

# ENCLOSURE A18

Plaintiff's Request for Admissions under Fed.R.Civ.P.

Supplemental Document to MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

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

1) A(1)(a): Affirm or Deny

Q(1)(a): ECF 1-27 – Admit that Col. Tavi N. Brunson sent an email “Signed by:” “tavi.n.brunson.mil@mail.mil” to the Plaintiff’s government email account at michael.j.forbes.mil@socom.mil on Tuesday, November 29, 2022.

ANSWER:

2) A(1)(b): Affirm or Deny

Q(1)(b): ECF 1-28 – Admit that Maj. Rhea L. Racaza sent an email “Signed by:” “rhea.l.racaza.mil@mail.mil” to the Plaintiff’s government email account at michael.j.forbes.mil@socom.mil on Tuesday, November 29, 2022.

ANSWER:

3) A(1)(c): Affirm or Deny

Q(1)(c): ECF 1-29 – Admit that Maj. Rhea L. Racaza sent an email from “facilitator@corestrengths.com” to the Plaintiff’s government email account at michael.j.forbes.mil@socom.mil on Tuesday, November 29, 2022.

ANSWER:

4) A(1)(d): Affirm or Deny

Q(1)(d): Admit that soldiers were under order to accomplish the Strengths Deployment Inventory 2.0, which required them to agree to the Corestrengths Corporate “Terms of Service” and “Privacy Policy.”

ANSWER:

5) A(1)(e): Affirm or Deny

Q(1)(e): Admit that the Strengths Deployment Inventory 2.0, ordered in the November 29, 2022 email sent by Col. Brunson, was consistent with the description of the same program in its organic document entitled Strengths Deployment Inventory Methodology and Meaning?"

6) A(2)(a): Affirm or Deny

Q(2)(a): Admit that the Plaintiff sent an email from "michael.j.forbes.mil@socom.mil" to LTC Howsden's government email account at christopher.howsden@socom.mil on Wednesday, November 30, 2022.

ANSWER:

7) A(2)(b): Affirm or Deny

A(2)(b): Admit that the 1<sup>st</sup> Special Forces Command Inspector General's Office recorded an incoming telephonic Assistance Request call from the Plaintiff on the morning of November 30, 2022?

8) A(2)(c): Affirm or Deny

A(2)(c): Admit that the Inspector General document entitled, "Inspector General Activities and Procedures" contains the following text: "Special correspondence. IGs routinely receive allegations or requests for assistance in a variety of ways. Normal correspondence includes letters (and in some cases audio or video tapes) that the IG must attach to the hard copy DA Form 1559 as part of the case file. Call-in complaints are acceptable, but the IG must ensure the complainant understands the Privacy Act and verbally consents to the release of personally identifying information in order to resolve the matter."

ANSWER:

9) A(2)(d): Affirm or Deny

A(2)(d): Admit that the Inspector General document entitled, "Inspector General Activities and Procedures" contain the following text: "Electronic mail. IGs will treat IGARs sent by email as a call-in complaint by calling the individual to ensure that he or she understands the Privacy Act and verbally consents to the release of personally identifying information in order to resolve the complaint. The IG will acknowledge receipt by sending a generic email message only if the

complainant did not provide a mailing address or telephone number. When acknowledging receipt by email, the IG must use a generic subject line to ensure the complainant's confidentiality. The IG will never reply to the actual message but will instead send a new message to avoid sending confidential IG information back through an open email server. The IG should make every attempt to verify the source of complaints received by email either in person or telephonically or, if anonymous, that the complaint is in fact legitimate."

ANSWER:

10) A(2)(e): Affirm or Deny

A(2)(e): Admit that the Inspector General document entitled, "The Assistance and Investigations Guide" contains the following text: "Section 2-2-2", that states the following instructions, "1. Purpose: This section explains the process of receiving a call-in IGAR. 2. Call-in IGARs: Call-in is one of the options to a complainant for submitting a complaint or request for information to the Inspector General. The IG will conduct an initial intake interview with the complainant over the telephone to capture the essence of that person's complaint. The IG will utilize the DA Form 1559 to explain the Privacy Act and consent elections and to record information from the complainant. The IG will conduct the telephonic interview in the same manner as a walk-in IGAR. In addition to the interview, the IG will follow the four steps listed below during a telephonic interview: a. Privacy Act: The IG will read the Privacy Act Statement of 1974 to the complainant located on the top of the DA Form 1559. The IG must ensure that the complainant understands the Privacy Act statement before the IG begins working the complainant's case (prescriptive provision in Army Regulation 20-1, paragraph 6-1d (1) (b)).b. Consent: The IG will read the consent options to the complainant located at the bottom of the DA Form 1559. The IG must ensure that the complainant understands the consent options. The IG will then annotate whether or not the complainant consents to the release of his or her personal information and / or documents provided to the IG before the IG begins working the complainant's case (prescriptive provision in Army Regulation 20-1, paragraph 6-1d (1) (b)).c. Read Back the DA Form 1559: The IG will read back to the complainant the information taken during the telephonic interview for clarity and accuracy. d. Telephonic: When taking complaints via the telephone, the IG will annotate in the signature block the word "Telephonic" on the DA Form 1559. The Inspector General may forward to the complainant a copy of the DA Form 1559 for that person's records. a. Written Follow-up Documentation: The IG will ask the complainant to forward any supporting documentation to the Inspector General office."

11) A(3)(a): Affirm or Deny

Q(3)(a): Admit that Maj. Rhea L. Racaza's sworn statement, dated January 19, 2023 was handed to the Plaintiff as part of a packet of information pertaining to the notification of the decision by BG Ferguson for the Plaintiff to be delivered a GOMOR that occurred the 389<sup>th</sup> Military Intelligence Battalion facility's (X-2719, Fort Bragg) conference room on June 1, 2023.

