

ENCLOSURE A01

SUPPLEMENT TO THE STATEMENTS OF FACTS

for

PLAINTIFF RESPONSE TO DEFENDANT MOTION TO DISMISS

&

PLAINIFF MOTION FOR PARTIAL SUMMARY JUDGMENT

Supplemental Document

case Forbes v. US Army et al, 5:24-cv-00176-BO-RJ

(emphasis added throughout)

This case can be summarized in the following statement, “A lawful directorial authority who unlawfully coerced a captive vulnerable population into surrogate contracts to provide it with ill-gotten gains that are intended to be subjectively used for/against its subjects.”¹ The Plaintiff will address some glaring mischaracterization in the Defendant’s MOTION TO DISMISS as they occurred in the Defendant’s STATEMENT OF FACTS by focusing on the following subset of evidence in and added to the record.

SUBSET OF CASE EVIDENCE, CITED STATEMENT OF FACTS

Having an established a prima facie case, the Plaintiff, using evidentiary submissions to the Court, and evidence previously on the record, presents the following subset of evidence in argument opposing the Defendant’s MOTION TO DISMISS in an effort to declutter the multifaceted nature of this case. This subset that this response is based on, should in no way, indicate the Plaintiff subjugates the other concerns addressed in his “corrected” Complaint:

¹ Citation lost.

0) prior to November 29, 2022, the Army and its Officials, as ordered directly by the Brigade Commander (Col. Tavi N. Brunson, 528th SB, Fort Bragg), and thru his Command Operational Psychologist (Maj. Rhea Racaza), and their lack of adherence to professional code-of-conduct,² regulations³ [ECF 1-42], Executive Orders⁴⁵, federal law (5 USC § 552a, (e)(1), (e)(2), (e)(3), (e)(4), (e)(7) & (m)(1) and remedied under (g)(1)(C) or (D)), and our Constitution the Defendant (the U.S. Army) prepared to and committed wrongs against the Plaintiff, et al. [(e)(10)] (the Psychologist, whose area of expertise enjoined her with the duty to better guide the Commander out of the unlawfully ordered mandate for select Soldiers' participation in Strengths Deployment Inventory (SDI) prior to and thru the SDI order issuance, did not do so); [(e)(10)] this is evident in the Psychologist's support for it and their combined and coordinated defense of (see Complaint and MOTION FOR PARTIAL SUMMARY JUDGMENT) the unlawful order (once issued) through an unfair follow-on attack (5 USC § 552a, (e)(5)) on the character and career of the Plaintiff);

1) **on November 29, 2022**, a violation of the Privacy Act, specifically the "Agency Requirements" [(e)(1), (e)(2),(e)(3)(A-D),(e)(4),(e)(7) and (m)(1)], and the "Government Contractors" [(m)(1)] provisions of the law (This violation occurred upon the delivery of the

² See Enclosure A08, The Arizona (AZ) Board of Psychologists Examiners (BOPE), "Ethical Principles of Psychologists and Code of Conduct" adopted the American Psychological Association, Section 3, "Human Relations," Principles 3.05, "Multiple Relationships," 3.06, "Conflict of Interest," 3.08 "Exploitive Relationships," 3.10 "Informed Consent," and 3.11, "Psychological Services Delivered to or Through Organizations," pgs. 2-3, as is effective June 1, 2003.

³ See Enclosure A19, excerpt of AR 25-22, (Sections 1-9, "Fair Information Practice Principles (f., & g.), 1-10, "General provisions (a., b., c., & f.)," 1-12, "Civil liberties" & 5-1, "Collecting personally identifiable information" Army Privacy Policy, September 30, 2022.

⁴ 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.

