved in a personnel action perceived or was aware of the protected communication,”⁴³ to say nothing of the impossibility of proving a Commander’s thought process. It simply can’t be done, short of a rare, self-incriminating admission in any sequestered investigation that proves that ‘the Responsible Management Official had animus in their decision-making after the protected communication.’ Moreover, this does not even consider any possible bias of the investigator who possibly values a COLONEL’s career over a Sergeant First Class’s career in their “best interest of the Army”⁴⁴ calculus.

Bias

Regarding bias, in *Schaeuble v. Reno*, 87 F. Supp. 2d 383, the “Supreme Court noted” that “exhaustion [of remedies] may not be required when the agency ‘is shown to be biased or has otherwise predetermined the issue before it’” Id. at 148, 112 S. Ct. at 1088 (citing *Gibson*, 411 U.S. at 575 n. 14, 93 S. Ct. at 1696 n. 14). The bias can be seen in the deflection of my requested meetings with my

⁴² See “Protecting Military Whistleblowers: 10 U.S.C. §1034,” *Congressional Research Service* (April 9, 2020) online at: <https://crsreports.congress.gov/product/pdf/IF/IF11499>.

⁴³ Ibid.

⁴⁴ See U.S. Army Inspector General website, “ROUTINE USES,” <https://ig.army.mil/REQUEST-IG-ACTION/Request-Army-IG-Action/>.

Commanding Generals and a redress denial, regardless of being informed of the evidence-based federal violations conducted by my Brigade Commander and his Staff. They are as follows:

- On January 18, 2023, I requested (in-person) an open-door meeting with MAJOR GENERAL Angle and was redirected and scheduled to meet with COMMAND SERGEANT MAJOR (CSM) Ted C. Munter on January 19th (later at circa 6 p.m. on the 18th I was deemed 'erratic' and ordered/escorted (approved by MAJOR Racaza, the Psychologist who had a prior charge of 'disrespecting an officer' levied against me through COLONEL Brunson that made me an 'accused') to an after-hours emergency Command Directed Behavior Health Evaluation (eCDBHE)). These conflict-of-interest decisions occurred while I was being investigated and was not notified (flagged) of the investigation.
- On January 19, 2023, six hours after my 3 a.m. release from the eCDBHE at the hospital, I met with CSM Munter. I informed him of the federal violations. Subsequently, in April, once I determined my issues were not being addressed, I notified CSM Munter of my future plans to raise these same issues at higher echelon.
- On March 31, I sent a formal Article 138 redress⁴⁵ to the 528th Sustainment Brigade COLONEL Tavi N. Brunson that featured the Privacy Act violations asking him to release me, and all Brigade Soldiers, from his unlawful order; in an "assess the unassessed" email⁴⁶ he granted my request⁴⁷ (possibly due to my Army Human Research Protection Office complaint and the

⁴⁵ See Enclosure 08, Article 138 redress packet sent through legal counsel, SFC Michael Forbes and James M. Branum, Esq., March 31, 2023.

⁴⁶ See Enclosure 09, email from COL Tavi N. Brunson featuring "Assess the Unassessed," April 11, 2023.

⁴⁷ See Enclosure 10, Memorandum "Response to Initial Request for Redress Under Article 138, Uniform Code of Military Justice, and In Accordance with Army Regulation 27-10" 528th Sustainment Brigade Commander, COLONEL Tavi N. Brunson, April 5, 2023.

Brigade Surgeon's memo⁴⁸ dated February 23, 2023) and denied my request for the rest of the Soldiers on April 5, 2023.⁴⁹

- On May 1, 2023, I requested to meet with LIEUTENANT GENERAL Jonathan P. Braga, US Army Special Operations Command, Commanding General.⁵⁰
- On May 3, 2023, I was rebuffed due to concern over conflicts of interest over any "pending matters that may come to the GC for decision, in order to protect the integrity of the process"⁵¹ after I notified him of federal law violations.
- On May 19, 2023, I was redirected to meet with COMMAND SERGEANT MAJOR JoAnn Naumann on June 15, 2023⁵².
- On June 1, 2023, upon receipt of my General Officer Memorandum of Reprimand and the intent to provide me with a Relief for Cause evaluation report, I submitted a hasty rebuttal of the myriad allegations (I was finally notified of them) that were contained in the investigation that I was presented with. This rebuttal went to CAPTAIN Patrina Lowrie and BRIGADIER GENERAL

⁴⁸ See Enclosure 11, memorandum entitled, "528th HPW Assessment Program HIPPA, PHI, and PII Security Program," MAJOR Robert C. Sawyer, MD, February 23, 2023.

⁴⁹ See Enclosure 10, Memorandum "Response to Initial Request for Redress Under Article 138, Uniform Code of Military Justice, and In Accordance with Army Regulation 27-10" 528th Sustainment Brigade Commander, COLONEL Tavi N. Brunson, April 5, 2023.

⁵⁰ See Enclosure 12, email from SFC Forbes to Mr. William T. Wallace, May 1, 2023

⁵¹ See Enclosure 13, email exchanges with Mr. William Wallace, May 3, 2023.

⁵² Ibid.

Lawrence Ferguson of 1st Special Forces Command (1SFC) on June 16, 2023.⁵³ My rebuttal was ignored by both CPT Lowrie and BG Ferguson.

- On June 15, 2023, I emailed an apology that evening.⁵⁴ The massive allegations against me in the investigation caused me to miss the meeting with CSM Naumann.
- On June 22, 2023, I re-engaged to meet with CSM Naumann. I heard nothing for weeks.⁵⁵
- On July 14, 2023, I changed my request back to an open-door meeting with LIEUTENANT GENERAL Jonathan P. Braga; I was again redirected to meet with CSM Naumann.⁵⁶
- On July 24, 2023, I met with CSM Naumann and informed her of the Privacy Violations and she informed me that she could not comment due to pending Personnel Actions against me.
- On September 15, 2023, I sent another request to meet with the US Army Special Operations Command, LIEUTENANT GENERAL Johnathan P. Braga and was rebuffed and ignored.⁵⁷

⁵³ Available upon request: the rebuttal memo, layman's due-process review, and a CD-ROM of evidence, consisting of hundreds of pages.

⁵⁴ See Enclosure 14, email to Mr. William Wallace, June 15, 2023.

⁵⁵ See Enclosure 15, email to Mr. William Wallace, June 22, 2023

⁵⁶ Ibid.

⁵⁷ See Enclosure 16, "Acknowledge receipt of your request." email from Mr. William T. Wallace, USASOC Secretary of the General Staff (SGS), September 15, 2023.

- On November 24, 2023, I then sent a subsequent formal Article 138 redress to the 1SFC BRIGADIER GENERAL Lawrence G. Ferguson that featured the Privacy Act violations and the retaliation.⁵⁸
- On January 19, 2023, only after notifying the Inspector General, my counsel finally received⁵⁹ BRIGADIER GENERAL Ferguson's answer,⁶⁰ "Your request for redress to rescind and remove your permanently filed GOMOR is **denied**" and "[y]our request for redress to rescind and remove your relief for cause NCOER is denied." This document was dated November 30, 2023 and never sent to me in accordance with regulation.⁶¹

My Commanders refused to professionally address these violations and I have no appropriate venue to address these federal violations within the Army. So now, I reach out to this Court to address the violations of the Privacy Act, *et al*, for transparent adjudication that could spur other outside agencies to investigate further. In retrospect, I conclude that US Special Operations Command Staffers were using my retaliatory and pending negative Personnel Actions to subvert my requests to address the violations of federal law with my commanding generals simply because they were instigated by the Department of Defense, which is biased.

⁵⁸ See Enclosure 17, Article 138 redress packet sent through legal counsel, SFC Michael Forbes and James M. Branum, Esq., November 24, 2023.

⁵⁹ See Enclosure 18, emails between CPT Rudolph Dambeck and Mr. James M. Branum, January 19, 2024.

⁶⁰ See Enclosure 19, memorandum entitled, "MEMORANDUM FOR SFC Michael Forbes, SUBJECT: Response to Request for Redress submitted 24 November 2023," BG Lawrence G. Ferguson, November 30, 2023.

⁶¹ (1) "Regular Army. An RA commander will serve a response on the complainant within 15 days after having received the initial request for redress. If a final response within 15 days is not possible, an interim response will be provided that indicates the estimated date of a final response.," – *from*: AR 27-10 (Military Justice) para. 19-7 (d)(1), (November 20, 2020), *online at*: https://armypubs.army.mil/epubs/DR_pubs/DR_a/ARN31271-AR_27-10-001-WEB-2.pdf.

DAMAGES

Currently, I have been damaged and there are future damages if the violations are not adjudicated at this time. The current damages are as follows:

- due to the wrongful actions of my command in violation of the Privacy Act (outlined below) I was unjustly given a GOMOR (General Officer Memorandum of Record) and was “flagged;”⁶²
- due to being unjustly given a GOMOR and being flagged, I have been restricted from my earned promotable status to the rank of MASTER SERGEANT, that could have occurred as early as April 1, 2023, resulting in a loss of a monthly increase of approximately \$400 per month;
- because I have been flagged, I was not allowed to have a permanent change of station (PCS) to my next requested and approved assignment to accomplish at Fort Huachuca, which stagnates my career;
- In retaliation for exercise my rights under the Privacy Act (by asking for an open door meeting), I was sent to an inappropriate after-hours, emergency Command Directed Behavioral Health Evaluation. This forced mental health evaluation caused me emotional distress;
- In retaliation for exercising my rights under the Privacy Act, I was disparaged to my Congressman, with whom I had protected communications, using a second unchallenged, clandestine investigation that the Army has thus far, refused to provide me via a Freedom of

⁶² See AR 600-8-2, (Suspension of Favorable Personnel Actions (Flag)), (April 5, 2014) *online at*: https://armypubs.army.mil/epubs/DR_pubs/DR_a/ARN30769-AR_600-8-2-000-WEB-1.pdf.

Information Act (FOIA) Request, which has damaged my reputation and impacted my ability to seek assistance;

- In seeking redress against the damages I have suffered, I have incurred over \$7,000 of attorney's fees to date.

FUTURE DAMAGES

Per *Guitard v. US Navy*,⁶³ irreparable injury *may* occur without immediate judicial relief” on the following:

- I have estimated calculations of wages (of over 3 years) and pension benefits (until my actuarial death at age 80) to over \$2.4 million.
- A flag was placed in my record with Immediate Reenlistment Prohibition restriction Code RET13 Transaction code, which indicates the possibility of a debt repayment of a significant portion of my previously received reenlistment bonus (\$22,800)⁶⁴ due to my being selected for consideration in the Qualitative Management Board, and I would be “subject to repayment of the unearned portion under United States Code Title 37 §303a(e) and 337” (my contracted incentive bonus amount).

⁶³ See *Guitard v. US Navy*, 967 F.2d 737.

⁶⁴ See Enclosure 20, DA Form 4789, STATEMENT OF ENTITLEMENT TO RETENTION INCENTIVE, SSG Michael J. Forbes, January 16, 2020.

WE ALL HAVE OBLIGATIONS

All citizens must constrain themselves within our laws and support the protections inherent in our Constitution and uniquely, ALL Military Members are obligated by oath, to defend it. It must be emphasized, due to the specifics of this case, this formal obligation also applies to military agencies and their leaders, imposing a special trust in Generals, Colonels, Psychologists, Researchers, Commanders (CDRs), Officers, Civilians, and even enlisted Soldiers. Note: All Soldiers (both officers and enlisted) must follow all lawful orders⁶⁵ and “[t]he order must not conflict with the statutory or constitutional rights of the person receiving the order.”⁶⁶ The only authorized person that can determine its lawfulness is a military judge and I have been prevented from that venue by the lack of charges preferred by the Brigade Commander.

This begs the question, ‘Which regulation covers redress of an unlawful order?’ In fact, there are several vehicles available to a Soldier embedded in regulations, including open-door policies, Congressional and Inspector General (IG) complaints processes, multiple redress programs, and Article 138 procedures; therefore, unlawful orders have opportunities for modification. These exist to ensure orders are lawful and are supported by Manual for Courts-Martial (MCM) United States,⁶⁷ which plainly states, “[An] order must not conflict with the statutory or constitutional rights of the person receiving the order.” Moreover, the Army Privacy Program states, “Improper government interference with the exercise of fundamental rights and freedoms violates the U.S. Constitution.”⁶⁸ But what must one do when these remedies fail, or

⁶⁵ “(ii) Determination of lawfulness. The lawfulness of an order is a question of law to be determined by the military judge.” – *from*: Commentary on UCMJ Article 90, found at page IV-24 in Appendix IV, *Manual for Courts-Martial*, online at: <https://jsc.defense.gov/military-law/current-publications-and-updates/>.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ See AR 25-22 (The Army Privacy and Civil Liberties Program) (September 30, 2022), online at: https://armypubs.army.mil/epubs/DR_pubs/DR_a/ARN38442-AR_25-22-001-WEB-2.pdf.

they are blatantly ignored by leaders who simply don't want to address, and/or even consider the possibility of, the unlawfulness of an order (God forbid it is their own)? What must a Soldier do when leaders go on the offensive versus their own Soldiers and launch gratuitous, ad hominem attacks⁶⁹ against them in which the Soldier's leaders hide behind the preponderance-driven administrative actions that they instigate? My unit's leaders chose this Course-of-Action (COA) and this COMPLAINT features some of the actions I took to remediate these unlawful orders and the retaliation campaign that ensued.

All Soldiers, officers and enlisted alike, take an oath to "support and defend our Constitution against all enemies," so why would my Brigade (BDE) Commander (CDR) be at odds with me, a Senior Enlisted Non-Commissioned Officer-in-Charge (NCOIC) that has served him so well over 18 months? After all, we both took the same oath. Did I not address the issue directly with his Brigade Commander? Did I not request the appropriate data to address the issue a second time it occurred? Did I not report it to IG and other agencies to get assistance to explain it to him? Did I not use open-door policies to remediate the situation? This filing should answer these questions and focus the Court's attention on the Brigade Commander's efforts, and those that support him (from every echelon), to subvert the constitutional protections afforded me (the NCOIC), our Citizenry and especially thousands of other unsuspecting Soldiers, based in fallacies of logic and an in-concert contravention and circumvention of existing federal law.

