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PETER A. MOORE, JR., CLERK  
US DISTRICT COURT, EDNC  
BY *[Signature]* DEP CLK

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
RALEIGH DIVISION

No. 5:24-CV-00176-BO

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

*Plaintiff,* )

v. )

THE UNITED STATES ARMY, )  
Christine E. Wormuth et al., )  
101 Army Pentagon, )  
Washington, D.C., 20310 )

*Defendant.* )

MEMORANDUM IN SUPPORT OF MOTION  
FOR PARTIAL SUMMARY JUDGMENT

This 1<sup>st</sup> day of July 2024.

This memorandum is in support of a MOTION FOR PARTIAL SUMMARY JUDGMENT by the Plaintiff, *pro se*, pertaining to a Complaint, which alleged Privacy Act violations. The violations of the Act are of certain provisions, namely: (e)(1), (e)(2), (e)(3), (e)(4), (e)(5), (e)(7), (e)(10), and (m)(1). Pursuant to Fed.R.Civ.P 56, “[t]he court shall grant PARTIAL SUMMARY JUDGMENT if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law for actual damages against an agency for failure to comply with “any other provision” (g)(1)(C & D) of the Privacy Act.

This motion should be granted for the following reasons: **First**, the Plaintiff asserts that a subset of specific and central facts of the Plaintiff’s case has not and cannot be disputed by the Defendant, pursuant to Fed.R.Civ.P. 8. The Defendant mischaracterized other facts in evidence without production of contravening evidence or declarations while simultaneously only

asserting arbitrary and capricious allegations of denial or disbelief. **Second**, the Defendant does not attack the veracity of any of the Plaintiff's documents, electronically stored information, or declarations. **Third**, the Plaintiff cites particular materials in the record that do not establish the presence of a genuine dispute, and in support thereof, the Plaintiff has prepared and provided a request for admissions for use in any scheduled pretrial conference pursuant to Fed.R.Civ.P. 16, and at the Court's pleasure. **Fourth**, the Plaintiff submits, for the record, Defendant-possessed declarations of an agency official and another's internal witness declarations used in the internal investigation, which were central to the Defendant's internal complaint of "disrespectful in language and deportment towards a Field Grade officer" levied against the Plaintiff on November 30, 2022 and again on January 12, 2023 and has some facts of undisputed content. These declarations indicate that the declarants were and are competent to testify on the matters stated, and that a subset of their testimony corroborates the Plaintiff's steadfast position that he *professionally* asked for the missing information required by the Privacy Act. **Fifth**, the agency official (the Command Operational Psychologist) and her assistant's wrongful declarations were used in the Defendant's internal investigation, which were central in the career-ending administrative separation decision delivered to the Plaintiff, yet these declarations were not brought forth by the Defendant as support or admissible evidence, likely because they support the Plaintiff on a specific and seminal fact of the case. **Finally**, the Plaintiff's added declarations are a pivotal aspect of the Plaintiff's account, which asserts the birth of causality and provides the Plaintiff with an expressed affirmative defense as expressly cited by the Defendant statutory rules. Had the Defendant brought charges or Uniform Code of Military Justice action against the Plaintiff, the Plaintiff would have requested a proper venue to argue his case. The weakness of the Defendant's position is a probable insight into why no Article 89

charges were recommended by the Investigating Officer or brought forth by the Brigade Commander, and the Plaintiff is, instead, being separated based on simplistic, circular, and repeated, self-professed allegations of an agency official in an administrative separation with no objective third-party oversight.

As an introductory summation, the subset of evidence the Plaintiff cited in this MOTION FOR PARTIAL SUMMARY JUDGMENT stands on its own to justify this request, while simultaneously not diminishing other violations contained within the Plaintiff's Complaint in this case. The Defendant did not offer denials of substance to violations of the Privacy Act provisions (e)(1), (e)(2), (e)(3), (e)(4), (e)(5), (e)(7), (e)(10) and (m)(1)) as described in the *pro se* complaint, and codified by the inclusive clause found in (g)(1)(C & D), nor violations of two Executive Orders (m-10-22 & m10-23), nor violations of the Defendant's supervisory agency's (the Department of Defense's) Privacy Policy (DoD 5400.11-R). The Plaintiff has proactively remedied the descriptive nature of the Complaint in this filing. That said, the Defendant provided what could only be assessed as a General Denial, pursuant to Fed.R.Civ.P. 8. To wit, given the prima facie nature of the Plaintiff's pleading and in anticipation of the pleasure of the Court, the Plaintiff has included a memorandum of admissions for the Defendant, whose answers will likely support the Plaintiff's prima facie case status and support this MOTION FOR PARTIAL SUMMARY JUDGMENT as indicated by the Plaintiff identified claims. The Plaintiff intends to argue his case's jurisdiction and standing, pursuant to Fed.R.Civ.P. 12(b)(1) and 12(b)(6), as authentic in his MEMORANDUM IN SUPPORT OF RESPONSE TO DEFENDANT'S MOTION TO DISMISS, and address other concerns therein. Moreover, the Plaintiff's stance, as supported by law and opinion, is the following: jurisdiction is justiciable, standing is valid, damages are in-fact, damages can be

redressed, and redress is authorized for a decision of the Court to adjudicate a portion of this case, in an expedited manner. Timing is essential, not only for the Plaintiff, but for thousands of other Soldiers who are unwittingly being stripped of their privacy by coerced Psychological assessments per the Plaintiff's other claims in his Complaint not addressed in this MOTION. Partial adjudication is warranted for the Plaintiff to prevent further harm to the Plaintiff and other servicemembers.

#### STATEMENTS OF FACTS FOR PARTIAL SUMMARY JUDGMENT

Having an established a prima facie case, the Plaintiff, using evidentiary submissions to the Court, and evidence previously on the record, presents a supplement<sup>1</sup> as a more detailed statement of facts in chronological context, in accordance with FRCP 10 and Local rule 7.2.