⁵ 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.

order from the Brigade Commander [ECF 1-27] and supporting emails from the Command Operational Psychologist [ECF1-28 (as an Army Officer), & ECF 1-29 (as a Corestrengths Facilitator)],⁶ on November 29, 2022. The order instructed the Plaintiff to participate in the corporate 3rd-party, personally-identifiable, data gathering, online Behavioral Assessment application, (assessing, motives, personalities and thoughts)⁷ [(e)(7)] entitled Strengths Deployment Inventory (SDI) 2.0 owned and operated by Corestrengths, (LLC),⁸ whom also maintains and uses respondent's data indefinitely for its own secondary research and marketing)[(e)(4) and (m)(1)];

2) **on November 30, 2022** (circa 9:25 a.m.), the Plaintiff called LTC Howsden, the Command Inspector General, and telephonically requested assistance⁹ regarding the SDI ordered assessment and was told to “go to the source” (the Psychologist that notified everyone in the November 28 staff meeting), though reticent to do so, the Plaintiff sent an email to the Inspector¹⁰ and followed his guidance;

3) **on November 30, 2022**, the Plaintiff attempted to remediate the violation of the Privacy Act by requesting the missing “Agency Required” information [(e)(3) (A-D)] from the Command Operational Psychologist, and the Psychologist and her assistant acknowledged that

⁶ Ibid Enclosure, A07, *see definition for* “Certified Facilitator.”

⁷ See Enclosure A04, “SDI 2.0 Methodology and Meaning,” Corestrengths, *or online at* <https://www.corestrengths.com/sdi-2-0-methodology-and-meaning/>.

⁸ SDI 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.

⁹ See Enclosure A20, “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>.

¹⁰ See Enclosure A21, Plaintiff email to Lt. Col. Howsden, forwarding Col. Tavi Brunson SDI order and referencing telephone conversation, SFC Michael J. Forbes, November 30, 2022 (9:25 a.m.).

the Plaintiff “asked” for the “needed” (required) “regulations and policy” pertaining to the Privacy Act information re: the specific “Behavioral Health Evaluation” (both acknowledgments occurred in separate sworn statements on January 19, 2023);^{11 12}

4) **on November 30, 2022**, the Command Operational Psychologist had a legal and professional duty to provide the “Agency Required” information pertaining to the unsanctioned SDI assessment [(e)(1) and (m)(1)] required by the Privacy Act [(e)(3)(A-D)] in remediation to the unlawful order [(e)(1), (e)(2), (e)(3)(A-D), (e)(4), (e)(7) and (m)(1)], as the violation had already occurred and the order was still outstanding and being implemented, but she failed to produce it or schedule its production. Since the Defendant’s Agent (the Command Operational Psychologist) is a “superior commissioned officer”¹³ and accused the Plaintiff of an Article 89 offense, “disrespect toward superior commissioned officer,[(e)(5)]”¹⁴ but “whose conduct in relation to the accused under all the circumstances depart[ed] substantially from the required standards appropriate to that officer’s rank or position under similar circumstances”¹⁵ activated the special defense referenced in the Manual for Courts-Martial; the Plaintiff has never been permitted to argue this defense as: a) the investigating Officer never recommended UCMJ action or formal charges [(ECF 1-30, p.3, “RECOMMENDATIONS”)] [(e)(5)]; b) charges were never adjudicated in any UCMJ procedure]; c) charges were never brought forth by the convening authority to a Military Court; and d) the Investigating Officer disregarded the Plaintiff’s

¹¹ See Enclosure A10 DA Form 2823, “Sworn Statement” of Maj. Rhea L. Racaza, January 19, 2023.

¹² See Enclosure A09 DA Form 2823, “Sworn Statement” of SGT Jamari Aldeguier, January 19, 2023.

¹³ See Enclosure A11, excerpt of Manual for Courts-Martial, commentary on UCMJ Article 89 (Special Defense), found at page IV-22 In Appendix IV, Manual for Courts-Martial, 2024.

¹⁴ Ibid.