These constitutional protections, understandable through the inalienable rights contained therein, are paramount to our freedom in the United States of America; and, this, I will defend. Therefore, I humbly request this Court to provide relief from the violations conducted by the United States Army, through its agents (contained herein), against me and thousands of other Soldiers; adjudicate those that provide the

⁶⁹ "The Ad Hominem Argument (also, "Personal attack," "Poisoning the well"): The fallacy of attempting to refute an argument by attacking the opposition's intelligence, morals, education, professional qualifications, personal character or reputation, using a corrupted negative argument from ethos.,"
– from "Master List of Logical Fallacies" *University of Texas at El Paso*, online at:
<https://utminers.utep.edu/omwilliamson/ENGL1311/fallacies.htm>

basis for this court's jurisdiction and, especially, those that also have established basis in our Constitution. This filing is of temporal essence as the retaliatory Personnel Actions I am being subjected to, by my Brigade Commander, are heading to a Qualitative Management Board in April 2024 for my involuntary separation. This will severely impact my life and future and that of my wife, two daughters and five grandchildren, because of the curtailment of many of the rights and privileges attached to the honorable service that I intend to provide my country until my current contract is fulfilled (in 2027), which would place me over 20 years of honorable service.

SUMMARY OF FACTS

November 29 and December 2, 2022, were the only dates in my unblemished⁷⁰ 16-year Army career that anyone had knowingly, willfully, and unlawfully violated my privacy in such a legitimating⁷¹ and covert manner in two human research behavioral assessments that collected and stored personally-identifiable data. The first one was named Strength Deployment Inventory (SDI) by CoreStrengths (an LLC),⁷² which was paid third-party vendor of the Army. The Second one was an embedded Tactical Performance Inventory Questionnaire coupled with biometric tracking devices, constant longitudinal questions in applications, and mandatory psychological (non-clinical and/or clinical) meetings embedded in the program. This one is called the Human Performance Wellness (HPW) Program. It is a subset of the Preservation of the Force and Family Program, which is part of the Warfighter for Life Alliance and is cultivated by U.S. Army Futures Command Combat Capabilities Development Command (DEVCOM)

⁷⁰ Available upon request, 15 Non-Commissioned Officer Evaluation Reports (NCOERs) spanning from February 1, 2010 - August 31, 2022.

⁷¹ See ADP 6-22 *Army Leadership and the Profession* (July 2019), para. 5.11 (methods of influence), *online at*: https://armypubs.army.mil/epubs/DR_pubs/DR_a/ARN18529-ADP_6-22-000-WEB-1.pdf.

⁷² This is an online product of Personal Strengths Publishing, Inc. (PSP), an LLC with Unique Entity Identifier (UEI): V3CATN1WFE63, d.b.a. "Core Strengths" brand name.

and North Carolina Center for Optimizing Military Performance (a Congressionally sponsored consortium of entities from America's corporate, collegiate, and military organizations).

An order was issued on November 29, 2022. It directly stemmed from the COLONEL Tavi N. Brunson's, 528th Sustainment Brigade (SB), Special Operations, (SO) Airborne (A),⁷³ Brigade Commander's willful, knowing, and unlawful orders (via email) to his Senior Staff, under the pretense of Command authority⁷⁴ to use a third-party corporate surrogate's (*Corestrengths*)^{75,76} web-based application (SDI) to maintain (collect, use or disseminate per the Privacy Act) personally-identifiable behavioral health research data^{77,78} and store it in an outside system of records.⁷⁹ The application also produces a deliverable Behavioral Health Assessment (BHA) report⁸⁰ under a paid government contract, without proper public notice requirements,⁸¹ or Soldier consent.⁸²

⁷³ "The 528th Sustainment Brigade (SO) (A) is responsible for providing logistical, medical, signal, and intelligence support for Army special operations forces worldwide in support of contingency missions and war fighting commanders. Headquartered at Fort [Bragg], North Carolina.... The 528th Sustainment Brigade (SO) (A) consists of a brigade staff, a support operations unit, and three battalions: the Special Troops Battalion, the 112th Special Operations Signal Battalion, and the 389th Military Intelligence Battalion.," *from*: "United States Army Special Operations Command" *Wikipedia*, *online at*: https://en.wikipedia.org/wiki/United_States_Army_Special_Operations_Command.

⁷⁴ This is a Logical fallacy resulting in a violation of law. *See* "Appeal to Authority Fallacy" *ListOfFallacies.com*, *online at*: <https://listoffallacies.com/appeal-to-false-authority>.

⁷⁵ *See* Enclosure 21, *Corestrengths* Terms of Service.

⁷⁶ *See* Enclosure 22, *Corestrengths* Privacy Policy.

⁷⁷ OMB Circular No. A-108, "Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act" *WhiteHouse.gov* (December 23, 2016), *online at* https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A108/omb_circular_a-108.pdf.

⁷⁸ OMB Circular No. A-130, "Managing Information as a Strategic Resource" *WhiteHouse.gov* (July 28, 2016), *online at*: <https://www.whitehouse.gov/sites/default/files/omb/assets/OMB/circulars/a130/a130revised.pdf>.

⁷⁹ *See* 5 USC 552a, (m)(1), "Government Contractors."

⁸⁰ Collecting BHAs Contravenes DoD 5240.1-R, "Procedures Governing the Activities of DoD Intelligence Components that affect United States Persons," Ch. 1., Procedure 11, dated April 26, 2017, *online at*: <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/524001r.pdf>.

⁸¹ *See* 5 USC 552a as implemented by DoD 5400.11, *online at*: <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/540011p.pdf>, and AR 25-22, (Army Privacy

On December 2, 2022 another order was communicated (via email from the Deputy Commander⁸³ and later by Operational Order through official channels) under the premise of a Congressionally-sponsored holistic health program, named Human Performance and Wellness (HPW) Program that had another embedded Behavioral Health Assessment in it. It too, had not adhered to statutory required preparatory actions required by the Commander's stated self-classification of the program as human research⁸⁴ in his USASOC Commander's Directive Memorandum concerning the Warfighter for Life Alliance programs before their implementation.⁸⁵ This order, as implemented, is prohibited by requirements located in multiple laws,⁸⁶ DoD regulations and policies, which are cited throughout this filing.

In fact, it was a falsified order (unsigned with COL Brunson's signature block). It stated there were directives from a higher echelon for the holistic health (HPW) program. After I had complained (protected communications in early February 2023) to personnel at the Army Human Research Protection Office (AHRPO), my complaints likely influenced a remediation effort that addressed some of the HPW Programs deficiencies and this action authenticated all of my concerns; a memo was produced stating that

Policy, Ch. 10-3, (Judicial sanctions for privacy act and civil liberties violations), (September 30,2022), *online at: https://armypubs.army.mil/epubs/DR_pubs/DR_a/ARN38442-AR_25-22-001-WEB-2.pdf*

⁸² See 5 USC 552a, (b).

⁸³ See Enclosure 23, email to Brigade Staff from LTC Manuel D Sanchez, Executive Officer/DCO (Deputy Commanding Officer), December 2, 2022.

⁸⁴ See Enclosure 24, USASOC Warfighter for Life Alliance, memorandum, para. 6, by MG Francis M. Beaudette, June 25, 2021.

⁸⁵ See *Ibid.* HPW is a subset of the Preservation of the Force (PotFF) and Family resiliency initiative, which supported by the "Warfighter for Life Alliance;" a consortium of "Department of Defense, academia, U.S. Army Medical Treatment Facilities and premier public and private research institutions in order to provide evidence-led, innovative Soldier-focused tools and methodologies for the longitudinal surveillance, protection, enhancement, and treatment of ARSOF Soldier performance, mind and brain health."

⁸⁶ See 5 U.S.C. § 552a, "Privacy Act of 1974;" *also see* 45 CFR part 46, "Basic Health and Human Services (HHS) Policy for Protection of Human Research Subjects;" *and see* 32 CFR Part 219, "DoD Protection of Human Subjects."

[a]s a consequence, there is potential for the TPIQ, and the HPW assessment program in general, to generate HIPPA, PHI, and PII covered information. Therefore the following safeguards will be implemented as a matter of SOP:.... All Soldiers will be given the opportunity to Opt-in or Opt-out of self-reported data.⁸⁷

Moreover, there were no authorized directives from higher in effect; the Brigade Commander's HPW OPOD (Operations Order) was false,⁸⁸ and his order premature,⁸⁹ and implemented without proper procedural caution.

These two unlawfully ordered Behavioral Health Assessments (BHAs) are not 'incident to service.'⁹⁰ Both BHAs should have been professionally and ethically curtailed⁹¹ (at a minimum) by Major Rhea Racaza, the Brigade Commander's state-licensed, Command Operational Psychologist, due to the violations of the Civil Liberties/Rights and Privacy of all Soldiers, violations of several federal laws, and violations of professional/medical codes-of-conduct. The Brigade Commander knowingly issued unlawful orders, which subjected Soldiers under his Command to the Command-Directed use of third-party,

⁸⁷ See Enclosure 11, Memorandum signed by 528th Sustainment Brigade (Special Operations) (Airborne), Brigade Surgeon, MAJ (P) ROBERT C SAWYER, MD, dated February 23, 2023.

⁸⁸ See 42 USC § 1320d-6(b).

⁸⁹ See Enclosure 25, email to Ms. Lutz from LTC George Webb of the Human Performance Optimization Division, USASOC, stated, "The USASOC Directive is still in draft....You guys are way ahead of us on this...."

⁹⁰ See Enclosure 26, "the SDI self-assessment tool.... is not an 'Army' requirement," email from LTC Christopher Howsden to SFC Forbes, December 6, 2022.

⁹¹ "The most important KSAs [knowledge, skills and abilities] across all four task domains and unit types are the ability to practice effectively and ethically outside a traditional clinical setting and to communicate with leaders effectively regarding ethical and appropriate courses of action (COAs).," –from: Ogle, Alan D., et. al "Initial job analysis of military embedded behavioral health services: Tasks and essential competenceies" *Military Psychology* (March 18, 2019), online at: <https://www.tandfonline.com/doi/full/10.1080/08995605.2019.1598227>.

corporate, surrogate, applications to “[obtain] individually identifiable [behavioral] health information relating to an individual[.]”⁹²

THE PRIVACY VIOLATIONS

On November 29, 2022, my Brigade Commander, COLONEL Brunson, willfully issued an unlawful^{93,94,95,96} direct order⁹⁷ to me that was directly supported by the Psychologist, Major Rhea Racaza, who was acting in her dual roles,⁹⁸ as an Army Officer,⁹⁹ and as a “CoreStrengths”¹⁰⁰ facilitator,¹⁰¹ for that contracted third-party Corporation.¹⁰² COLONEL Tavi N. Brunson knowingly, willfully, and unlawfully ordered me and his entire Senior Staff, to fully participate in the Strengths Deployment Inventory (SDI), a personally identifiable Behavioral Health Assessment (BHA). We were coerced to become customers of

⁹² See 42 USC 1320d-6 (a)(2): “Wrongful disclosure of individually identifiable health information,” as added Pub. L. 104-191, (HIPAA of 1996).

⁹³ See “Memorandum: Guidance for Agency Use of Third-Party Websites and Applications,” *Executive Office of the President* (June 25, 2010), online at: https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/memoranda/2010/m10-23.pdf.

⁹⁴ See 5 USC § 552a, “Privacy Act of 1974.”

⁹⁵ See 32 CFR Part 219, Department of Health and Human Services, “Protection of Human Subjects.”

⁹⁶ See 45 CFR 46, Office of the Secretary of Defense, “Protection of Human Subjects.”

⁹⁷ See Enclosure 27, COL Brunson, Brigade Commander, email *order* to provide data to 3rd party, November 29, 2022.

⁹⁸ Arizona (AZ) Board of Psychologists Examiners (BOPE) “The Board incorporates by reference standards 1.01 through 10.10 of the “Ethical Principles of Psychologists and Code of Conduct” adopted by the American Psychological Association, effective June 1, 2003, online at: <https://www.apa.org/ethics/code>.

⁹⁹ See Enclosure 28, MAJ Racaza, BDE Psychologist, email *as Army Officer*, November 29, 2022.

¹⁰⁰ This is an online product of Personal Strengths Publishing, Inc. (PSP), an LLC with Unique Entity Identifier (UEI): V3CATN1WFE63, d.b.a. “Core Strengths” brand name.

¹⁰¹ See Enclosure 29, MAJ Racaza, BDE Psychologist, email *as Core Strengths certified facilitator*, November 29, 2022.

¹⁰² See 5 USC § 552a, (m)(1)

this Corporate entity and forced to use their third-party website,¹⁰³ which requires us to agree to the ‘Terms of Service’¹⁰⁴ and ‘Privacy Policy’¹⁰⁵ of that corporate third-party website.¹⁰⁶ This singular action violated the Privacy Act of 1974, the HIPPA Act of 1996, the Evidence-Based Act of 2019, at least two ‘Protection of Human Research Subjects’ laws, multiple Department of Defense Instructions (DoDI),^{107,108} a Department of Defense (DoD) Regulation¹⁰⁹ (et al), two Executive orders^{110,111} and the American Psychological Association professional code-of-conduct.¹¹²

This forced relationship would have resulted in the sharing the information with multiple entities, without my consent;¹¹³ notably, because I *did not* purchase the BHA from *CoreStrengths* myself, I have no

¹⁰³ See “Memorandum M-10-23: Guidance for Agency Use of Third-Party Websites and Applications” *Executive Office of the President, Office of Management and Budget*, (June 25, 2010) online at: https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/memoranda/2010/m10-23.pdf.

¹⁰⁴ See Enclosure 21.

¹⁰⁵ See Enclosure 22.

¹⁰⁶ *Corestrengths* login site, <https://app.corestrengths.com/login>.

¹⁰⁷ See DoDI 5400.11, (*DoD Privacy and Civil Liberties Programs*), (December 8, 2020) online at: <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/540011p.pdf?ver=gM7QU0FeRs8wMwzFXS8uSA%3d%3d>.

¹⁰⁸ See DoDI 6490.04, (*Mental Health Evaluations of Members of the Military Services*), (April 22, 2020) online at: <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/649004p.pdf>.