ANSWER:

12) A(3)(b): Affirm or Deny

Q(3)(b): Admit that SGT Jamari Aldeguier's sworn statement, dated January 19, 2023, was handed to the Plaintiff as part of a packet of information pertaining to the notification of the decision by BG Ferguson for the Plaintiff to be delivered a GOMOR that occurred the 389<sup>th</sup> Military Intelligence Battalion facility's (X-2719, Fort Bragg) conference room on June 1, 2023.

ANSWER:

13) A(4)(a): Affirm or Deny

Q(4)(a): Admit that the Command Operational Psychologist, Maj. Rhea L. Racaza is licensed in the State of Arizona and subject to the Arizona Administrative Code Title 4, "Professions and Occupations," Chapter 26 "Board of Psychologist Examiners", (4 A.A.C. 26), with valid licensure dating back to January 14, 2014 and currently expiring on July 31, 2026.

ANSWER:

14) A(4)(b): Affirm or Deny

Q(4)(b): Admit that Maj. Rhea L. Racaza is bound by the Arizona Code of Conduct in her professional Capacity as a Professional Psychologist.

ANSWER:

15) A(4)(c): Affirm or Deny

Q(4)(c): Admit that Maj. Rhea L. Racaza is bound to follow Army regulations in her professional Capacity as a Professional Psychologist.

ANSWER:

16) A(4)(d): Affirm or Deny

Q(4)(d): Admit that Maj. Rhea L. Racaza is bound to follow Army Regulations in her capacity as a Commissioned Officer in the United States Army.

ANSWER:

17) A(4)(e): Affirm or Deny

Q(4)(e): Admit that Maj. Rhea L. Racaza was fully credentialed through Womack Army Medical Center contiguously during her entire tenure while assigned or attached to 528<sup>th</sup> Sustainment Brigade on Fort Bragg, NC from her in-processing date (date of arrival) at the unit through her departure in mid-2024, (circa June).

ANSWER:

18) A(4)(f): Affirm or Deny

Q(4)(f): Admit that 5 USC § 552a, (e)(3), a Privacy Act provision, be complied with by Maj. Rhea Racaza.

ANSWER:

19) A(4)(g): Affirm or Deny

Q(4)(g): Admit that 5 USC § 552a, (m)(1), a Privacy Act provision, must be complied with by Maj. Rhea Racaza.

ANSWER:

20) A(4)(h): Affirm or Deny

Q(4)(h): Admit that 5 USC § 552a, (e)(3), a Privacy Act provision, must be complied with by Col. Tavi N. Brunson.

ANSWER:



21) A(4)(i): Affirm or Deny

Q(4)(i): Admit that 5 USC § 552a, (m)(1), a Privacy Act provision, must be complied with by Col. Tavi N. Brunson.

ANSWER:

22) A(4)(j): Affirm or Deny

Q(4)(j): Admit that the Manual for Courts Marshall (2022, 2023 & 2024 editions) under "Part IV PUNITIVE ARTICLES" pertaining to an Article 89 violation entitled, "Disrespect toward superior commissioned officer;..." contain the following text under 15. c.(2)(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."

ANSWER:

23) A(5)(a): Affirm or Deny

Q(5)(a): Admit that the Defendant has the recording that the Plaintiff left on LTC Howsden's Office telephone, at 1<sup>st</sup> Special Forces Command, Inspector General Office on November 30, 2023 prior to 1:45 p.m..

ANSWER:

24) A(6)(a): Affirm or Deny

Q(6)(a): Admit that Maj. Rhea L. Racaza sent an email from "rhea.l.racaza@socom.com" to the plaintiff's government email account at michael.j.forbes.mil@socom.mil on Tuesday, November 30, 2022.

ANSWER:

25) A(6)(b): Affirm or Deny

Q(6)(b): Admit that Maj. Rhea L. Racaza sent an email from "rhea.l.racaza@socom.com" to the plaintiff's government email account at michael.j.forbes.mil@socom.mil with the subject line of "Subject: Friday LPD" on November 30 2022, did not include information that would identify "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."

ANSWER:

26) A(6)(c): Affirm or Deny

Q(6)(c): Admit that Maj. Rhea L. Racaza sent an email from "rhea.l.racaza@socom.com" to the plaintiff's government email account at michael.j.forbes.mil@socom.mil with the subject line of "Subject: Friday LPD" on November 30 2022, did not include "the principal purpose or purposes [other corporate purposed located in Corestrength's Terms of Service and Privacy Policy] for which the information is intended to be used."

ANSWER:

27) A(6)(d): Affirm or Deny

Q(6)(d): Admit that Maj. Rhea L. Racaza sent an email from "rhea.l.racaza@socom.com" to the plaintiff's government email account at michael.j.forbes.mil@socom.mil with the subject line of "Subject: Friday LPD" on November 30 2022 which did not include "the routine uses which may be made of the information."

ANSWER:

28) A(6)(e): Affirm or Deny

Q(6)(e): Admit that Maj. Rhea L. Racaza sent an email from "rhea.l.racaza@socom.com" to the plaintiff's government email account at michael.j.forbes.mil@socom.mil with the subject line of "Subject: Friday LPD" on November 30 2022 which did not include "the effects on him, if any, of not providing all or any part of the requested information."

ANSWER:



29) A(6)(f): Affirm or Deny

Q(6)(f): Admit that Maj. Rhea L. Racaza sent an email from "rhea.l.racaza@socom.com" to the plaintiff's government email account at michael.j.forbes.mil@socom.mil with the subject line of "Subject: Friday LPD" on November 30 2022 which did not include all (without exception) of the individually identified information points described in Q(6)(b-e) that would "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."