¹⁵ Ibid.

declaration that stated that Maj. Racaza deflected to answer his request for the scope and statutory support for SDI. [(e)(5)]

5) on November, 30, 2022, the Command Operational Psychologist, instead followed the Plaintiff back upstairs and immediately complained to the Brigade Commander that the Plaintiff allegedly treated her with disrespect, [(e)(5)] and concurrently, while she was in Brigade Commander's office, the Plaintiff called and left a voicemail on LTC Howsden's voicemail at 1st Special Forces Command's Office;

6) on November 30, 2023, (2:26 p.m.), the Psychologist sends a 5Ws email¹⁶ that did not include the required sections of the Privacy Act [(e)(3),(A-D)],¹⁷ (Namely, it lacked, the following information required per 5 USC § 552a, (e)(3): "inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual A) "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," B) "the [other corporate] purposes for which the information is intended to be used," C) "the routine uses which may be made of the information," and D) "the effects on him, if any, of not providing all or any part of the requested information.);"

¹⁶ A "5Ws" email in the Army refers to an email that has answers to the questions of "Who, What, Where, When, Why, and How" any Command task must be completed. It can be written by anyone in a position to convey the Commanders intent with respect to any order.

¹⁷ See Enclosure A22, email from Maj. Racaza, Command Operational Psychologist, "Friday LPD," November 30, 2022.

7) **on December 1, 2022**, after emails between the Plaintiff and the Army Brigade Commander were exchanged,¹⁸ the Brigade Commander ‘did the right thing’ and absolved the Plaintiff of his unlawful order, which the Plaintiff felt laid the issue to rest.

8) The following day, yet another unlawful order was issued by the Brigade Commander [(e)(1), (e)(2), (e)(3)(A-D), (e)(4), (e)(7) and (m)(1)], wherein, between December 2-7, 2022, the Plaintiff interacted (via email) with LTC Howsden, Command Inspector General, again and requested assistance¹⁹ regarding this second assessment ordered (HPW, with embedded Psychological baseline and longitudinal assessments) and referred to similarities of SDI assessment description;²⁰

9) **on December 6, 2022** (4:44 p.m.), LTC Howsden confirmed that SDI was not incident to service by stating, “I first want to be clear that our initial discussion was about the SDI self-assessment tool last week and not the Bridge Athletic fitness tool. I also said that it is not an ‘Army’ requirement [(e)(1)];”²¹

10) **on January 12, 2023** the Command Operational Psychologist’s complaint was integral to a subsequent clandestine investigation (Plaintiff not notified he was the subject) launched by the Brigade Commander with the Plaintiff as the *only* suspect; this is depicted by the only named references to the Plaintiff and the Command Operational Psychologist, Maj. Racaza,

¹⁸ See Enclosure A23, emails between the Plaintiff and Col. Tavi Brunson, Brigade Commander, 528th Sustainment Brigade, December 1, 2022.

¹⁹ See Enclosure A24, 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

²⁰ See Enclosure A16, emails between SFC Forbes and Lt. Col. Howsden, December 2-7, 2022.

²¹ Ibid. See Enclosure A16, email from Lt. Col. Howsden to the Plaintiff, December 6, 2022 at 4:44 p.m. (para. 1).

and date of their interaction, in the appointment orders of that investigation [ECF 1-45, p. 1, 2. d.(1)]; [(e)(5)]

11) **On January 18, 2023** (circa 10:00 a.m.), the Plaintiff requested an open-door meeting at the headquarters building of 1st Special Forces Command with the Commanding General Angle and was instead scheduled to see CSM Munter on January 19, 2023 at 9:00 a.m.²² and later that afternoon, the Plaintiff reported, as ordered (24 hours prior), to Cpt. Korista's office at 4:00 p.m., where he was ordered to an after-hours,²³ emergency Command Directed Behavioral Health Evaluation (eCDBHE); [ECF 1-44] [(e)(5)] while Cpt. Korista was filling out the referral form (in front of Brian Lanier LCSW) he provided an answer to a standard question, "Is it your opinion that the Soldier is suitable for retention in the service?" Cpt. Korista checked the box "No." [ECF 1-43, block 9. d.]; the company Commander, Cpt. David Korista filled in another box on the form pertaining to the Plaintiff with the written answer to this open-ended sentence, "Your future plans for dealing with the Soldier are:" [ECF 1-43, p. 2, block 10] his answer was "[r]emove him from USASOC/levels of responsibility"; [(e)(5)]

12) **on January 18, 2023**, Cpt. Korista, the Company Commander, informed the Battalion and the Brigade Commanders in an "SIR" [serious-incident-report]²⁴ that the Plaintiff "exhibited alarming mental symptoms//behaviors at 1SFC(A) HQs..." and the Command Operational Psychologist gave him the medical professional authorization [(e)(5)-conflict-of-

²² See Enclosure A25, Plaintiff email to Ms. Leadbeater, USASOC Inspector General, January 27, 2023.