That said, to streamline this complex case, the Plaintiff has listed below the following correlating claims in RESPONSE TO DEFENDANT'S MOTION TO DISMISS and for imminent adjudication in an accompanying MOTION FOR PARTIAL SUMMARY JUDGMENT. The following claims are evidentiary on their face; however, the Plaintiff has provided a published request for admissions supplement for use at the Courts pleasure in any pretrial conference deemed necessary under Fed.R.Civ.P. 16. The claims are as follows:

First, prior to November 29, 2022, the Brigade Commander, and the subject matter expert, the Command Operational Psychologist, failed to establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom

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<sup>1</sup> See Enclosure A01, SUPPLEMENT TO THE STATEMENT OF FACTS.

information is maintained by willfully preparing, delivering and supporting an order for Soldiers, under his command and their authority to participate in a corporate (third-party) behavioral assessment. [(e)(10)]

Second, on November 29, 2022, the Brigade Commander willfully ordered, and the Command Operational Psychologist willfully supported, the Plaintiff and other Senior Staff to: mandatorily participate, in a surrogate behavioral assessment (including motives, personality and thoughts), [(e)(7)]; be coerced the Soldiers to agree to the surrogate corporation's "Terms of Service" and "Privacy Policy" agreements [(m)(1)]; answer survey questions in an agency-contracted surrogate corporation's online platform, [(e)(2)]; allow the surrogate corporation to collect, forward, and store, personally identifiable information (PII) and personal health information (PHI) on the surrogate's system of record, [(e)(4)] allow the surrogate corporation to disclose the collected information in a personally identified report containing PII and PHI immediately back to the "purchaser," the Brigade Commander, and the Command Operational Psychologist (a surrogate corporate "Facilitator") [(e)(7)]; give the unlawful appearance of, and thereby, implied permission, through a mandatory agreement of a surrogate corporations agreements, for the Brigade Commander and Command Operational Psychologist to receive personally identified reports containing that personally identified PII and PHI, which the Commander was prohibited from directly requesting from the Soldiers without written consent [(e)(3)(A-D)]; comply with a task that was not 'incident-to-service.' [(e)(1),(e)(7)]. [Section note: order was a violation of m-10-22 & m-10-23]

Third, on November 30, 2022, the Command Operational Psychologist failed to provide the "Agency Requirements" form containing the data at the Plaintiff's requested. [(e)(3)(A) "statutory support" & (B-D) "scope"]; reported the Plaintiff as having shown "disrespect toward



a superior commissioned officer,” after failing in her duty (via professional licensure and military oath) to provide the requested missing “Agency Requirements” form. [(e)(5)][Article 89 “Special defense - conduct departed substantially from the required standard appropriate to that officer’s rank or position under similar circumstances”]

Fourth, on November 30, 2022, (2:26 p.m.), the Command Operational Psychologist; sent an email (not a form) that failed to address the specific “Agency Requirements;” [(e)(3)(A) & (B-D)] reinforced the Soldiers that were expected to attend and review their personally identifiable reports in a group-share setting [(e)(1) & (e)(7)]

Fifth, on December 2, 2022, the Brigade Commander willfully ordered thru the Executive Officer, the Plaintiff and other Senior Staff to: mandatorily participate, in a second behavioral assessment (including motives, personality and thoughts), [(e)(7)]; answer survey questions in an online platform and attend mandatory meetings with non-clinicians, [(e)(2)]; allow multiple mandatory-use online platforms (behavioral, physical, spiritual, cognitive, etc.) and non-clinical personnel to collect, forward, and store, personally identifiable information (PII) and personal health information (PHI) on the Agencies purchased or contracted system of record (“SMARTABASE”), [(e)(4)] allow the database to be accessed by myriad medical personnel to view and assess the collected information containing PII and PHI [(e)(7)]; give the appearance of, and thereby, implied consent, as the Plaintiff’s and Soldiers comply with the lawfully mandated-use portions of the program (that they are introduced to first), to participate in the portion of the mandate regarding the behavior assessment of the Government funded program, for the Brigade Commander, Command Operational Psychologist and myriad other medical professionals, to receive personally identified reports and data containing the personally identified PII and PHI collected over time, which the Commander was prohibited from directly

requesting from the Soldiers without written consent [(e)(3)(A-D)]; comply with subsets of a task (the behavioral and spiritual) that was not ‘incident-to-service.’ [(e)(1), (e)(7)]; comply with a falsified order to participate in the Government funded program that was distributed through official channels purporting official support that did not exist at the time of the order and its implementation [(e)(1)] [Section note: order was a violation of m-10-22 & m-10-23]

Sixth, on January 12, 2023, the Brigade Commander: launched an unfair investigation to collect, use and disseminate information in records about the Plaintiff based on a false-premise the Plaintiff showed “disrespect toward a senior commissioned officer,” and without notifying the Plaintiff until February 7, 2023 [(e)(5)]; unfairly cited the Command Operational Psychologist, the Plaintiff, and the date of November 30, 2022, as three components to the “disrespect” which was previously remedied with the Brigade Commander on December 1, 2022. [(e)(5)]

Seventh, on January 18, 2023, the Company Commander unfairly scheduled a meeting at 4:00 p.m. that did not start for another 30 minutes) and then spent over an hour attempting to convince the Plaintiff to attend a voluntary after hours, (which is not considered routine) “Safety Check,” at the post Medical Center [(e)(5)]

Eighth, on January 18, 2023, the Company Commander and the Command Operational Psychologist unfairly ordered and authorized, respectively, an emergency Command-Directed Behavioral Health Exam (eCDBHE) while both of them were cognizant of the Brigade Commander’s investigation on the unwitting Plaintiff, which was spawned by the Command Operational Psychologists complaint against the Plaintiff on November 30, 2022. [(e)(5)]

Ninth, on January 18, 2023, the Command Operational Psychologist did not recuse herself from her conflict of interest with respect to authorizing the eCDBHE while concurrently being a complainant in the open investigation of the Plaintiff. [(e)(5)]

Tenth, on January 19, 2023, the Command Operational Psychologist, read the eCDBHE report on January 19, 2023 and filed her sworn declaration for the investigation, or read the eCDBHE report after her sworn declaration and never retracted the declaration, thereby unfairly disregarding the report. [(e)(5)]

Eleventh, on February 7, 2023, the Brigade Commander thru the Company Commander unfairly notified the Plaintiff four weeks after (January 12, 2023) the Plaintiff was formally named in an investigation with him as the sole subject. [(e)(5)]

Twelfth, on February 21, 2023, the Investigating Officer unfairly did not provide ample time for the Plaintiff to respond, nor provided any specificity or accuracy of any allegations of counterproductive behavior, to the Plaintiff to respond to her emailed questions thru the Plaintiff's Legal Assistance Counsel, one day before the end of her "investigative plan during the ...AR 5-6 investigation with suspense date of 22 February 2023." [(e)(5)]

Thirteenth, on February 22 (memo date), or April 13, 2023 (digital signature), the Investigating Officer signed the investigation and inaccurately and unfairly found the Plaintiff's leadership style "demonstrated ... Erratic behaviors," "poor self control" and "behaving erratically," thereby completely disregarded the timeliness and accuracy of the Licensed Certified Social Worker's eCDBHE report.