ANSWER:

30) A(7)(a): Affirm or Deny

Q(7)(a): Admit that LTC Howsden's email account at christopher.howsden@socom.mil received the government email account of the Plaintiff (michael.j.forbes.mil@socom.mil) on Friday, December 2, 2022 with a subject line of "HPW program pending orders."

ANSWER:

31) A(7)(b): Affirm or Deny

Q(7)(b): Admit that DLTC Howsden sent from christopher.howsden@socom.mil an email to the government email account of the Plaintiff (michael.j.forbes.mil@socom.mil) on Friday, December 2, 2022 with a subject line of "HPW program pending orders."

ANSWER:

32) A(7)(c): Affirm or Deny

Q(7)(c): Admit that LTC Howsden's email account (christopher.howsden@socom.mil) received an email from the account of the government email account of the Plaintiff (michael.j.forbes.mil@socom.mil) on Monday, December 5, 2022 with a subject line of "HPW program pending orders."

ANSWER:

33) A(7)(d): Affirm or Deny

Q(7)(d): Admit that LTC Howsden's sent from christopher.howsden@socom.mil to the government email account of the Plaintiff (michael.j.forbes.mil@socom.mil) on Tuesday, December 6, 2022 with a subject line of "HPW program pending orders."

ANSWER:

34) A(7)(e): Affirm or Deny

Q(7)(e): Admit that LTC Howsden's email account ( christopher.howsden@socom.mil) received an email from the government email account of the Plaintiff (michael.j.forbes.mil@socom.mil) on Tuesday, December 6, 2022 with a subject line of "HPW program pending orders."

ANSWER:

35) A(7)(f): Affirm or Deny

Q(7)(f): Admit that Did the LTC Howsden sent from email account christopher.howsden@socom.mil an email to government email account of the Plaintiff (michael.j.forbes.mil@socom.mil) on Wednesday, December 7, 2022 with a subject line of "HPW program pending orders."

ANSWER:

36) A(7)(g): Affirm or Deny

Q(7)(g): Admit that LTC Howsden's email account (christopher.howsden@socom.mil) received an email from the plaintiff's governmentemail address (michael.j.forbes.mil@socom.mil) on Wednesday, December 7, 2022 with a subject line of "Phone incident today."

ANSWER:

37) A(7)(h): Affirm or Deny

Q(7)(h): Admit that Col. Tavi N. Brunson received an email at tavi.n.brunson.mil@socom.mil from the plaintiff's government email address (michael.j.forbes.mil@socom.mil) on Thursday, December 1, 2022.

ANSWER:

38) A(7)(i): Affirm or Deny

Q(7)(i): Admit that Col. Tavi N. Brunson sent from the account of tavi.n.brunson.mil@socom.mil on Thursday, December 1, 2022 an email to Plaintiff's government email account (michael.j.forbes.mil@socom.mil).

ANSWER:

39) A(8): Affirm or Deny

Q(8): Admit that LTC Howsden sent an email to the Plaintiff's government email address (michael.j.forbes.mil@socom.mil) on Tuesday, December 6, 2022 with a subject line of "HPW program pending orders" which included include the statement "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 is not an 'Army' requirement."

ANSWER:

40) A(9)(a): Affirm or Deny

Q(9)(a): Admit that the Brigade Commander's appointment orders, dated January 7, 2023 [ECF 1-45] included the paragraphs, "At a minimum you should interview MAJ Rhea Racaza, MAJ CH Alvaro Rivera, 1SG Larry Morgan, CPT Patrina Lowrie, PFC Matthew Scheffing, SFC Michael Forbes and any other relevant witnesses in order to address the following questions and issues: (1) On or about 30 November 2022, did SFC Forbes engage in disrespectful behavior toward MAJ Rhea Racaza? If so, what are the specific facts and circumstances? (2) Has SFC Michael Forbes engaged in counterproductive or toxic leadership behaviors within the Brigade or battalion S2 sections as discussed in AR 600-100, Chapter 1-11d and ADP 6-22? If so, what are the specific facts and circumstances."

ANSWER:

41) A(9)(b): Affirm or Deny

Q(9)(b): Admit that the following quoted paragraph (from AR 600-100, 1-11d, dated April 5, 2017) was used in Col. Brunson's appointment order instructions to 2LT Tolston, the Investigating Officer, referenced in his appointment orders dated, January 12, 2023: "Army professionals are required to uphold the Army Ethic and model the core leader competencies described above. They must remain vigilant to guard against counterproductive leadership behaviors from themselves as well as in the units with which they serve. Counterproductive

leadership can take different forms, from incompetence to abusiveness, all of which have detrimental impacts on individuals, the unit, and the accomplishment of the mission. Counterproductive leadership behaviors can span a range of behaviors to include bullying, distorting information, refusing to listen to subordinates, abusing authority, retaliating, blaming others, poor self-control (loses temper), withholding encouragement, dishonesty, unfairness, unjustness, showing little or no respect, talking down to others, behaving erratically, and taking credit for others' work. One such type of counterproductive leadership is toxic leadership, which is defined as a combination of self-centered attitudes, motivations, and behaviors that have adverse effects on subordinates, the organization, and mission performance. To be classified as toxic, the counterproductive behaviors must be recurrent and have a deleterious impact on the organization's performance or the welfare of subordinates. An exacerbating factor may be if the behaviors demonstrate selfish reasons such as elevating one's own status, grabbing power, or otherwise obtaining personal gain. Counter-productive leadership behaviors prevent the establishment of a positive organizational climate, preclude other leaders from fulfilling their requirements, and may prevent the unit from achieving its mission. They will lead to investigations and, potentially, removal from position or other punitive actions. Army leaders are required to utilize self-awareness programs (MSAF, CDR360, and others) to ensure they receive feedback indicating whether they exhibit appropriate behaviors for an Army leader. Army leaders are required to provide performance and professional growth counseling to subordinate leaders to prevent or remedy counterproductive leadership."