²³ By scheduling this meeting at the end of the work day and then ordering the Plaintiff to the after-hours (all attorneys and IG had already gone home for the day), eCDBHE, they violated DoDI 6490.04, see Enclosure A14, DoDD 6490.04 Enclosure 3, subpart 4, chap., .d.3.a), March 14, 2013.

²⁴ See Enclosure A26, a "clean copy" of [ECF 1-44] email of Serious Incident Report (SIR) from CPT David Korista to COL Tavi Brunson, dated January 18, 2023.

interest] that the Department of Defense (DoD) Instruction [a policy] required²⁵ for him to order the Plaintiff to that escorted eCDBHE, pursuant to DoDI Instruction 6490.04,²⁶ at Womack Army Medical Center (WAMC). Later that day, Cpt. Korista reported, “SFC Forbes refused to conduct a Safety Check with WAMC ER [emergency room], which was the recommendation provided by the BDE [Brigade] BH [Behavioral Health].”²⁷ [(e)(5)-conflict-of-interest] Later in the document, he reiterated that claim, “After consultation with the Brigade Psychologist, MAJ Racaza, [(e)(5) – conflict-of-interest] it was determined that the safest course of action was to escort SFC Forbes to WAMC ER for a routine Safety Check.”²⁸ As stated, the unit referral [ECF 1-43], by Cpt. David Korista, required the authorization of any clinical Medical Professional, yet Maj. Rhea Racaza authorized it even though she was the complainant in an open investigation [ECF 1-45], and therefore, had a duty as an Officer and a licensed practitioner of Psychology to recuse herself (and find an alternate authorization Official), but she did not; [(e)(5)]²⁹

13) **on January 19, 2023**, the Licensed Clinical Social Worker, Brian Lanier, stated important points in his assessment [ECF 1-46], they are as follows: 1) “No duty limitations are recommended due to BH [Behavioral Health] reasons and he currently meets BH medical retention standards”) [ECF 1-46, p. 13 “Disposition”]; 2) “SM exhibits no current evidence of significant risk of harm towards himself or others.” and 3) “He/She(sic) is cleared for assignment

²⁵ See Enclosure A14, DoDI 6490.04, Mental Health Evaluations of Members of the Military Services, “ENCLOSURE 3,” 4. “HOSPITALIZATION FOR PSYCHIATRIC EVALUATION AND TREATMENT”, d., April 22, 2020.

²⁶ Ibid.

²⁷ See Enclosure A26, a duplicate clean copy of email with Plaintiff reminder stickers removed [same email as ECF 1-44], emails from Cpt. Korista to multiple echeloned Command leadership, January 18, 2023 (6:48 p.m.).

²⁸ Ibid.

²⁹ See Enclosure, A08, The Arizona (AZ) Board of Psychologists Examiners (BOPE), “Ethical Principles of Psychologists and Code of Conduct” adopted the American Psychological Association, Section 3, “Human Relations” Principle 3.06, “Conflict of Interest,” p. 2, as is effective June 1, 2003.

to this position of significant trust and authority (coincidentally, this was the day that the Plaintiff made the Master Sergeant Fully Qualified Promotable List entitled, “FY23 RA SFC EVAL BD FQ LIST [Fiscal Year 2023, Regular Army, Sergeant First Class Evaluation Board Fully Qualified List]).”³⁰

14) **On January 19, 2023**, within hours of fulfilling the Command Operational Psychologist’s professional obligation to read the clinical report on the Plaintiff from the eCDBHE, that she had previously authorized be ordered. Then, after a full 7 weeks from November 30, 2022, the Command Operational Psychologist and her assistant codified disputed accusations (with some significant undisputed information referenced in bullet #3 above)^{31,32} regarding the Psychologist’s verbal (November) complaint to the Brigade Commander (in their declaratory statements contained in the investigation, the Psychologist and her assistant corroborated that the Plaintiff’s “asked” for and “needed” required Agency Required information pertaining to Corestrengths SDI 2.0, a third-party “behavioral health evaluation);” [(e)(5)]

15) **on February 7, 2023**, the Company Commander notified the Plaintiff he was the subject of an investigation that began on January 12, 2023 [(e)(5)];³³

16) **on February 21, 2023**, the investigating officer 2nd Lt. Tolston, Mirriam emailed [ECF 1-33] vague interrogatory questions on a memorandum [ECF 1-34] to his Legal Assistance Office Attorney, Cpt. Henry Carras, and after receiving the Plaintiff’s response on February 23, 2023 that included a question of clarification of the myriad allegations buried in the eight witness

³⁰ See Enclosure A27 excerpt showing title page and page where plaintiff is named, , “FY23 RA SFC EVAL BD FQ LIST,” Human Resourced Command, Department of the Army, January 19, 2023.

³¹ See Enclosure A10 DA Form 2823, “Sworn Statement” of Maj. Rhea L. Racaza, January 19, 2023.

³² See Enclosure A09 DA Form 2823, “Sworn Statement” of SGT Jamari Aldeguier, January 19, 2023.

³³ See Enclosure A28, DA Form 4856, “Developmental Counseling Form,” Cpt. Korista, February 7, 2023

sworn statements, six Investigating Officer-authored memos of witnesses,' statements, and two historical counseling statements, much of which is refuted by the Plaintiff's evaluation reports covering the periods alleged, (the Investigating Officer was never heard from again, by the Plaintiff, which is a violation of and why the Plaintiff had to pay his Military Administrative Counsel to create a 7 page brief to cover his 31 page rebuttal to address all the allegations found in the investigation packet on June 1, 2023); [(e)(5)]

17) on **April 20, 2023**, Col. Tavi Brunson digitally signed a document entitled "REPORT OF PROCEEDINGS BY INVESTIGATING OFFICER," and added into "SECTION V9 – AUTHENTICATION" the following statement, "I approve the finding as it relates to counter productive(sic) leadership, but disapprove the finding of harassment [ECF 1-36];]" [(e)(5)]

18) on **May 22, 2023**, Col. Tavi Brunson digitally signed a "MEMORANDUM FOR RECORD" with "SUBJECT: clarification of Approved Findings, AR 15-6 Investigation, dated 20 April 2023," (at 3:44 p.m.) that stated, "2. I disapprove the finding of harassment, pursuant to AR 600-20. 33. I approve the finding of disrespect to a senior commissioned officer, pursuant to Article 89, Uniform Code of Military Justice. [ECF 1-36, p. 5]" (the Brigade Commander's upgrade of the investigation via the May 22, 2023 memorandum, which happened 62 minutes after I carbon-copied him on an email (a protected communication) that included my request for Maj. Racaza's credentials pursuant to the WAMC Bill of Rights, and an "open door" meeting, [ECF 1-13] (at 2:42 p.m); [(e)(5)]

19) on **June 1, 2023**, the Plaintiff was delivered a damaging General Officer Memorandum of Reprimand (GOMOR) for the November 30, 22, 2022 request for Agency Required Information [ECF 1-5] that stated, "You are hereby reprimanded for being

disrespectful in language and deportment towards a Field Grade officer and for engaging in counterproductive leadership” and “you engaged in counterproductive leadership by being quick to anger, erratic, disrespectful, and by failing to take accountability for your mistakes,” and also received a notification of future receipt of a Relief for Cause, Non-Commissioned Officer Evaluation Report (RFC, citing “disrespect,” et al.), and a Military Protection Order (issued over five months after being removed from the Plaintiff’s S2 NCOIC position and the facility in which all protected persons worked, including the Command Operational Psychologist), on December 19, 2022). [(e)(5)] [(e)(5)]

20) **between June 29 and July 12, 2023**, the Plaintiff’s leadership all recommended permanent filing of the GOMOR except for the Battalion CSM, CSM Emekaekwue who abstained for an unstated reason (those that recommended permanent filing were Col. Brunson, CSM Vargas, Lt. Col Robinson, 1SG Deleon, and 2nd Lt. Jennes);³⁴ [(e)(5)]

21) **on July 12, 2022**, the plaintiff was delivered a damaging Relief for Cause Non-Commissioned Officer Evaluation Report by Cpt. Patrina Lowrie, which incorrectly purported that the Plaintiff did the following: “failed to live up to the Army Values by being disrespectful in language and deportment towards a field grade officer; led to field grade feeling unsafe” [ECF 1-6, Part IV, block c, “Character”], “exhibited counterproductive leadership qualities...displayed incompetence, self-serving and erratic behaviors” [ECF 1-6, Part IV, block f, “Leads”] and “I directed this RFC because I lost trust and confidence in SFC Forbes to perform as the BDE S2 NCOIC during this rating period based(sic) substantiated allegations of courter productive(sic) leadership from an AR15-6 investigation” [ECF 1-6, Part IV, block i, “RATER OVERAL PERFORMANCE”] (notably, regarding the aforementioned “unsafe” accusation of Cpt. Lowrie,

³⁴ See Enclosure A29, “GOMOR TRANSMITTAL FORM” Staff Judge Advocate, 1st Special Forces Command, signed between June 29 - July 12, 2023.

the Military Protection Order that was issued, was issued a full six months later, on June 1, 2023,³⁵ and the event was November 30, 2022, which does not support the statement on the Relief for Cause);” [(e)(5)]

22) on **October 23, 2023 and December 26, 2023** the Department of the Army, via Mr. Michael R. McSweeney, produced two documents^{36,37} that were delivered to the Plaintiff of his being considered for Administrative Separation by the Qualitative Management Program (QMP) Board, due to the Cpt. Lowrie’s Relief for Cause (RFC) Evaluation Report and the Brig. Gen. Ferguson’s General Officer Letter of Reprimand (GOMOR), respectively;[(e)(5)]

23) On May 29, 2023, the plaintiff received the QMP Board decision. This occurred after the Board received a letter notifying them of the judicial challenge to the investigation and the GOMOR and RFC it produced. The QMP Memo states “Notification of Denial of Continued Active Duty Service under the Qualitative Management Program (QMP),” which is the Board’s decision memo and further states, I can voluntarily retire “under any provision of law for which you are [the Plaintiff is] otherwise eligible.... but will not be later than 12/1/2024.”³⁸ The statute, 10 USC § 1176 does not permit the Plaintiff to voluntarily retire until his 18th year anniversary or February 12, 2025, which is two months and 12 days after the separation date);[(e)(5)]

³⁵ See Enclosure A30, “Military Protection Order,” ICO SFC Michael J. Forbes, Cpt. David Korista, June 1, 2023.

³⁶ See Enclosure A31, “MEMORANDUM THRU Commander, US Army Special Operations Command, 2929 Desert Storm Drive, Fort Bragg, NC 28310-5200 FOR SFC FORBES, MICHAEL J,(sic) 1295918507” Michael R. McSweeney, Chief, Retirements and Separations Branch, October 23, 2023.

³⁷ See Enclosure A32, “MEMORANDUM THRU Commander, US Army Special Operations Command, 2929 Desert Storm Drive, Fort Bragg, NC 28310-5200 FOR SFC FORBES, MICHAEL J,(sic) 1295918507” Michael R. McSweeney, Chief, Retirements and Separations Branch, December 26, 2023.

³⁸ See Enclosure A33, “MEMORANDUM THRU Commander, US Army Special Operations Command, 2929 Desert Storm Drive, Fort Bragg, NC 28310-5200 FOR SFC FORBES, MICHAEL J,(sic) 1295918507” Michael R. McSweeney, Chief, Retirements and Separations Branch, May 29, 2024.