Fourteenth, on February 23, 2023, the Investigating Officer unfairly never provided a response to the Plaintiff's request for clarification of the alleged counterproductive behavior so



that the Investigating Officer could have a more complete and accurate record prior to its dissemination. [(e)(5)]

Fifteenth, on April 20, 2023, the Brigade Commander approved the Investigating Officer's investigation findings without the "disrespect toward a senior commissioned officer," likely due to the unfair and inaccurate determinations circular logic found in her findings of "disrespect." [(e)(5)].

Sixteenth, on May 22, 2023, the Brigade Commander unfairly retaliated and inaccurately reapproved the Investigating Officer's investigation findings of a "disrespect" determination and thereby added back the "disrespect toward a senior commissioned officer," [(e)(5)]

Seventeenth, on June 1, 2023, the Brigade Commander, through agency officials, delivered inaccurate documents including a General Officer Memorandum of Reprimand (GOMOR, citing "disrespect," et al.), a notification of future receipt of a Relief for Cause, Non-Commissioned Officer Evaluation Report (RFC, citing "disrespect," et al.), a Military Protection Order with the Plaintiff as the subject. [(e)(5)]

Eighteenth, between June 29 and July 12, 2023, five of six leaders unfairly recommended the GOMOR be permanently filed in my Army Military Human Resource Record based on incomplete and inaccurate information while disregarding the Privacy Act violations and an open investigation with the Inspector General. [(e)(5)]

Nineteenth, on July 12, 2023, the Brigade Officer-in-Charge of the S2 (intelligence section) and former supervisor of the Plaintiff issued an unsubstantiated and unfair Relief For Cause, Non-Commissioned Officer Evaluation Report (RFC, citing "disrespect," et al.) after she was a witness in the investigation. [(e)(5)]

Twentieth, on October 23, and December 26, 2023, the Department of the Army, via Mr. Michael R McSweeney, Chief, Retirements and Separations Branch, inaccurately sent notification to the Plaintiff that he was being considered for the Qualitative Management Program QMP for possible administrative separation based on inaccurate and unfair determinations that resulted in the GOMOR and RFC. [(e)(5)]

Twenty first, on May 29, 2024, the QMP Board inaccurately determined to administratively separate the Plaintiff on December 1, 2024 (notably two months and 12 days before his 18th anniversary of contiguous Army Service) even after being notified of a filed lawsuit challenging the investigation,<sup>2</sup> et al., that spawned the GOMOR and RFC. [(e)(5)]

The Plaintiff's assurance of fairness in making any determination about an individual with such accuracy, relevance, timeliness and completeness was willfully violated by having not compiled a reasonably complete and accurate report from the investigation launched by the Brigade Commander into the Plaintiff. The Brigade Commanding Officer, the Investigating Officer and the witnesses did not intend to create a "balanced record to support a fair review" id.. of the Plaintiff. [(e)(5)]

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Each claim listed above should be considered as an independent violation and viewed collectively and/or separately as justification supporting this MOTION FOR PARTIAL SUMMARY JUDGMENT, under Fed. R.Civ.P. 56.

## ARGUMENT

**II. The Plaintiff asserts that a subset of specific and central facts of the Plaintiff's case has not and cannot be disputed by the Defendant, pursuant to Fed.R.Civ.P. 8. The Defendant mischaracterized other facts in evidence without production of**

<sup>2</sup> See Enclosure A02, "SUBJECT: Formal Request for delayed consideration of 1SFC Personnel Actions ICO Michael J. Forbes, 11295918507," SFC Michael J. Forbes, March 29, 2024.

**contravening evidence or declarations while simultaneously only asserting arbitrary and capricious allegations of denial or disbelief.**

As stated in the MEMORANDUM IN SUPPORT OF RESPONSE TO DEFENDANT'S MOTION TO DISMISS, the Defendant has enjoined this court to consider their dismissal request under a specific provision "(disclosure)" of the Privacy Act, not supported by the Plaintiff's allegations. To please the Court, and in a good faith effort to expedite the adjudication of this controversy, the Plaintiff will attempt to focus on an undisputed subset of evidence found in this filing's STATEMENT OF FACTS (above) that could significantly sway the Court in granting this MOTION FOR PARTIAL SUMMARY JUDGMENT under 5 USC § 552a, (e)(1), (e)(2)(e)(3),(e)(4), (e)(5), (e)(7) and (m)(1).

The investigation lacked objectivity [(e)(5)] in multiple ways that follow: 1) the Plaintiff had no opportunity to present a defense as specific allegations were never presented to the Plaintiff; 2) the built-in defense was never considered even though the Plaintiff notified the Investigating Officer of the Privacy Act violations in his sworn declaration to her; 3) much of the allegations covered periods that were already formally evaluated in completed Non-Commissioned Officer Evaluation Reports on the Plaintiff;<sup>3</sup> [ECF 1-3] [(e)(5)], 4) the Investigating Officer never responded to the Plaintiff's request for clarification in his sworn declaration [(e)(2)]; 5) sent the Plaintiff to an eCDBHE under the auspice of a conflict of interest; 6) if a negative report was issued the eCDBHE would have been used to support the investigation; 7) the report's findings were incongruous to Maj. Racaza's and Cpt. Korista's allegations but disregarded, and regardless, their perceptions that led to the referral were used in Personnel Actions against the Plaintiff; 8) circular findings of the Investigating Officer, and; 9) the General Officer denied rescinding the investigation or the documents it spawned [ECF 1-19]

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<sup>3</sup> See Enclosure A03, DA Form 2166-8 (NCOER), thru February 26, 2022

after notification of the Army's Privacy Policy violations [ECF 1-61]. "Liability for damages is incurred only when an agency violates the Act in a willful or intentional manner, ... by... flagrantly disregarding others' rights under the Act. 5 U.S.C. § 552a(g) (4)." [Kassel v. US VETERANS'ADMIN., 709F. Supp. 1194 (D.N.H. 1989)]. Essentially, the Brigade Commanders appointment of the Investigating Officer and the Investigating Officers efforts are alleged to have been "half-hearted" id.. by the Plaintiff, since they demonstrated behaviors consistent with attempting to either "build a case against" id.. the Plaintiff, or possibly protect the Psychologist and Commander from scrutiny, or both. In any case, the Plaintiff alleges they intended "not to create a balanced record to support a fair review" id.. of the Plaintiff, which is contrary to provision (e)(5) and supports the Plaintiff's MOTION FOR PARTIAL SUMMARY JUDGMENT.