¹⁰⁹ See DoD 5400.11-R, (*Department of Defense Privacy Program*), (May 14, 2007) online at: <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/540011r.pdf>.

¹¹⁰ See “Memorandum M-10-23: Guidance for Agency Use of Third-Party Websites and Applications” *Executive Office of the President, Office of Management and Budget*, (June 25, 2010) online at: https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/memoranda/2010/m10-23.pdf.

¹¹¹ See “Memorandum M-10-22: Guidance for Online Use of Web Measurement and Customization Technologies,” *Executive Office of the President* (June 25, 2010) online at: https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/memoranda_2010/m10-22.pdf.

¹¹² Arizona Board of Psychologists Examiners adopted the American Psychological Association’s Code of Conduct see Title 4, Chapter 26 of Arizona Administrative Code, Article 3. “Regulation,” APA code of conduct found at <https://www.apa.org/ethics/code>.

recourse against Corestrengths even though they informed me that they are providing my personally-identified answers (in the form of their assessment) to the “Purchaser.” Should the “Purchaser” not comply with law, their feckless reassurances in their ‘terms of service’ are meaningless. Nevertheless, I was ordered to agree to their Terms.¹¹⁴ In essence, as a corporate facilitator, MAJOR Racaza would have been in receipt of my assessment report,¹¹⁵ produced by this contract between *Corestrengths* and my unit in the U. S. Army.

The intent of the Brigade Commander (as a “Purchaser”),¹¹⁶ was to willfully contract with a surrogate to obtain private and identifiable information that any Commander and their Psychologist were prohibited to directly order¹¹⁷ on behalf of the U. S. Army, without procuring the Soldier’s written consent. Then the unit would receive that behavioral data record and, as defined by law, “maintain,”^{118,119} this identifiable, unique, and private, behavioral health assessment (BHA) as an identifiable “statistical record,”¹²⁰ for possible assessment by the Psychologist or anyone else that the Commander decided should view it. Moreover, the third-party corporation (which we are ordered to become a client of) then retains the data

¹¹³ See 5 USC § 552a (b), “No agency shall disclose any record which is contained in a system of records by any means of communication to any person..., except pursuant to a written request by , or with the prior written consent of , the individual to whom the record pertains....”

¹¹⁴ “If an employer... (...the Purchaser) purchases the assessment for an individual, the Purchaser may be granted access to the results, but the individual will still own the results, and the Purchaser may not share the individual results without prior consent from the individual. Purchasers who receive access to individual results have an obligation to protect the privacy and confidentiality of the individual.” - *from*: Enclosure 20, Core Strengths Terms of Service agreement, Ch. 8.6

¹¹⁵ “... Facilitators ... will also have access to individual and team reports based on your results.” –*from*: Enclosure 21. Core Strengths Privacy Policy.

¹¹⁶ See Enclosure 21, Core Strengths Terms of Service agreement, para. 8-6

¹¹⁷ See DoDI 6490.04(April 22, 2020), *online*: <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/649004p.pdf>.

¹¹⁸ “the term “maintain” includes maintain, *collect*, use, or disseminate.” (emphasis added) - *from* 5 USC§ 552a

¹¹⁹ See Enclosure 22, Core Strengths Privacy Policy, “October 5, 2021.

¹²⁰ See 5 USC§ 552a

and reserves their right to use it for marketing and other secondary research without proper consent. Essentially, the only way to protect my privacy was to not be “forced through coercion to work for another”¹²¹ (corporation, Brigade Commander, or Psychologist) and this is a protection afforded us under the Constitution, and notably, follows the educational guidance of the Federal Trade Commission and our Military.^{122,123}

ATTEMPTS TO USE INTERNAL TOOLS DESIGNED TO ADDRESS ISSUES

I, immediately, called the 1st Special Forces Command (1SFC) Inspector General’s (IG’s) Office for assistance (deemed a “Call-in IG Assistance Request” or “IGAR”)¹²⁴ and, contrary to IG’s Standard Operating Procedures (SOP) they are taught¹²⁵ was told to “go ask the Source.” I, subsequently, exercised my right of free speech^{126,127} in an effort to protect my privacy, by going to the Psychologist’s office (per their nonstandard advice) to request the “scope and statutory support” for the *Corestrengths* Strength Deployment Inventory (SDI). I intended to use the missing required statutory information to determine whether I would consent to the assessment and, regardless of that decision, I wanted to personally assist

¹²¹ *Constitution of the United States of America*, 13th Amendment.

¹²² See “Using a health app?,” *Federal Trade Commission* (undated), *online at*: https://consumer.ftc.gov/sites/www.consumer.ftc.gov/files/flo_health_app_infographic_11022020_en_508.pdf.

¹²³ See “Does your health app protect your sensitive info” *MilitaryConsumer.gov*, (January 15, 2021), *online at*: <https://www.militaryconsumer.gov/blog/does-your-health-app-protect-your-sensitive-info#:~:text=Here%20are%20some%20things%20to%20consider%3A%20Compare,the%20risks.%20...%20%20Report%20your%20concerns.%20>.

¹²⁴ See AR 20-1 (Inspector General Activities and Procedures), para. 6-1 (f) “Special correspondence.” (March 20, 2020), *online at*: https://ig.army.mil/Portals/101/Documents/regs%20etc/AR_20-1_MAR2020.pdf.

¹²⁵ See “The Assistance and Investigations Guide”, *U.S. Army Inspector General School* (July 2021), Section 2-2-2, *online at*: <https://ig.army.mil/Portals/101/TIGS/HOT%20ITEMS/Assistance%20and%20Investigations%20Guide.pdf>.

¹²⁶ *Hening v. Adair*, 7:21cv00131 (W.D. Va. (December 2, 2022), *online at*: <https://casetext.com/case/hening-v-adair>

¹²⁷ *Constitution of the United States of America*, 1st Amendment.

the Brigade Commander in understanding the gravity of his informed consent violation. Surprisingly, my request to the “source”, the Psychologist, MAJOR Racaza, was rebuffed (regardless of her statutory and professional licensure, which mandates she provides it), and she reported me to the Brigade Commander as being “angry and disrespectful;” I was immediately called into the Brigade Commander’s office where COLONEL Brunson’s first question to me was, “Why do you want to die on this hill?”

Six weeks after this conversation and, notably, after emails between myself and the Brigade Commander were exchanged, (which I felt laid the issue to rest), a clandestine investigation¹²⁸ that included factual and procedural problems was launched into my alleged ‘disrespect’ on November 29, 2022 and other contrived-after-the-fact allegations. I was flagged (notified) 3.5 weeks after “three working day” requirement¹²⁹ and well after the start of the investigation (regulations require ‘flagging’).¹³⁰ Then, approximately three months later, I was found administratively guilty of ‘disrespecting an officer’ (Article 89 of the Uniform Code of Military Justice) due to circular referenced logic.¹³¹

This occurred regardless of my questions and concerns regarding Privacy and Due-Process relayed to the Inspector General. Moreover, the Brigade Commander and Psychologist continued to order Soldiers, via emailed fragmentary orders (FRAGOs),¹³² to take the SDI inventory and another clinical psychological

¹²⁸ The mandatory flagging (being notified) of the January 12, 2023 investigation did not occur until February 7, 2023 in violation of regulation, *see* AR 600-8-2 (Suspension of Favorable Personnel Actions (Flag)) (April 5, 2014) *online at*: https://armypubs.army.mil/epubs/DR_pubs/DR_a/ARN30769-AR_600-8-2-000-WEB-1.pdf.

¹²⁹ *Ibid* at para. 1-10, “Standards of Service.”

¹³⁰ *Ibid*, “**Flag** Suspension of favorable personnel actions.” (promotion, awards, retention, etc.).

¹³¹ *See* Enclosure 30, The support the IO used was a circular reference by merely using MAJ Racaza’s claim of disrespect as the support by stating, “I find that SFC Forbes engaged in disrespectful behavior towards MAJ Rhea Racaza....This can be supported by MAJ Racazas(sic) statement claiming....”

¹³² *See* Enclosure 31, email from 389th S3, “Daily FRAGO [Fragmentary Order is an abbreviated form of an Operations Order]: 24 January 2023.”

assessment test entitled the “PSYCH NEO¹³³ ATM.”¹³⁴ I am unaware of any interference of the Inspector General to prevent these violations of law.

THE CORRUPTED INVESTIGATION (1ST INVESTIGATION)

The Investigating Officer (IO), appointed by my Brigade Commander, 2nd Lieutenant¹³⁵ Mirriam G. Tolston’s findings paragraph¹³⁶ stated, “I find that SFC Forbes engaged in disrespectful behavior towards MAJOR Rhea Racaza...” This was followed by “This can be supported by MAJOR Racazas (sic) statement claiming...”¹³⁷ Courts have stated “The [IO] reasoning in this respect is entirely circular,”¹³⁸ therefore this disrespect charge should be materially discounted.

Furthermore, the Uniform Code of Military Justice, Article 89 (disrespect toward superior commissioned officer), has a built-in defense regarding the charge of disrespect.¹³⁹ In fact, MAJOR Racaza never provided the required statutory information pursuant to the Privacy Act (and other federal laws) after my request, let alone prior to my request as is required by law; I states, “[e]ach agency that maintains a system of records shall-...inform each individual whom it asks to supply information,...on a separate

¹³³ “NEO” is a psychometric assessment, NEO stands for “neuroticism... extraversion ... openness;” the PI in “NEO-PI” stands for “Personality Inventory” <https://psychometric-success.com/aptitude-tests/test-types/the-neo-personality-inventory-test>.

¹³⁴ See Enclosure 31, embedded pic of CONOP (Commander’s Concept of an operation) and “Revised NEO Personality Inventory” *Wikipedia, online at: https://en.wikipedia.org/wiki/Revised_NEO_Personality_Inventory*.

¹³⁵ 2LT is an officer grade 1, the lowest rank of the officer corps.

¹³⁶ See Enclosure 30, memorandum entitled, “Findings and Recommendations for Army Regulation 15-6 Investigation into SFC Michael Forbes for Allegations of Disrespect Towards a Senior Commissioned Officer and Counterproductive Leadership.” 2LT Tolston, dated February 22, 2023.

¹³⁷ Ibid, excerpt from memorandum.

¹³⁸ See *Samson v. California*, US Supreme Court, No.04-9728, June 19, 2006.

¹³⁹ See: *Manual for Courts-Martial*, commentary on UCMJ Article 89 (Special Defense), found at page IV-22 In Appendix IV, Manual for Courts-Martial, online at: <https://jsc.defense.gov/military-law/current-publications-and-updates/>.

form that can be retained by the individual-....”¹⁴⁰ This is an example of an Army Officer, and concurrently, a licensed Command Operational Psychologist, whose conduct activated the embedded and stated defense of the MCM’s (Manual for Court Marital) Article 89 violation, as she had divested herself substantially from the Constitutional and Federal requirements assumed by her rank and/or position. Therefore, she “loses the protection of this Article [89].”¹⁴¹ To date, she has never provided this information, which she, and the Brigade Commander, had a statutory, regulatory, and professional duty to provide *prior to*¹⁴² his order; I was attempting to assist her and the Brigade Commander in their understanding that his order, that stated, “All staff in the TO: line will take the SDI[.]”¹⁴³ was a violation of law. The truth is, “All Staff” *had an independent choice* to opt-in or -out of the requirement (ergo the order was unlawful).

She did not give me the opportunity for discussion when she immediately repeated her question, “Why?” and then redefined the issue to her misperceived “angry” claim. Weeks later, this culminated in an investigation. There were so many problems with this erroneous and highly unjust investigation (such as the aforementioned issue with MAJOR Racaza), that I was forced to perform a layman’s Due-Process review,¹⁴⁴ after 1SFC IG completed a lackluster Due-Process review. I added it to my rebuttal packet to BRIGADIER GENERAL Lawrence G. Ferguson, and CAPTAIN Patrina Lowrie, for their respective consideration. Both ignored the violations of laws, the lack of due-process, and the logic within my

¹⁴⁰ See 5 USC 552a, (e) “Agency Requirements,” (3) et. Al.

¹⁴¹ “Special defense—unprotected victim. A superior commissioned officer whose conduct in relation to the accused under all the circumstances departs substantially from the required standards appropriate to that officer’s rank or position under similar circumstances loses the protection of this article. That accused may not be convicted of being disrespectful to the officer who has so lost the entitlement to respect protected by Article 89.” - *from*: Ibid at IV-22, commentary on UCMJ punitive Article 89 (c)(2)(d)

¹⁴² See 5 USC 552a, et. Al.

¹⁴³ See Enclosure 27.

¹⁴⁴ See Enclosure 32, Memorandum entitled, “SFC Forbes, Michael J. Timeline of AR 15-6 Investigation,” SFC Michael J. Forbes, June 16, 20[2]2.

rebuttal that I levied against their Personnel Action decisions (the General Officer Memorandum of Reprimand and Relief For Cause evaluation report).

LACK OF DUE-PROCESS IN COL BRUNSON'S INVESTIGATION

I identified plenty of issues in the appointed Investigating Officer's, Second Lieutenant Tolston's, investigation.¹⁴⁵ The most egregious lack of due-process was her waiting until February 20 at 7:31 p.m. to request that I meet with her at 4 p.m., which was the day before her investigation deadline. Upon my counsel's request, she emailed¹⁴⁶ her interrogatory questions¹⁴⁷ to my counsel the evening before her deadline (of which, my counsel and I were unwitting) extension expired on February 22, 2023.¹⁴⁸ This was our first interaction wherein she asked me some obscure questions and I, later, voluntarily replied in the form of a sworn statement. Before responding, I notified her that a rescheduling due to the timing of her inquiry may be necessary.¹⁴⁹ She responded to my counsel after hours on February 21, 2023 with written questions.¹⁵⁰ I was able to get my sworn statement notarized on February 23, 2023,¹⁵¹ and hand-delivered it to her office with a clarification question in it. But she had already prepared her findings, per her memo dated February 22, 2023¹⁵² and the Report of Proceedings by Investigating Officer.¹⁵³ This was

¹⁴⁵ Ibid.

¹⁴⁶ See Enclosure 33, emails between the 'accused,' me (SFC, Michael J. Forbes), my counsel (CPT Henry Carras), and the investigating officer (2LT Mirriam G. Tolsten), February 21, 2023.