ANSWER:

42) A(10)(a): Affirm or Deny

Q(10)(a): Admit that Cpt. David Korista, Company Commander, of Headquarters and Headquarters Company, Special Troops Battalion, 528th Sustainment Brigade ordered the Plaintiff to an after-work-hours, emergency Command-Directed Behavioral Health Evaluation on January 18, 2023 at Womack Army Medical Center.

ANSWER:

43) A(10)(b): Affirm or Deny

Q(10)(b): Admit that on January 18, 2023 the Plaintiff's Company Commander, Cpt. David Korista, on form FB 1462-E, checked the box under the block entitled "PURPOSE FOR REFERRAL (check one)" indicating the Plaintiff's arrival at Womack Army Medical Center on January 18th was for an "Emergency Evaluation (Safety to self/others)."

ANSWER:

44) A(10)(c): Affirm or Deny

Q(10)(c): Admit that on January 18, 2023, the Plaintiff's Company Commander, Cpt. David Korista, filled out form FB 1462-E in front of the Licensed Clinical Social Worker, Brian Lanier at Womack Army Medical Center.

ANSWER:

45) A(10)(d): Affirm or Deny

Q(10)(d): Admit that on January 18, 2022 the Plaintiff's Company Commander, Cpt. David Korista, handwrote, in block 7, in "Disciplinary Actions" block on FB 1462-E the following, "15-6 InV", "12JAN23", "Counter-productive(sic) leadership," and "on-going."

ANSWER:

46) A(10)(e): Affirm or Deny

Q(10)(e): Admit that on January 18, 2022, the Plaintiff's Company Commander, Cpt. David Korista, checked the box for "No" in answer to the question "Is it your opinion that the Soldier is suitable for retention in the service?" on FB Form 1462-E.

ANSWER:

47) A(10)(f): Affirm or Deny

Q(10)(f): Admit that on January 18, 2022, the Plaintiff's Company Commander, Cpt. David Korista, handwrote, in block 10, in answer to the question "Your future plans in dealing with this Soldier are?" the response of "Remove him from USASOC/levels of responsibility," on FB Form 1462-E.

ANSWER:

48) A(10)(g): Affirm or Deny

Q(10)(g): Admit that the Plaintiff met with CSM Munter of 1<sup>ST</sup> Special Forces Command, at 9:00 a.m. on January 19, 2023.

ANSWER:



49) A(11)(a): Affirm or Deny

Q(11)(a): admit that the purpose of the Plaintiff being at 1st Special Forces Command Headquarters building on the morning of January 18, 2023 was to schedule a meeting with a member of the Command Staff there (H2313, Fort Bragg).

ANSWER:

50) A(11)(b): Affirm or Deny

Q(11)(b): Admit that 10 USC § 1090a (c)(2) states: "only a psychiatrist, or, in cases in which a psychiatrist is not available, another mental health professional or a physician, may admit the member pursuant to the referral for a mental health evaluation to be conducted on an inpatient basis."

ANSWER:

51) A(11)(c): Affirm or Deny

Q(11)(c): Admit that 10 USC § 1090a (c)(2) states: "Prohibition on Use of Referrals for Mental Health Evaluations to Retaliate Against Whistleblowers.-The regulations required by subsection (a) shall provide that no person may refer a member of the armed forces for a mental health evaluation as a reprisal for making or preparing a lawful communication of the type described in section 1034(c)(2) of this title, and applicable regulations."

ANSWER:

52) A(11)(d): Affirm or Deny

Q(11)(d): Admit that 10 USC § 1090a (c)(2) states that: "The term "mental health evaluation" means a psychiatric examination or evaluation, a psychological examination or evaluation, an examination for psychiatric or psychological fitness for duty, or any other means of assessing the state of mental health of a member of the armed forces."

ANSWER:



53) A(11)(e): Affirm or Deny

Q(11)(e): Admit that the U.S. Army Medical Command document entitled "MEDCOM Reg. 40-38" states: "No person will refer a Service member for a behavioral health evaluation as a reprisal for making or preparing a lawful communication to-- (1) A member of Congress; (2) Any appropriate authority in the Service member's chain of command; (3) An IG or; (4) A member of a DOD audit, inspection, investigation, or law enforcement organization[?]."

ANSWER:

54) A(11)(f): Affirm or Deny

Q(11)(f): Admit that the Department of Defense Instruction 6490.04, with entitled subject of "Mental Health Evaluations of Members of the Military Services," dated "March 4, 2013, Incorporating Change 1, Effective April 22, 2020," included in Ch. 3 entitled "POLICY," states in paragraph d: "A commander or supervisor will refer a Service member for an emergency MHE as soon as is practicable whenever: (1) A Service member, by actions or words, such as actual, attempted, or threatened violence, intends or is likely to cause serious injury to him or herself or others. (2) When the facts and circumstances indicate that the Service member's intent to cause such injury is likely.(3) When the commanding officer believes that the Service member may be suffering from a severe mental disorder."