**II. The Defendant does not attack the veracity of any of the Plaintiff's documents, electronically stored information, or declarations.**

The Defendant's overreliance on the findings of an investigation based on the Plaintiff's quotes of the investigation (in the Plaintiff's Complaint) vs. seeking any substantive redress review of the investigation's internal declarations (sworn statements) or other evidence, has been, and is, superficial. Prior to filing suit, the Plaintiff consistently sought to internally bring forth flawed aspects of the Defendant's investigations and was rebuffed in every instance. Now, to add depth to the Defendant's overreliance on the aforementioned disputed clandestine investigation, the Plaintiff now publishes, as part of the case-record, two sworn statements that illustrate some problems with the Defendant's explanation of the facts.

The Defendant failed to “set out facts that would be admissible in evidence” in dispute of the Plaintiff’s allegations in its MOTION TO DISMISS, likely because evidence that could be used in support of the Defendant in reality supports a central aspect of Plaintiff’s case, namely his request to remediate the Privacy Act violation (e)(3) by contacting the Inspector General and then asking the Command Operational Psychologist, Maj. Rhea Racaza for the information. It was the statutory and regulatory duty of the Psychological Officer, and the Commanding Officer that issued to order to provide the information prior to giving the order. Once that violation occurred, their duty remained. This fact supports the Plaintiff as posited in more depth below (see “special defense).”

The central dispute stems back to the missing statutory information that was required to be provided either prior to, or simultaneously with, the order [(e)(3)] to participate in the third-party Corporate “Behavioral Assessment. [(m)(1)]”<sup>4</sup> The implied expectation of the order was for the Plaintiff to agree to a 3rd-Party Corporation’s required “Terms of Service” [ECF 1-21] and “Privacy Statement” [ECF 1-22] but neither of these records complied with the provisions of 5 USC § 552a, (e)(1),(e)(3),(e)(4) or (m)(1). On November 29, 2022, the Commander’s “requirement” was for the entire “[Senior] Staff Team” [ECF 1-27] to complete the SDI of Corestrengths (LLC) for an off-site group session on Friday, December 2, 2022. This third-party corporate command-order was issued by the Brigade Commander regardless of the “Agency Requirements” provision [(e)(3)] of the Privacy Act, which includes a Privacy Notice that the Brigade Commander must adhere to. Notably, as a sworn Military Officer, he also did this with

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<sup>4</sup> See Enclosure A04, *highlights that prove this is a behavioral assessment*, SDI [Strengths Deployment Inventory] 2.0 Methodology and Meaning, Corestrengths, <https://www.corestrengths.com/sdi-2-0-methodology-and-meaning/>.



disregard towards other standing Executive Orders<sup>5,6,7</sup> of the office of the President of the United States, which prohibited such an order [(e)(1)].

The “Agency Requirements” of the Privacy Act exist so the Plaintiff, “whom [the agency] asks to supply information,” (emphasis added) - [5 USC § 552a, (e)(3)] is aware of:

*...the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;...the principal purpose or purposes for which the information is intended to be used; the routine uses which may be made of the information, ...; the effects on him, if any, of not providing all or any part of the requested information. (emphasis added)[5 USC § 552a, (e)(3)]*

This requirement ensures that those solicited can make an informed decision to either opt-in or out of the *asked for* personally-identifiable information prior to becoming a reluctant research subject and respondent of the corporation. Notably, the “customer,”<sup>8</sup> by Corestrengths definition, is

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<sup>5</sup> Executive Memoranda are treated as Orders as they come from the Office of the President and are expected to be complied with.

<sup>6</sup> See Enclosure A05, 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](https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/memoranda_2010/m10-22.pdf).

<sup>7</sup> See Enclosure A06, 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](https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/memoranda_2010/m10-23.pdf).

<sup>8</sup> See Enclosure A07 “Excerpts of Corestrength’s ‘Terms of Service’ and ‘Privacy Policy,’”

*an individual, business, or other entity that purchases PSP's Products or Services, or with which PSP has a contractual relationship to provide Products or Services. [ECF 1-22]*

The Plaintiff did not pay for this company's services, as such, he understood that any rights afforded a "customer" in the contract are moot to him regardless of his acceptance of their agreements; he simply did not meet this definition of "customer."

The Plaintiff began reading the Corestrength's (the corporation) mandatory agreements in the evening of the verbal announcement of it by the Command Operational Psychologist in the morning planning meeting (the 'Scrub,' November 28, 2022) and the more he read, the more uncomfortable he became. He wasn't able to find any language within them that alluded to any aspect of the "Government Contractors" (m)(1) provision of the Privacy Act; neither did they imply deference to the "respondent"<sup>9</sup> for controversies, nor did they mention any "Agency Requirements" (e)(3) for any Government "customer."<sup>10</sup> Moreover, there was no reasonable recourse for the Plaintiff had his personally identifiable information been mishandled by Corestrengths. In fact, Corestrength indicated, in these agreements, that it could keep the Plaintiff's "(respondent)"<sup>11</sup> information for as long as it desired.

