

# ENCLOSURE A02



DEPARTMENT OF THE ARMY  
528TH SUSTAINMENT BRIGADE (SPECIAL OPERATIONS) (AIRBORNE)  
BLDG X-4047 NEW DAWN DRIVE  
FORT BRAGG, NORTH CAROLINA 28310

AOSC-MI

29-MAR-2024

MEMORANDUM THRU James M. Branum, Civilian Defense Counsel

FOR Qualitative Management Board (QMP) Members

SUBJECT: Formal Request for delayed consideration of 1SFC Personnel Actions ICO Michael J. Forbes, 1295918507

1. I am a 55 year old Sergeant First Class veteran with 17 years of continuous active and unblemished service; prior to entering military service I had a 14 year career as a licensed Financial Advisor, also with an unblemished record with the Financial Industry Regulatory Authority (FINRA). I am submitting matters to the board President addressing my potential for continued service. In fact, since my conduct was professional and in accordance with our Constitution, Public Law, Military Regulations, standing Executive Orders, my appointed and implied duties, and my responsibilities as a Citizen, I should be retained without restriction. I do not have misconduct to address for rehabilitative adjudication.
2. To wit, the provisions of AR 635-200 para. 16-11 (g)(2) provides that matters submitted to the Qualitative Management Program (QMP) Board (hereafter "Board") may not include "[c]orrespondence that criticizes or reflects on the character, conduct, or motives of any other Soldier will not be provided to the board." This provision limits my ability to adequately defend myself, since the allegations made against me are directly related to my being a whistleblower (under 10 USC § 1034). In accordance with this provision, I will not be addressing specific misconduct by other individual Soldiers by name in this response.
3. The U.S. Army has used Personnel Action documents stemming from a corrupted investigation, including a General Order Memorandum of Reprimand (GOMOR) and a Relief for Cause, (RFC) Non-Commissioned Officer Evaluation Report (NCOER), in retaliation for multiple protected communications regarding the my being ordered (mandated) to participate in two third-party, corporate, behavioral health web-based applications.
4. These two orders were executed preemptive of the fulfillment of lawful informed consent requirements. Once I exercised my 1<sup>st</sup> Amendment right to ask for the information, I was denied the information and subsequently threatened and retaliated against. I did not have an opportunity to use that requested information to exercise my lawful right to make an

informed consent decision to participate because I was not provided the information; it did not exist in either case.

5. These questionable Personnel Action documents at issue serve to support, via a submitted packet to the Board, a scheduled Administrative Separation decision; I have been formally notified that the Board will occur on April 15, 2024. Moreover, the merits of the Personnel Action retaliatory documents are being challenged in federal court (*see* Enclosure B). I have motioned for judicial injunctive relief of this Board's consideration of the packet and any pending involuntary separation put forth and endorsed by my Commanders, Supervisors, and this Board, *inter alia*.
6. The U.S Army failed to implement or adhere to legislated safeguards prior to either of the orders; notably, the Human Performance and Wellness (HPW) Program order, severely violated the HIPAA Act by executing a premature order by falsifying the order's echeloned support directives. Safeguards in this program were not employed for all Soldiers until after I engaged in protected communications (one of many, in case #5:24-cv-00176-BO-RJ, filed *pro se* in the US District Court for the Eastern District of North Carolina (Western Division)), with three representatives at two echelons of the Army Human Research Protection Office (the Defense Health Headquarters, Falls Church, VA, via email and a local office at Fort Bragg, NC, in-person) from February 3 thru February 10, 2023 (two months later). My communications likely contributed to a subsequently implemented limited safeguard policy memorandum by the Brigade Surgeon.<sup>1</sup> The content of the limited safeguard memo significantly correlated to the substance of my concerns with the Department of Defense's implementation of HPW Program and other similar Programs.
7. The limited safeguard, though not fully compliant with legislated informed consent requirements of the Privacy Act, personally identifiable research information and protected health information laws, Department of Defense regulations and presidential orders, could have prevented the subsequent retaliation that followed. Yet, regardless of this policy letter, I was retaliated against further. The retaliation operation conducted against me may result in severe consequences to me should this Board consider this flawed packet prior to the outcome of the judicial adjudication, and will cause undue hardship on me to remediate the possibility of a preemptive negative decision implemented in err that could result.
8. A complete list of the retaliation is located in Enclosure B; material and significant effects of the retaliation is as follows:
  - a. the loss of retirement and other benefits,

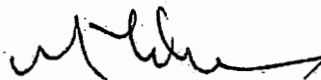
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<sup>1</sup> See Enclosure 11, of the COMPLAINT filed in case #5:24-cv-00176-BO-RJ, filed *pro se* in the US District Court for the Eastern District of North Carolina (Western Division), "Memorandum signed by 528<sup>th</sup> Sustainment Brigade (Special Operations) (Airborne), Brigade Surgeon, MAJ (P) ROBERT C SAWYER, MD, dated February 23, 2023.

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- b. the loss of salary and entitlements for over 3 years,
  - c. the removal from the promotion list for MSG (E-8),
  - d. the enduring damage to my career and reputation and,
  - e. the time and financial expenditure that must be incurred to remediate the violations of law that led to the retaliation that led to the negative Board packet and any resultant decision that may be inconsistent with federal law or our Constitution.
9. I have attached a FOIA request for identification of the Members of the Board that is convening on April 15, 2024 (*see* Enclosure A) and character reference letters (*see* Enclosure C).
10. Please carry forward (delay) the Board's consideration of my packet for any Retention / Administrative Separation Decision until the judicial adjudication of the referenced judicial complaint is complete.



MICHAEL J. FORBES  
SFC, USA  
Former S2 NCOIC

Enclosures:

- A. FOIA request
- B. Docket report for case #5:24-cv-00176-BO-RJ, filed *pro se* in the US District Court for the Eastern District of North Carolina (Western Division)
- C. Character Reference letters (previously submitted as an enclosure to the complaint in the above-mentioned federal court filing)