ANSWER:

55) A(11)(g): Affirm or Deny

Q(11)(g): Admit that Department of Defense Instruction 6490.04, with entitled subject of "Mental Health Evaluations of Members of the Military Services," dated "March 4, 2013, Incorporating Change 1, Effective April 22, 2020," included in "Enclosure 3, Procedures," Ch. 3 entitled "COMMAND PROMOTION OF CARE SEEKING FOR THE MAINTENANCE OF TOTAL WELL-BEING," states in paragraph a.: "Commanders or supervisors may make informal, non-mandatory recommendations for Service members under their authority to seek care from an MHP when circumstances do not require a CDE based on safety or mission concerns. Under such circumstances, the commander or supervisor will inform the Service member that he or she is providing a recommendation for voluntary self-referral and not ordering the care."

ANSWER:

56) A(11)(h): Affirm or Deny

Q(11)(h): Admit that Department of Defense Instruction 6490.04, with entitled subject of "Mental Health Evaluations of Members of the Military Services," dated "March 4, 2013, Incorporating Change 1, Effective April 22, 2020," included in "Enclosure 3, Procedures," Ch. 4 entitled "HOSPITALIZATION FOR PSYCHIATRIC EVALUATION AND TREATMENT," states in paragraph d., "An involuntary inpatient admission to an MTF is appropriate only when a psychiatrist, or, when a psychiatrist is not available, a physician or another MHP with admitting privileges, makes an evaluation that the Service member has, or likely has, a severe mental disorder or poses imminent or potential danger to self or others."

ANSWER:

57) A(12)(a): Affirm or Deny

Q(12)(a): Admit that Licensed Clinical Social Worker, Brian Lanier, marked on DA Form 3822 (signed and dated January 19, 2023), the box "Yes," that states, "SM can understand and participate in administrative proceedings and appreciate the difference between right and wrong."

ANSWER:

58) A(12)(b): Affirm or Deny

Q(12)(b): Admit that Licensed Clinical Social Worker, Brian Lanier, stated in DA Form 3822 (signed and dated January 19, 2023), that "He/She(sic) is cleared for assignment to this position of significant trust and authority."

ANSWER:

59) A(12)(c): Affirm or Deny

Q(12)(c): Admit that Licensed Clinical Social Worker, Brian Lanier, stated in DA Form 3822 (signed and dated January 19, 2023), that "SM exhibits no current evidence of significant risk of harm towards himself or others."

ANSWER:

60) A(12)(d): Affirm or Deny

Q(12)(d): Admit that the report entitled "ED BH Consultation" authored by Licensed Clinical Social Worker, Brian Lanier, described the Plaintiff's arrival at the medical center for the ordered eCDBHE by Cpt. Korista and include agency requirement instructions that stated, "[the Plaintiff] initially arrived without FB 1462 but one was completed by the commander on instructions of this provider.""

ANSWER:

61) A(13)(a): Affirm or Deny

Q(13)(a): Admit that Sgt. Aldeguier wrote in his declarative statement on DA Form 2823, on January 19, 2023, the following sentence, "SFC Forbes walked into my office asking for information about SDI 2.0."

ANSWER:

62) A(13)(b): Affirm or Deny

Q(13)(b): Admit that SGT Aldeguier wrote in his declarative statement on DA Form 2823, on January 19, 2023, the following sentence, "He then proceeded to follow MAJ Racaza to her office and asked her to give him all the details about SDI."

ANSWER:

63) A(13)(c): Affirm or Deny

Q(13)(c): Admit that Maj. Racaza wrote in her declarative statement on DA Form 2823, on January 19, 2023, the following sentence, "When I tried to ask SFC Forbes what information he needed, ...."

ANSWER:

64) A(13)(d): Affirm or Deny

Q(13)(d): Admit that Maj. Racaza wrote in her declarative statement on DA Form 2823, on January 19, 2023, the following phrases in a sentence, "At that time, SFC Forbes also... I provide him with regulations or policy on what right the BDE CDR has to... his participation in the ....[?]"

ANSWER:

65) A(13)(e): Affirm or Deny

Q(13)(e): Admit that Maj. Racaza wrote in her declarative statement on DA Form 2823, on January 19, 2023, the following sentence; "He... making him do a behavioral health evaluation."

ANSWER:

66) A(13)(f): Affirm or Deny

Q(13)(f): Admit that Maj. Racaza wrote in her declarative statement on DA Form 2823, on January 19, 2023 the following sentence, "On 30NOV22 (sic) approximately 1345, SFC Forbes was speaking...[disputed verbiage] ...to my NCO, SGT Aldeguir."

ANSWER:

67) A(14)(a): Affirm or Deny

Q(14)(a): Admit that Cpt. Korista, David, the Plaintiff's Company Commander, conducted a meeting and delivered the Developmental Counseling Form (DA Form 4856) on February 7, 2023, that contained the following statement, "EVENT ORIENTED COUNSELING – COMMANDER'S INVESTIGATION FLAG (L) you are being flagged for being the subject of a Commander's Investigation. A Flag is the temporary suspension of favorable personnel actions such as promotions or special duty assignments. The Flag will remain in effect until the proceeding is complete and the issue resolved or adverse action is complete. The DA Form 268 which initiates the Flag is attached. Its sole purpose is to notify you of a personnel Flag action and is possible consequences."

ANSWER:

68) A(14)(b): Affirm or Deny

Q(14)(b): Admit that the Plaintiff lost his promotable status to Master Sergeant due to either: 1) the Relief-for-Cause, Non-Commissioned Officer Evaluation report with Senior Rater Cpt. Lowrie, with thru date of July 12, 2023; or 2) the General Officer Memorandum of Reprimand signed by Brig. Gen. Ferguson, dated May 30, 2023.