¹⁴⁷ See Enclosure 34, memorandum entitled, "Informal Army Regulation (AR) 15-6 Investigation – Questions for the accused," February 21, 2023.

¹⁴⁸ See Enclosure 35, memorandum entitled, "MEMORANDUM FOR Investigating Officer (IO), 15-6 Investigation regarding SFC Michael Forbes," extension request, COL Tavi N. Brunson, January 24, 2023.

¹⁴⁹ See Enclosure 33, email from SFC Forbes, February 21, 2023, "1:30 PM".

¹⁵⁰ See Enclosure 33, email from 2LT Tolston to counsel, February 21, 2023, "5:02 PM".

¹⁵¹ See Enclosure 34, DA Form 2823, "Sworn Statement" of SFC Michael J. Forbes, February 23, 2023.

¹⁵² See Enclosure 30.

also after being notified that my Legal Assistance Counsel was reviewing my response as she finalized the unchallenged investigation. Essentially, “The ‘weight of the evidence’” was “not determined ... by considering all the evidence and evaluating such factors as the witness's demeanor, opportunity for knowledge, information possessed, ability to recall and relate events, and other indications of veracity.”¹⁵⁴

Moreover, as the “accused,” I was not informed of any of the allegations located in the sworn statements of the unit investigation until I received the GOMOR, with its supporting investigation evidence, on June 1, 2023; then, I had to scramble to rebut myriad allegations (containing hearsay, opinion, falsities, and embellishments) in the 16 days allotted to me. Succinctly, 2LT Tolston provided me a day to respond to data she had 6 weeks to gather. Summarily, I have never had a fair venue to challenge (nor been “afforded complete due-process prior to the NCO evaluation board convene date”)¹⁵⁵ the retaliatory nature of this situation after recognizing the violations of law and attempting to remedy them; instead, I was targeted in a biased manner for performing my stated, implied and appointed duties as I attempted to professionally protect our facilities, others and myself.

UNSUPPORTED SECOND ORDERED BEHAVIORAL HEALTH ASSESSMENT

I was informed of the second Behavioral Health Assessment (Human Performance and Wellness) on December 2, 2022 (4 days after the first ordered SDI BHA) in an email from the BDE Deputy CDR, LIEUTENANT COLONEL Manuel Sanchez, and I immediately requested the “statutory support” from

¹⁵³ See Enclosure 36, Report of Proceedings by Investigating Officer, Section II, “Timeline...completed findings and recommendations at....”

¹⁵⁴ “Standard of proof. Findings of substantiated complaints will meet the standard of proof of the “preponderance of the evidence” standard.” – *from*: AR 600-20 (Army Command Policy), para. 6-6, (c)(12), (July 24, 2020), *online at*: https://armypubs.army.mil/epubs/DR_pubs/DR_a/ARN32931-AR_600-20-004-WEB-6.pdf.

¹⁵⁵ See AR 635-200 “Active Duty Enlisted Administrative Separations,” para. 16-11 “Enlisted Qualitative Management Program,” at (b)(8) *online at*: https://armypubs.army.mil/epubs/DR_pubs/DR_a/ARN40058-AR_635-200-001-WEB-3.pdf.

our Operations Office (S3).¹⁵⁶ Their response was in the form of an emailed Operational Order (OPORD).¹⁵⁷ This indicated more identified problems: 1) the email contained an HPW OPORD that did not have an assigned reference number (after the year),¹⁵⁸ which comprised part of the naming convention of every OPORD,¹⁵⁹ 2) it was unsigned¹⁶⁰ and 3) it contravened a law and a published executive order.¹⁶¹ The OPORD Mission was stated as, “**Commanders Intent:** All Soldiers will participate in HPW assessment, including Strength and conditioning, briefings and surveys from each pillar of HPW IOT create a baseline assessment¹⁶² and meet USASOC¹⁶³ and 1st SFC directives. Max participation will be achieved across all units to meet HPW requirements.” I contacted 1st Special Forces Command Inspector General via email and, again, was recommended to “[reach] out to your HPW team with your questions.”

¹⁵⁶ “The S-3, or operations officer, is in charge of operational planning and training at the battalion and brigade. The S-3 is the primary staff officer for integrating and synchronizing the operation as a whole for the commander.” DEFENCE247GR: What is S1 S2 S3 S4 in the army? – *from*: “What is S1 S2 S3 S4 in the Army?” *Defence247GR*, online at: <https://defence247gr.com/?p=14069>.

¹⁵⁷ “OPORDs are published for a specific mission, typically some type of operational mission. They are in a five-paragraph format, to include the task organization, situation, mission, execution, service & support, and command/signal. An OPORD always specifies a date and time for execution. The more complex the mission, the more complex the OPORD. Most OPORDs are published by the commander but created by the S3 section (battalion level and higher),” – *from*: “The Five types of Army orders” *Part-time-commander.com*, online at: <https://www.part-time-commander.com/types-of-army-orders/>

¹⁵⁸ “OPORD 22-XXX” was on the document, which typically indicates a Work-in-Progress order.

¹⁵⁹ See Enclosure 37, “OPORD 22-XXX 528th SB (SO) (A) Human Performance and Wellness Assessment:”

¹⁶⁰ Ibid.

¹⁶¹ “Executive Memorandum M-10-23: Guidance for Agency Use of Third-Party Websites and Applications,” *WhiteHouse.gov*, (June 25, 2010) online at: https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/memoranda/2010/m10-23.pdf.

¹⁶² See 42 USC 1320d-6(a).

¹⁶³ “The United States Army Special Operations Command (Airborne) (USASOC) is the command charged with overseeing the various special operations forces of the United States Army. Headquartered at Fort [Bragg], North Carolina....,” – *from*: “United States Army Sepcial Operations Command” *Wikipedia*, online at: https://en.wikipedia.org/wiki/United_States_Army_Special_Operations_Command.

NOT DOING THAT AGAIN!

I was reticent to follow the Inspector General office's advice this time, given the Brigade Psychologist, Commander, and Command Sergeant MAJOR's reaction to my query the week prior; I decided to sit in on one of the HPW briefings instead. On December 5, 2022, I attended a scheduled briefing with ~12 Intelligence Soldiers and their Battalion COMMAND SERGEANT MAJOR (BN CSM), Demetris A. Prewitt.

THE INSTITUTIONALIZATION OF PEDS IN OUR CLASSIFIED FACILITY

It was during the December 5th HPW briefing that I discovered that the ordered-to-be-present Soldiers (all from 389th Military Intelligence Battalion including their Battalion COMMAND SERGEANT MAJOR Demetris A. Prewitt) were being notified by contracted personnel (that also work for the Brigade Commander), that Personal Electronic Devices (PEDs) were permitted in our classified-information-handling facility in support the embedded HPW applications. This is false.

As the currently appointed Brigade S2 Intelligence NCOIC (Non-Commissioned Officer-in-Charge) with two years of experience, as well as the Personnel Security Manager and the Information Security Officer (with 12 years of experience), I knew this was abjectly false. I immediately and professionally corrected all present that PEDs are not permitted in our facility and that there are no active exception-to-policy¹⁶⁴ memorandums authorized at this time for this program. The Battalion MI (Military Intelligence) COMMAND SERGEANT MAJOR was silent and provided no support.

¹⁶⁴ An exception-to-policy or "ETP" is typically a standardized form or memo that provides the PED serial number and any acceptable uses and prohibited uses for the PED and in what facilities with an expiration date; it must accompany the PED at all times when in a classified facility and presented upon request from any Soldier.

The week that followed included long meetings with various unit leaders. I notified my Officer in Charge, CAPTAIN Patrina Lowrie¹⁶⁵ of my concerns and attempted to educate our staff (including leadership), on Army PED prohibition in classified facilities. It was here that I learned that the culture of our unit was defective.¹⁶⁶ Therefore, I intimated the need for a 'PED Sweep'¹⁶⁷ to 1st Special Forces Command Inspector General office and got it. I also put up hasty signage notifying everyone entering our facility of the PED prohibition. Within 24 hours, my signage was removed. (I possess video footage of my Company Commander, CAPTAIN David Korista, ripping the signs down the morning after I posted them). Clearly, my efforts were not working.

PEDs IN A CLASSIFIED BUILDING POSTED ON FACEBOOK

Two Electronic Devices (one personal and one government; both without required Exception to Policy paperwork) were discovered in the sweep (December 9, 2022),¹⁶⁸ and 2-4 PEDs identified in a holiday picture posted on Facebook¹⁶⁹ in our facility (with our BN CDR and CSM in the background); all of this occurred that same week (of December 5th). I then requested to put out an impromptu verbal message to our formation on the following Monday morning. It ultimately resulted in me being humiliated and assaulted (grabbed by the neck and pushed and shoved back to my spot in formation) in front of the entire Battalion Formation by CSM Emmanuel Emekaekwue (he is the person who was wearing Santa hat and multi-colored holiday jacket in the aforementioned Facebook post). This occurred while I was in the

¹⁶⁵ See Enclosure 38, email from SFC Michael J. Forbes to CPT Patrina Lowrie, December 7, 2022.

¹⁶⁶ See "Leaked docs reveal Army CID reform plan and its need for a culture shift," Davis Winkie and Kyle Rempfer, *Army Times* (December 10, 2021) online at: <https://www.armytimes.com/news/your-army/2021/12/10/leaked-docs-reveal-army-cid-reform-plan-and-its-need-for-a-culture-shift/>.

¹⁶⁷ See Enclosure 39, email to LTC Christopher L. Howsden, 1SFC IG, from SFC Forbes, December 8, 2022.

¹⁶⁸ See Enclosure 40, USASOC Wireless Detection Report, Charles A. Ransom and Jorde Neri, December 9, 2022.

¹⁶⁹ See Enclosure 41, screen captured of picture posted on Facebook depicting PEDs in building X-4047 classroom, SFC Michael Forbes captured on December 9, 2022.

middle of an invited (by the Company FIRST SERGEANT Larry Morgan)¹⁷⁰ verbal National Security message to our Special Troops Battalion (STB)¹⁷¹ troops that PEDs are prohibited without an exception-to-policy, the morning of December 12, 2022. Later that morning, I recommended to the PAO that the picture be removed immediately to protect our unit and our leaders per Army Regulation (AR) 25-2 (a “regulation that restricts and guides the use of portable electronic devices (PEDs).”¹⁷²

SOUGHT INFORMATION FOR CONSENT DECISION, CONFIRMED FALSE ORDER

The following week I met face-to-face with 1st Special Forces Command (1SFC) IG again, to request assistance in procuring the written Directives from 1SFC, and US Army Special Operations Command (USASOC), that COLONEL Brunson’s 528th¹⁷³ HPW OPORD stated were in effect. Was this another fallacy-driven BHA order from a higher echelon? I was scolded by the IG official, a SERGEANT FIRST CLASS, as he stated, “You are a SERGEANT FIRST CLASS, go find the answer!” I immediately traveled to the 1SFC, Operations Office asked them. They could not find the referenced directive and informed me to go to USASOC. After reaching out (via email) to USASOC, their reply was clear; it was not a fallacy-driven order, but (worse yet) a produced work of fabricated authority that was being (and ultimately was) implemented.

¹⁷⁰ In our unit the HHC Company First Sergeant (not the others) forms everyone up and gets accountability of everyone before handing it to the Battalion Command Sergeant Major.

¹⁷¹ “The Special Troops Battalion (formerly known as the 528th Support Battalion (A)) provides rapidly deployable combat service support and health service support to ARSOF and consists of a headquarters company with an organic rigger detachment, a special operations medical detachment with four Austere Resuscitative Surgical Teams (ARSTs).” – *from*: “528th Sustainment Brigade (United States) *Wikipedia, online at:* [https://en.wikipedia.org/wiki/528th_Sustainment_Brigade_\(United_States\)](https://en.wikipedia.org/wiki/528th_Sustainment_Brigade_(United_States)).

¹⁷² See Enclosure 42, USASOC Regulation 25-2 excerpt, p. 17-23 (highlighted), October 17, 2022.

¹⁷³ Referring to the 528th Sustainment Brigade.

RETALIATION PHASE¹⁷⁴

The day after my inquiry uncovered this falsity and a week after being assaulted by my Special Troops Battalion¹⁷⁵ CSM Emmanuel A. Emekaekwue, I was removed from my Brigade S2 NCOIC¹⁷⁶ Staff position by the Brigade Commander, COLONEL Tavi Brunson. This decision was the ‘fuel’ that began a steady stream of retaliation operations against me by him and many amongst his staff. Essentially, I was targeted to cover up the assault and the prior violations of laws; I was:

- removed of all appointed duties and responsibilities I successfully held for over 20 months by COLONEL Tavi N. Brunson (I was astonished and rationalized that he must be protecting me as a victim while he investigated CAPTAIN Korista and CSM Emekaekwue’s actions),
- investigated in two clandestine investigations. The first one was instigated by COLONEL Tavi N. Brunson (an internal investigation). The second one was instigated by BRIGADIER GENERAL Derek N. Lipson (an investigation started from my 1st Special Forces Command Inspector General referred MWPA complaint).¹⁷⁷ Both were conducted without Due-Process,¹⁷⁸ I was initially not aware of, or flagged,¹⁷⁹ upon initiation of the first Brigade investigation for 3.5 weeks

¹⁷⁴ See 10 USC § 932, (UCMJ Article 132 Retaliation)

¹⁷⁵ Our Battalion was a typical size; the assault occurred in front of a formation of about 200 Soldiers of all ranks.

¹⁷⁶ “S2 handles the processing of intelligence and tactical information for the commander” – *from*: “What is S1 S2 S3 S4 in the Army?” *Defence247GR*, *online at*: <https://defence247gr.com/?p=14069>.

¹⁷⁷ This is a violation of law of 10 USC § 1034 (b)(2)(A)(v).

¹⁷⁸ My administrative law Attorney sent my layman’s Due-Process review (Enclosure 31) as part of my GOMOR and RFC rebuttal packet to the Commanding General of 1SFC, June 16, 2023.

¹⁷⁹ “SUMMARY of CHANGE Standardizes all time requirements (to within 3 days) for initiating and removing suspension of favorable personnel actions within Human Resources systems...” – *from*: AR 600-8-2, (Suspension of Favorable Personnel Actions (Flag)), (April 5, 2014), Summary of Changes, p. 2, *online at*: https://armypubs.army.mil/epubs/DR_pubs/DR_a/ARN30769-AR_600-8-2-000-WEB-1.pdf.

and at the onset of the second MWPA investigation,¹⁸⁰ I was added as a suspect in my own Whistleblower complaint investigation.

- ordered¹⁸¹ and escorted¹⁸² by CAPTAIN David K. Korista for a gratuitous emergency Command Directed Behavioral Health Examination (eCDBHE),¹⁸³ and authorized by the same aforementioned Psychologist, MAJOR Rhea Racaza (which is a conflict-of-interest)¹⁸⁴ in support of the Brigade Commander's clandestine investigation.^{185,186} CAPTAIN Korista's ill-intended stated purpose was clearly stated in his answer to the block 10 question on the required form, which states, "Your future plans for dealing with this Soldier?..." His answer was: "remove him from USASOC/levels of responsibility"¹⁸⁷ (This was when I first believed that a coordinated effort to railroad me out of the Army was being implemented;¹⁸⁸ FIRST SERGEANT Larry

¹⁸⁰ See Military Whistleblower Protection Act of 1988, 10 USC § 1034 (b)(2)(A)(v)

¹⁸¹ See Enclosure 43, Fort Bragg form 1462-E, "REQUEST FOR MENTAL HEALTH EVALUATION," CPT Korista, January 18, 2023.

¹⁸² See Enclosure 44, email of Serious Incident Report (SIR) from CPT David Korista to COL Tavi Brunson, dated January 18, 2023.

¹⁸³ See DoDI 6490.04, "Mental Health Evaluations of Members of the Military Services," April 22, 2020, <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/649004p.pdf>.

¹⁸⁴ The Arizona (AZ) Board of Psychologists Examiners (BOPE) incorporates by reference standards 1.01 through 10.10 of the "Ethical Principles of Psychologists and Code of Conduct" adopted by the American Psychological Association, namely Principles 3.05 & 3.06, as is effective June 1, 2003, *online at*: <https://www.apa.org/ethics/code>

¹⁸⁵ See Enclosure 45, Memorandum, "Appointment as Investigating Officer," signed by COL Tavi Brunson, dated January 12, 2023.

¹⁸⁶ *Constitution of the United States of America*, 4th Amendment.

¹⁸⁷ See Enclosure 43, Fort Bragg form 1462-E, "REQUEST FOR MENTAL HEALTH EVALUATION," CPT Korista, January 18, 2023.

¹⁸⁸ The Company Commander used an old informal Army tool against me, the imposition of weaponized mental health evaluations to silence perceived trouble-makers. This is a violation of the stated intent of these evaluations: "... clinical efforts are also being implemented to address suicide prevention by reducing stigma. DoDI 6490.04, Mental Health Evaluations of Members of the Military Services, was updated in 2020 to continue mandated mental health evaluation referrals by Commanders and supervisors when a Service member indicates possible harm to self

Morgan ensured SECOND LIEUTENANT Tolston (the investigator) had CAPTAIN Korista's Serious Incident Report email on January 20, 2023¹⁸⁹ even though the report from the clinician (that took me three months and five requests to get) showed I had "[n]o duty limitations."¹⁹⁰

- removed from the Master Sergeant (MSG) promotion list (I was very disappointed in this consequence of their retaliation),
- confronted with multiple entrapment attempts (contrary to doctrinal procedure)¹⁹¹ that culminated in event-oriented counseling sessions¹⁹² by CSM Prewitt, CAPTAIN Hollis Davenport, and FIRST SERGEANT Amanda F. Kelley (all of the 389th Military Intelligence Battalion), that required my mandatory signature and each entrapment was associated with some accusation of my wrongdoing, of which my concurrence would have supported the longstanding 528th Sustainment Brigade, Commander's investigation (every time I was ordered to appear I felt like a mouse in a maze full of career-death traps); I never wavered in my support of my dutiful professionalism in these staged events,

or others, or they believe the Service member may be suffering from a mental illness." – *from: DoD Annual Suicide Report (ASR) 2020, "Department Wide Efforts," p. 44, online at: <https://www.dsps.mil/Portals/113/Documents/CY20%20Suicide%20Report/CY%202020%20Annual%20Suicide%20Report.pdf?ver=0OwlvDd-PJuA-igow5fBFA%3D%3D>*

¹⁸⁹ See Enclosure 44, email to 2LT Tolston, from 1SG Morgan, January 20, 2023.

¹⁹⁰ See Enclosure 46, FB form 3822 (p. 4-5 in pdf) from clinical social worker (NPI 1598720104), Mr. Brian D. Lanier, January 19, 2023.

¹⁹¹ See *Army Techniques and Procedures (ATP) 6-22.1, "The Counseling Process," para. 2-30, (July 2014), online at: https://armypubs.army.mil/epubs/DR_pubs/DR_a/pdf/web/atp6_22x1.pdf*.

¹⁹² Ibid "Specific Instances of Superior or Substandard Performance," para. 1-6 and 1-7.

- added as a suspect into my own Inspector General complaint's,¹⁹³ referred investigation,¹⁹⁴ by BRIGADIER GENERAL Derek N. Lipson, Deputy Commanding General (DCO), 1st Special Forces Command, who appointed MAJOR Ian Chustek, as Investigating Officer, a violation of the Military Whistleblower Protection Act of 1988 (MWPA),¹⁹⁵
- found guilty in the unchallenged and unseen MWPA investigation and disparaged by COLONEL Patrick R. Nelson, Chief of Staff (COS), 1st Special Forces Command, in a written attempt¹⁹⁶ to chill future communications¹⁹⁷ with more retaliation with my Congressman,¹⁹⁸ through his use of an excerpt of this corrupted investigation¹⁹⁹ sent to Hon. Richard Hudson with unseen and unchallenged content of my MWPA complaint's²⁰⁰ investigation (I could not believe they would violate another law cover for their prior violations); therefore, I have not had my "right to appeal" it,²⁰¹

¹⁹³ Enclosure 47, DA Form 1559, Inspector General Action Request, dated December 13, 2022.

¹⁹⁴ Enclosure 48, Memorandum, "Appointment as a Preliminary Inquiry Investigating Officer into Allegations Against Members of 528th Sustainment Brigade (Special Operations) (Airborne)," signed by BG Derek N. Lipson,

¹⁹⁵ Not only did they investigate me in retaliation, but they brazenly added me in my own MWPA complaint's investigation lodged with 1SFC IG on December 13, 2022. - See 10 USC § 1034, (b), (2), (A), (v).

¹⁹⁶ See Enclosure 49, letter to Honorable Richard Hudson from COL Patrick Nelson, 1st Special Forces Command April 28, 2023.

¹⁹⁷ See Enclosure 50, Submitted a Privacy Authorization Release Form regarding the assault to Honorable Richard Hudson, December 19, 2022.

¹⁹⁸ See *DoD Retaliation Prevention and Response Strategy Implementation Plan* "SAPR.mil," "Annex B: Definitions of Retaliation," Para 1, C., p. 24, (January 2017), online at: https://sapr.mil/sites/default/files/DoD_RPRS_Implementation_Plan.pdf.

¹⁹⁹ See Enclosure 48, Memorandum that added me (SFC Forbes) as a potential suspect instigating my being assaulted on December 12, 2022, "Appointment as a Preliminary Inquiry Investigating Officer into Allegations Against Members of 528th Sustainment Brigade (Special Operations) (Airbone)," signed by BG Derek N. Lipson, Deputy Commanding General, 1SFC, February 9, 2023.

²⁰⁰ See Enclosure 47, DA Form 1559 (a Military Whistleblower Complaint) that clearly depicts the "Co. CDR" (CPT Korista) and CSM Emekaekwue as alleged perpetrators, SFC Michael J. Forbes, December 13, 2022.

²⁰¹ See, AR 27-10 (Military Justice), para. 3-16 (a)(7) "The right appeal," online at: https://armypubs.army.mil/epubs/DR_pubs/DR_a/ARN31271-AR_27-10-001-WEB-2.pdf.

- rebuffed by the US Army Inspector General’s Agency²⁰² (likely due to the “get-out-of-jail-free affirmative defense clause added to the Military Protection Act (MWPA) in 2016) when I tried to open a complaint for adding me as a suspect into my own MWPA complaint’s investigation (I was demoralized that no one would help),
- provided with an unwarranted and unsubstantiated Relief-for-Cause by CAPTAIN Patrino Lowrie, Brigade S2 Intelligence OIC (Officer-in-Charge), NCOER (Non-commissioned Officer Evaluation Report) based on a corrupted investigation by SECOND LIEUTENANT Tolston,
- recommended for and provided a General Officer Memorandum of Record (GOMOR) by BRIGADIER GENERAL Lawrence G. Ferguson, Deputy Commanding Officer, 1st Special Forces Command regardless of corrupted investigation or violations of our Constitution or federal laws: it was recommended to be filed permanently in my permanent Army Military Human Resource Record (AMHRR)²⁰³ file by: 1LT Kaitlin Jennes, Acting Co. CDR; LTC Gerald A. Robinson, BN CDR; COLONEL Tavi N. Brunson, Brigade Commander; 1SG Joshua Deleon, Co. 1SG; CSM Emmanuel A. Emekaekwue (abstained due to assault complaint), BN CSM; CSM Sandra A. Vargas, BDE CSM,

²⁰² See Enclosure 51, letter from US Army Inspector General Agency, Investigations Division, Mr. John R. Peloquin, Deputy Chief, dated November 27, 2023.

²⁰³ “The naming convention AMHRR is an umbrella term encompassing human resource (HR) records for Soldiers, retirees, veterans, and deceased personnel. The AMHRR contains military service-specific information related to a Soldier’s career and includes, but is not limited to, the official military personnel file (OMPF), finance related documents, and non-service related documents deemed necessary to store by the Army,” – *from*: AR 600-8-104 (Army Military Human Resource Records Management), (June 29, 2023) *online at*: https://armypubs.army.mil/epubs/DR_pubs/DR_a/ARN30770-AR_600-8-104-000-WEB-1.pdf.

- issued a fake Military Protection Order 6 months after the event, which was rescinded the day that BRIGADIER GENERAL Ferguson decided to permanently file the GOMOR in my Army Human Resources. Contrary to established procedure, it was never sent to the Provost Marshal Office, who would have sent it to the North Carolina State Bureau of Investigation and then it would have been forwarded to the FBI for entry into the National Crime Information Center (NCIC) Protection Order File (POF),
- given a warning order that I was to be forced to complete a Privately Owned Weapons counseling²⁰⁴ by 1SG Amand Kelly. This happened as we walked out of conference room the day I received the GOMOR; it was left on my desk when I arrived the next day to work (it was never executed, I would have refused to answer its unlawful questions),²⁰⁵
- denied amendment through rescission of General Order Memorandum of Reprimand and Relief for Cause, Non-Commissioned Officer Evaluation Report, regardless of my submitted evidentiary rebuttal and subsequent formal Article 138 redress request informing the Brigadier General Ferguson of the Privacy violations and all issues that followed,
- redirected my in-person request to meet with the 1st Special Forces Command General on January 18, 2023 and, never scheduled any of my acknowledged email requests per their respective Open-Door Policies,^{206,207} this includes my final attempt in September,²⁰⁸ to meet with U.S. Army Special Operations Command General (higher echelon),

²⁰⁴ See Enclosure 52, 'Personal Weapon inventory request (see "Plan of Action" top of page 2),' DA Form 4856, 1SG Amanda Kelly, undated and unexecuted.

²⁰⁵ See Pub. Law 111-383 § 1062: "Prohibition on infringing on the individual right to lawfully acquire, possess, own, carry, and otherwise use privately owned firearms, ammunition, and other weapons."

²⁰⁶ See Enclosure 53, 1st SFC Open Door Policy #1, MAJOR GENERAL John W. Brennan, former Commander, with adoption memo by MAJOR GENERAL Richard E. Angle, February 22, 2022.

- punitively added into the Qualitative Management Program (QMP) for consideration for administrative separation from my Army contract and military service in April 2024.

ARMY REPEATING SAME MISTAKES OF THE PAST

On January 18, 2023, 40 years after the Military Whistleblower Protection Act of 1988 became law, I was treated exactly as Chief Petty Officer (CPO, equivalent to MSG in the Army) Michael J. Tufariello was treated.²⁰⁹ He was forced into an emergency Command-Directed Behavioral Health Evaluation (eCDBHE) at a hospital, as I was. The only difference anyone can infer between our stories is that he assaulted his Senior Master Chief²¹⁰ after his release from the hospital while I did not fight back when my Battalion COMMAND SERGEANT MAJOR assaulted me.

His Congressional testimony, among others, prompted the codification of language contained within the MWPA Act of 1986. Sadly, as contained herein, this may be yet another example of a feckless law on our books as questionable and corrupted referrals, like mine, are implemented as an ad hominem attack and fishing expedition to support an investigation of the Soldier that complains. Any negative information from that would have been used in the investigation that started a week earlier against me, the unwitting accused. In fact, the mere act of sending me to the eCDBHE was used in the investigation when FIRST

²⁰⁷ See Enclosure 54, Current US Army Special Operations Command legacy, open-door policy sent to me by a Staff Member at US Army Special Operation Command on April 11, 2023 entitled, "Open Door Policy, Policy Number 19-15," Lieutenant General Francis M. Beaudette, September 4, 2018.

²⁰⁸ See Enclosure 16, email to and from USASOC Secretary of the General Staff (SGS), Mr. William T. Wallace September 15, 2023.

²⁰⁹ "Military Medical Malpractice- Mike Tufariello, Pat Audet, Carl Mollnow" *Current Affair* (TV Show 1992) online at: <https://www.youtube.com/watch?v=gHCT3-jpMM0&t=9s>

²¹⁰ A Naval Senior Master Chief is the equivalent of a Command Sergeant Major in the Army (E-9)

SERGEANT Larry Morgan ensured²¹¹ the investigator had the SIR email that CAPTAIN David Korista was required to send to COLONEL Tavi Brunson.

ATTEMPT TO USE WIFE'S ASSISTANCE REQUEST AGAINST ME

Notably, my civilian wife's request-for-assistance letter²¹² to the Secretary of the Army, Christine Wormuth, was used against me by adding it in my General Officer Memorandum of Reprimand (GOMOR) packet. The GOMOR packet with the letter included was found in the Human Resources Command system of records that was submitted after BRIGADIER GENERAL Ferguson's decision for its permanent filing.

SUMMATION OF THE RETALIATION OF THESE PRIVACY VIOLATION

COLONEL Brunson, a Commissioned Officer of the United States Army attempted to cover for his initial Privacy violations once his decision's second and third order effects morphed into an assault by one of his Senior Command Staff, from November 29 - December 12, 2022. His efforts led to the Army retaliating against me via investigating me twice without due-process, fishing for alcohol abuse and/or a personality disorder in the eCDBHE, and the multiple entrapment counseling sessions, etc. A thorough examination would provide ample evidence for an outside adjudicator to determine a "close temporal proximity"²¹³

²¹¹ See Enclosure 44, email to 2LT Tolston, from 1SG Morgan, January 20, 2023.

²¹² See Enclosure 55, letter sent to Secretary of the Army, Christine E. Wormuth, by Sabrina B. Forbes, May 23, 2023.

²¹³ "(In retaliation cases, a causal connection may exist where the employer takes adverse employment action against an employee shortly after learning of the protected activity.');" also see *Flanagan v. Searce*, No. 7:19-cv-00413, 2021 U.S. Dist. LEXIS 180353, at *21 (W.D. Va. Sep. 22, 2021)...And the close temporal proximity between the other alleged adverse actions (harshly criticizing Hening's performance during a film session and removing her from the starting lineup for the Clemson and UNC games) occurred within two weeks of Hening's refusal to kneel before the UVA game." – *from: Hening v. Adair*, 644 F.Supp.3d 203, 206 (W.D. Va. 2022), *online at: <https://casetext.com/case/hening-v-adair>*.

(the Army Inspector General office refers to this as an ‘inference of causation)’ of multiple actions associated with this retaliation by COLONEL Brunson and his staff.

These retaliations were designed to chill my follow-through multiple protected communications and especially, on my intended Arizona Board of Psychologist Examiners complaint against MAJOR Racaza, which has not occurred (to date) due to these efforts. The most flagrant demonstration of this occurred on May 22, 2023, when he added back “disrespect” as a ‘founded’ charge²¹⁴ to his Brigade-appointed and completed investigation, 62 minutes after my mandated notification (via email) to COLONEL Brunson of my seeking an open-door meeting with BRIGADIER GENERAL Jonathan P. Braga.²¹⁵ The email included my repeatedly rebuffed (never answered) requests for MAJOR Racaza’s credentials that both, the Defense Health Agency “Patient Bill of Rights”²¹⁶ and the Womack Army Medical Center’s (WAMC) “Patient’s Rights and Responsibilities,”²¹⁷ respective Patient Bill of Rights (BoRs), states I am permitted to receive upon request.²¹⁸

Given COLONEL Brunson’s retaliatory response to the facts in that email, his singular punitive reaction could serve to provide additional weight to modern arguments for “Reducing the Role of the

²¹⁴ See Enclosure 36, Memorandum (last page of pdf), COL Tavi N. Brunson, time and dated 3:44pm May 22, 2023

²¹⁵ See Enclosure 13, email to Mr. William Wallace, USASOC Secretary to the General Staff (SGS) time and dated 2:42pm, May 22, 2023.

²¹⁶ See Defense Health Agency, Procedural Instruction Number 6025.10, Enclosure 3, Procedure 3 (A)(4), “DoD Patient Bill of Rights and Responsibilities (REFERENCE (E)), IN MHS MTFs” (October 9, 2018) *online at*: <https://corpuschristi.tricare.mil/Portals/115/Documents/DHAPI%20602510%20Patient%20Rights%20and%20Responsibilities.pdf>

²¹⁷ See Enclosure 56, WAMC FORM 2714, “Patient Rights” para. (4), March, 2023.

²¹⁸ See Enclosure 57, emailed FOIA request from me to Medical Command at Fort Belvoir, MD (after multiple requests at WAMC), May 12, 2023 (this was never answered due to a Covid-19 email autoreply).

Commander” in our Military Justice System.²¹⁹ Furthermore, when it comes to evidence-based programs, providing this level of invasive information to Commanders could produce a significant bias problem with respect to their administrative separation decisions. This argument could include the likelihood of Commander bias influencing Administrative Separation recommendations in lieu of non-judicial punishment or other charges; as seen in my situation, any reasonable person can conclude that there is a reason that COLONEL Tavi N. Brunson decided not to bring Uniform Code of Military Justice charges against me. I would have chosen to prosecution these charges in a proper venue where I could have been heard, where my evidence could have been weighed, and where Rules of Evidence would have applied.²²⁰ Through these two clandestine, unchallenged, retaliatory and corrupted²²¹ investigations (one of which I still haven’t seen despite multiple informal FOIA requests and a formal request on October 11, 2023), Army personnel redefined issues to obfuscate their Constitutional, Federal Law, and Regulatory, violations or to protect others that did.

THE TACTICAL PERFORMANCE INDEX QUESTIONNAIRE (TPIQ)

None of this has curtailed my efforts for remediation of the Personnel Actions against me and the declarative relief for Soldiers; the latter of which I may have positively contributed to in a limited way. In early February 2023, I lodged a complaint with the Army Human Research Protection Office, which may have contributed to a memorandum signed by our Brigade Surgeon, on February 23, 2023. This memo acknowledged “...no soliciting of specific past medical or behavioral health history,...Commanders will

²¹⁹ Schlueter, David A. and Lisa Schenck “Transforming Military Justice: The 2022 and 2023 National Defense Authorization Act” *Military Law Review*, Volume 231, Issue 1, (2023), <https://commons.stmarytx.edu/cgi/viewcontent.cgi?article=1734&context=facarticles>.

²²⁰ See *Manual for Courts-Martial*, <https://jsc.defense.gov/Military-Law/Current-Publications-and-Updates/>.

²²¹ Brigadier General Ferguson, 1SFC Commanding General was notified of the Due-Process (5th Amendment) violations of the BDE 15-6 investigation and his echelon added me as an unwitting suspect in the MWPA referred investigation.

only have access to aggregate scores of their units without the ability to access individual results,”²²² and clearly stated that “All Soldiers will be given the opportunity to Opt-in or Opt-out of the TPIQ [Tactical Performance Inventory Questionnaire].”²²³ That said, there is open-source²²⁴ evidence from previously conducted HPW pilot at 10th Mountain Division,²²⁵ that Commanders can get de facto access²²⁶ to this data through a simple ordered request²²⁷ to a Platoon Leader.

Although the Brigade Surgeon’s memorandum may serve as an acknowledgment and remediation for the HPW program and the Medical Staff at our unit, it does nothing to remediate the thousands of Soldiers who already participated in these ordered (mandatory) baseline-data-gathering ‘pilots.’ Moreover, any mandatory meetings (individual or group) with clinical or non-clinical personnel to gather beliefs/discuss provocative topics/gather other data, or any application gathering “daily wellness questionnaires,”²²⁸ are

²²² See Enclosure 11, memorandum entitled, “528th HPW Assessment Program HIPPA, PHI, and PII Security Program,” MAJOR Robert C. Sawyer, MD, February 23, 2023.

²²³ Ibid.

²²⁴ “Collecting open-source intelligence is achieved in a variety of different ways, such as: Social Media Intelligence, which is acquired from viewing or observing a subjects online social profile activity.”- from “Open-source intelligence” *Wikipedia*, online at: https://www.bing.com/search?q=Collecting+open-source+intelligence+is+achieved+in+a+variety+of+different+ways%2C+such+as%3A+Social+Media+Intelligence%2C+which+is+acquired+from+viewing+or+observing+a+subjects+online+social+profile+activity&cvid=2ebf6c8bb7d54b2dabb7a841cca624c5&gs_lcrp=EgZjaHJvbWUyBggAEEUYOdIBCDEONzVqMGo0qAIAAsAIA&FORM=NAB01&PC=U531.

²²⁵ “The 10th Mountain Division (Light Infantry) is a light infantry division in the United States Army based at Fort Drum, New York.” See “10th Mountain Division (United States)” *Wikipedia*, online at: [https://en.wikipedia.org/wiki/10th_Mountain_Division_\(United_States\)](https://en.wikipedia.org/wiki/10th_Mountain_Division_(United_States)).

²²⁶ See “Military Treatment Facility Mental Health Clinical Outcomes Guidance,” Attachment 1, para. 1 (bullet 4) to Memorandum from Johnathan Woodson, M. D., Assistant Secretary of Defense” (September 9, 2013), online at: https://health.mil/Reference-Center/Publications/2013/09/09/PHCoE-OASD-memo-dtd09-sep13_508.

²²⁷ “Battalion and Company leaders needed to see how their group was performing as a whole and identify trends over time, while restricting access to Soldier-specific data. Platoon leaders needed both aggregate and Soldier-level data to effectively monitor and manage illness in their group.”- from: “DEVCOM Solider Center & MRDC: Optimizing the Human Weapon System Staying Connected Under Isolating Conditions” *Smartabase.com*, online at: <https://smartabase.com/success-stories/devcom-solider-center-mrdc>.

²²⁸ “When the COVID-19 pandemic hit, funding was made available to rapidly develop and test solutions to effectively track and manage the spread of COVID amongst Soldiers. To this end, the DEVCOM Soldier Center partnered with the 10th Mountain Division and launched the Optimizing the Human Weapon System (OHWS)

also problematic and have occurred in my, and two other, unit(s),^{229,230} over the past few years. Moreover, upon bringing the Surgeon's memo to the US Army Special Operations Command (USASOC) Inspector General's attention, they did nothing to remediate the effects of the negative Personnel Actions that I currently endure and face that stemmed from these two orders; the Personnel Actions remain even though the memorandum clearly indicates my concerns and questions were valid and I have reached out to myriad agencies for remediation.

SUMMARY OF THOUGHT-SURVEILLANCE

Summarily, the amount of flawed logic and fallacy driven sensationalism is astounding in these *cart blanc* thought-surveillance efforts currently being employed in our military. False statements or fallacy-driven logic exist and can be used for good purposes, e.g. as basis for Psychological Operations against an enemy force to get them to act a preferred way or decide a preferential Course-of-Action (COA) for us; that said, they are not appropriate for use against our own troops. This is especially true when those same troops are ethically bound, by oath, to defend to the death the very Civil Liberties and Rights inherent in our Constitution that our leaders are trying to clandestine strip from them. A solution would be for our leaders to honorably and proactively follow our laws and Constitution and pause, absorb, and consider the guidance from Subject Matter Experts (SMEs), or de facto subordinate SMEs, on such grave issues. Unfortunately, in this case, that has not occurred.

initiative. The aim of OHWS was to screen for illness in the ranks by looking at changes in physiological states in conjunction with subjective data from daily wellness questionnaires.” – *from*: Ibid.

²²⁹ For discussion of the implementation of this in the 10th Mountain Division, See "Devcom Soldier Center & MRDS: Optimizing the Human Weapon System" *Smartabase Website, online at*:

https://f.hubspotusercontent40.net/hubfs/6443997/Download%20Assets%20for%20the%20website/Smartabase_OH_WS_Customer_Story.pdf.

²³⁰ See Enclosure 58, 5th SFG (A) Human Performance and Wellness Program Policy, Policy 21-27, COL Brent W. Lindeman, order dated August 2, 2021.

RETALIATION CAMPAIGN

Subsequently, the US Army (through my Command) has engaged in a multifaceted retaliation campaign, which violated my 1st Amendment rights that I employed to attempt to gather the required notice denied me, under the Privacy Act of 1974 (inter alia), which lawfully bound them to provide prior to any Order/mandate. The campaign had many facets; some of which I highlight here. I was denied access to my emergency Command-Directed Behavioral Health Evaluation record for 3 months,²³¹ it required five requests and, ultimately; I was forced to email the WAMC Commander, COLONEL David R. Zinnante to be provided the document. 1st Special Forces Command failed to amend my records by rescinding²³² the General Order Memorandum of Reprimand (GOMOR)²³³ and Relief-for-Cause (RFC)²³⁴ after I notified BRIGADIER GENERAL Lawrence G. Ferguson, Commanding General, of the violations of Federal laws and our Constitution.²³⁵ Notably, as a known whistleblower, I was added as a suspect in retaliation and investigated in my own referred Military whistleblower complaint²³⁶ after I complained about the corrupt referral to an eCDBHE authorized by the same Psychologist who helped spur an investigation that was opened one week prior.

²³¹ See Enclosure 59, email from SFC Forbes to COL David R. Zinnante, Commander, Womack Army Medical Center, Fort Bragg, NC., April 20, 2023.

²³² See Enclosure 60, Memorandum response to Article 138 Redress, BG Lawrence G. Ferguson, Commanding General of 1st Special Forces Command, in Fort Bragg, NC, dated November 30, 2023 and emailed January 19, 2024.

²³³ See Enclosure 05, "MEMORANDUM FOR SFC Michael Forbes...SUBJECT: General Officer Memorandum of Reprimand, BG Lawrence G. Ferguson, May 30, 2023.

²³⁴ See Enclosure 06, DA Form 2166-9-2, NCO Evaluation Report, Patrina Lowrie and LTC Burton Furlow.

²³⁵ See Enclosure 61, Article 138 redress brief sent by Mr. James M. Branum, Esq. with enclosures, November 24, 2023.

²³⁶ See 10 USC § 1034.

Soldiers, unfortunately, follow fallacy-based, unlawful orders such as these because they are conditioned to and are empirically aware of others who have fallen prey to similar retaliatory tactics. In fact, many military members have witnessed or experienced some level of retaliation²³⁷ that has been successfully employed, without recourse to the perpetrators. This issue is gaining some public exposure lately, but most internal attention and external publication of it seems to be reserved for cases that have a sexual aspect to them. Little, if any research is available that addressed ‘simple’ retaliation (without a sexual case associated with it). This is likely due to one of the following two reasons: 1) it never comes to light in court until years after the Soldier’s administrative removal by the bad actors and the bad actors have moved units, and, 2) Soldiers give up defending their military service record after being administratively removed due to their unwillingness to continue a battle (for financial, professional, familial or mental health reasons) that becomes seemingly endless and possibly ‘futile’ in their mind.

As targeted separating Soldiers (in similar situations as mine) are corralled and pushed along their respective administrative separations, one of the two, or both, of the aforementioned effects are likely. Some can become desperate and disassociated when they come to their own perceived realization that punishment of the seemingly untouchable Commanders won’t occur. It gets even bleaker when they realize remediation of their characterized service can take years and potentially a lot of money as well. These two effects could contribute to the military suicide rate, as approximately a quarter of attempted and completed suicides are by Soldiers in some kind of “administrative/legal problem.”^{238,239}

²³⁷ “Upholding Retaliation Prevention and Response: The Command Team's Vital Responsibility,” *Defense Equal Opportunity Management Institute* (December 19, 2023) online at: https://www.defenseculture.mil/Portals/90/Documents/Culture-Portal/Publications/TECR_23-52-CTAS_Retaliation_Prevention-20231219.pdf?ver=pksxo61f_5tMITOWemTKPQ%3d%3d.

²³⁸ See “Annual Report on Suicide in the Military, Calendar Year, 2022” *DSPO.mil*, online at: https://www.dspo.mil/Portals/113/Documents/ARSM_CY22.pdf?ver=StAk_q6lJgNRUsOlptzVVA%3d%3d.

²³⁹ Steve Walsh, “A Pentagon report finds that troops’ suicides are often preceded by legal or administrative troubles,” *KPBS.org/The American Homefront Project* (January 15, 2024) online at: <https://www.kpbs.org/news/military/2024/01/15/pentagon-report-troops-suicides-preceded-legal-administrative-troubles>.

'A THOUSAND STUDIES' PRODUCED 'A THOUSAND FLOWERS'

Adding dangerous, invasive, and unlawfully ordered evidence-based psychological 'medicine' (recommended in the myriad suicide studies performed since 2009) may not positively affect that problem, however, it does give more information and power to Commanders to make biased and unlawful recommendations. If Commanders using these third-party evidence-based programs are not bound to constrain themselves within our U.S. Constitution, federal law, and professional codes of conduct, our Soldiers are subject to unwittingly and indefinitely giving up their privacy to these third-party corporations. This allows the Commander into every aspect of their private lives with the discretion to negatively affect their careers. After all, Soldiers are already liberty-impaired due to their oaths of enlistment, and therefore, are easy targets under an authoritative fallacy. If they don't comply, they face near-impossible conflicts using illegal retaliation tactics (contained herein) and reaching for help is ineffective. The Commanders are protected by the aforementioned affirmative defense clause. The bad-actors never get scrutinized. Moreover, the Army leaders and the office of the Inspector Generals (as internal organizations) that the courageous ones reach out to for assistance are designed to make decisions in 'the best interest of the Army' [or DoD]. This may never include or, let alone, outweigh the lawfulness of that Soldiers plight against a Commander's violation of law (and his/her supervisors' cover for his/her violations). This toxic combination produces an environment conducive to the communal bias of Commanders and the subjective purging of Soldiers from the ranks.

World history is replete with examples of this type of dichotomy²⁴⁰ where it seems simple to assert "The needs of the many outweigh the needs of the few,"²⁴¹ and, I too agree, we need a broadly strong and resilient Army. That said, our Army is made up of individual Soldiers with constitutionally protected

²⁴⁰ "Political and Cultural Purges" *Wikipedia*https://en.wikipedia.org/wiki/Category:Political_and_cultural_purges.

²⁴¹ *Star Trek II: The Wrath of Khan* (1982 movie).

rights, which cannot be lawfully ignored. The most notable example of a purge with dire consequences can be seen in the German National Socialist (Nazi) party as they rose to power in the 1930's. Some form of this utilitarian concept (of societal needs) was likely bastardized by those in power through the nationalization of Police actions. "This represented a radical departure from German tradition, which held that law enforcement was (mostly) a Land (state) and local matter."²⁴² Hitler changed that tradition with the formation of his formidable secret information force that began as a national surveillance force on their own citizens and quickly gravitated to violence and any "arrested ... were held without judicial process."²⁴³ Furthermore, the Gestapo, whose "... fanatical accumulation of information became the Gestapo's greatest weapon....the Gestapo²⁴⁴ was operating essentially without any meaningful restraint."²⁴⁵ In contrast, our free society, as represented by our democratic republic, is (arguably) the longest-standing endeavor of its kind in history. Moreover, it only has endured this long due to the constraints that our Founding Fathers had the wisdom to ensure were placed in our Constitution and the laws begotten from it by our represented Citizenry to protect a citizen's information (or privacy).

We must defend our Civil Liberties and Rights and the penumbra of Privacy²⁴⁶ that has been argued to exist within our Constitution. To that end, we must allow "the Privacy needs of the many to outweigh the mental health needs of the few,"²⁴⁷ or we may pave the road for unelected bureaucrats and military leaders

²⁴²"Gestapo," *Wikipedia*, online at: <https://en.wikipedia.org/wiki/Gestapo>.

²⁴³ Ibid.

²⁴⁴ "Nazi political police" or "Geheime Staatspolizei (German: Secret State Police)," *Encyclopedia Britannica*, online at: <https://www.britannica.com/topic/Gestapo>.

²⁴⁵ See McNamara, Robert "The Gestapo: Definition and History of the Nazi Secret Police," *Thoughtco.com* (August 2, 2021) online at: <https://www.thoughtco.com/gestapo-4768965>.

²⁴⁶ Warren, Samuel D., and Louis D. Brandeis "The Right to Privacy" *Harvard Law Review*, Vol. 4, Number 5, (December 15, 1890) online at: <https://www.jstor.org/stable/1321160>

²⁴⁷ The SPRIRC believes the opposite construct (needs of the few outway the needs of them many), as they stated, "Initially developed [PL 112-239 § 1057 amending PL 111-383 § 1062] to prevent the unconstitutional infringement of service members' right to acquire, possess, and use firearms when not on DoD property, multiple policy officials, law enforcement personnel, leaders, and *military researchers indicated that legal interpretations of this provision*

to gain subjective favor over our Soldiers by purposefully ignoring our laws. In fact, there are plenty of citizens that will consciously, or not, provide consent to these invasions of their thoughts to the scrutiny of the assessments of others for a perceived (real or not) greater good; but our laws protect those that choose to protect their thoughts and wish to be given the required choice to give *consent* (or ‘opt-out’) and even protect the ignorant to, at the very least, be *informed*.

There is a penumbra of current efforts (touched on throughout this filing) within our military, that if ignored, could produce irreparable damage to our democratic republic from the inside out by giving thoughts and power to the few in control of these programs. In world history, this has usually produced an environment conducive to the replication of the many historical purges²⁴⁸ of Germany or some similar sovereign state’s debilitating socio-economic calamity. Purges can easily be accomplished with a slow and steady implementation of illicit programs slowly gathering waves of Soldiers that growingly ignore the Privacy violations embedded within pilot programs systematically ordered in the ranks; after all, they signed up to dutifully follow lawful orders (just not the unlawfully hidden ones). This Soldier is not ignoring these violations as they are egregious and I have found out they are increasingly malignant; selfishly, I don’t want to have to argue why these programs were essentially a “Thousand Flowers”²⁴⁹ plot when subjective reported military suicide threats skyrocket after the fact.

have severely impeded DoD efforts to understand and prevent military suicides.” (emphasis added) – from: “Suicide Prevention and Response Independent Review Committee report,” Ch. 5.12, p. 58, *Media.Defense.gov* (January 4, 2023), *online at*: <https://media.defense.gov/2023/Feb/24/2003167430/-1/-1/0/SPRIRC-FINAL-REPORT.PDF>.

²⁴⁸”Political and cultural purges,” *Wikipedia*, *online at*: https://en.wikipedia.org/wiki/Category:Political_and_cultural_purges#:~:text=Articles%20relating%20to%20political%20and,is%20labeled%20as%20purging%20itself.

²⁴⁹ The “Thousand Flowers” Fallacy (also, “Take names and kick butt.”): A sophisticated, modern “Argumentum ad Baculum” in which free and open discussion and “brainstorming” are temporarily allowed and encouraged (even demanded) within an organization or country not primarily in order to hear and consider opposing views, but rather to “smoke out,” identify and later punish, fire or liquidate dissenters or those not following the Party Line. The name comes from the Thousand Flowers Period in Chinese history when Communist leader Chairman Mao Tse Tung applied this policy with deadly effect.” – from “Master List of Logical Fallacies” *University of Texas at El Paso*, *online at*: <https://utminers.utep.edu/omwilliamson/ENGL1311/fallacies.htm>

On March 8, 2024, the new Company Commander of STB, CAPTAIN Aurelia Pearson, sent an email to the entire Battalion²⁵⁰ regarding a monthly “Phoenix Warriors” Concept of Operations (CONOP)²⁵¹ that CPT Keeli Buehler, the Battalion XO, were promoting right after accountability formations on the “2nd Friday morning of each month.”²⁵² Evidently, questions were arising from the formation. An excerpt is as follows:

*OIC/ NCOIC, you are already familiar with your soldiers. However, **please ensure the conversation is thoughtful and engaging.** If you need additional guidance on how to accomplish this, please see CPT Jones or MAJ Racaza. **They can also advise you on how to respond if an unexpected conversation arises.**(emphasis added)*

THE FUTURE

Therefore, I implore this court to adjudicate the aforementioned violations of our Constitution and federal laws in a manner that communicates a clear message to leaders that choose behaviors that conspire to actively retaliate against *any* Soldier who is dutifully defending their privacy; it should not be tolerated. Their corrupted behavior must be modified and situated to constrain themselves within our laws through adequately established checks-and-balances, or the outright removal of the Privacy and punitive issues

²⁵⁰ See Enclosure 62, email to STB Battalion from CPT Aurelia Pearson, Company Commander, March 6, 2024, 8:52 p.m..

²⁵¹ See Enclosure 62, email to STB Battalion from CPT Keeli Buehler, Battalion Executive Officer, March 6, 2024, 1:48 p.m..

²⁵² See Enclosure 63, Employment of mandatory engaging conversations without consent and without warning of referral to psychologists and the possibility of subsequent treatment, behavioral modification training, or Personnel Actions, etc., can be seen in this answer to “individual questions from a few sections” – *resulting from the order to participate in the Concept Operation (CONOP)*, note: this Concept Operation (or mission) was used as part of Phoenix Warrior Wellness (PWWT) Time, which is a subset of the Human Performance and Wellness (HPW) program.

they seemingly struggle with (as seen in this case). If it were not for the unique opportunity that I find myself in, which to bring this *novel Privacy Act violation* case to the attention of this court,²⁵³ while congruently in service in our military, these violations and their associated retaliation campaigns would likely continue (as they have) to be clandestinely and successfully employed on all Soldiers. How many others undergo this type of coordinated administrative attack without a Privacy violation, without Due-Process, all while Commanders lack any “legal experience.”²⁵⁴

In fact, the Supreme Court weighed this matter regarding more grave venues than an Administrative Separation or Qualitative Management Program Board back in the post-Vietnam era. The court stated “courts-martial as an institution are singularly inept in dealing with the nice subtleties of constitutional law.”²⁵⁵ This court can adjudicate how my Command leadership has, and the pending Qualitative Management Program Board will, deal[t] with the Constitutional issues without my having any opportunity to fairly address them while Personnel Actions were levied against me. The catalytic federal violations and my reporting on the ensuing assault launched the perceived need for the ad hominem operation against me. The “absolute power”²⁵⁶ provided to Commanders by Congress ensured that I would not be provided a fair and argumentative venue for adjudication. Moreover, I am even restricted from assailing their “character, conduct, or motives”²⁵⁷ in the very Board their Personnel Actions force

²⁵³ “Michaelson v. Herren, 242 F.2d 693, 695-96 (2d Cir. 1957), “While we agree that the exhaustion rule applies to most claims against the military, see id., we reverse because the Privacy Act specifically authorizes (1) suits for damages with no requirement that the plaintiff first exhaust his administrative remedies, and (2) suits for injunctive relief where the agency fails to abide by the expedited review procedures mandated by the act.” – from: *Diederich v. Department of the Army*, 878 F.2d 646 (2dCir. 1989).

²⁵⁴ “...they [Military commanders] have the final say during criminal cases, even though they have no legal experience.” “The other side: A review of ethical misconduct in the military legal system” SOFREP.com(July 19, 2020) online at: <https://sofrep.com/news/the-other-side-a-review-of-ethical-misconduct-in-the-military-legal-system/>.

²⁵⁵ O'Callahan v. Parker, 395 U. S. 258, 265 (1969)

²⁵⁶ *ibid.*

²⁵⁷ See AR 635-200, para. 16-11 (g) (2), (Pre-Board Soldier Options), June 28, 2021, *online at*: https://armypubs.army.mil/epubs/DR_pubs/DR_a/ARN40058-AR_635-200-001-WEB-3.pdf.

me into. Therefore, I seek the relief below due to the following that applies to Courts-Martial, which have, at least some, civil protections:

*A civilian trial, in other words, is held in an atmosphere conducive to the protection of individual rights, while a military trial is marked by the age-old manifest destiny of retributive justice.... 'None of the travesties of justice perpetrated under the UCMJ is really very surprising, for military law has always been and continues to be primarily an instrument of discipline, not justice.'*²⁵⁸

This Administrative Separation decision of the Qualitative Management Board is no different. It is neither, an instrument of discipline, nor of justice. In fact, it was I, whom was professional and disciplined in support of my duties, individual rights, Privacy protections, and Army Regulations and sought to assist my leadership to remediate the violations. Then I acted accordingly to seek internal and informal justice for the retaliation under the Military Whistleblower Protection Act that I have professionally endured for my dutiful and professional service. I, also, did all of this in lieu of the absent UCMJ decision by my Commander. In fact, his decision to instead to recommend the Personnel Actions that prompted Board's consideration only serves to further hinder me from what individual protections I would have sought in a more formal venue, had I been charged by him. Therefore, I humbly ask this Court, under the established jurisdiction, to adjudicate the actions of the Army in accordance with your interpretation of law. The relief I request follows.