After reading these agreements, the Plaintiff was stuck between a proverbial unlawful order [(e)(1), (e)(2), (e)(3)(A-D), (e)(4), (e)(7) and (m)(1)], with the underpinning of legitimate directorial authority, and onerous corporate contractual agreements, that the order demanded he agree to; both of which, he wanted nothing to do with. It was an ethical dilemma brought about by the Brigade Commander's order and the lack of professionally educated interdiction by the

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<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

Command Operational Psychologist, whose obligations under military regulations and the Arizona Board of Psychologist Examiners' (BOPE or 'Board')<sup>12</sup> professional code of conduct, should have guided the Brigade Commander away from this non-complaint order. The Psychologist should have had the Soldier's privacy as a paramount concern [(e)(1)] concerning the "Agency Requirements" [(e)(3)] and "Government Contractors" [(m)(1)] provisions of the Privacy Act in this "Behavioral Assessment"<sup>13</sup> as seen in the Arizona Board's Code of Conduct Principles cited below:

*(a) Psychologists delivering services to or through organizations provide information beforehand to clients and when appropriate those directly affected by the services about (1) the nature and objectives of the services, (2) the intended recipients, (3) which of the individuals are clients, (4) the relationship the psychologist will have with each person and the organization, (5) the probable uses of services provided and information obtained, (6) who will have access to the information, and (7) limits of confidentiality. As soon as feasible, they provide information about the results and conclusions of such services to appropriate persons.*<sup>14</sup> (emphasis added)

[AZ BOPE Ethical Principles of Psychologists Code of Conduct 3.11]

*(b) If psychologists will be precluded by law or by organizational roles from providing such information to particular individuals or groups, they so inform those individuals or groups at the outset of the service.*<sup>15</sup> (emphasis added)

[AZ BOPE Ethical Principles of Psychologists Code of Conduct 3.11]

The Plaintiff, after the order was delivered, had no opportunity to professionally and independently opt out without taking on the mantle of the "Agency Requirement" (e)(3)

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<sup>12</sup> Maj. Rhea Racaza is licensed with AZ BOPE (active license #PSY-004462 since January 14, 2014 and she is current as of this filing.

<sup>13</sup> See Enclosure A08, The Arizona (AZ) Board of Psychologists Examiners (BOPE), "Ethical Principles of Psychologists and Code of Conduct" adopted the American Psychological Association, namely Principle 3.11, b. "Psychological Services Delivered to or Through Organizations," p. 3, as is effective June 1, 2003.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

responsibility himself by attempting to get assistance from the Inspector General, whom did nothing but redirect him to “go ask the Source,” which he did.). Maj. Racaza whose objectivity was required to assist the Plaintiff in understanding the scope of the assessment, and that it was, in fact, voluntary (not incident-to-service), instead, immediately treated him as an insubordinate.

The Plaintiff’s pleading merely described these effects contained within Corestrengths agreements in his Complaint; the Plaintiff has quoted the definition and key parts<sup>16</sup> of these coerced mandatory agreements that all users or “respondents”<sup>17</sup> must agree to prior to entering their online website to accomplish the SDI assessment, in an attached supplement<sup>18</sup> to this MOTION FOR PARTIAL SUMMARY JUDGMENT.

**III. The Plaintiff cites particular materials in the record that do not establish the presence of a genuine dispute, and in support thereof, the Plaintiff has prepared and provided a request for admissions for use in any scheduled pretrial conference pursuant to Fed.R.Civ.P. 16.**

Each action in the aforementioned SUMMARY OF FACTS is supported by an evidentiary Defendant-created or acknowledged document. Though a REQUEST FOR ADMISSIONS has been supplied to assist the Court in assessing the merits of the Plaintiff’s evidence, if it pleases the Court to employ under Fed.R.Civ.P 16, the Plaintiff feels the submissions stand without need of such support. Regardless, the REQUEST FOR ADMISSIONS has been attached to this MOTION FOR PARTIAL SUMMARY JUDGMENT for the Court’s consideration if deemed relevant.

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<sup>16</sup> See Enclosure A07, “Excerpts of Corestrength’s ‘Terms of Service’ and ‘Privacy Policy,’”

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

**IV. The Plaintiff submits, for the record, Defendant-possessed declarations of an agency official and another's internal witness declarations used in the internal investigation, whom were central to the Defendant's internal complaint of "disrespectful in language and deportment towards a Field Grade officer" levied against the Plaintiff on November 30, 2022 and again on January 12, 2023 and has some facts of undisputed content.**

The sworn statement of Maj. Rhea Racaza is being entered into the record due to its seminal nature in relation to the impetus concerning the Defendant's clandestine internal investigation into the Plaintiff. This document was the initial complaint on the Plaintiff's unblemished record, which is currently destroyed due to the fallout from the investigation that Maj. Racaza's complaint inspired and causally culminated in the Plaintiff's scheduled administrative separation. This document was written a full seven weeks after the fact, yet supports the Plaintiff's position of attempting to remediate the Defendant's violation of the Privacy Act [(e)(3)], which she did nothing to prevent [(e)(1)] as it was not incident-to service.

The Plaintiff adds another sworn statement, of the Psychologist's assistant, SGT Jamari Adleguier, which was included in the same investigation that purported the Plaintiff's guilt of "disrespect" of Maj. Racaza. Although the Plaintiff disputes the scope of and depth of any conversation with this witness, SGT Aldeguier's statement was relied upon by the Defendant's Investigating Officer [ECF 1-30, p. 1, Ch. 4.]. SGT Aldeguier's statement further corroborates the Plaintiff's assertions of having requested SDI 2.0 information of Maj. Racaza, as the witness declared, "[the Plaintiff]...asking for information about SDI 2.0" and once invited into Maj. Racaza's office, the witness declared, "[the Plaintiff], asked her to give him all the details about SDI."

The Defendant's aforementioned superficial reliance on the internal investigation by merely regurgitating its circular findings from the Investigating Officer, 2<sup>nd</sup> Lt. Tolston, is weak by itself, but the next fact mortally impugns those circular findings and any reference to them.



Sadly, the Defendant's Investigating Officer evidently bypassed the "Special Defense" to an Article 89 offense (disrespect toward superior commissioned officer) in her administrative 15-6 investigation and likely did so because she believed it would never be scrutinized outside our Command; no outside scrutiny of a Court Marshall would be injected as long there was no recommendation for UCMJ prosecution. [(e)(5)] This further supports a willful violation of provision (e)(5), which is further supported by the timing, declarations made, amount of hearsay and opinion prevalent in the witness statements, as well as the amount of written Memorandums for Record by the Investigating Officer (some, for witnesses that provided a sworn declaration), [ECF 1-30, p. 4, "Exhibits"] [(e)(5)] and behaviors of both the Brigade Commander and Investigating Officer contained within the investigation.[ECF 1-32] [(e)(5)]. A Court can conclude "that a reasonable jury could find that the Board's report was inaccurate or incomplete" [Kassel v. US VETERANS'ADMIN., 709F. Supp. 1194 (D.N.H. 1989)], which would also support this MOTION FOR PARTIAL SUMMARY JUDGMENT.

**V. The agency official (the Command Operational Psychologist) and her assistant's declarations were used, at least, in the Defendant's internal investigation, which were central in the career-ending administrative separation decision delivered to the Plaintiff, yet these declarations were not brought forth by the Defendant as support or admissible evidence, likely because they support the Plaintiff on a specific and seminal fact of the case.**

The Defendant's order was not 'incident to service' [(e)(1)] and was issued and delivered without the "Agency Requirements" [(e)(3)] of the Privacy Act, which prompted the Plaintiff to have a 'protected communication' to request assistance to find the missing information and ultimately had to request the information himself. The Plaintiff spoke with the Command Operational Psychologist, via guidance from the Inspector General, to "ask"<sup>19</sup> for the missing

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<sup>19</sup> See Enclosure A09 DA Form 2823, "Sworn Statement" of SGT Jamari Aldeguier, January 19, 2023.

“needed”<sup>20</sup> information regarding the ordered “behavioral health evaluation”<sup>21</sup> “(SDI 2.0).”<sup>22</sup> The Defendant’s Official (the Psychologist), and her subordinate, both, concurred with this integral point in their sworn declarations. The Statute squarely places the responsibility of compliance on the agency and this cannot be disputed as it is lettered law. The Psychologist took offense to being questioned, and over a month later, an investigation was launched by the Brigade Commander because of it. The Plaintiff’s position, career, reputation promotion, monies and his ability to fulfill his Service Contract, have all been decimated by these two agency officials and their launched investigation. This is yet another stance in support of this MOTION FOR PARTIAL SUMMARY JUDGMENT as these issue as to the Plaintiff’s intent and actions are not in dispute.

**VI. The Plaintiff’s added declarations are a pivotal aspect of the Plaintiff’s account, which asserts the birth of causality and, which provides the Plaintiff with an expressed affirmative defense as expressly cited by the Defendant statutory rules.**

The following becomes another paramount issue; it is the internal finding of disrespect [(e)(5)] as written in the Manual for Courts Martial. The Uniform Code of Military Justice, Article 89 (disrespect toward superior commissioned officer), has a built-in defense regarding the charge of disrespect.<sup>23</sup> To illustrate its application, the Plaintiff starts with the fact that the agency never provided the required statutory information pursuant to the Privacy Act [(e)(3)] (and other federal laws) before or during its “ask” for information submission (per “Agency

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<sup>20</sup> See Enclosure A10 DA Form 2823, “Sworn Statement” of Maj. Rhea L. Racaza, January 19, 2023.

<sup>21</sup> See Enclosure A10 DA Form 2823, “Sworn Statement” of Maj. Rhea L. Racaza, January 19, 2023.

<sup>22</sup> See Enclosure A09 DA Form 2823, “Sworn Statement” of SGT Jamari Aldeguier, January 19, 2023.

<sup>23</sup> See Enclosure A11, *an excerpt of* Manual for Courts Martial (2024), “Special defense. page IV-22 in Appendix IV, Manual for Courts-Martial, *online at:* <https://jsc.defense.gov/military-law/current-publications-and-updates/>.

Requirements”) in the delivered order from the Brigade Commander. Moreover, after the Plaintiff quickly identified the violation and “asked” for the required information, he not only never received it, [(e)(3)] but also was reported [(e)(5)] for asking for it.

#### SPECIAL DEFENSE TO ARTICLE 89

This case can be summed up as an example of an Army Commanding Officer’s (a Defendant’s agency official’s) unlawful order [(e)(1), (e)(2), (e)(3)(A-D), (e)(4), (e)(7), (e)(10) and (m)(1)], and concurrently, a licensed Command Operational Psychologist’s support of that order, whose conduct activated the embedded and stated defense of the MCM’s (Manual for Court Marital) under an Article 89 violation.

*(d) 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.<sup>24</sup>*

As the Plaintiff has substantiated, the licensed Command Operational Psychologist, Maj. Racaza, divested herself substantially from the statutory and professional licensure requirements assumed by her rank and/or position [(e)(1), (e)(3) (e)(5) and (m)(1)]. Therefore, she loses the protection contained within the Article [89]. She never provided the information about the SDI 2.0 order, even though she and the Brigade Commander, had a statutory, regulatory, and professional duty to provide *the information*<sup>25</sup> with his order; The Plaintiff was attempting to

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<sup>24</sup> Ibid.

<sup>25</sup> See 5 USC 552a, (e)(3), et. Al.

assist her and the Brigade Commander in their understanding that his order, as stated and delivered, “All staff in the TO: line will take the SDI[ECF 1-27]....” was a violation of law and a standing Executive Order of the President [(e)(3), m-10-22 & m-10-23]. The truth is, “All Staff” *had an independent choice to opt in or opt out* of the requirement (ergo the order was unlawful). Given that neither the licensed Psychologist nor the Commander ever supplied this information to the Plaintiff while also coercing Soldiers (under their authority) into a corporate relationship with a company of their choosing, they departed substantially from the required standards appropriate to their rank and position; in a similar corporate circumstance both of them could easily have been fired for coercing employees into third-party contracts of any kind, or worse, forcing employees to associate with an outside behavioral research firm against their will [(e)(1)]. The special defense applies and stands as another pillar of support for the Plaintiff’s MOTION FOR PARTIAL SUMMARY JUDGMENT.

### CONCLUSION

The Plaintiff’s cited a subset of evidence in his pleading, in this MOTION FOR PARTIAL SUMMARY JUDGMENT, which stands on its own as evidentiary proof of violations of the Privacy Act (5 USC § 552a, (e)(1), (e)(2) (e)(3),(e)(5),(e)(7) and (m)(1)), not to mention, violations of Executive Orders m-10-22 and m-10-23, DoD 5400.11-R and AR 25-22. The Plaintiff’s subset of prima facie case evidence, as stated herein, also serves to justify the judgment request under subsection (g)(1)(D) of the Privacy Act with respect to causal and actual damages (legal fees for multiple briefs<sup>26</sup> [ECF1-8, ECF 1-61] sent to the Defendant’s Officials,

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<sup>26</sup> See Enclosure A12, Article 138 redress packet sent through legal counsel, SFC Michael Forbes and James M. Branum, Esq., June 16, 2023



cost to file suit, loss of benefits from the Servicemembers Civil Relief Act,<sup>27,28</sup> and restriction of promotion), which does not require exhaustion of administrative remedies and, concurrently, does not diminish other similar violations contained within the Plaintiff's Complaint. This Court has before it a novel prima facie case of an agency official's ordering is Service Members into a third-party [(e)(2)] contractual [(m)(1)] relationship that will provide personally-identifiable records and containing PII and PHI (including personal motives, thoughts and beliefs) to agency officials with information that the agency officials are prohibited from having, or having the opportunity to store, [(e)(1) (e)(3) & (e)(7)] in any (including third-party) system of record, [(e)(4) & (m)(1)] had they asked the Service Member directly, without the properly administered Service Member consent [(e)(3)].<sup>29</sup> That said, the Plaintiff asserts investigative retaliation [(e)(5)] is more common.

"The legality of a military order is a question of law...." [United States v. Sterling, 75 M.J. 407, 413–14 (C.A.A.F. 2016)]. A lawful order must "be clear, specific, and narrowly drawn." *Id.* "not conflict with statutory or constitutional rights of the person receiving the order,"<sup>30</sup> and "have a valid military purpose." *id.*<sup>31</sup> Although the Brigade Commander's emailed

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<sup>27</sup> See Enclosure A13, Official notification of financial impact to loss of benefits of the SCRA on "9/18/2024", Discover Card Customer Service, June 18, 2024.

<sup>28</sup> A Privacy Act "Access" request is in process to identify what disclosure or "documentation [Discover Card] have on file" and to request for possible follow-on "Amendment. (for any possible violations of (b),(e)(4), or any other provisions, if any, of the Privacy Act."

<sup>29</sup> See Enclosure A14. (DoDI) 6490.04), There exist only three situations in which a Commander can order a behavioral evaluation.

<sup>30</sup> See Enclosure A15, excerpt of Manual for Courts-Martial, commentary on UCMJ Article 90, found at page IV-24, in Appendix IV, Manual for Courts-Martial, 2024.

<sup>31</sup> Available online at: <https://www.armfor.uscourts.gov/newcaaf/opinions/2015SepTerm/150510And160223.pdf>. For additional commentary on this case, see: Lieutenant Colonel Nolan T. Koon & Major David L. Ford "Religious Freedom: An overview of Religious accommodation policies in the Army" *Army Lawyer* (2021, Issue 2) online at: <https://tjaglcs.army.mil/Periodicals/The-Army-Lawyer/tal-2021-issue-2/Post/5748/Practice-Notes-Religious-Freedom>



order, on November 29, 2022, was reasonably specific, it conflicted with statutory (the Privacy Act (e)(1),(e)(3) & (m)(1)) and our constitutional rights (per Complaint), and it did not pertain to military service as “it [was] not an ‘Army’ requirement”<sup>32</sup> (not incident to service).

Succinctly, the Brigade Commander’s decision to deliver an unlawful, and non-statute-compliant, order [(e)(1), (e)(2), (e)(3)(A-D), (e)(4), (e)(7) and (m)(1)], led to the Plaintiff’s questions, which led to the Inspector General’s inaction, which led to the Psychologist’s complaint [(e)(5)], which led to the Brigade Commander’s investigation [(e)(5)], which led to the S2 OIC’s RFC and Commanding General’s GOMOR [(e)(5)], which led to the Army’s recommendation of the Plaintiff for the QMP Board [(e)(5)], which led to QMP Board decision to separate the Plaintiff from his dutiful service in defense of his contracted service in the Army [(e)(5)], on December 1, 2024. All of this occurred because the Plaintiff understood the law and asked the appropriate questions to help bring the Defendant back into compliance.

In fact, once this case is approached from the macro career perspective of the Plaintiff, any reasonable person could adjudge that the Plaintiff has never tolerated bad actors or defective cultures throughout his educational [ECF 1-1 & 1-2], financial [ECF 1-2] or military careers [ECF 1-1]; he has always stood up for what is lawful, reasoned and justified. Most apropos, in this case, is the Plaintiff’s military conduct, which can be seen in his 15 unblemished NCOERs spanning a 12-year NCO career (up until the Defendant’s allegations in this case), and more specifically, the stories contained within the Character Reference Letters submitted to the Defendant, yet seemingly ignored by the Defendant. To explain this, the Plaintiff points to two seminal statements made by central figures in the management and direction of the Plaintiff’s Brigade, the Bridgade Commander and the Comad Sergeant Major. They are as cited, as follows:

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<sup>32</sup> See Enclosure A16, email from Lt. Col. Howsden to the Plaintiff, December 6, 2022 at 4:44 p.m (paragraph 1).

*Sir, recommend filing this GOMOR in the NCO's AMHRR. SFC Forbes has a demonstrated history of being cancerous to organizations and his current tenure in the 528SB is indicative of that history. SFC Forbes' substantiated AR 15-6 investigation denotes him as a toxic leader, disruptive to good order and discipline, and erratic. During the course of the AR 15-6, despite being given the opportunity to serve in his career field in another battalion, he continued to exhibit similar if not the same behavior. SFC Forbes' presence in this command is wholly indicative of counterproductive leadership and the caliber of toxicity that is deleterious to command climates. Given his continued poor performance as a Non-Commissioned Officer, I recommend a permanent filing.*

COL Tavi N. Brunson, July 7, 2023

*Sir, recommend AMHRR filing. In my 21 years of service, I have never worked with a Soldier who has been more disruptive to an organization than SFC Forbes. His counterproductive behavior created a detrimental environment within the Brigade which not only effected(sic) his subordinates, but multiple Officers and DOD civilian employees. It was also documented that he demonstrated similar behaviors when he was previously assigned to 3<sup>rd</sup> SFG (A) and 173<sup>rd</sup>. His exchanges were not only unprofessional, but bully-like in nature and beyond unacceptable.*

CSM Sandra Vargas, July 12, 2023

First, the Plaintiff willingly admits he has a history of seeking assistance with the very office within the agency (the Inspector General) that has been conceived and built to specifically to professionally ‘run interference’ for Soldiers when leadership cultures become defective and stray from regulations in our directorial authority-driven agency, the Army. The Plaintiff, proudly, has never subverted his adherence to his “two basic responsibilities... uppermost in [his] mind- accomplishment of the mission and the welfare of [his] Soldiers.”<sup>33</sup>

What Col. Brunson and CSM Vargas deem “cancerous,” “deleterious” and “disruptive,” the Plaintiff’s former Soldiers, peers, and supervisors have viewed as ‘unwavering,’<sup>34</sup> ‘values oriented,’<sup>35</sup> ‘effective,’<sup>36</sup> and “steadfast.”<sup>37</sup> [ECF 1-4]. Two of the Plaintiff’s former Soldiers’ stories [(ECF 1-4)] depict situations in “3rd SFG (A) and 173<sup>rd</sup>” in which the Plaintiff, engaged, or encouraged his Soldier to engage, the Inspector General to ‘right’ a ‘wrong’ with successful outcomes. This suggests CSM Vargas’ assessment is as purported, merely hearsay, much like the bulk of the investigation that emulated the remainder of Maj. Racaza’s declared sworn statement.<sup>38</sup> In contrast, a former supervisor of the Plaintiff markedly commented, “Anyone not wanting this person, this man, this Soldier, this Senior Non-Commissioned Officer on his or her team frankly is foolish and know nothing about what denotes or classifies a great Soldier, a leader nor an Intelligence Professional,” Yet the Defendant has attempted to permanently smear

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<sup>33</sup> See Enclosure A17, Creed of the Non-Commissioned Officer.

<sup>34</sup> “Sir, SFC Forbes has never wavered in his commitment to doing the right thing.” SFC(R) Donald Bleyl, June 8, 2023.

<sup>35</sup> “He LIVES the Army Values.” SFC Eric Salinas, June 1, 2023.

<sup>36</sup> “SFC Forbes is an effective leader and should be supported to continue developing Soldiers.” SSG Valerie M. Hughes, June 10, 2023.

<sup>37</sup> “Michael Forbes did not show signs of weakness, he stood steadfast, excepted(sic) responsibility, and showed many Soldiers in the unit what it meant to be resilient.” CSM Aubrey L. Crenshaw, June 11, 2015(sic ‘2022).

<sup>38</sup> See Enclosure A10 DA Form 2823, “Sworn Statement” of Maj. Rhea L. Racaza, p. 2., January 19, 2023

the Plaintiff's life-long history of adherence to laws, regulations, personal ethical principles, and educational/professional codes-of-conduct,<sup>39</sup> that has spanned nearly four decades worth of educational and professional work experience. Another significant refutation to the Defendant's case against the Plaintiff can be seen through the direct plea from a retired Sergeant Major to BG Ferguson (who was considering the Plaintiff's GOMOR status), who stated,

*Please rescind this GOMOR, Sir. I know SFC Forbes, I know he is rebutting this GOMOR and the investigation that underpins it. I can assure you, he would not argue a losing point. He would concede if he was wrong; he is a true professional!*<sup>40</sup>

This too, was ignored by BG Ferguson in his decision.

Intrinsically, from a broad, integrity-oriented vantage, the following questions emerge, 'Does one believe the two individuals who were directly responsible for a defective culture that condoned ignoring laws and regulations (Col. Brunson and CSM Vargas)?' or 'Does one believe a supported Soldier (the Plaintiff) with a documented history of standing up in material situations detrimental to Soldiers to remediate issues and protect the Army's reputation in the balance (even if that means attempting to prevent and protect leaders from their own paradigms that form basis in unlawfully delivered orders such as this one).

Sacrosanct to that decision is the opportunity for the Court to remediate the effects of the defective culture Col. Brunson cultivated and protected (as established in the this

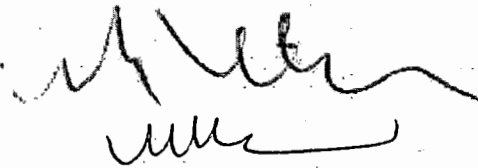
MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT),

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<sup>39</sup> As seen in his 14 year career as a licensed Financial Advisor.

<sup>40</sup> CSM(R) 18Z, Anthony J. Armijo, June 8 2023.

from appearing elsewhere in our Army. An adjudication in favor of the Plaintiff could produce “intervening case law” to remediate gaps apparent in the law stemming from this case, The gaps appear in the preparatory phase of unlawfully executed orders that fall under the “Agency Requirements” provision (e) and the “Government Contractors” provision (m) of the Privacy Act, that absent in 32 CFR § 310, the “Protection and Privacy and Access to and Amendment of Individual Records Under the Privacy Act of 1974.” This decision could enhance a necessary ‘prominence-of-mind-effect’ within the agency that could better preserve every Soldier’s decision to protect their privacy as they see fit, especially when any mandate to use any third-party application solicits expressed thoughts and beliefs (e)(7) that will be shared with others. To further this effort, the Plaintiff has produced a request for admissions specific to the identified subset of evidence, which is supplemented<sup>41</sup> for the Court, for any pretrial conference pursuant to Fed.R.Civ.P. 16, if it pleases. Regardless, the Plaintiff asserts there are no genuine disputes to these material facts that could preclude adjudication of this MOTION FOR PARTIAL SUMMARY JUDGMENT.



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Michael J. Forbes, *pro se*

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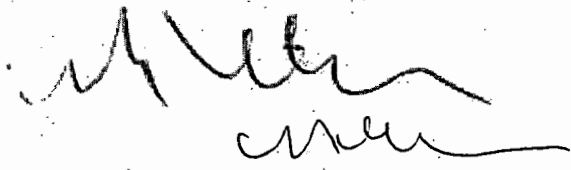
<sup>41</sup> See Enclosure A18, Request for admissions.



CERTIFICATE OF COMPLIANCE

This document complies with the page limit and word count of Local Rule 7.2, in that it is 29 pages long and contains 7236 words.

Dated: June 28, 2024

A handwritten signature in black ink, appearing to read "Michael J. Forbes", written over a horizontal line.

Michael J. Forbes, *pro se*