ANSWER:

69) A(15)(a): Affirm or Deny

Q(15)(a): Admit that the Plaintiff's Government Legal Assistance Attorney, Henry R. Carras, receive an email in his account (henry.r.carras.mil@army.mil) from the account of 2<sup>nd</sup> Lt. Mirriam Tolston (mirriam.g.tolston.mil@socom.mil) on Tuesday, February 21, 2023, that included the statement, "Attached are my questions for SFC Forbes. Please let me know if you have any questions and have a great night."

ANSWER:

70) A(15)(b): Affirm or Deny

Q(15)(b): Admit that the Plaintiff, in his DA Form 2823, "Sworn Statement," dated February 23, 2023 provided the following statement in answer to Q[uestion]2b, "Not applicable. I don't understand what witnesses you want to view a leadership style that spans two excellent NCOERs while I was BDE NCOIC and Acting OIC. Clarification is needed."

ANSWER:

71) A(16): Affirm or Deny

Q(16): Admit that on April 20, 2023, Col. Tavi Brunson digitally signed a document entitled, "REPORT OF PROCEEDINGS BY INVESTIGATING OFFICER," that included the comment "Approved with the following modifications:" and "I approve the finding as it relates to counter productive(sic) leadership, but disapprove the finding of harassment."

ANSWER:



72) A(17)(a): Affirm or Deny

Q(17)(a): Admit that on May 22, 2023, Col. Tavi Brunson digitally signed a document entitled, "REPORT OF PROCEEDINGS BY INVESTIGATING OFFICER," that had the comment "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."

ANSWER:

73) A(17)(b): Affirm or Deny

Q(17)(b): Admit that on May 22, 2023, was there a 62 minute gap between Col. Brunson's receipt of an email from the Plaintiff at 2:42 p.m. that informed Col. Brunson that the Plaintiff "went to WAMC to get her [Maj. Racaza's] credentialing," and informed Col. Brunson of the Plaintiff's intent to file a "licensee complaint," and Col. Brunson's digital signature at 3:44 p.m. that upgraded the investigation of the Plaintiff to include "disrespect to a senior commissioned officer."

ANSWER:

74) A(18a): Affirm or Deny

Q(18a): Admit that on May 30, 2023, that Brigadier General Lawrence G. Ferguson, signed a "MEMORANDUM FOR SFC Michael Forbes, Headquarters and Headquarters Company, 528<sup>th</sup> Special Troops Battalion (Special Operations) (Airborne), 528<sup>th</sup> Sustainment Brigade (Special Operations) (Airborne) Fort Bragg, North Carolina, 28310" with "SUBJECT: General Officer Memorandum of Reprimand" that stated, "You are hereby reprimanded for being disrespectful in language and deportment towards a Field Grade officer and for engaging in counterproductive leadership On 30 November 2022, you were disrespectful in language and deportment during a conversation with a senior commission officer, by raising your voice at her and talking over her. Also, during you time as Brigade S2, NCOIC, you engaged in counterproductive leadership by being quick to anger, erratic, disrespectful, and by failing to take accountability for your mistakes."

ANSWER:



75) A(18)(b): Affirm or Deny

Q(18)(b): Admit that a Senior Non-Commissioned Officer is permitted and expected to professionally and matter-of-factly inform another Soldier that the Soldier's actions are not in compliance with Executive Orders, or regulations, and is not considered Counterproductive by the Army' definition as found in AR 600-100, 1-11d, that the Investigating Officer, 2<sup>nd</sup> Lt. Tolston, used for the investigation?

ANSWER:

76) A(18)(c): Affirm or Deny

Q(18)(c): Admit that, in general, a Senior Non-Commissioned Officer professionally directing a subordinate Soldier to comply with any regulation, does not fall in the definition of AR 600-100, 1-11d, dated April 5, 2017, a regulation which was used in Col. Brunson's appointment order instructions for 2LT Tolston, the Investigating Officer.

ANSWER:

77) A(18)(d): Affirm or Deny

Q(18)(d): Admit that the Army doesn't confer any requirement on any Soldier that obligates the Soldier, from any source, to take accountability for a mistake that the Soldier is accused of, but also, the Soldier didn't perform.

ANSWER:

78) A(18)(e): Affirm or Deny

Q(18)(e): Admit that the following paragraph, a portion of 5 USC § 3331 entitled, "Oath of office," states, "An individual, except the President, elected or appointed to an office of honor or profit in the civil service or uniformed services, shall take the following oath: "I, AB, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God." This section does not affect other oaths required by law."

ANSWER:

79) A(18)(f): Affirm or Deny

Q(18)(f): Admit that the Army has an official list of "Army Values"?

ANSWER:

80) A(18)(g): Affirm or Deny

Q(18)(g): Admit that the following paragraphs of the "Army Values" (as quoted from <https://www.army.mil/values/> as downloaded on June 22, 2024) are, "LOYALTY [-] Bear true faith and allegiance to the U.S. Constitution, the Army, your unit and other Soldiers. Bearing true faith and allegiance is a matter of believing in and devoting yourself to something or someone. A loyal Soldier is one who supports the leadership and stands up for fellow Soldiers. By wearing the uniform of the U.S. Army you are expressing your loyalty. And by doing your share, you show your loyalty to your unit. DUTY [-] Fulfill your obligations. Doing your duty means more than carrying out your assigned tasks. Duty means being able to accomplish tasks as part of a team. The work of the U.S. Army is a complex combination of missions, tasks and responsibilities — all in constant motion. Our work entails building one assignment onto another. You fulfill your obligations as a part of your unit every time you resist the temptation to take "shortcuts" that might undermine the integrity of the final product. RESPECT [-] Treat people as they should be treated. In the Soldier's Code, we pledge to "treat others with dignity and respect while expecting others to do the same." Respect is what allows us to appreciate the best in other people. Respect is trusting that all people have done their jobs and fulfilled their duty. And self-respect is a vital ingredient with the Army value of respect, which results from knowing you have put forth your best effort. The Army is one team and each of us has something to contribute. SELFLESS SERVICE [-] Put the welfare of the nation, the Army and your subordinates before your own. Selfless service is larger than just one person. In serving your country, you are doing your duty loyally without thought of recognition or gain. The basic building block of selfless service is the commitment of each team member to go a little further, endure a little longer, and look a little closer to see how he or she can add to the effort. HONOR [-] Live up to Army values. The nation's highest military award is The Medal of Honor. This award goes to Soldiers who make honor a matter of daily living — Soldiers who develop the habit of being honorable, and solidify that habit with every value choice they make. Honor is a matter of carrying out, acting, and living the values of respect, duty, loyalty, selfless service, integrity and personal courage in everything you do. INTEGRITY [-] Do what's right, legally and morally. Integrity is a quality you develop by adhering to moral principles. It requires that you do and say nothing that deceives others. As your integrity grows, so does the trust others place in you. The more choices you make based on integrity, the more this highly prized value will affect your relationships with family and friends, and, finally, the fundamental acceptance of yourself. PERSONAL COURAGE [-] Face fear, danger or adversity (physical or moral). Personal courage has long been associated with our Army. With physical courage, it is a matter of enduring physical

duress and at times risking personal safety. Facing moral fear or adversity may be a long, slow process of continuing forward on the right path, especially if taking those actions is not popular with others. You can build your personal courage by daily standing up for and acting upon the things that you know are honorable[?]"

ANSWER:

81) A(18)(h): Affirm or Deny

Q(18)(h): Admit that the following paragraphs are part of the U.S. Army NCO Creed, " No one is more professional than I. I am a noncommissioned officer, a leader of Soldiers. As a noncommissioned officer, I realize that I am a member of a time honored corps, which is known as "The Backbone of the Army". I am proud of the Corps of noncommissioned officers and will at all times conduct myself so as to bring credit upon the Corps, the military service and my country regardless of the situation in which I find myself. I will not use my grade or position to attain pleasure, profit, or personal safety. Competence is my watchword. My two basic responsibilities will always be uppermost in my mind—accomplishment of my mission and the welfare of my Soldiers. I will strive to remain technically and tactically proficient. I am aware of my role as a noncommissioned officer. I will fulfill my responsibilities inherent in that role. All Soldiers are entitled to outstanding leadership; I will provide that leadership. I know my Soldiers and I will always place their needs above my own. I will communicate consistently with my Soldiers and never leave them uninformed. I will be fair and impartial when recommending both rewards and punishment. Officers of my unit will have maximum time to accomplish their duties; they will not have to accomplish mine. I will earn their respect and confidence as well as that of my Soldiers. I will be loyal to those with whom I serve; seniors, peers, and subordinates alike. I will exercise initiative by taking appropriate action in the absence of orders. I will not compromise my integrity, nor my moral courage. I will not forget, nor will I allow my comrades to forget that we are professionals, noncommissioned officers, leaders."

ANSWER:

82) A(18)(i): Affirm or Deny

Q(18)(i): Admit that on the Military Protection order, issued by Cpt. David Korista, with SFC Michael J. Forbes as the SUBJECT SERVICE MEMBER, dated June 1, 2023, states that "Maj. Rhea Racaza" is named as a "PROTECTED PERSON" and that the form states the reason as "Fear of reprisal by Subject?"

ANSWER:

83) A(19)(a): Affirm or Deny

Q(19)(a): Admit that CSM Emekaekwue abstained from any recommendation for the permanent filing of the GOMOR in the Plaintiff's permanent record on the "1<sup>st</sup> SFC (A), Staff Judge Advocate, GOMOR TRANSMITTAL FORM."

ANSWER:

84) A(19)(b): Affirm or Deny

Q(19)(b): Admit that Col. Brunson stated in the "Comments" section of the "1SFC (A) Staff Judge Advocate, GOMOR TRANSMITTAL FORM," "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."

ANSWER:

85) A(19)(b): Affirm or Deny

Q(19)(b): Admit that Lt. Col. Robinson had not taken command of Special Troops Battalion yet, on December 19, 2022 when the Plaintiff was removed from his Brigade S2 NCOIC position.

ANSWER:

86) A(19)(b): Affirm or Deny

Q(19)(b): Admit that 1SG Deleon had not taken responsibility of Headquarters and Headquarters Company yet, on December 19, 2022 when the Plaintiff was removed from his Brigade S2 NCOIC position.

ANSWER:



87) A(20)(a): Affirm or Deny

Q(20)(a): Admit that instructing any Soldier, who had no Exception to Policy paperwork on their person, pursuant to standing Policies and Regulations, to immediately remove their phone from a classified building, thereby immediately directing compliance with Army Regulations, does not fall in the definition of AR 600-100, 1-11d, dated April 5, 2017, a regulation used in Col. Brunson's investigating officer appointment order instructions to 2LT Tolston.

ANSWER:

88) A(20)(b): Affirm or Deny

Q(20)(b): Admit that emailing Battalion Commanders to inform them of an Army G2 directive to own all Soldiers in the Defense Information System for Security within 30 days of receiving the G2 memorandum, thereby immediately informing them of the need for compliance with Department of the Army Policy, or any other policy a Senior Staff Member identifies as deficient, does not fall in the definition of AR 600-100, 1-11d, dated April 5, 2017, a regulation used in Col. Brunson's investing officer appointment order instructions to 2LT Tolston.