²⁵⁸ See O'CALLAHAN v. PARKER, 395 U.S. 258, 266.

RELIEF

For the violations listed above, the lack of Due-Process and the retaliation endured, the plaintiff requests the following RELIEF:

- 1. Injunctive Relief from the Qualitative Management Program²⁵⁹ until this civil case is resolved:** I have been recommended for and being considered for administrative discharge from the United States Army in April due to the Personnel Actions stemming from the Army's actions(the General Officer Memorandum of Reprimand and Relief For Cause evaluation report after 17 years of exemplary service). This court should take immediate action and order the Qualitative Management Board to carry forward the consideration of my packet and stay any administrative efforts to separate me from my contracted Army service (discharge) until this case is resolved.

- 2. Declarative Relief for the standardization of Informed Consent forms:** A standardized consent form in all Government-sponsored programs that are evidence-based, like HPW, that includes the omitted (from version 9 and 10) "I do 'NOT' consent box," for Soldiers to place a check-mark, with binding, non-retaliatory language on the form.

- 3. Declarative Relief for Medical Records personnel annual training:** Mandatory training for medical records personnel in handling legitimate requests for emergency Command Directed Behavioral Health Evaluation (eCDBHE) paperwork.

²⁵⁹ See "FY23 Qualitative Management Program (QMP) Frequently Asked Questions" *HRC.Army.mil*, (2023), online at: https://www.hrc.army.mil/sites/default/wcmtfiles/files/18007_0.pdf

4. Declarative Relief for the clear written communication required of Privacy Act and Human

Research laws: Soldiers should not be confused, or as in my case, placed in a position to be opposite an unlawful order. The Appeal to Authority fallacy²⁶⁰ associated with unlawfully ordered BHAs is not obscure; it is illegal. This can be remediated by the presentation of all required information and an appropriate written consent form PRIOR TO any order to appear to any Behavioral Health Assessment whether contracted or conducted by the Government. This would also serve to ensure that Commanders clearly understand the limits of their authority with respect to the Privacy Act of 1974 (inter alia). Moreover, this should be signed prior to every requested Soldier submission as evidence-based research and holistic health policies have the threat of “scope creep”²⁶¹ which could negatively affect Soldier’s Privacy at any time after the consent is given.

5. Declarative Relief of written restraints on active-duty and contracted Human Performance

Team²⁶² Behavioral Health Personnel to mandatorily screen²⁶³ Soldiers or Co. CDRs to condition them for annual assessment engagement:²⁶⁴ Given a Psychologist’s officer status, the rank-structure in the military, coupled with the Appeal to Authority fallacy, Soldiers are being exploited to force or induce themselves into longitudinal CDBHEs,²⁶⁵ which contravenes military

²⁶⁰ “A List of Every Fallacy Out there,” *online at:* <https://listoffallacies.com/>.

²⁶¹ See Posard, Marek, et. al “Reducing the Risk of Extremist Activity in the U.S. Military,” *RAND.org* (September 2021) *online at:* https://www.rand.org/content/dam/rand/pubs/perspectives/PEA1400/PEA1447-1/RAND_PEA1447-1.pdf.

²⁶² See “Preventing Suicide in the U.S. Military: Recommendations from the Suicide Prevention and Response Independent Review Committee” *Media.Defense.gov*, para. 6.12, 6.12.1, 6.13 , (January 4, 2022), *online at:* <https://media.defense.gov/2023/Feb/24/2003167430/-1/-1/0/SPRIRC-FINAL-REPORT.PDF>.

²⁶³ “Military Leaders’ Use of Behavioral Health Resources: Barriers to Care and Possible Solutions” *Office of People Analytics (OPA)*, at “Recommendations 5” (January 2019) *online at:* <https://apps.dtic.mil/sti/pdfs/AD1066161.pdf>.

²⁶⁴ *Ibid*, At “Recommendations 11.”.

²⁶⁵ “A recommended change would be to have two distinct sets of behavioral health care personnel: those who conduct mandatory evaluations and those who deliver behavioral health care,” – *from:* *Ibid.*, p. 31.

policy.²⁶⁶ This results in the mandatory collection of behavioral health data, which is added to a Soldier's system of records in the SMARTABASE (a contracted system of record) and the U.S. Army Research Institute of Environmental Medicine's SPHERE Database (a system of record that collects clinical, and now non-clinical reports,²⁶⁷ along with physical and job performance data)²⁶⁸ and applied to a "subjective judgments"²⁶⁹ found in an unpublished "reasonable grounds"²⁷⁰ calculus of an assigned/licensed Psychologist's assessment, or worse for arbitrary determination by an unlicensed/untrained Commander, as to whether a Soldier is a violent risk. This produces the inevitable future conflicts stemming from the possibility of "mandate[d] biennial mental health physicals"²⁷¹ from unpublished manuscripts promoting them.²⁷² Then adding in spouses to mandatory newcomer briefs, which could be characterized as coerced²⁷³

²⁶⁶ See DoDI 6490.04,(Mental Health Evaluations of Members of the Military Services), (April 22, 2020), *online at*: <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/649004p.pdf>.

²⁶⁷ "At a minimum, any personally identifiable information recorded by MOS and MFLC Program counselors is subject to section 552a of title 5, United States Code (U.S.C.) ... commonly referred to as the "Privacy Act of 1974" and DoD 5400.11-R ... however, because MOS and the MFLC Program are not healthcare programs, this information may not be subject to DoDI 6025.18 [HIPPA, hence readily shareable with other Medical Personnel]...." -from: DoDI 6490.06 (Counseling Services for DoD Military, Guard and Reserve, Certain Affiliated Personnel, and Their Family Members), (April 21, 2009) *online at*: <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/649006p.pdf>.

²⁶⁸ "Soldier performance, health, and readiness database : SPHERE Database" *U.S. Army Research Institute of Environmental Medicine*, *online at*: <https://usariem.health.mil/index.cfm/research/divisions/mpd/sphere>.

²⁶⁹ Aliche, Mard D. and Stephanie H. Weigel "The Reasonable Person Standard: Psychological and Legal Perspectives," *Annual Review of Law and Social Science*, Vol. 17:12-138 (Oct. 2021) *online at*: <https://www.annualreviews.org/doi/full/10.1146/annurev-lawsocsci-111620-020400>.

²⁷⁰ See DoDI 6400.09 (DOD Policy on integrated primary prevention of self-directed harm and prohibited abuse or harm), (September 11, 2020) *online at*: <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/640009p.pdf>.

²⁷¹ "Military Leaders' Use of Behavioral Health Resources: Barriers to Care and Possible Solutions," *DTIC.mil*, at "Recommendations 5," (January 2019) *online at*: <https://apps.dtic.mil/sti/pdfs/AD1066161.pdf>.

²⁷² Horton, R., Macemon, B., & Moore, R. "Special Operations Forces mental health readiness assessment.(2018 Unpublished manuscript), *Joint Special Operations Forces Senior Enlisted Academy, MacDill Air Force Base, Tampa FL*

²⁷³ "Recommendation 11: Make One-on-one meeting with providers mandatory at certain career touchpoints" and "newcomer and Spouse Mandatory Briefings" – from: "Military Leaders' Use of Behavioral Health Resources:

unlawful ‘fishing expedition’ where every fish is ‘shot in a barrel.’ These freshly-minted efforts seek to “remove obstacles to improve coordination of care,”²⁷⁴ for Soldiers are being Congressionally-supported under the guise of suicide prevention. Essentially, they created a mandatory embedded referral lane that skirts the Health Insurance Portability and Accountability Act (HIPAA). Moreover, these efforts falsely empower our Army leaders, and the Medical Branch, with a sense of authorized access to all Soldiers’ thoughts and beliefs in non-clinical environment for their centralized evidence-based opportunity²⁷⁵ to make individualized non-clinical subjective referrals for clinical services and possibly “lethal means access”²⁷⁶ and then “legally collected by program evaluators”²⁷⁷ through subjective appraisals. By invading Soldiers’ Privacy, without being self-constrained by our laws or our Constitution, military leaders are, building a ‘bridge over an (our Secretary of Defense’s) obstacle,’ which is actually building a ‘bridge to nowhere.’ Moreover, violating Soldiers’ Privacy (en masse) builds a bridge that leads to something much, much worse; because without our Constitution and its embedded penumbra of Privacy protections, we are NOT a democratic republic of, by and for a free people. We are doomed to the subjective results of a subjective Psychologist’s assessment.

Barriers to Care and Possible Solutions," *DTIC.mil* (January 2019) online at: <https://apps.dtic.mil/sti/pdfs/AD1066161.pdf>.

²⁷⁴ Austin, Lloyd J. III, “Secretary of Defense memorandum: New DoD Actions to Prevent Suicide in the Military”, *Media.Defense.gov* (September 26, 2023) online at: <https://media.defense.gov/2023/Sep/28/2003310249/-1/-1/1/NEW-DOD-ACTIONS-TO-PREVENT-SUICIDE-IN-THE-MILITARY.PDF>.

²⁷⁵ “The United States Army Research Institute of Environmental Medicine (USARIEM) is tasked with data analysis of the H2F system,” -from: “U.S. Army H2F Holistic Health and Fitness, Soldiers Readiness System” *Department of Defense, Center for Lessons Learned*, No. 23-06 (784), (June, 2023) online at: <https://api.army.mil/e2/c/downloads/2023/06/05/25e44ff1/23-06-784-holistic-health-and-fitness-handbook-jun-23-public-release-1.pdf>.

²⁷⁶ See DoDI 6490.16, (Defense Suicide Prevention Program), para. 3.3 (f) (Procedures in cases of danger to self or others” (emphasis added), online at: https://www.dspo.mil/Portals/113/Documents/DoDI%206490.16%20Defense%20Suicide%20Prevention%20Program_15June2020%20.pdf?ver=2020-07-06-101216-977.

²⁷⁷ See “Preventing Suicide in the U.S. Military: Recommendations from the Suicide Prevention and Response Independent Review Committee” *Media.Defense.gov* (Jan. 4, 2022), para. 5.13, online at: <https://media.defense.gov/2023/Feb/24/2003167430/-1/-1/0/SPRIRC-FINAL-REPORT.PDF>.


- 6. Declarative Relief to ensure the credentialing of clinical or non-clinical staff hired is additionally credentialed in the Privacy Act protections afforded Soldiers and that all credentialing is available upon request, per the stated intent of the Defense Health Agency Bill of Rights:** Soldiers should have access to this on-demand as stated. This is especially true if a Soldier is concerned about any decision a Psychologist, or other Medical Provider, has communicated in any format.
- 7. Declarative Relief to expunge any behavioral health data gathered on unsuspecting Soldiers without proper informed consent:** Proof-of-concept arguments for evidence-based research programs that include mandated questionnaires, gifts of biometric data transmitting wearable technology, mandatory use of applications on personal electronic devices, and storage of health constant-stream biometric data, should be prohibited. They should not be built on the premise of violating unwitting Soldiers' Civil Liberties or Rights granted by our Constitution or the binding protections imposed and codified in valid Federal law. Soldiers should be given a choice whether to have data Collected for, or leave Collected data in, the SMARTABASE²⁷⁸ and SPHERE²⁷⁹ or any other system of record (contracted or conducted by the Government).

²⁷⁸ "Smartabase is the leading Human Performance Platform, providing organizations with a central hub for performance, medical, health, and wellness data. Our customers include many of the world's highest profile military, government, sports teams, national sporting federations, Olympic committees, and research organizations," - from: "DEVCOM Solider Center & MRDC: Optimizing the Human Weapon System Staying Connected Under Isolating Conditions" *Smartabase.com*, online at: <https://smartabase.com/success-stories/devcom-solider-center-mrdc>.

²⁷⁹ "The SPHERE Database is a high resolution epidemiologic research tool that serves as a significant resource for identifying risk/protective factors and adverse health outcomes and for evaluating intervention strategies in Army personnel. The SPHERE is a vast data repository that combines US Army population data from multiple disparate Department of Defense agencies and is housed and managed within USARIEM's Military Performance Division by a team of epidemiologists, analysts, and database managers.," - from: "Soldier performance, health, and readiness database : SPHERE Database" *U.S. Army Research Institute of Environmental Medicine*, online at: <https://usariem.health.mil/index.cfm/research/divisions/mpd/sphere>.

8. Declarative Relief of any associated Personnel Action restrictions employed due to retaliation: I was placed on the Order of Merit List for promotion to Master Sergeant on January 19, 2023. I request that I be placed back on that list and have the opportunity to be promoted to MSG in accordance with normal Army procedures. The removal of Reenlistment Prohibition Code RET13 Transaction, and any other restrictions associated with the retaliatory investigations, Flags, the Relief For Cause evaluation report and the General Officer Memorandum of Reprimand, etc. is necessary to accomplish this relief.

9. Lost promotion wages and legal fees incurred and any future damages if involuntarily separated due to these Personnel Actions prior this COMPLAINT's adjudication: The costs to my character and career²⁸⁰ resulting from exercising my 1st amendment right to protect my thoughts²⁸¹ under the penumbra of privacy rights inherent in our constitution, and moreover, the codification of these rights and their application with respect to serving Soldiers through modern day laws, is likely being viewed as an affront to a Brigade Commander and a Psychologist. Therefore, I ask this court for adjudication of their actions. They acted on these misguided perceptions and I have incurred financial damage, damage to my lifestyle and damage to my reputation from their decisions and more damages are still pending.

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²⁸⁰ "Injuries such as mental distress, humiliation and loss of reputation cannot be accurately measured in monetary terms. Because true compensation is usually impossible, money damages are awarded to approximate the harm done. See Restatement (Second) of Torts § 903 comment a (1977); D. Dobbs, supra note 19, § 7.1, at 509.," – from: Lodge, Frederick Z. "Damages under the privacy act of 1974: Compensatory Deterrence" *Fordham Law Review*, Vol. 52, Issue 4 (1984), at footnote 20, *online at*: <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2579&context=flr>.

²⁸¹ "intrusion into an individual's private affairs, seclusion or solitude. Because privacy is a dignitary interest, the injuries caused by actionable invasions are difficult to measure and cannot be fully compensated by money damages." – from: *Ibid*.