ANSWER:

89) A(20)(c): Affirm or Deny

Q(19)(c): Admit that, In general, notifying peers and higher-ranking leaders of our units non-compliance does not fall in the definition of AR 600-100, 1-11d, dated April 5, 2017, a regulation used in Col. Brunson's investigating officer appointment order instructions to 2LT Tolston.

ANSWER:

90) A(20)(d): Affirm or Deny

Q(19)(d): Admit that directing a Soldier to complete a lawful task, does not fall in the definition of AR 600-100, 1-11d, dated April 5, 2017, a regulation used in Col. Brunson's investigatin officer appointment order instructions to 2LT Tolston.

ANSWER:

91) A(20)(e): Affirm or Deny

Q(19)(e): Admit that directing a Soldier to complete a lawful task using a lawful procedure does not fall in the definition of AR 600-100, 1-11d, dated April 5, 2017, a regulation used in Col. Brunson's investigating officer appointment order instructions to 2LT Tolston.

ANSWER:

92) A(21)(a): Affirm or Deny

Q(21)(a): Admit that in paragraph "2." of the "MEMORANDUM THRU Commander, US Army Special Operations Command, 2929 Desert Storm Drive, Fort Bragg, NC 28310-5200 FOR SFC FORBES, MICHAEL J,(sic) 1295918507" signed by Michael R. McSweeney, Chief, Retirements and Separations Branch, and dated October 23, 2023, the code that reads "DA 2166-9-2-R 2023-07-12" specifically represents the 'Relief for Cause Non-Commissioned Officer Evaluation Report' of SFC Michael J. Forbes with "THRU" date of "20230712" and the Rater was "CPT Patrina A.Lowrie, and signed July 21, 2023?

ANSWER:

93) A(21)(b): Affirm or Deny

Q(21)(b): Admit that in paragraph "2." of the "MEMORANDUM THRU Commander, US Army Special Operations Command, 2929 Desert Storm Drive, Fort Bragg, NC 28310-5200 FOR SFC FORBES, MICHAEL J,(sic) 1295918507" signed by Michael R. McSweeney, Chief, Retirements and Separations Branch, and dated December 26, 2023, the code that reads "LTR REPR 2023-05-30" specifically represents the 'General Officer Memorandum of Reprimand' of SFC Michael J. Forbes and the signature was provided by "Brigadier General Lawrence G. Ferguson?"

ANSWER:

94) A(22(a)): Affirm or Deny

Q(22)(a): Admit that in paragraphs "2." and 2.a. of the "MEMORANDUM THRU Commander, US Army Special Operations Command, 2929 Desert Storm Drive, Fort Bragg, NC 28310-5200 FOR SFC FORBES, MICHAEL J,(sic) 1295918507" with "SUBJECT: Notification of Denial of Continued Active Duty Service under the Qualitative Management Program (QMP)", signed by Michael R. McSweeney, Chief, Retirements and Separations Branch, and dated May 29, 2024, that these two paragraphs mean that the Plaintiff will be separated from the Army two months and 12 days prior to the opportunity for the Plaintiff to engage the protections of 10 USC § 1176 and



seamlessly fulfill his service contract, to which the Plaintiff is a party, enabling him to receive a retirement after 17 years of unblemished service?

ANSWER:

95) A(22)(b): Affirm or Deny

Q(22)(b): Admit that BG Ferguson's decisions to give and permanently file a GOMOR to the Plaintiff was tied, in part or in whole, to the Plaintiff's being the subject of a complaint of "disrespecting an officer" alleged by MAJ Racaza on November 30, 2022.

ANSWER:

96) A(MISC)(a): Affirm or Deny

Q(MISC)(a): Admit that the the memorandum "EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET," dated June 25, 2010, and signed by Peter R. Orszag, Director, with "SUBJECT: Guidance for Agency Use of Third-Party Websites and Applications," stated on page 2, para. 2, "The purpose of this Memorandum is to help Federal agencies to protect privacy, consistent with law, whenever they use web-based technologies to increase openness in government."

ANSWER:

97) A(MISC)(b): Affirm or Deny

Q(MISC)(b): Admit that the memorandum "EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET," dated June 25, 2010, and signed by Peter R. Orszag, Director, with "SUBJECT: Guidance for Agency Use of Third-Party Websites and Applications," states on page 2, Chap., entitled "Scope," that, "This Memorandum applies to any Federal agency use of third-party websites or applications to engage with the public for the purpose of implementing the principles of the Open Government Directive. The guidance also applies when an agency relies on a contractor (or other non-Federal entity) to operate a third-party website or application to engage with the public on the agency's behalf[?] "

ANSWER:

98) A(MISC)(c): Affirm or Deny

Q(MISC)(c): Admit that the memorandum "EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET," dated June 25, 2010, and signed by Peter R. Orszag, Director, with "SUBJECT: Guidance for Agency Use of Third-Party Websites and Applications," states on page 2, Chap. 2., entitled "**Existing Requirements.**" that "Agencies are reminded of their obligation to comply with applicable privacy laws (including the Privacy Act of 1974) and OMB guidance, as well as to consult established privacy principles."

ANSWER:

99) A(MISC)(d): Affirm or Deny

Q(MISC)(d): Admit that the memorandum "EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET," dated June 25, 2010, and signed by Peter R. Orszag, Director, with "SUBJECT: Guidance for Agency Use of Third-Party Websites and Applications," stated on page 2, Chap. 3, entitled "**General Requirements.**" Para. a., that "**Third-Party Privacy Policies.** Before an agency uses any third-party website or application to engage with the public, the agency should examine the third party's privacy policy to evaluate the risks and determine whether the website or application is appropriate for the agency's use. In addition, the agency should monitor any changes to the third party's privacy policy and periodically reassess the risks."

ANSWER: