

EXHIBIT A



THE LAW FIRM OF JAMES M. BRANUM

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To: COMMANDER, 528th SB (SO)(A), 1st Special Forces Command, Fort Bragg, NC
From: SFC Michael Forbes through James M. Branum, Attorney at Law
Date: March 31, 2023
Subject: Response to request for SFC Forbes to participate in “Human Performance and Wellness Assessment” as part of the USASOC HPW Program, submitted pursuant to UCMJ Article 138 and AR 27-10.

Through legal counsel, SFC Forbes submits this brief (with attachments) as an explanation for why he will not be consenting to participate in portions of the “Human Performance and Wellness Assessment” (hereafter “HPW”) via a third party cell phone app,¹ to gather personally identifiable (via DoD ID number) information and subjectively assess initial baseline and subsequently collected data in the HPW research project, as well as why the order given for all members of 528th SB (SO)(A) to participate in the HPW assessment is an unlawful order.²

Please note that this brief is also submitted as an appeal for redress under the provisions of UCMJ Article 138 and AR 27-10.

Statement of Wrongs

1. The HPW Assessment (in its current form), violates military regulations involving the protection of PII (personally identifiable information).

According to DoDI 5400.11 part 5.1 (a)(3) (ref. A), information gathered by a DOD component about an individual may only be “collected, used, maintained, or disseminated” if certain criteria are met, including:

- A. The information gathered must be “legally authorized, relevant and necessary to accomplish an established DoD mission or function,”
- B. The information must be “accurate, relevant, timely, and complete for its stated purpose,”

¹ See encl. 1.

² See commentary on UCMJ article 90, page IV-24 (ref. D).

- C. The information must be “collected directly from the individual to the greatest extent practicable when the information may result in adverse determinations about the individual’s rights, benefits and privileges,” and that this information can only be gathered if the subject of the information has been informed of:
- a. “The specific purpose or purposes” for the information being gathered and record,
 - b. The legal authority for the use of this information,
 - c. How the information will be used,
 - d. Whether participation is mandatory or voluntary, [and]
 - e. The actual consequences of not providing the requested information.”

It is also important to note that all of these provisions apply in the current situation, despite the fact that much of the HPW assessment is being done by way of a third-party app³ because according to DoD 5400.11-R part C1.3 (ref. B), the rules regarding the gathering and retention of data also apply equally to government contractors such as the app owner/developer. Unfortunately, the End-User License Agreement (EULA) for the *BridgeTracker* app⁴ does not mention that the protections of DOD regulations apply to data entered into this app, but does include a mandatory arbitration clause, which prevents a user from suing the company in the event of wrongdoing by the company, such as a data leak or any possible illegal or unauthorized distribution and/or use of the data.

Moreover, the use of third-party surrogates or internal HPW delegates to gather and store data in a personally identifiable database⁵ without required procedural requirements or oversight degrades Soldiers’ protections afforded by the code of federal regulations⁶ and US Army regulation.⁷ This also has the possibility to result in the ever-present danger of “scope-creep.”⁸

³ The app in question is called BridgeTracker and is developed by Bridge Athletic. (<https://play.google.com/store/apps/details?id=com.bridgeathletic.tracker>).

⁴ See <https://www.bridgeathletic.com/terms-of-use-agreement>.

⁵ The US Army Futures Command’s Combat Capabilities Development Command (DEVCOM) Soldier Center conducted a field test of the Smartabase with a 10th Mountain Division. (https://f.hubspotusercontent40.net/hubfs/6443997/Download%20Assets%20for%20the%20website/Smartabase_OHWS_Customer_Story.pdf).

According to the schedule for the USASOC Human Performance+Wellness Annual Summit dated May 16-20, 2022 (encl. 5), USASOC’s HPW program will also using the Smartabase.

⁶ See 32 CFR 219 (ref. E).

⁷ See AR 70-25 (ref. G).

⁸ See Posard, Marek, et. al “Reducing the Risk of Extremist Activity in the U.S. Military.” (ref. J).

Unfortunately, it appears that many of the above-mentioned criteria were not, in fact, satisfied in a prior similar “requirement”/“directive” by the Command, an ad hoc behavioral health assessment entitled, “Strength Deployment Inventory” which was coordinated by the unit Psychologist in the week prior to the HPW order.

SFC Forbes requested further information of the scope and statutory support, and then learned that the online third party sponsored entity not only gathered and assessed the data but also produced an identifiable report that is distributed back to the sponsor. Based on this information, SFC Forbes chose to not give his consent to the third party “Terms of Service” and “Privacy Policy,” until he could confirm his findings. Moreover, the Psychological Officer also did not provide the scope or statutory support for the assessment and redirected to question his motivation for his request. This request resulted in the Psychological Officer erroneously reporting SFC Forbes to the Command, having not answered either of his questions.

Subsequently, the imminent HPW order and its general opaqueness as demonstrated by the restriction of access to the USASOC HPW portal pages to non-HPW staff⁹ did not provide SFC Forbes with answers to similar privacy concerns. SFC Forbes attempted to determine the statutory support and scope of the sponsored event outside his unit due to the aforementioned consequences he experienced.

2. The HPW Assessment (in its current form) violates military regulations that prohibit the creation of records involving the exercise of first amendment rights by a servicemember, except in limited circumstances.

According to encl. 2, the HPW Assessment will include inquiries into “POTFF” domains¹⁰ including “social & family, spiritual,” and “psychological.”

This is a problem. According to DoD 5400.11-R part C.1.5 (ref. B), the DOD is forbidden from creating records that record information about an individual’s exercise of First Amendment rights including “freedom of religion, freedom of political beliefs, freedom of speech, freedom of the press, the right to assemble, and the right to petition.”

The only exceptions to this policy are if the request for such information is: (1) expressly authorized by Federal statute, (2) expressly authorized by the individual,¹¹ or (3) within the scope of authorized law enforcement activity.

Moreover, assessing “spirituality” is by its nature a violation of two constitutional provisions: (1) the

⁹ See email correspondence dated Dec. 16, 2022 (encl. 4).

¹⁰ See <https://www.socom.mil/POTFF/Pages/default.aspx>.

¹¹ This exception does not apply here, as the members of SFC Forbes unit are being told they must complete the HPW assessment. This means any “consent” given by assessment subjects was not given voluntarily.

Establishment clause of the First Amendment of the US Constitution (ref. K), as well as the “religious test” clause of the Article VI of the US constitution (ref. K).

It is important to note, that while the military (through its chaplain corps, endorsed by religious organizations) provides opportunities for servicemembers to engage in religious free exercise, the military is not allowed to promote any specific religion (or even religion in the abstract). It also may not judge a servicemember based upon his or her religion, or lack of religion. This hybrid system (with denominational endorsement and supervision of the religious functions of the chaplain’s position, and military supervision of the military-specific provisions of service as a chaplain) was specifically created to ensure that competing tensions of the Establishment and Free Exercise clauses are respected.¹² This is very different from the HPW’s spiritual assessment, which is created by and supervised by the military itself.

Furthermore, the use of third-party apps to collect unauthorized information would indicate a surrogate relationship to accomplish a prohibited activity. For instance, DoDI 6490.04 (3)(d) (ref. H), highlights the three situations in which a psychological assessment in a Command Directed Behavioral Health Evaluation (CDBHE) can be required. HPW (as currently implemented) does not satisfy these requirements, and hence the command-directed baseline assessment referenced in encl. 1 pertaining to the “psychological” pillar requires both notification and consent pursuant to the code of federal regulations and US Army regulation.¹³

3. The HPW Assessment (in its current form) is a form of research, and as such requires the informed consent of all participants. "Consent" given under compulsion is not consent.

According to encl. 3, the HPW pilot project of USASOC is a research project. As such, the project is subject to relevant federal statutes and regulations that govern human research,¹⁴ including the requirement for actual informed consent that is free of coercion,¹⁵ which includes an outright bar on “(m)ilitary and civilian supervisors, officers, and others in the chain of command” from “influencing their subordinates to participate in HSR” (human subject research).¹⁶

Moreover, the DOD Patients’ Bill of Rights¹⁷ requires that military patients to be protected from breaches

¹² See Tuttle, Robert W. "Accommodation: The constitutional ground of chaplaincy" *Human Rights* (July 5, 2022), Vol. 47, No. 3/5) (ref. I).

¹³ See 32 CFR 219 (ref. E) and DoDI 3216.02 (ref. F).

¹⁴ See 32 CFR 219 (ref. E) and DoDI 3216.02 (ref. F).

¹⁵ See 32 CFR 219 § 219.116 (ref. E)

¹⁶ See DoDI 3216.02 § 3.9 (f)(3) (ref. F)

¹⁷ See DoDI 6000.14 (ref. C)

of privacy and security¹⁸ and to have the right to informed consent, including the right to consent or "refuse participation in clinical trials or other research investigations as may be applicable."¹⁹

The relevant provisions of the DOD Patients' Bill of Rights are further amplified by the provisions of AR 70-25 (ref. G), which include:

1. A requirement that all participants in research be fully informed and (with a few exceptions) provide voluntary consent,²⁰
2. A requirement that commands publish appropriate directives and regulations to ensure that research subjects are provided with appropriate disclosures to ensure that participation in said research is done in a lawful and consensual manner.²¹

Conclusion and Request for Redress

SFC Forbes is a good soldier and a good NCO. He does his best to follow the law and regulations, because it is the right thing to do. It is not easy for him to decline this order, but it is within his rights under federal law and DOD regulations to decline to participate in portions of the USASOC HPW Pilot program, and that is what he is doing.

For the sake of all members of the unit, you are urged to withdraw the unlawful order for all to participate in the USASOC HPW pilot program at this time.

A handwritten signature in black ink, appearing to read "James M. Branum". The signature is stylized with a large, looped initial "J" and a clear, legible name.

James M. Branum
Attorney at Law

¹⁸ See DoDI 6000.14, enclosure 2, (1)(c) (ref. C)

¹⁹ See DoDI 6000.14, enclosure 2, (1)(f) (ref. C).

²⁰ See AR 70-25 (3-1)(a)(ref. G).

²¹ See AR 70-25 (3-2)(ref G).

Enclosures:

- 1: OPOD 22-XXX 528th SB (SO) (A)
- 2: Poster "Assess the Unassessed"
- 3: Memorandum for record dated June 25, 2021 re: USASOC Warfighter Alliance
- 4: Email correspondence dated Dec. 16, 2022
- 5: Schedule of USASOC Human Performance+Wellness Annual Summit dated May 16-20, 2022.

References:

- A: DoDI 5400.11
B: DoD 5400.11-R
C: DoDI 6000.14
D: Manual for Courts-Martial
E: 32 CFR 219
F: DoDI 3216.02
G: AR 70-25
H: DoDI 6490.04
I: Tuttle, Robert W. "Accommodation: The constitutional ground of chaplaincy" *Human Rights* (July 5, 2022), Vol. 47, No. 3/5) online at:
https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/intersection-of-lgbtq-rights-and-religious-freedom/accommodation/.
J: Posard, Marek, et. Al "Reducing the Risk of Extremist Activity in the U.S. Military" online at:
<https://www.rand.org/pubs/perspectives/PEA1447-1.html>).
K: US Constitution

Enclosure 1

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UNIT: 528th SB (SO)(A)
1st Special Forces Command
FT BRAGG, NC

DTG: 221500NOV2022

OPORD 22-XXX 528th SB (SO) (A) Human Performance and Wellness Assessment:

1. Time Zone Used Throughout the Order: (U) Local

TASK ORGANIZATION. No Change

1. SITUATION. The 528th SB (SO) (A) Soldiers will complete a Human Performance and Wellness (HPW) assessment to meet USASOC and 1st SFC directive. This will allow for a baseline of SMs within the organization to increase support from HPW pillars. Assessment will occur in four phases to ensure 100% assessment. Phase I (Planning and coordination) has already been completed. Phase II (Initial assessment workflow) will be conducted from 29NOV22 through 09JAN23. Phase III (Full assessment) will be conducted from 10JAN23 through 31MAR23. Phase IV (Data Analysis) will be conducted through April 2023. All assessments will be conducted at the BDE HPTC and BDE Classrooms.

2. MISSION. 528th SB (SO) (A) Soldiers will conduct HPW Assessment from 29NOV22 through 31MAR23 IOT meet USASOC and 1st SFC directives.

3. EXECUTION.


A. Commanders Intent: All Soldiers will participate in HPW assessment, including Strength and conditioning, briefings and surveys from each pillar of HPW IOT create a baseline assessment and meet USASOC and 1st SFC directives. Max participation will be achieved across all units to meet HPW requirements

B. Concept of Operations: HPW Assessment will take place from 29NOV22 Through 31MAR23. Assessments will be conducted every Tuesday and Thursday from 0630 to 1130. Phase II will be primarily STB and BDE Staff IOT increase processes and efficiency during the assessment starting on 29NOV22. Phase III will consist of STB, 112th, and 389th starting O/A 10JAN23.

1. Phase I: BDE Staff and STB will coordinate through the BN and BDE S3 to meet required numbers each date. The assessment will start in the HPW Human Performance Training Center at the BDE.
 - 29NOV22 - x 10 PAX
 - 01DEC22 - x 10 PAX
 - 06DEC22 - x 20 PAX
 - 08DEC22 - x 20 PAX
 - 13DEC22 - x 30 PAX
 - 15DEC22 - x 30 PAX
2. Phase II: This phase will encompass all BNs (STB, 112th, 389th) from 10JAN23 through 31MAR23
 - a. Conducting assessments every Tuesday and Thursday from 0630 until 1130.
 - b. Each assessment day will include 35 SMs to complete the assessment.
 - (1) STB will provide 11 SMs each day until complete, may be required to provide more depending on availability.
 - (2) 112th will provide 13 SMs each day until complete, may be required to provide more depending on availability.
 - (3) 389th will provide 11 SMs each day until complete, may be required to provide more depending on availability.
 - c. Coordination will be managed through the BN S3's and BDE S3.
 - d. Phase II will be completed once all 528th SB SMs have completed the assessment
3. Uniform: Assessment will be conducted in workout attire (Black on Black athletic apparel or APFU)
4. Feedback: During the assessment individual SMs will receive follow on appointments with individual pillars for follow up feedback concerning their assessments and SMs desiring more information (i.e. Strength and conditioning program, financial, Social and Family Programs)

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OPORD 19-XXX 528th SB (SO) (A) HPW Assessment

C. Task.	
ALL	<p>All 528 SB (SO) (A) service members will participate in HPW assessment from 29NOV22 through 31MAR23. BN S3 required submitting names with Civilian emails the Friday prior to assessment week. All service members required to have access to the Bridge Athletics / Bridge Tracker. Utilize below QR Code to download.</p>  <p>Bridge Tracker</p> <p>All SMs are required to start the initial assessment after fasting. This is a 10 hr fast, meaning that the SM does not eat or drink anything besides water after dinner. The SM should refrain from eating, drinking (other than water), tobacco prior to inbody assessment.</p>
STB	<ol style="list-style-type: none"> Provide SMs for assessment on the following dates <ol style="list-style-type: none"> 29NOV22 - x 10 PAX 01DEC22 - x 10 PAX 06DEC22 - x 20 PAX 08DEC22 - x 20 PAX 13DEC22 - x 30 PAX 15DEC22 - x 30 PAX 10JAN23 through 31MAR23 <ul style="list-style-type: none"> STB will provide 11 SMs each day until complete, may be required to provide more depending on availability. Conducting assessments every Tuesday and Thursday from 0630 until 1130. <ol style="list-style-type: none"> Each assessment day will include 35 SMs to complete the assessment. Coordination will be managed through the BN S3's and BDE S3. BN S3 will submit names for the following week NLT COB Friday the week before to BDE S3 IOT ensure full assessment classes. Uniform: Assessment will be conducted in workout attire (Black on Black athletic apparel or APFU) Feedback: During the assessment individual SMs will receive follow on appointments with individual pillars for follow up feedback concerning their assessments and SMs desiring more information (i.e. Strength and conditioning program, financial, Social and Family Programs)
112 th SIG	<ol style="list-style-type: none"> Provide SMs for assessment on the following dates <ol style="list-style-type: none"> 10JAN23 through 31MAR23 <ul style="list-style-type: none"> 112th will provide 13 SMs each day until complete, may be required to provide more depending on availability. Conducting assessments every Tuesday and Thursday from 0630 until 1130. <ol style="list-style-type: none"> Each assessment day will include 35 SMs to complete the assessment. Coordination will be managed through the BN S3's and BDE S3. BN S3 will submit names for the following week NLT COB Friday the week before to BDE S3 IOT ensure full assessment classes. Uniform: Assessment will be conducted in workout attire (Black on Black athletic apparel or APFU) Feedback: During the assessment individual SMs will receive follow on appointments with individual pillars for follow up feedback concerning their assessments and SMs desiring more information (i.e. Strength and conditioning program, financial, Social and Family Programs)

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OPORD 19-XXX 528th SB (SO) (A) HPW Assessment

MI BN	<ol style="list-style-type: none"> Provide SMs for assessment on the following dates <ol style="list-style-type: none"> 10JAN23 through 31MAR23 <ul style="list-style-type: none"> 389th will provide 11 SMs each day until complete, may be required to provide more depending on availability. Conducting assessments every Tuesday and Thursday from 0630 until 1130. <ol style="list-style-type: none"> Each assessment day will include 35 SMs to complete the assessment. Coordination will be managed through the BN S3's and BDE S3. BN S3 will submit names for the following week NLT COB Friday the week before to BDE S3 IOT ensure full assessment classes. Uniform: Assessment will be conducted in workout attire (Black on Black athletic apparel or APFU) Feedback: During the assessment individual SMs will receive follow on appointments with individual pillars for follow up feedback concerning their assessments and SMs desiring more information (i.e. Strength and conditioning program, financial, Social and Family Programs)
CMD	
S-1	<ol style="list-style-type: none"> Coordinate with STB S3 and BDE S3 for assessment slots
S-2	<ol style="list-style-type: none"> Coordinate with STB S3 and BDE S3 for assessment slots
S-3	<ol style="list-style-type: none"> Provide coordination for roster Manage and coordinate numbers and names for events.
S-4	<ol style="list-style-type: none"> Coordinate with STB S3 and BDE S3 for assessment slots
S-6	<ol style="list-style-type: none"> Coordinate with STB S3 and BDE S3 for assessment slots
SPO	<ol style="list-style-type: none"> Coordinate with STB S3 and BDE S3 for assessment slots
SPECIAL STAFF	<ol style="list-style-type: none"> Coordinate with STB S3 and BDE S3 for assessment slots
D. Coordinating Instructions.	
4. SERVICE SUPPORT. A. General: N/A B. Material and Services: <ol style="list-style-type: none"> N/A 	
<ul style="list-style-type: none"> 5. COMMAND AND SIGNAL. Action Officer for this event is BDE S3. Event Execution run through HPW / CPT Forte at joseph.forte@socom.mil or 908-5062 	

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OPORD 19-XXX 528th SB (SO) (A) HPW Assessment

ANNEXES/ATTACHMENTS.

A – N/A

DISTRIBUTION

STAFF

STB, 528th (SO)(A)

112th SIG BN (SO)(A)

389th MI BN (SO)(A)

ACKNOWLEDGE

BRUNSON
COL

OFFICIAL:

MAJ

Philbin

S3

Enclosure 2



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528th SB: Assess the Unassessed



Overview

528th SB (SO) (A) assessment achieves baseline evaluation and identify concerns and indicators to provide proactive intervention within the five pillars of HPW

End Result: To obtain information and data, justifying the HPW Resource and impact is has on enabler population

Currently conducting assessments twice a week until 100% assessed

Future Assessments: Annual requirement

Currently assessed: 122
Follow up identified: 44%

Assessment focus: enablers

Included Assessments/Components

- InBody 770
- TPIQ
- ANAM
- Social and Family Questioner
- Financial Questioner
- ACFT (Company administered)
- Spiritual Assessment

Follow Up: individual domains will coordinate follow up with SMs bases on precedence of findings, from assessment data, if desired or referred. Trend analysis and feedback for commanders.

Resources Required

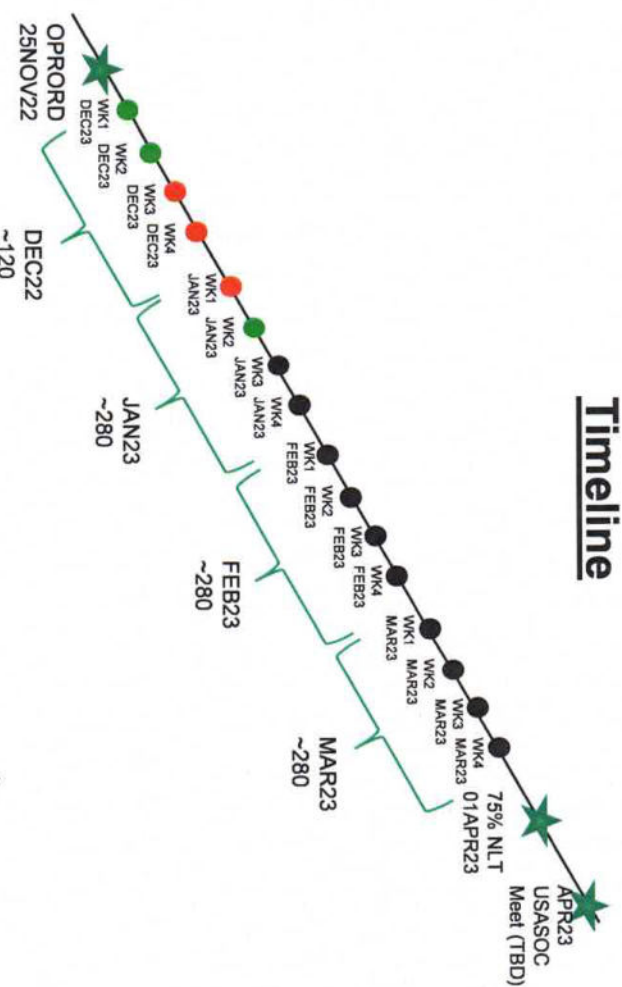
We are utilizing tablets, Inbody 770, Microsoft Forms

POTFF Domains involved: Medical, PT, S&C, Social & Family, Spiritual, Physiological, Financial

impact/strain:

- limits the availability of services during the assessment
- Data analysis will decrease domain interactions
- Limited to one Inbody 770; mitigation with cross leveling devices, individual purchase, consolidated contracting through 1st SFC
- Limited to one ANAM computer, coordinating with SWTC and 1st SFC, 82nd, Solider Support Center

Timeline





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528th SB: Assess the Unassessed



Overview

528th SB (SO) (A) assessment achieves baseline evaluation and identify concerns and indicators to provide proactive intervention within the five pillars of HPW

End Result: To obtain information and data, justifying the HPW resource and impact is has on enabler population

Currently conducting assessments twice a week until 100% assessed

Future Assessments: Annual requirement

Currently assessed: 98

Follow up identified: 44%

Assessment focus: enablers

Included Assessments/Components

InBody 770

TPIQ

ANAM

Social and Family Questioner

Financial Questioner

ACFT (Company administered)

Spiritual Assessment

Follow Up: individual domains will coordinate follow up with SMs bases on precedence of findings, from assessment data, if desired or referred. Trend analysis and feedback for commanders.

Resources Required

We are utilizing tablets, Inbody 770, Microsoft Forms

POTFF Domains involved: Medical, PT, S&C, Social & Family, Spiritual, Physiological, Financial

impact/strain:

- limits the availability of services during the assessment
- Data analysis will decrease domain interactions
- Limited to one Inbody 770, mitigation with cross leveling devices, individual purchase, consolidated contracting through 1st SFC
- Limited to one ANAM computer, coordinating with SWTC and 1st SFC, 82nd, Solider Support Center

Timeline



We Support to the Utmost - Sentinel!

528th Sustainment Brigade (Special Operations)(Airborne)





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528th SB: Assess the Unassessed

Overview

528th SB (SO) (A) assessment achieves baseline evaluation and identify concerns and indicators to provide proactive intervention within the five pillars of HPV

Currently conducting assessments twice a week until 100% assessed

Future Assessments: Annual requirement

Currently assessed: 59

Follow up identified: 30%

Assessment focus: enablers

Resources Required

We are utilizing tablets, Inbody 770, Microsoft Forms

POTFF Domains involved: Medical, PT, S&C, Social & Family, Spiritual, Physiological, Financial

impact/strain:

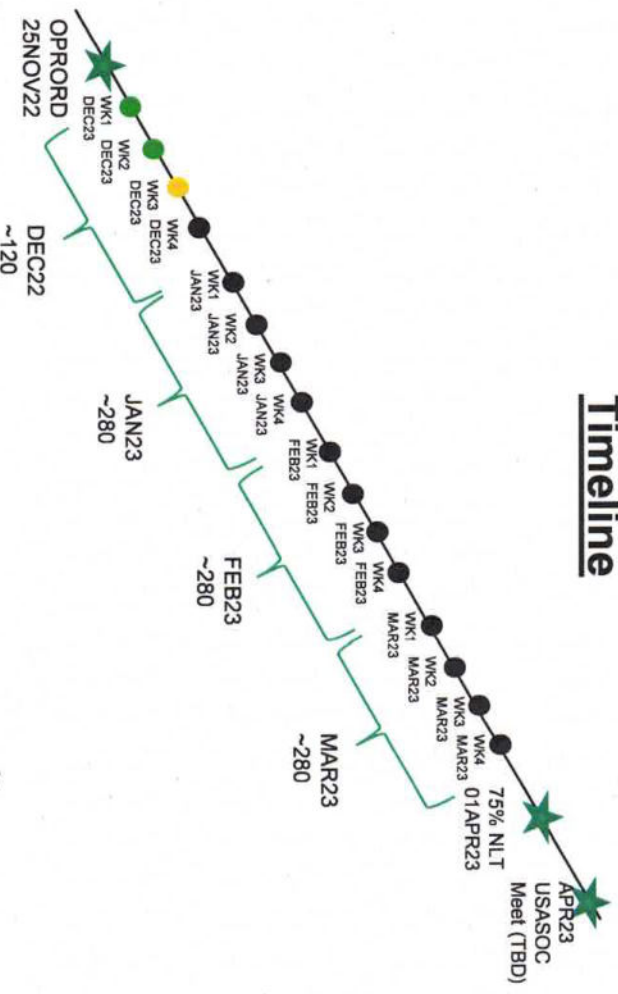
- limits the availability of services during the assessment
- Data analysis will decrease domain interactions
- Limited to one Inbody 770; mitigation with cross leveling devices, individual purchase, consolidated contracting through 1st SFC
- Limited to one ANAM computer, coordinating with SWTC and 1st SFC, 82nd, Solider Support Center

Included Assessments/Components

- InBody 770
- TPIQ
- ANAM
- Social and Family Questioner
- Financial Questioner
- ACFT (Company administered)
- Spiritual Assessment

Follow Up: individual domains will coordinate follow up with SMS bases on precedence of findings, from assessment data, if desired or referred. Trend analysis and feedback for commanders.

Timeline



We Support to the Utmost - Sentinels!
528th Sustainment Brigade (Special Operations)(Airborne)

Enclosure 3



DEPARTMENT OF THE ARMY
HEADQUARTERS, UNITED STATES ARMY SPECIAL OPERATIONS COMMAND
2929 DESERT STORM DRIVE
FORT BRAGG, NORTH CAROLINA 28310-9110

AOHP-W

JUN 25 2021

MEMORANDUM FOR RECORD

SUBJECT: United States Army Special Operations Command (USASOC) Warfighter For Life Alliance

1. Vision: USASOC leads a collaborative alliance delivering effect-focused research to meet and optimize Army Special Operations Forces (ARSOF's) performance and resilience needs.
2. Mission: USASOC harnesses expertise throughout the Department of Defense, academia, U.S. Army Medical Treatment Facilities (MTFs), and premier public and private research institutions in order to deliver evidence-led, innovative, Soldier-focused tools and methodologies for the longitudinal surveillance, protection, enhancement, and treatment of ARSOF Soldier performance, mind and brain health.
3. Lines of Effort:
 - a. Identify, Monitor, and Mitigate Brain Trauma Exposures: Development of objective, predictive and standardized set of brain health vital signs; increasing awareness of the signs and symptoms of concussions and other head trauma; reduce risks of exposure to events negatively impacting brain health; provide timely concussion treatments for providers and Special Operation medics; and inform engaged leaders of ways to employ and care for Soldiers. Pursue research institute partnerships leveraging existing evidence and propose emerging neuroscience research focused on both preventive and rehabilitative warfighter brain health, and rapidly deliver valid neuroscience tools and processes to the provider and Soldier.
 - b. Rapid Human Performance (HP) and Wellness Research Focus: capitalizes on innovation at all levels to establish, harness, and sustain a rapid process to harness best processes, tools, methods, education, information and collaboration. Gains in research are applied and resourced to support and enable the Soldier, the Family Member and the ARSOF Veteran into the future.
 - c. Development of a Performance and Brain Health Fusion Center on Fort Bragg serving as the hub of collaborative efforts and research for USASOC, FORSCOM, 18th Airborne Corps, and 82nd Airborne Division.
4. Research Areas of Interest:
 - a. Warfighter Mind and Brain Health: Establish cognitive performance baselines; raise awareness and convey best practices to maximize cognitive performance. enhance current cognitive performance; in cooperation with DOD's Warfighter Brain

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SUBJECT: USASOC Warfighter For Life Alliance

Health Comprehensive Strategy, align brain health research and acquisition to the operational environment and current/emerging threats; mitigate the degradation of cognitive performance to operational risks; restore cognitive and physical performance post injury.

b. ARSOF Soldier Human Performance and Wellness: Establish performance baselines; raise awareness and convey best practices to optimize comprehensive performance; strengthen research partnership opportunities with other government agencies, industry, and academia; enable researchers' access to valid data; translate research findings to knowledge, practices, policies, and material products; facilitate research by bringing researchers to the nexus of ARSOF training and ARSOF/FORSCOM operational units.

c. Diversity and Inclusion in ARSOF: Pursue research, identify best practices, and implement activities and programs to effectively integrate historically underrepresented groups and genders into ARSOF; better understand and optimize respective HPW needs and requirements for diversity and inclusion as a part of the ARSOF mission; create pathways to increase USASOC's diversity; enable and promote progression opportunities within USASOC.

d. ARSOF Veteran Engagement and Transition Support (ARSOF VETS): Establish a collaborative community that connects with and engages the Service Member and Family upon entry into ARSOF, throughout service in uniform, into and through post-separation for 24 months; filling SOF-peculiar gaps in Army Transition Assistance Program (TAP), thicken the support network to connect to VA, inform ARSOF VETS about benevolent Veteran Service Organizations (VSOs), and equip ARSOF veterans with right knowledge, processes and tools to thrive after their service to the nation.

5. USASOC Warfighter For Life Alliance as a part of the USASOC Strategic Planning Process:

a. USASOC will own this process at all levels of command to foster the initiative, innovation and creativity found at the tactical level, while synchronizing with processes and staffs to enable approval, resourcing and sustainment over time. The external members of the alliance will collaborate with service members, units, leaders, experts and staff members at all echelons of USASOC. This policy outlines the process and necessary requirements for additional agreements with academic universities, research institutions, public and private organizations, as seen in Figure 1.

SUBJECT: USASOC Warfighter For Life Alliance



c. Collaboration through the HPW IPT enables the resourcing of solutions through research, development, testing, evaluation, fielding and equipping requirements. This process defines the method the alliance uses to enter the USASOC Planning, Programming, Budgeting and Execution (PPBE) portion of the Strategic Planning Process (SPP). This nesting of processes transforms research and innovative ideas into tangible tools available to the Special Operations Soldier, provider, Family member, Veteran and supporting staff.

a. The HPW IPT can and will serve as a clearing house for the RAC, to ensure Human Subjects Research proposals are IAW the USASOC identified priority research areas of interest and forwarded onward for review and approval/disapproval by the

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SUBJECT: USASOC Warfighter For Life Alliance

RAC. Human Subjects Research efforts that are conducted on the behalf of, or in collaboration with USASOC will be approved through the USASOC Human Subjects Review Board (HSRB) and the RAC.

b. Requirements as a part of any agreement with a program management institute must include, but are not limited to: **USASOC data ownership of USASOC service members**, including those serving as human test subjects; intellectual property ownership delineation; landscape review of research areas of interest; Institutional Review Board (IRB) completion; interim results delivered from Primary Investigator (PI) to USASOC HPW IPT; pre-peer review and/or pre-publication review to USASOC HPW IPT; and streamlined testing and evaluation of processes, tools, and methods to rapidly deliver validated tools and means to the service member, provider and supporting staff.

7. Research Proposal through Output Process: The process to facilitate study proposals through research and fielding is outlined in Figure 2.

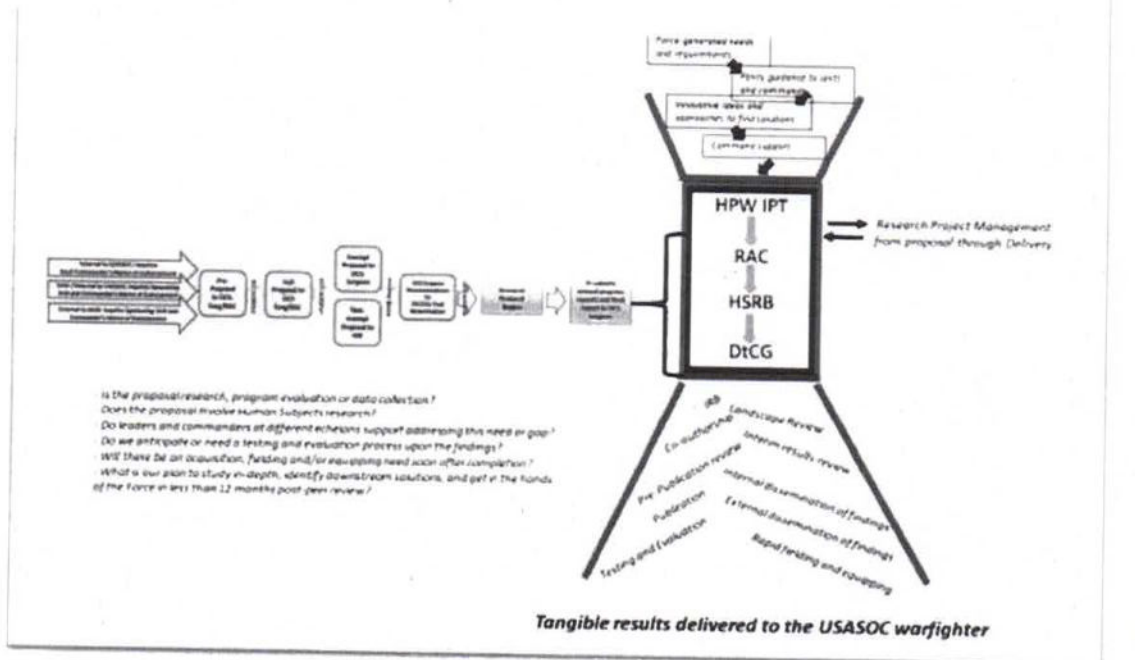


Figure 2, Research Proposal, Project Management and Delivery process

Example milestone timelines of two separate proposals are outlined in Figure 3.

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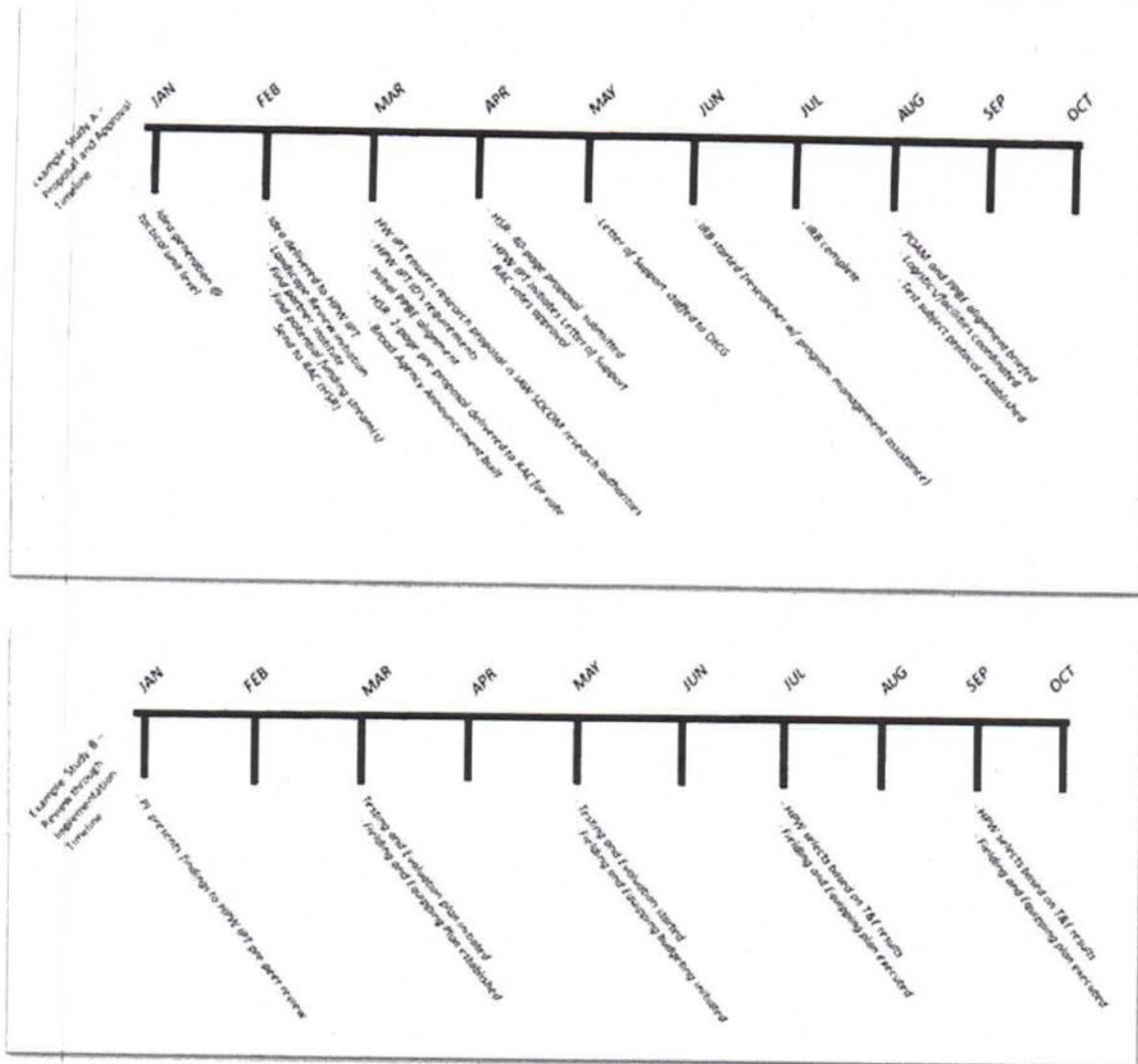


Figure 3, Examples of milestone timelines for two separate proposals

8. Agreement Partnerships, Areas of Collaboration, Staffing and Approval Process: USASOC will maintain and grow collaborative partnerships with higher education institutes as defined by the Department of Higher Education as a public entity as a part of this alliance. The alliance enables the military, research and academic communities to mutually benefit through shared capabilities, expertise, and interest in national security.

a. Background. This policy defines the requirements for any future partnerships between USASOC and College, University, higher education school system, research institute or foundation, as well as any other private or public entity as a part of the USASOC Warfighter For Life Alliance. This policy also outlines the requirements for any continuation of current partnerships with College, University, higher education school system, research institute or foundation, as well as any other private or public entity (from here forward known as "partner entities") as a part of the USASOC Warfighter For

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Life Alliance. Such partnerships in the past have produced meaningful contributions to national security. USASOC wants to ensure that we establish a streamlined process to maintain guidelines, procedures, and responsibilities for functional partnerships into the future. This policy provides the framework for establishing subsequent Memorandum of Agreement (MOA) for collaboration and shared expertise between the academic and military communities in support of U.S. National Security objectives.

b. Scope. The scope of the partnership between USASOC and the partner entity will be in accordance with (IAW) the respective requirements of both parties. Under the charge of the partner entity's strategic plan and the USASOC Strategy, USASOC will proactively anticipate and seek solutions to challenges, needs, and requirements throughout the partnership. Partnerships subject to this policy should consider progressive pathways for accredited education for ARSOF personnel. The scope of the partnership can be wide-ranging and should consider exploring the following areas of interest, without limitation as they apply to SOF:

Human Performance

Strength and Conditioning

Nutrition

Rehabilitation and Physical Therapy

Traumatic Brain Injury

Sport and Exercise Psychology

Musculoskeletal injuries

Cognitive performance

Psychology

Human-machine interface

Resilience

Performance optimization and injury prevention

Performance monitoring and prediction, including Wearables and Data Analytics

Science and Technology

Behavioral Science

Engineering

Computer science and/or Information Systems

Materials Science

Anthropology

Sociology

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Geographic Information Systems

Political Science

Research and Development

Human Domain

Medical and Health Sciences

Physical and Natural Sciences

Life Sciences

Agricultural and Plant Sciences

Data Science, Analytics, Artificial Intelligence and Machine Learning

Various Subjects or Colleges

Foreign Language Studies

Cultural Studies

International Relations Studies and Social Sciences

Social Work

Medical Studies

Engineering

Management

Instructional Technology

Adaptive Thinking and Leadership Courses

Supply chain management

Language and Cultural Collaboration

Communications

Education

Professional Certificate Programs

Baccalaureate and Graduate Degree Awarding Programs for USASOC Soldiers

- Programs and courses aligned with Special Operations requirements to professionalize the Force

Degree Completion Programs for USASOC Soldiers

Army Senior Service College Fellowship Program

Leadership Development

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Leader and Staff/Faculty exchanges

Guest speaking/instructing opportunities

Internships

Students/faculty with duty at USASOC locations

USASOC Soldiers at academic institutions/facilities

c. The Parties will determine whether a list of areas of interest is exclusive or not, and whether it may be expanded or revised as relevant and IAW the respective MOA. These areas of interest may be explored through faculty and student exchanges (including, as appropriate, role-playing in USASOC exercises); capability exercises, conferences, seminars and speaker series; curricula development; and applied research and directed projects.

d. Understanding. The USASOC Human Performance and Wellness (HPW) Directorate and the respective partner institute's Federal Relations Office (or representative) will serve as the initial internal points of contact for these partnerships. Each lead is required to coordinate and facilitate, but not encumber, initiatives proposed and accepted by both partners. USASOC may grant direct liaison between partner entities and CSC/CSUs as required and will be clearly stated in the MOA. HPW and respective Federal Relations Office will have visibility and/or involvement (to varying levels) in all component sections' elements' initiatives and programs (e.g. research). Subordinate USASOC elements are required to get approval of HPW prior to any action to partner, contract or seek assistance with/from partner entities.

e. Responsibilities. The HPW Directorate and respective Federal Relations Office of the partner entity will:

(1) Maintain transparent, effective channels of official communication to foster linkages and collaboration between and among various elements of the two institutions (for the development of innovative solutions to complex problems);

(2) Maintain institutional commitment and continuity;

(3) Provide access to respective body of knowledge capabilities and strengths

(4) Ensure research activities are either novel or not duplicative;

(5) Expand the capacity of each institution (and their component elements) to serve the nation.

f. It is required that any individual collaboration, exchange or project anticipated between the parties will be reduced to writing in the MOA, including sufficient description of deliverables or expectations and associated fees or costs, clearly determine data ownership and data or capabilities protection guidelines, and will be duly executed by the authorized representatives of the parties.

g. The HPW Directorate and respective Federal Relations Office will determine, by mutual agreement, to:

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SUBJECT: USASOC Warfighter For Life Alliance

- (1) Schedule regular meetings to identify and assess initiatives;
 - (2) Manage and oversee liaisons and/or interns for the purpose of information exchange, coordination, and collaboration;
 - (3) Establish benchmarks or measures of effectiveness for ongoing programs, and refine terms and conditions of specific initiatives, as appropriate;
 - (4) Identify Key Leader Engagements to support positive Strategic Communications for both organizations.
- h. The HPW Directorate and respective Federal Relations Office will determine, by mutual agreement, to pursue or facilitate the below items. These items are subject to any applicable rules covering USASOC service members and employees (particularly items 4 through 7).
- (1) The exchange of instructors, to include but not limited to medical, language, psychology, culture, communications, marketing, public administration/urban planning, and management negotiation training;
 - (2) The assessment of USASOC capabilities gaps for materiel for possible solution by institute/organization science and technology activities;
 - (3) The evaluation by institute/organization subject matter experts of science and technology proposals received by USASOC;
 - (4) Experience-based constructive credit and degree completion opportunities for Soldiers and Department of Defense civilians, including online programs;
 - (5) Degree opportunities and assistance for military spouses and Family members;
 - (6) The alignment of pertinent Civil Affairs, Psychological Operations, Special Forces, and other Army Special Operations Forces course curricula with curricula to parallel military and academic accreditation and/or course validation;
 - (7) Consult with the International Scholar Program to confirm it is willing and able to cooperate, then establish a relationship to allow for mutually supporting educational and cultural exchanges and awareness (and possible language exchange);
 - (8) Support to the Special Warfare Center of Excellence;
 - (9) Pertinent national security fellowship programs from the partner institute/organization;
 - (10) Congressional liaison, coordination, and support.
- i. USASOC desires collaboration among institutes, organizations and universities that have demonstrated expertise supporting our desired effects. The HPW Directorate or respective Federal Relations Office must assess that the institute/organization possesses the appropriate subject matter experts, and otherwise the institute/organization will facilitate coordination between USASOC and other appropriate

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subject matter experts willing to partner.

9. Funding Requirements:

a. The parties of an agreement will determine whom shall be responsible for their respective expenses associated with monthly meetings or travel between geographical headquarters.

b. All references to funding are understood by both Parties to be subject to the availability of funds and personnel and IAW applicable laws and regulations.

10. Miscellaneous Terms of Agreement to consider:

a. The Parties of agreements will determine who may terminate the respective MOA, and how to terminate the MOA, likely requiring notification from one party to the other party, in writing with a minimum of six months notice. Termination shall be without penalty to either Party, unless otherwise provided by a separate agreement related to any activity being performed by one Party at the request of the other.

b. The parties of agreements will determine sufficient notice (six months) in advance of termination of specific collaborations, exchanges or projects, documented in the MOA, with notice being given to the appropriate point of contact in the MOA. The parties of agreements will determine if any costs incurred for an approved collaboration, exchange, or project up to the termination date provided in the notice of termination will be paid in a manner to be provided in the applicable MOA or not.

c. The parties of agreements will determine how to promptly resolve any issues or concerns raised regarding instructional presentation, liaisons, trainers, speakers, curriculum, or the conduct of any training and education.

d. The partner institute/organization shall observe any required security processing and adhere to all security requirements and standards as outlined by USASOC and required by law. USASOC will identify positions requiring a security clearance and notify the respective institute/organization as soon as possible.

e. This policy will be reviewed biannually or ad hoc as circumstances or events reveal the need for substantial alterations, or for the development of a new policy.

f. In order to be effective, all annexes or amendments to this policy will be in writing.

g. In the event law or regulation necessitates a revision, the policy shall be construed as being modified on the effective date of the legal change.

h. No party from any MOA shall release confidential information derived from the other Party to a non-participating third Party without the approval of the contributing MOA Party. Notwithstanding the prior sentence, both Parties will clarify their understanding that protection of confidential information is subject to disclosure under the Federal Freedom of Information Act and any respective state or local public records disclosure statutes.

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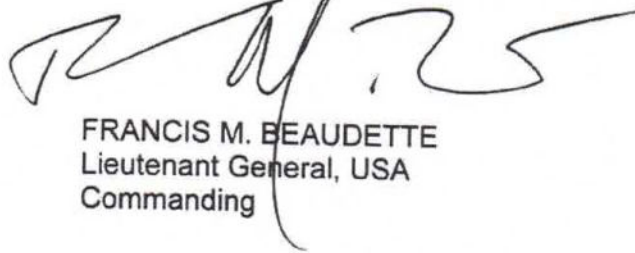
SUBJECT: USASOC Warfighter For Life Alliance

i. The parties of MOAs will determine the process to inform the other of any news media releases or engagements regarding the partnership established in the respective MOA and affiliated initiatives.

j. The parties of agreements will determine how and when to submit an initial report outlining the details of an initiative or program and provide subsequent regular (e.g. quarterly) updates to the HPW Directorate or Federal Relations Office, respectively. Initial reports and updates will be provided to the Commanding General, USASOC.

11. Effective Date: The parties of agreements will determine when the respective MOA shall become effective, based on the date of the last signature, and will remain in effect until terminated in writing, and in a mutually agreed upon manner.

12. Point of Contact: The point of contact for this memorandum is COL Mark Ray, USASOC HPW Director at (910) 432-4848 or email: mark.d.ray.mil@socom.mil.



FRANCIS M. BEAUDETTE
Lieutenant General, USA
Commanding

DISTRIBUTION:

Director USASOC Human Performance and Wellness
USASOC Command Surgeon
Director USASOC UPMC
Director USASOC CAG
USASOC JAG

Enclosure 4

Forbes, Michael J SFC USARMY USSOCOM USASOC (USA)

From: Lutz, Cathy M CIV USSOCOM USASOC (USA) <Catherine.Lutz@socom.mil>
Sent: Friday, December 16, 2022 3:09 PM
To: Forbes, Michael J SFC USARMY USSOCOM USASOC (USA)
Cc: Allemand, Brenda CIV USSOCOM USASOC (USA)
Subject: FW: Forbes, Michael J SFC USARMY USSOCOM USASOC (USA) wants to access 'Documents'
Signed By: catherine.m.lutz.civ@army.mil

This site is restricted to HPW personnel only.

From: Forbes, Michael J SFC USARMY USSOCOM USASOC (USA) <no-reply@sharepoint-mil.us>
Sent: Friday, December 16, 2022 2:33 PM
To: Lutz, Cathy M CIV USSOCOM USASOC (USA) <Catherine.Lutz@socom.mil>
Subject: Forbes, Michael J SFC USARMY USSOCOM USASOC (USA) wants to access 'Documents'

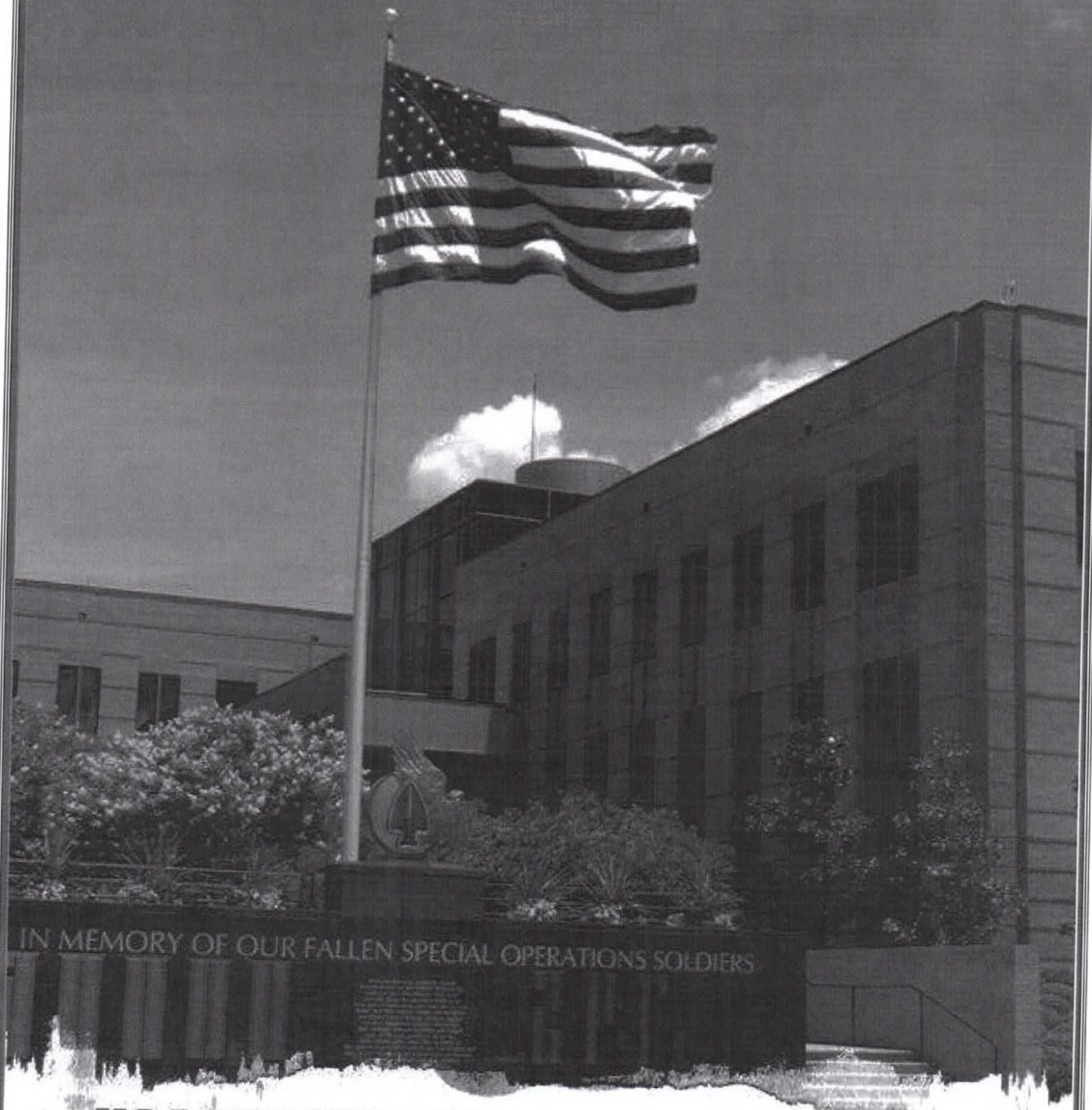
I'd like access, please.

[Accept](#) or [Decline](#) this request

Requested resource: <https://socom.sharepoint-mil.us/sites/usasoc-hq-hpw/Shared%20Documents>

Requested by: Forbes, Michael J SFC USARMY USSOCOM USASOC (USA)(michael.j.forbes.mil@socom.mil)

Enclosure 5



USASOC HUMAN PERFORMANCE + WELLNESS

Annual Summit – May 16 – 20, 2022

FOR OFFICIAL USE ONLY



Thursday, 19 May, 2022

DATA DAY

Attendees: HPW Staff + Designated Reps

DATE/TIME	ACTIVITY	LOCATION
0730 – 0830	Set Up	IMCC
0830 – 0930	Opening Comments – LTC George Webb	IMCC
0930 – 1200	<ul style="list-style-type: none"> Smartabase Report Card Commander's dashboard (Smartabase) 	IMCC
1200 – 1300	Lunch	IMCC/Various
1300 – 1400	Summit Close Out – COL Mark Ray	IMCC
1400 – 1600	HPW Coordinators closed session	IMCC
1630	Facility Closes	IMCC

Friday, 20 May, 2022

DATE/TIME	ACTIVITY	LOCATION
0600 – TBD	Travel Day	Various

EXHIBIT B

(1) Medical Care.

Patients have the right to quality care and treatment that is consistent with available resources and generally accepted standards, including timely access to specialty care and to pain assessment and management. Patients have the right to obtain care from other clinicians within the facility, to seek a second opinion, and to seek specialty care.

(2) Respectful Treatment.

Patients have the right to considerate and respectful care, with recognition of personal dignity, psychosocial, spiritual, and cultural values and belief systems. The hospital prohibits discrimination based on age, race, ethnicity, religion, culture, language, physical or mental disability, socioeconomic status, sex, sexual orientation, and gender identity or expression.

(3) Privacy and Security

(a) Patients have rights, defined by Federal law, in accordance with References (m) through (n), to reasonable safeguards for the confidentiality, integrity, and availability of their protected health information, and similar rights for other personally identifiable information, in electronic, written, and spoken form. These rights include the right to be informed when breaches of privacy occur, to the extent required by Federal law.

(b) Limits of confidentiality. Patients have the right to be informed in advance of making a sensitive disclosure during a health care encounter that in certain circumstances the provider is mandated to make a notification to an individual, agency or service, without requiring the patient's permission or consent to make the provider notification. For example, types of sensitive disclosures may include but are not limited to sexual assault or harassment, domestic violence, substance misuse or abuse, or intent to harm self or others.

(4) Provider Information. Patients have the right to receive information about the individual(s) responsible for, as well as those providing, his or her care, treatment, and services. The MTF will inform the patient of the names, and as requested, the professional credentials of the individual(s) with primary responsibility for, as well as those providing, his or her care, treatment, and services.

(5) Explanation of Care. Patients have the right to an explanation concerning their diagnosis, treatment options, procedures, and prognosis in terms that are easily understood by the patient or responsible caregiver. The specific needs of vulnerable populations in the development of the patient's treatment plan shall be considered when applicable. Such vulnerable populations shall include anyone whose capacity for autonomous decision-making may be affected. When it is not medically advisable to give such information to the patient due to vulnerabilities or other circumstances, the information should be provided to a designated representative.

(6) Informed Consent. Patients have the right to be informed of necessary information in non-clinical terms to make knowledgeable decisions on consent or refusal for treatments, or participation in clinical trials or other research investigations as applicable. Such information is to include any and all complications, risks, benefits, ethical issues, and alternative treatments as may be available. Patients will be informed that information on TRICARE covered services, including clinical trials, is available on the TRICARE.mil website at: www.tricare.mil

(7) Filing Grievances. Patients have the right to make recommendations, ask questions, or file grievances to the MTF Patient Relations Representative or to the Patient Relations Office. If concerns are not adequately resolved, patients have the right to contact The Joint Commission (TJC) at 1-800-994-6610, or by submitting a concern or complaint online at <https://www.jointcommission.org/resources/patient-safety-topics/report-a-patient-safety-event/>

(8) Research Projects. Patients have the right to know if the MTF proposes to engage in or perform research associated with their care or treatment. The patient has the right to refuse to participate in any research projects and withdraw consent for participation at any time.

(9) Safe Environment. Patients have the right to care and treatment in a safe environment.

(10) MTF Rules and Regulations. Patients have the right to be informed of the MTF rules and regulations that relate to patient or visitor conduct.

(11) Transfer and Continuity of Care. When medically permissible, a patient may be transferred to another MTF or private sector facility/provider only after he or she has received complete information and an explanation concerning the needs for and alternatives to such a transfer.

(12) Charges for Care. Patients have the right to understand the charges for their care and their obligation for payment.

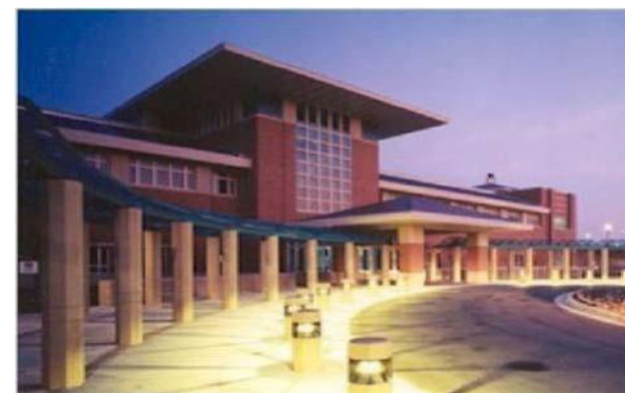
(13) Advance Directive. Patients have the right to make sure their wishes regarding their healthcare are known even if they are no longer able to communicate or make decisions for themselves.

(14) Limits of Confidentiality. Patients have the right to be informed in advance of making a sensitive disclosure during a health care encounter that in certain circumstances the provider is mandated to make a notification to an individual, agency, or service, without requiring the patient's permission or consent to make the provider notification. For example, types of sensitive disclosures may include but are not limited to sexual assault or harassment, domestic violence, substance misuse or abuse, or intent to harm self or others.

(15) Chaperones. Patients have the right to a chaperone during both inpatient and outpatient clinical visits, specifically during sensitive physical exams and treatments. Patients have a right to request a different chaperone (for example, different gender); when feasible, staff will try to accommodate request or assist with rescheduling visit. There may be emergency situations that require an exception to a chaperone where delays in care could jeopardize life.

Womack Army Medical Center Fort Bragg, North Carolina

ADVANCED MEDICAL DIRECTIVES FOR PATIENTS



PATIENT'S RIGHTS AND RESPONSIBILITIES

Audio Version 910-907-7500

What Is An Advance Directive?

An Advance Directive is a written statement of your wishes regarding your health care which goes into effect if at some time you are unable to make health care decisions. There are two types of advance directives: **A Living Will and a Durable Health Care Power Of Attorney.**

What Is A Living Will?

A **Living Will** is a document that states your desires concerning the medical treatment you do or do not want to receive, if you become unable to make your own medical care decisions.

What Is Durable Health Care Power of Attorney?

A **Durable Power of Attorney** is a document in which you give another adult person the legal authority to make medical treatment decision for you if you become unable to do so. You can designate anyone, a spouse, relative, or good friend as your decision-maker. This person is frequently referred to as your agent, proxy, or surrogate decision- maker.

Why Should I Put My Wishes In Writing?

If, as result of serious Injury or illness, you become unable to make medical treatment decisions, you retain legal ability to control your medical treatment by having am **Advance Directive**. Writing your wishes down helps your doctor, family and friends know what medical treatment you do or do not want in case you cannot tell them yourself.

Who should I Tell About My Advance Directive?

Before you prepare an Advance Directive, you should discuss your medical treatment wishes with your physicians, close family members, and the person you choose as your surrogate.

You should give a copy of your Advance Directive to your primary physician. Military patients see different physicians; a copy should be placed in your outpatient medical record. Another copy should be placed in your inpatient record if you have one. You should also bring a copy of your **Advance Directive** with you any time you are admitted to the hospital. A copy of **any Durable Healthcare Power Of Attorney** should be given to the person you named as your surrogate decision maker.

Under What Circumstances Might My Advance Directive Not Be Honored?

During surgery or other invasive procedures.

Am I Required To Have An Advance Directive?

No, you are not required by law, Army regulations or hospital policy to have an Advance Directive in order to receive care. However, your advance directive is an effective way to ensure desires concerning medical treatment are honored if you become unable to communicate your choices to those providing your medical care. Discussing your wishes with your physician is another way to communicate your treatment preferences in advance.

What Should Be Included In Advance Directive?

You should declare your desires concerning the limitation or withdrawal of life-sustaining medical treatment.

Typical Instructions Include those concerning:

Cardiopulmonary Resuscitation (CPR): Treatment to restore breathing and heartbeat. It may include pushing on the chest, electric shock to the chest and the Insertion of a breathing tube in your throat.

Dialysis:

Treatment to clean the blood with a machine when the kidneys do not function.

Being placed on a ventilator or breathing machine.

A breathing machine helps the patient breath. It is designed to help patients who cannot breathe adequately on their own "in a potentially life threatening situation".

Give pain medication and comfort care.

This is to alleviate pain and discomfort.

Donating Your Organs.

This act allows a person to make a gift of organs and tissue during his or her lifetime with the gift to take effect upon death.

What If My Doctor And I Do Not Agree About My Treatment?

Your doctor will treat you according to professionally accepted medical standards. If you and your doctor do not agree about your medical treatment, you have the right to request to be treated by another doctor.

Second Opinions

You have the right to request/seek a second opinion within your Primary Care Medical Home.

Specialty Care

You have the right to request specialty care through your Primary Care Provider/Manager.

You may also seek advice from the Ethics Committee. The Ethics Committee consists of doctors, nurses, and the Chaplain, Legal and administration representatives and is on-call to help patients and staff members with ethical questions concerning health care. You may contact the Committee through the phone number listed in this pamphlet.

Can I Change My Advance Directive?

Your Advance Directive can be changed or revoked by you any time either verbally or in writing. If you do so it is crucial that you tell your physician and family members, along with anyone you have designated as decision-maker.

How Can I Have An Advance Directive Prepared?

You can complete an Advance Directive form yourself in the presence of acceptable witnesses and a notary public. You may also complete one at your servicing Legal Assistance Office (LOA). Remember that witnesses may not be member of your family or on the hospital staff. It is highly recommended that you discuss advance directives with your family and physician before you prepare one.

Legal advice is available at the XVIIIth Airborne Corps LAO, 910-396-6113, or the 82nd Division LAO, 432-0195.

Limited legal services provided to Fort Bragg military community.
<https://home.army.mil/bragg/index.php/units-tenants/xviii-airborne-co/xviii-airborne-corps-osja/legal-assistance-office>

What Do I need to Remember?

It is important to remember that you are a member of your own health care team. Your wishes about your care are important to your doctor and the other health care professionals. They can serve you best if you continue to talk with them and with your family throughout your treatment, both in and out of the hospital.

Important Telephone Numbers:

Patient Advocate 910-907-6036

Chaplain's Office 910-907-PRAY(7729)

Any individual who has any concerns about patient care and safety in the hospital or clinics is encourages to contact the hospital's management. If those issues are not resolved, the individual may contact the Joint Commission's Office of Quality Monitoring to report any concerns or register complaints by either calling 800-994-6610 or www.jointcommission.org/resource/patient-safety-topics/report-a-patient-safety-event

Patient Responsibilities:

(1) **Providing Information.** Patients are responsible for providing accurate, complete, and up-to-date information about complaints, past illnesses, hospitalizations, medications, and other matters relating to their health to the best of their knowledge, as well as participate in self-management activities. Patients are responsible for advising their healthcare provider of whether they under-stand the diagnosis, treatment plan, and prognosis.

(2) **Respect and Consideration.** Patients are responsible for being considerate of the rights of other patients and MTF healthcare personnel. Patients are responsible for being respectful of the property of other persons and of the MTF.

(3) **Adherence with Medical Care.** Patients are responsible for adhering to the medical and nursing treatment plan, including follow- up care, recommended by healthcare providers. This includes keeping appointments on time and notifying MTF when appointments cannot be kept.

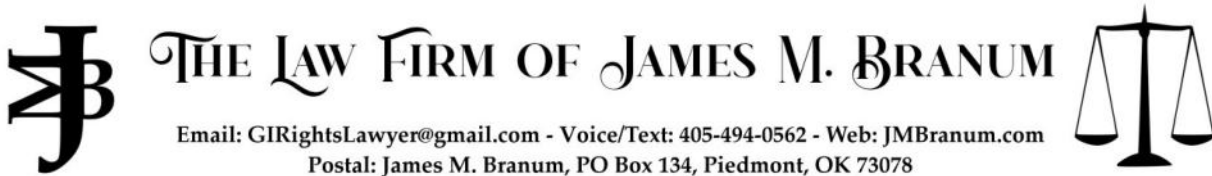
(4) **Medical Records.** Patients are responsible for returning medical records promptly to the MTF for appropriate filing and maintenance if records are transported by the patients for the purpose of medical appointments, consultations, or changes of duty location. All medical records documenting care provided by any MTF are the property of the U.S. Federal Government.

(5) **MTF Rules and Regulations.** Patients are responsible for following MTF rules and regulations affecting patient care and conduct.

(6) **Refusal of Treatment.** Patients are responsible for their actions if they refuse treatment, or do not follow the practitioner's instructions.

(7) **Healthcare Charges.** Patients are responsible for meeting financial obligations incurred for their healthcare as promptly as possible.

EXHIBIT C



MEMORANDUM FOR President, DA Suitability Evaluation Board, 251 18th St S, Ste. #385, Arlington, VA 22202-3531

June 28, 2024

SUBJECT Request for removal of General Officer Memorandum of Reprimand (GOMOR) and the Relief for Cause (RFC)/ NCOER of SFC Michael J. Forbes, DOD: 1295918507, 528th Sustainment Brigade (BDE), Special Operations (SO) Airborne (A), Fort Liberty, NC

1. This request is made on behalf of SFC Michael J. Forbes by his civilian defense counsel, James M. Branum IAW AR 600-37, to request the removal of the above-mentioned documents from the Army Military Human Resource Record (AMHRR).
2. According to AR 600-37 para. 7-2(a):

Once an official document has been properly filed in the OMPF, it is presumed to be administratively correct and to have been filed pursuant to an objective decision by competent authority. Thereafter, the burden of proof rests with the individual concerned to provide evidence of a clear and convincing nature that the document is untrue or unjust, in whole or in part, thereby warranting its alteration or removal from the OMPF. Normally, consideration of appeals is restricted to grades E6 and above, to officers, and to warrant officers. Although any soldier may appeal the inclusion of a document placed in his or her file under this regulation, the appeals of soldiers in grades below E-6 will only be considered as an exception to policy. This does not include documents that have their own regulatory appeal authority such as evaluation reports and court-martial orders. Appeals that merely allege an injustice or error without supporting evidence are not acceptable and will not be considered.

3. SFC Forbes has sought through multiple channels to correct the injustices that have led to the wrongful filing of the above-mentioned documents and has a pending *pro se* civil suit in the US District Court for the Eastern District of North Carolina that seeks to redress this wrongful filing.
4. The clear and convincing evidence that these documents are incorrect and unjustly filed can be found in SFC Forbes' *pro se* complaint¹ and supporting documents.²

¹ See enclosure 1.

² These documents can be found online at: <https://mwpa.army/the-case-forbes-v-us-army/>.

Conclusion:

The DASEB is urged to use its power, as authorized under AR 600-37 para. 6-4 (a)(3), to remove the above-mentioned documents from the performance portion of the OMPF and to exercise its “decision authority to close [this case] favorably and to notify the referring agency of the outcome.”

Respectfully,

A handwritten signature in black ink, appearing to read "James M. Branum". The signature is stylized with a large, looped initial "J" and a distinct "M" and "B".

James M. Branum
Civilian Defense Counsel

Enclosures:

1. Packet originally submitted in response to original QMP proceedings.
2. Memorandum in support of motion for partial summary judgment submitted in the case of *Michael J. Forbes v. The United States Army, et al.* in the US District Court for the Eastern District of North Carolina (Case #5:24-cv-00176)

ENCLOSURE 1



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 1st 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

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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.¹ 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,

¹ 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 528th 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)

ENCLOSURE 2

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 1st 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's 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 supplement¹ 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

¹ 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,² 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)]

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

² 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;³ [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]

³ 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)]”⁴ 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

⁴ 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^{5,6,7} 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,”⁸ by Corestrengths definition, is

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

⁶ 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.

⁷ 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.

⁸ 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"⁹ for controversies, nor did they mention any "Agency Requirements" (e)(3) for any Government "customer."¹⁰ 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)"¹¹ 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

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

Command Operational Psychologist, whose obligations under military regulations and the Arizona Board of Psychologist Examiners' (BOPE or 'Board')¹² 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"¹³ 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.*¹⁴ (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.*¹⁵ (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)

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

¹³ 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.

¹⁴ Ibid.

¹⁵ 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 parts¹⁶ of these coerced mandatory agreements that all users or “respondents”¹⁷ must agree to prior to entering their online website to accomplish the SDI assessment, in an attached supplement¹⁸ 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.

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

¹⁷ Ibid.

¹⁸ 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, 2nd 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"¹⁹ for the missing

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

“needed”²⁰ information regarding the ordered “behavioral health evaluation”²¹ “(SDI 2.0).”²² 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.²³ 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

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

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

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

²³ 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 89.²⁴

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*²⁵ with his order; The Plaintiff was attempting to

²⁴ Ibid.

²⁵ 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 briefs²⁶ [ECF1-8, ECF 1-61] sent to the Defendant’s Officials,

²⁶ 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,^{27,28} 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)].²⁹ 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,"³⁰ and "have a valid military purpose." *id.*³¹ Although the Brigade Commander's emailed

²⁷ 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.

²⁸ 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."

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

³⁰ 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.

³¹ 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://tjagles.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”³² (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:

³² 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 3rd SFG (A) and 173rd. 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.”³³

What Col. Brunson and CSM Vargas deem “cancerous,” “deleterious” and “disruptive,” the Plaintiff’s former Soldiers, peers, and supervisors have viewed as ‘unwavering,’³⁴ ‘values oriented,’³⁵ ‘effective,’³⁶ and “steadfast.”³⁷ [ECF 1-4]. Two of the Plaintiff’s former Soldiers’ stories [(ECF 1-4)] depict situations in “3rd SFG (A) and 173rd” 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.³⁸ 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

³³ See Enclosure A17, Creed of the Non-Commissioned Officer.

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

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

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

³⁷ “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).

³⁸ 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,³⁹ 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!*⁴⁰

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),

³⁹ As seen in his 14 year career as a licensed Financial Advisor.

⁴⁰ 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 supplemented⁴¹ 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.



Michael J. Forbes, *pro se*

⁴¹ 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 dark ink, appearing to read 'Michael J. Forbes', is positioned above a horizontal line.

Michael J. Forbes, *pro se*

EXHIBIT D

Fwd: Checking status on case

From: James M. Branum (jmb@jmb.bike)

To: paxmas2007@yahoo.com

Date: Wednesday, April 30, 2025 at 04:51 PM EDT

Michael,

I received the following email from ARBA (Army Review Boards Agency), which references two of your cases before US Army boards, however, ARBA sent me this after I asked information on another of my clients (even providing the other client's last 4 digits of their SSN).

FYI - i did redact the other client's personal info from the email below (marked as REDACTED), so you can see the prior emails that led to ARBA sending me this.

I am very concerned about this for obvious reasons.

v/r,
James

----- Forwarded message -----

From: **USARMY Pentagon HQDA ARBA Mailbox I** <usarmy.pentagon.hqda-arba.mbx.i@army.mil>

Date: Tue, Apr 15, 2025 at 2:54 PM

Subject: RE: Checking status on case

To: James M. Branum <jmb@jmb.bike>

Good afternoon Mr. Branum,

AR20240011962/ Forbes, Michael J/ DASEB

AR20240011967/ Forbes, Michael J./ ESRB

Please let me know if you need both.

Very Respectfully,

Customer Service Representative/cac

Army Review Board Agency

251 18th Street South, Suite 385

Arlington VA 22202

Email: army.arbainquiry@army.mil

Website: arba.army.pentagon.mil

From: James M. Branum <jmb@jmb.bike>
Sent: Tuesday, March 11, 2025 6:44 PM
To: USARMY Pentagon HQDA ARBA Mailbox I <usarmy.pentagon.hqda-arba.mbx.i@army.mil>
Subject: Re: Checking status on case

Of course.

The last 4 digits are REDACTED.

v/r,
James M. Branum

Attorney at Law

On Tue, Mar 11, 2025 at 3:05 PM USARMY Pentagon HQDA ARBA Mailbox I <usarmy.pentagon.hqda-arba.mbx.i@army.mil> wrote:

Good afternoon Mr. Branun,

Can you please send me the last four of your client SSN?

Thank you,

Very Respectfully,

Customer Service Representative/cac

Army Review Board Agency

251 18th Street South, Suite 385

Arlington VA 22202

Email: army.arbainquiry@army.mil

Website: arba.army.pentagon.mil

From: James M. Branum <jmb@jmb.bike>
Sent: Monday, February 24, 2025 3:31 PM
To: USARMY Pentagon HQDA ARBA Mailbox I <usarmy.pentagon.hqda-arba.mbx.i@army.mil>
Cc: REDACTED
Subject: Re: Checking status on case

cc: REDACTED

Also attached please find a privacy waiver signed by my client.

v/r,
James M. Branum

Attorney at Law

On Mon, Feb 24, 2025 at 11:46 AM James M. Branum <jmb@jmb.bike> wrote:

Hello,

My name is James M. Branum and I'm a civilian attorney who represents REDACTED in seeking relief from the US Army BCMR. (FYI, I emailed your agency a couple of months ago, but it appears I was using an old email address, so if this is duplicate, I appoligze.)

I believe he filed in late 2022 or early 2023 but we have not received any confirmation that the packet was received, so I'm checking to see if you have any record of receiving it and if there is an ETA regarding a decision on the packet.

v/r,
James M. Branum

Attorney at Law



THE LAW FIRM OF JAMES M. BRANUM

Email: GIRightsLawyer@gmail.com - Voice/Text: 405-494-0562 - Web: JMBranum.com
Postal: James M. Branum, PO Box 134, Piedmont, OK 73078



MEMORANDUM FOR Army Special Review Board, Army Review Boards Agency, 251 18th Street South, Suite 385 Arlington, VA 22202-3531

June 28, 2024

SUBJECT Appeal of Relief for Cause (RFC)/NCOER

1. This appeal is made on behalf of SFC Michael J. Forbes by his civilian defense counsel, James M. Branum, IAW AR 623-3 para. 4-7 (h).
2. AR 623-3 para. 4-11. Provides that:

Burden of proof and type of evidence

a. The burden of proof rests with the appellant. Accordingly, to justify deletion or amendment of an evaluation report, the appellant will produce evidence that establishes clearly and convincingly that—

(1) The presumption of regularity referred to in paragraphs 3-37a and 4-7a will not be applied to the evaluation report under consideration.

(2) Action is warranted to correct a material error, inaccuracy, or injustice.

b. Clear and convincing evidence will be of a strong and compelling nature, not merely proof of the possibility of administrative error or factual inaccuracy. If the adjudication authority is convinced that an appellant is correct in some or all of the assertions, the clear and convincing standard has been met with regard to those assertions.

3. Further, AR 623-3 para. 4-12 (b) provides that:

Once the decision has been made to appeal an evaluation report, the appellant will state succinctly what is being appealed and the basis for the appeal. For example, the appellant will state—

(1) Whether the entire evaluation report is contested or only a specific part or comment.

(2) The basis for the belief that the rating officials were not objective or had an erroneous perception of their performance. A personality conflict between the appellant and a rating official does not constitute grounds for

a favorable appeal; it must be shown conclusively that the conflict resulted in an inaccurate or unjust evaluation.

4. SFC Forbes is contesting the entire evaluation report based on the grounds that the rating officials were not objective and were in fact acting in retaliation against SFC Forbes for his decision to seek information that he was legally entitled receive under federal law and military regulations.
5. SFC Forbes has filed a *pro se* civil suit against the US Army in the US District Court of the Eastern District of North Carolina regarding these and related matters. The corrected complaint¹ and supporting documents² provide clear and convincing evidence of the bad faith and lack of objectivity of the rater.
6. SFC Forbes has also submitted a parallel request to the Department of the Army Suitability Evaluation Board (DASEB) requesting that the RFC/NCOER be removed.

Conclusion:

The Army Special Review Board is urged to grant this appeal and to exercise its power granted under AR 623-3 para. 4-9 (f):

f. When the board grants an appeal, in whole or in part, resulting in the removal or substantive alteration of an evaluation report that was seen by one or more promotion boards that previously failed to select the appellant, the ASRB will make a determination whether promotion reconsideration by one or more special boards is justified. The reviewing agency will notify each appellant by memorandum of the appeal decision and promotion reconsideration eligibility, if applicable.

Respectfully,

A handwritten signature in black ink, appearing to read "James M. Branum". The signature is stylized with a large, looped initial "J" and a distinct "M" and "B".

James M. Branum
Civilian Defense Counsel

¹ See enclosure 1.

² These documents can be found online at: <https://mwpa.army/the-case-forbes-v-us-army/>.

Enclosures:

1. Memorandum in support of motion for partial summary judgment submitted in the case of *Michael J. Forbes v. The United States Army, et al.* in the US District Court for the Eastern District of North Carolina (Case #5:24-cv-00176)

ENCLOSURE 1

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 1st 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's 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 supplement¹ 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

¹ 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,² 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)]

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

² 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;³ [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]

³ 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)]”⁴ 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

⁴ 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^{5,6,7} 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,”⁸ by Corestrengths definition, is

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

⁶ 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.

⁷ 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.

⁸ 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"⁹ for controversies, nor did they mention any "Agency Requirements" (e)(3) for any Government "customer."¹⁰ 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)"¹¹ 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

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

Command Operational Psychologist, whose obligations under military regulations and the Arizona Board of Psychologist Examiners' (BOPE or 'Board')¹² 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"¹³ 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.*¹⁴ (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.*¹⁵ (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)

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

¹³ 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.

¹⁴ Ibid.

¹⁵ 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 parts¹⁶ of these coerced mandatory agreements that all users or “respondents”¹⁷ must agree to prior to entering their online website to accomplish the SDI assessment, in an attached supplement¹⁸ 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.

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

¹⁷ Ibid.

¹⁸ 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, 2nd 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"¹⁹ for the missing

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

“needed”²⁰ information regarding the ordered “behavioral health evaluation”²¹ “(SDI 2.0).”²² 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.²³ 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

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

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

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

²³ 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 89.²⁴

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*²⁵ with his order; The Plaintiff was attempting to

²⁴ Ibid.

²⁵ 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 briefs²⁶ [ECF1-8, ECF 1-61] sent to the Defendant’s Officials,

²⁶ 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,^{27,28} 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)].²⁹ 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,"³⁰ and "have a valid military purpose." *id.*³¹ Although the Brigade Commander's emailed

²⁷ 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.

²⁸ 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."

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

³⁰ 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.

³¹ 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://tjagles.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”³² (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:

³² 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 3rd SFG (A) and 173rd. 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.”³³

What Col. Brunson and CSM Vargas deem “cancerous,” “deleterious” and “disruptive,” the Plaintiff’s former Soldiers, peers, and supervisors have viewed as ‘unwavering,’³⁴ ‘values oriented,’³⁵ ‘effective,’³⁶ and “steadfast.”³⁷ [ECF 1-4]. Two of the Plaintiff’s former Soldiers’ stories [(ECF 1-4)] depict situations in “3rd SFG (A) and 173rd” 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.³⁸ 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

³³ See Enclosure A17, Creed of the Non-Commissioned Officer.

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

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

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

³⁷ “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).

³⁸ 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,³⁹ 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!*⁴⁰

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),

³⁹ As seen in his 14 year career as a licensed Financial Advisor.

⁴⁰ 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 supplemented⁴¹ 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.



Michael J. Forbes, *pro se*

⁴¹ 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 dark ink, appearing to read 'Michael J. Forbes', is positioned above a horizontal line.

Michael J. Forbes, *pro se*

EXHIBIT E

OMITTED

EXHIBIT F

OMITTED

EXHIBIT G

OMITTED

EXHIBIT H

Terms of Service

THE FOLLOWING TERMS OF SERVICE ("AGREEMENT") APPLY TO THE CORE STRENGTHS PLATFORM SERVICES ("SERVICES") YOU ARE USING THAT ARE PROVISIONED BY CORE STRENGTHS, INC. ("CORE STRENGTHS"). BY ACCESSING OR USING ANY PART OF THE SERVICES, YOU ARE UNCONDITIONALLY CONSENTING TO BE BOUND BY, AND BECOME A PARTY TO, TERMS AND CONDITIONS STATED HERE. CORE STRENGTHS' ACCEPTANCE IS EXPRESSLY CONDITIONED UPON YOUR ASSENT TO ALL THE TERMS AND CONDITIONS, TO THE EXCLUSION OF ALL OTHER TERMS. IF THESE TERMS ARE CONSIDERED AN OFFER, ACCEPTANCE IS EXPRESSLY LIMITED TO THESE TERMS OF SERVICE.

Last Updated: October 4, 2021

1. Definition

1.1 "Agreement" means collectively, these General Terms of Service, together with each order schedule and all attachments, exhibits, schedules, policies, and instructions incorporated by reference thereto.

1.2 "Company" means the party that the order scheduled was prepared for as stated on the first page of the applicable order schedule which incorporates these Terms of Service.


1.3 "Company Data" means information submitted by, or entered by a User for administrative or general facilitation purposes including, but not limited to, user names, email addresses, account information, credit card information, bank account information, accounting information, transactions and reports.

1.4 "Confidential Information" means any and all information disclosed by either party (the "Disclosing Party") to the other (the "Receiving Party"), which is marked "confidential" or "proprietary" or which should reasonably be understood by the Receiving Party to be confidential or proprietary, including, but not limited to, the terms and conditions of this Agreement, and any information that relates to business plans, services, marketing or finances, research, product plans, products, developments, inventions, processes, designs, drawings, engineering, formulae, markets, software (including source and object code), hardware configuration, computer programs, and algorithms of the Disclosing Party.

1.5 "Error" means any errors in the function or operation of the Platform or the Presenter, or any errors in data relating to the Company or Users, maintained in the Platform or the Presenter, whether critical or non-critical.

1.6 "Facilitator" is anyone who has completed a Core Strengths Train-the-Trainer (T3) certification under a duly appointed Core Strengths Master Facilitator or through Core Strengths' Virtual Certification process. Certified Facilitators must complete all activities specified and demonstrate an understanding of course content and effective presentations skills. Upon completion of these requirements, Certified Facilitators receive a certificate verifying their status.

1.7 "Platform" includes the software and hardware used to provide the Services to Company over the Internet, including Core Strengths Presenter Desktop Software ("Presenter"), Web and/or other Internet services, and any associated offline components, and all updates thereto.

1.8 "Presenter" is a desktop application used by Core Strengths facilitators to deliver the Core Strengths workshops. The Core Strengths Presenter has to be downloaded and installed on the facilitator's desktop, and contains presentation materials, the intellectual property rights of  Chat with an Expert



which are solely owned and governed by Core Strengths.
(<https://www.corestrengths.com>)

1.9 “Services” means the online, Internet-based software services (including Documentation therefore), more fully described in the applicable order schedule, that are provided by Core Strengths, Inc. (“Core Strengths”) through the use of the Core Strengths Platform (“Platform”).

1.10 “User” means a named individual who is an employee, consultant, contractor or agent of Company and who is authorized to use the Services, for whom Company has paid fees and who has been supplied user identifications and passwords by Company (or by Core Strengths at Company’s request). Core Strengths Platform General Terms of Service 1 of 8 V2021-10

1.11 “User Data” means the information keyed in by a User for purposes of the User’s Core Strengths SDI 2.0 assessment and his or her own results generated from such assessment.

2. Services

2.1 License. Subject to the terms and conditions of the applicable order schedule, Core Strengths grants Company a non-exclusive, non-transferable, non-sublicensable right to have each User access the Platform and use the Services for its internal business purposes.

2.2 Subscription. Each User must have a paid subscription. User subscriptions are for named Users and cannot be shared or used by more than one User, but may be transferred to new Users from Users who have terminated an employment or contracting relationship with Company, or who otherwise no longer require ongoing use of the Services.

2.3 Facilitation. Users certified as Facilitators, via Core Strengths’ Certification (Train-the-Trainer) process, may use the Platform and Presenter for administration, scoring, and interpretation of the instruments contained in the Platform in conjunction with Core Strengths training. Facilitators may neither themselves nor by assisting or authorizing others, reverse engineer, compile, disassemble, or otherwise reduce the Platform, Presenter or any of its content to human perceivable form; modify, adapt, rent, lease, transfer, sublicense, assign, loan, or sell the Platform, Presenter or any of its Services; or create derivative works based on any part of it, including without limitation of the Platform or any of the instruments it contains or any part thereof.

2.4 Restrictions. Company will not, and will not allow any third party to (a) modify, copy, or otherwise reproduce the Platform in whole or in part; (b) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code form or structure of the software used in the Platform; (c) provide, lease or lend the Services or Platform to any third party except as expressly authorized hereunder; (d) remove any proprietary notices or labels displayed on the Platform; (e) modify or create a derivative work of any part of the Platform; (f) use the Services or Platform for any unlawful purpose or (g) create Internet “links” to or from the Platform, or “frame” or “mirror” any of Core Strengths’ content which forms part of the Platform.

2.5 Third-Party Providers. Certain third-party providers, some of which may be listed on pages within Core Strengths’ website, offer products and services related to the Services, including implementation, customization and other consulting services related to customers’ use of the Platform (both offline and online), such as by exchanging data with the Platform or by offering additional functionality within the user interface of the Platform. Core Strengths does not warrant any such third-party providers or any of their products or services, whether or not such products or services are designated by Core Strengths as “certified,” “validated” or otherwise. Any exchange of data or other interaction between Company and a third-party provider, and any purchase by Company of any product or service offered by such third-party provider, is solely between Company and such third-party provider.

2.6 Modifications. The Services are subject to modification from time to time at Core Strengths’ sole discretion, for any purpose deemed appropriate by Core Strengths. Core Strengths will use reasonable efforts to provide Company prior written notice of any such modification.



3. Fees, Duration & Payment (<https://www.corestrengths.com>)

3.1 Fees. Core Strengths' current fee schedule is included in the applicable ordering documents. In the event that there are additional products, subscriptions or credits added, which are currently not stated in the fee schedule, Core Strengths reserves the right to change fees or to institute a new fees schedule, at any time, and such additional products, subscriptions or credits will be based on such new fees. Company will be notified in advance of the effective date of changes in fees or new fees via electronic mail. Such changes or new fees will become effective upon the later of Company's next billing cycle or 30 days from the date of notice; however, such revised fees will not affect the prices for Services specified on the then current order schedule during its term.

3.2 Duration of User Subscriptions. Unless otherwise stated in the applicable order schedule: (a) all initial User subscriptions will begin and continue for the initial Subscription Period set forth in the applicable order schedule (the initial "Subscription Period"); (b) any additional User subscriptions added after the beginning of a Subscription Period will continue for the duration of that Subscription Period; (c) pricing for such additional User subscriptions will be the same as that for the pre-existing User subscriptions, prorated for the remainder of the then-current Subscription Period; and (d) all User subscriptions will automatically renew for additional Subscription Period(s) of one year at the then current Core Strengths price and subject to the current version of these Terms of Service on the date of renewal, a copy of which will be provided to the Company two (2) months in advance of such renewal. There shall be no automatic renewal if either party gives the other party notice of non-renewal at least 60 days prior to the end of the relevant Subscription Period. Core Strengths Platform General Terms of Service 2 of 8 v2021-09

3.3 Payment. Fees for the Services will be billed in advance as specified in the applicable order schedule. Subscriptions added during the term will be prorated and billed for the remainder of the current order schedule term. Company will pay amounts due and properly invoiced within the period specified on the invoice.

3.4 Suspension of Services. In the event that Company fails to make payment of the invoice within the period as stated in Section 3.3, and such payment is 10 days or more overdue, in addition to any of its other rights or remedies, Core Strengths reserves the right to suspend the provision of the relevant products, subscriptions and credits under the applicable order schedule.

3.5 Overdue Payments. Any late payments will accrue late charges at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower.

3.6 Taxes. All fees listed in the order schedule(s) are exclusive of any taxes. Company will be responsible for sales or use taxes related to the purchase or use of the products, subscriptions and credits as stated in the applicable order schedule. Core Strengths' will be responsible for any taxes that it is legally obligated to make payment of, including income tax. 3.7 Billing and Contact Information. Company will maintain complete and accurate billing and contact information on the Services at all times.

4. Proprietary Rights

4.1 Ownership. As between Core Strengths and Company, Core Strengths owns all intellectual property rights in the Platform, any Services delivered on the Platform or Presenter, including but not limited to any materials provided at or relating to training, workshops, debriefs and Train-the-Trainer (T3) certifications, workshop facilitator and learner guides, supporting marketing collateral, and any modifications, enhancements, customizations, updates, revisions or derivative works thereof, and all results of services delivered, whether made pursuant to this Agreement or a separate statement of work. No transfer of ownership of intellectual property rights will occur under this Agreement. Insofar as the Company provides any of its intellectual



corestrengths

property rights to Core Strengths for publicity purposes or otherwise, this is merely a revocable, non-transferable, non-exclusive license and does not accord any ownership rights to such intellectual property rights. Insofar as Company or any of the Company's employees or representatives input information into the Platform, all ownership rights of such information belong to Company or the individual who input such information, as the case may be.

4.2 Feedback. Company, from time to time, may submit comments, information, questions, data, ideas, description of processes, or other information provided to Core Strengths ("Feedback"). For any and all Feedback, Company grants to Core Strengths a non-exclusive, worldwide, perpetual, irrevocable license to use, exploit, reproduce, incorporate, distribute, disclose, and sublicense any Feedback in its products and services. Company represents that it holds all intellectual or proprietary rights necessary to grant to Core Strengths such license, and that the Feedback will not violate the personal, proprietary or intellectual property rights of any third party.

5. Confidentiality and Security

5.1 Confidential Information. Each party hereby agrees that it will not use or disclose any Confidential Information received from the other party other than as expressly permitted under the terms of the Agreement or as expressly authorized in writing by the other party. Each party will use the same degree of care to protect the other party's Confidential Information as it uses to protect its own confidential information of like nature, provided that such standard is at minimum, a reasonable standard of care. Neither party will disclose the other party's Confidential Information to any person or entity other than its officers, principals, employees and subcontractors who need access to such Confidential Information in order to affect the intent of the Agreement and who are bound by confidentiality terms no less restrictive than those in the Agreement.

5.2 Exceptions. The restrictions set forth in Section 5.1 will not apply to any Confidential Information that the Receiving Party can demonstrate (a) was known to it prior to its disclosure by the Disclosing Party; (b) is or becomes publicly known through no wrongful act of the Receiving Party; (c) has been rightfully received from a third party authorized to make such disclosure without restriction; (d) is independently developed by the Receiving Party; (e) has been approved for release by the Disclosing Party's prior written authorization; or (f) has been disclosed by court order or as otherwise required by law, provided that the party required to disclose the information provides prompt advance notice thereof, to the extent practicable, to enable the Disclosing Party to seek a protective order or otherwise prevent such disclosure.

5.3 Injunctive Relief. The parties agree that a breach of Section Core Strengths Platform General Terms of Service 3 of 8 v2021-09 5.1 may cause irreparable damage which money cannot satisfactorily remedy and therefore, the parties agree that in addition to any other remedies available at law or hereunder, the Disclosing Party will be entitled to seek injunctive relief for any threatened or actual disclosure by the Receiving Party.

5.4 Company Data. Company will cooperate with Core Strengths in connection with the performance of this Agreement by making available such personnel and information as may be reasonably required, and taking such other actions as Core Strengths may reasonably request. Company will also cooperate with Core Strengths in establishing a password or other procedures for verifying that only designated Users have access to the Services. Company data shall be treated as Confidential Information under this Agreement. Core Strengths will comply with the privacy policy set forth at Core Strengths Privacy Policy (<https://www.corestrengths.com/privacy-policy/>) in collecting and using the Company Data.

5.5 Data Compliance. Company shall (a) be responsible for Users' compliance with this Agreement, (b) be solely responsible for the Company Data, and (c) use the Services only in accordance with applicable laws and government regulations. Company shall not (i) upload or otherwise transmit through the Services any material which violates or infringes in any way



upon the rights of others, which is unlawful, which encourages conduct that would constitute a criminal offense, gives rise to civil or otherwise violates any law, (ii) use the Services to store or transmit viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs, (iii) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or (iv) attempt to gain unauthorized access to the Services or their related systems or networks.

5.6 Security. Core Strengths uses commercially reasonable practices, including encryption and firewalls, to ensure that Company Data is disclosed only to Company and Users. However, Company acknowledges that the Internet is an open system and Core Strengths cannot and does not warrant or guarantee that third parties cannot or will not intercept or modify Company Data.

5.7 Passwords. As part of the registration process, Company will select passwords for accounts. Company is responsible for maintaining the confidentiality of passwords, and Company agrees that Core Strengths has no liability with regard to the use of such passwords by third parties. Company agrees to notify Core Strengths immediately if Company has any reason to believe that the security of Company's account has been compromised.

5.8 Unauthorized Access. Company will use commercially reasonable efforts to prevent unauthorized access to, or use of, the Services, and notify Core Strengths promptly of any such unauthorized access or use. Company shall be responsible for obtaining and maintaining all telephone, computer hardware and other equipment needed for access to and use of the Services and all charges related thereto. Any conduct by Company that, in Core Strengths' discretion, restricts or inhibits any other Core Strengths' customer from using or enjoying the Services is expressly prohibited.

6. Availability

6.1 Availability. Core Strengths uses commercially reasonable efforts to maintain availability of the Services and Platform 24 hours per day, 7 days per week, in accordance with Core Strengths' Buy with Confidence Program.

6.2 Downtime. Scheduled and unscheduled interruptions may occur, and Core Strengths does not warrant uninterrupted availability of the Platform. Normal software or hardware upgrades are scheduled for nights and weekends, Pacific Standard Time, and designed to cause a minimum amount of interruption to Services and Platform availability. Company will be notified of scheduled interruptions in advance. In the event that an unscheduled interruption occurs, Core Strengths will use commercially reasonable efforts to resolve the problem and return the Platform to availability as soon as practical. During these scheduled and unscheduled interruptions, Company may be unable to transmit and receive data through the Platform. Company agrees to cooperate with Core Strengths during the scheduled and unscheduled interruptions.

6.3 Suspension. Core Strengths reserves the right to suspend Company's access to the Services: (i) for scheduled or emergency maintenance, or (ii) unavailability of services (including network and hosting services) provided by a third-party service provider. Core Strengths may also temporarily restrict Company's access to parts of the Services for maintenance or administration purposes without notice. In the event that such suspension is for a period of more than five (5) days a month, Core Strengths and Company will negotiate in good faith to see if there should be a corresponding reduction in fees for that billing period.

7. Support and Consulting Services

7.1 Technical Support. Core Strengths will provide standard technical support through a variety of systems, including on-line help, FAQ's, training guides and templates. Core Strengths is not



obligated to maintain or support any customization to the Core Strengths Platform General Terms of Service 4 of 8 V2021-09 Platform of Services except under a separate agreement signed by the parties.

7.2 Consulting Services. Any Consulting Services, training or other forms of services provided by Core Strengths are outside the scope of this Agreement.

8. Term & Termination

8.1 Term. This Agreement is effective on the Effective Date of any contractual agreement entered into between Core Strengths and Company that involves use of the Platform and Services, and will terminate when (a) all Subscription Periods and any renewals thereof entered into pursuant to these Terms of Service have expired or been terminated or (b) this Agreement is otherwise terminated as provided for herein.

8.2 Termination for Cause. Either party may terminate this Agreement and the affected order schedule for cause upon 30 days written notice of a material breach to the other party if such breach remains uncured at the expiration of such period. In addition, Core Strengths may terminate this Agreement immediately for any failure of Company to pay amounts due as per the order that are 10 days or more past due.

8.3 Effect of Termination. Termination will not relieve Company of the obligation to pay any fees due or payable to Core Strengths prior to the effective date of termination, including annual fees, implementation fees, training fees, User subscription fees, or any other fees or payments that Company has committed to under the Agreement. Sections 4, 8.4, 9.4, 10, 11 and 12 will survive any termination or expiration of the Agreement. Sections 5.1-5.3 will survive for 3 years after termination of the Agreement.

8.4 Return of Materials. All Confidential Information, designs, drawings, formulas or other data, financial information, business plans, literature, and sales aids of every kind will remain the property of the Disclosing Party. No later than 30 days after termination, if there is such a request by the Disclosing Party, the Receiving Party will prepare all such Materials in its possession for delivery to the other at the Disclosing Party's expense. Where such a request is made by the Disclosing Party, the Receiving Party will not make or retain any copies of any Confidential Information.

8.5 Company Data. In the event of any termination of the applicable order schedule or this Agreement, Company Data will be made available to Company either from Core Strengths or through a third-party offsite storage provider for up to 90 days after termination. Reasonable storage charges may apply.

8.6 User Data. The individual who participated in the Core Strengths SDI 2.0 assessment owns his or her results, regardless of whether the assessment was purchased by the Company. Only this individual can give permission to share his or her results. **If an employer, coach, consultant, or other individual or entity (collectively, the "Purchaser") purchases the assessment for an individual, the Purchaser may be granted access to the results**, but the individual will still own the results, and the Purchaser may not share the individual results without prior consent from the individual. Purchasers who receive access to individual results have an obligation to protect the privacy and confidentiality of the individual. **Some Users, as designated by Company, are able to change account settings, such as making all SDI 2.0 results visible to members of Company's account**. Any user who makes decisions about account settings expressly warrants that they have the right to do so. Company is responsible for selecting appropriate account settings and for compliance with any and all requirements regarding the use of data in Company's account.

9. Warranties

9.1 Authority. Each party represents to the other that it is a valid legal entity and is in good



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standing or validly existing under the laws of the state of its incorporation and residence. Each party represents that it has all requisite legal power and authority to execute, deliver and perform its obligations under the Agreement; that the execution, delivery and performance of the Agreement has been duly authorized; that the Agreement is enforceable in accordance with its terms; that no approval, authorization or consent of any governmental or regulatory authorities is required to be obtained or made in order for it to enter into and perform its obligations under the Agreement.

9.2 Warranty. Core Strengths warrants that, (i) the Services will function substantially in conformance with Availability and Downtime terms outlined in section 6.1 and 6.2, and (ii) any related Consulting Services provided by Core Strengths will be performed consistent with accepted industry standards.

9.3 Notices and Correction of Errors. Company will notify Core Strengths in writing of any Errors. Core Strengths will use commercially reasonable efforts, at its own expense, to determine if there is an Error, and to correct or remedy Errors within 30 days of such notice. Company will make reasonably appropriate adjustments to mitigate adverse effects of any Error until Core Strengths corrects or remedies such Error.

9.4 DISCLAIMER OF ALL OTHER WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED HEREIN, Core Strengths Core Strengths Platform General Terms of Service 5 of 8 v2021-09 DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE SERVICES, SYSTEM, AND DOCUMENTATION, WHETHER EXPRESS OR IMPLIED BY OPERATION OF LAW, REPRESENTATION STATEMENTS, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. COMPANY ACKNOWLEDGES AND AGREES THAT NEITHER Core Strengths NOR ANY SYSTEM, SERVICES, DOCUMENTATION, DATA, OR MATERIALS PROVIDED BY Core Strengths WILL BE CONSTRUED AS PROVIDING ACCOUNTING, TAXATION, FINANCIAL, INVESTMENT, LEGAL OR OTHER ADVICE TO COMPANY, END USERS, OR ANY THIRD PARTY. EACH PARTY WILL BE SOLELY AND INDIVIDUALLY RESPONSIBLE TO COMPLY WITH ALL LAWS AND REGULATIONS RELATING TO ITS RESPECTIVE BUSINESS OPERATIONS.

9.5 Remedies. For any breach of the warranties contained in Section 9.2, Company's exclusive remedy, and Core Strengths' entire liability, shall be (i) in the case of an Error in the Services, the correction of Errors that cause breach of the warranty, or if Core Strengths is unable to make the Services operate as warranted, Company shall be entitled to terminate this Agreement; (ii) upon written request by Customer within 30 days after the end of the year, Core Strengths will issue a credit in Customer's next invoice in an amount equal to 1% of the yearly fee for the affected Services, for each 1% loss of Service beyond stated availability, and excluding downtime resulting from (a) scheduled or unscheduled maintenance, (b) events of Force Majeure, (c) malicious attacks on the system, (d) issues associated with the Company's computing devices, local area networks or internet service provider connections, or (e) inability to deliver services because of acts or omissions of Company or User, up to a maximum of the Customer's fee for the affected Services; and (iii) in the case of a breach of warranty with respect to the consulting services, the reperformance of the consulting services, or if Core Strengths is unable to perform the consulting services as warranted, Company shall be entitled to recover the fees paid to Core Strengths for the nonconforming consulting services.

10. Indemnification

10.1 Core Strengths Indemnification. Core Strengths agrees to indemnify Company against any losses or damages finally awarded against Company incurred in connection with a third party claim alleging that the Company's use of the unaltered Services or Platform infringes or misappropriates any U.S. patent, copyright, or trade secret of such third party, provided that Company (a) provides prompt written notice of such claim to Core Strengths, (b) grants Core Strengths the sole right to defend such claim, and (c) provides to Core Strengths all reasonable assistance. In the event of a claim or threatened claim under this Section by a third party, Core



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Strengths may, at its sole option, (i) revise the Services and/or Platform so that they are no longer infringing, (ii) obtain the right for Company to continue using the Services and Platform, or (iii) terminate the Agreement upon 10 days notice. THIS SECTION 10.1 REPRESENTS THE SOLE AND EXCLUSIVE LIABILITY OF Core Strengths AND THE EXCLUSIVE REMEDY OF COMPANY FOR INFRINGEMENT OR MISAPPROPRIATION OF THIRD-PARTY RIGHTS.

10.2 Indemnification by Company. Subject to the Agreement, Company will defend, indemnify and hold Core Strengths harmless against any loss or damage incurred in connection with claims made or brought against Core Strengths by a third party alleging that the collection and use of Company Data infringes the rights of a third party; provided, that Core Strengths (a) provides prompt written notice of such claim to Company, (b) grants Company the sole right to defend such claim, and (c) provides to Company all reasonable assistance.

11. Limitation of Liability

EXCEPT FOR EITHER PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 10, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY ARISING IN ANY WAY OUT OF THIS AGREEMENT, EVEN IF NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGE. THE AGGREGATE LIABILITY OF ONE PARTY TO THE OTHER FOR DAMAGES UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF THE ACTION (AND WHETHER IN CONTRACT OR IN TORT) WILL BE LIMITED TO THE LESSER OF USD \$100,000 OR THE TOTAL AMOUNT PAYABLE TO Core Strengths UNDER THIS AGREEMENT.

12. General Provisions

12.1 Notices. Except as otherwise specified in the Agreement, all notices under the Agreement will be in writing and will be delivered or sent by (a) registered or certified mail, return receipt requested, postage prepaid; or (b) U.S. express mail, or national express courier with a tracking system, to the address specified in the applicable order schedule. Notices will be deemed given on the day actually received by the party to whom the notice is addressed. Core Strengths Platform General Terms of Service 6 of 8 v2021-09

12.2 Independent Contractors. The relationship of Core Strengths and Company is that of independent contractors. Neither party has any authority to act on behalf of the other party or to bind it, and in no event will the parties be construed to be partners, employer-employee, or agents of each other.

12.3 Governing Law Arbitration; Venue. The validity, construction and interpretation of the Agreement will be governed by the internal laws of the State of California, excluding its conflict of laws provisions. Except for the right of either party to apply to a court for a temporary restraining order, a preliminary injunction, or other equitable relief, **any controversy, claim or action arising out of or relating to the Agreement will be settled by binding arbitration in San Diego County, California, under the rules of the American Arbitration Association by 3 arbitrators appointed in accordance with such rules. The parties consent to the exclusive jurisdiction and venue of the federal and state courts located in San Diego County, California for any action permitted under this Section, challenge to this Section, or judgment upon the award entered.**

12.4 Assignment. The Agreement may not be assigned by either one of the parties by operation of law or otherwise, without the prior written consent of the other party, which consent will not be unreasonably withheld. Such consent is not required in connection with the assignment of the Agreement pursuant to a merger, acquisition or sale of all or substantially all of the assigning party's assets.

12.5 Force Majeure. Notwithstanding any provision contained in the Agreement, neither party will be liable to the other to the extent fulfillment or performance of any terms or provisions of the Agreement are delayed or prevented by revolution or other civil disorders; wars; strikes;



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labor disputes; electrical equipment or availability failure; fires; floods; acts of God; government action, or without limiting the foregoing, any other causes not within its control and which, by the exercise of reasonable diligence, it is unable to prevent. This section will not apply to the payment of any sums due under the Agreement by either party to the other.

12.6 Compliance with Laws. Each party will be responsible for compliance with all applicable laws and government regulations in the process of marketing, delivering and using the Services.

12.7 Press Releases. Core Strengths may not use Company's name and logo in Core Strengths' marketing program including use on Core Strengths' company website, marketing literature, and in press releases except with prior written consent of the Company and approval of any such marketing literature or press release prior to it being published.

12.8 Miscellaneous. Headings in the Agreement are for reference purposes only and will not affect the interpretation or meaning of the Agreement. If any provision of the Agreement is held by an arbitrator or a court of competent jurisdiction to be contrary to law, then the remaining provisions of the Agreement will remain in full force and effect. No delay or omission by either party to exercise any right or power it has under the Agreement will be construed as a waiver of such right or power. A waiver by either party of any breach by the other party will not be construed to be a waiver of any succeeding breach or any other covenant by the other party. All waivers must be in writing and signed by the party waiving its rights.

12.9 Counterparts; Fax Signatures. The Agreement may be executed simultaneously in any number of counterparts, each of which will be deemed an original, but all of which together constitute one and the same Agreement.

12.10 Order of Precedence. These Terms of Service are hereby incorporated by reference for purposes of the Agreement between the parties. The Agreement and any additional statements of work constitutes the entire agreement between Core Strengths and Company with respect to the subject matter hereof. The Agreement supersedes all prior negotiations, agreements, and undertakings between the parties with respect to such subject matter. No modification of the Agreement will be effective unless contained in writing and signed by an authorized representative of each party. Notwithstanding applicable law, electronic communications will not be deemed signed writings. Additional order schedules may be added to the Agreement by reference to these Terms of Service, provided that each such order schedule is signed by both parties. No term or condition contained in Company's purchase order or similar document will apply unless specifically agreed to by Core Strengths in writing, even if Core Strengths has accepted the order set forth in such purchase order, and all such terms or conditions are otherwise hereby expressly rejected by Core Strengths.

12.11 Certified Facilitators Platform Usage. Certified Facilitators may facilitate Core Strengths training using the Core Strengths Platform and Presenter, within the Company, in accordance with this Agreement. Core Strengths training and all intellectual property and proprietary rights of any kind associated therewith, arising therefrom, and relating thereto, are the sole property of Core Strengths. Nothing in this Agreement will transfer to Facilitator any ownership of, or right to retain beyond the term Core Strengths Platform General Terms of Service 7 of 8 v2021-09 of this Agreement, any materials provided to Facilitator as part of Facilitator's certification or in connection with any Core Strengths training.

12.12 Selection. Company acknowledges that Core Strengths SDI 2.0, 360 Feedback, and Role Expectations assessments are not validated as selection/hiring tools under the Uniform Guidelines promulgated by the EEOC, and as such, you will not use Core Strengths SDI 2.0, 360 Feedback, and Role Expectations assessments as a hiring tool or for selection purposes.

12.13 Disclosure. Both Parties will have the right to disclose the existence but not the terms and conditions of this Agreement, unless such disclosure is approved in writing by both Parties prior to such disclosure, or is included in a filing required to be made by a Party with a



governmental authority (provided such party will use reasonable efforts to obtain confidential treatment or a protective order) or is made on a confidential basis as reasonably necessary to potential investors or acquirers.

12.14 Severability. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

Still have questions or need clarification?

CONTACT US
([HTTPS://CORESTRENGTHS.COM/GB/CONTACT/](https://corestrengths.com/gb/contact/))

RELATIONSHIP INTELLIGENCE (/RELATIONSHIP-INTELLIGENCE/)

PRODUCTS (/PRODUCTS/)

Platform(/products/platform/)

Training(/products/training/)

Assessment(/products/assessment/)

Integrations(/products/integrations/)

SOLUTIONS ([HTTPS://WWW.CORESTRENGTHS.COM/SOLUTIONS/TEAM-PERFORMANCE/](https://www.corestrengths.com/solutions/team-performance/))

Team Performance(<https://www.corestrengths.com/solutions/team-performance/>)

Leadership Development(<https://www.corestrengths.com/solutions/leadership/>)

Change Management(<https://www.corestrengths.com/solutions/change-management/>)

Diversity, Equity, and Inclusion(<https://www.corestrengths.com/solutions/diversity-equity-inclusion/>)

Conflict Management(<https://www.corestrengths.com/solutions/conflict-management/>)

Coaching RQ(<https://www.corestrengths.com/solutions/coaching/>)

Productivity(<https://www.corestrengths.com/productivity/>)

EVENTS (/EVENTS-OVERVIEW/)

Facilitator Certification(<https://www.corestrengths.com/events-overview/certification/>)

Virtual Team Performance Workshops(/events-overview/in-house-workshops/)

Webinars(/events-overview/webinars/)

ATD Partnerships(/atd/)

RESOURCES (/RESOURCES/)

SDI Research(<https://www.corestrengths.com/resources/#SDIRESEARCH>)

SDI 2.0 Timeline(<https://www.corestrengths.com/sdi-2-0-timeline/>)

Customer Success(/customers/)

Newsroom(<https://www.corestrengths.com/newsroom/>)

Blog(<https://www.corestrengths.com/blog/>)

Product Updates(<https://corestrengths.atlassian.net/wiki/spaces/EX/pages/294551553/Platform+Release+Notes+RQ+Updates>)

LOGIN ([HTTPS://APP.CORESTRENGTHS.COM/](https://app.corestrengths.com/))

COMPANY (/ABOUT-US/)

CAREERS (/CAREERS/)

 Chat with an Expert

EXHIBIT I

Privacy Policy

Effective Date: October 5, 2021

This website is owned by Personal Strengths Publishing, Inc. (collectively “PSP,” “we,” “our,” or “us”). We recognize the importance of protecting the information collected from individuals (“you”) who use our services, visit our websites, or otherwise interact with PSP, and take reasonable steps to maintain the security, integrity, and privacy of any information in accordance with this Privacy Policy.

Definitions

- **“Assessment”** means an instrument, questionnaire, or inventory, such as the Strength Deployment Inventory (“SDI”) that is completed by Respondents for the preparation of Reports; or to provide information about a Respondent to the Respondent, PSP, or PSP Customers.
- **“Certified Facilitator”** means an individual who has successfully completed one of our certification programs that can administer an Assessment to Respondents, and interprets the Reports or other output generated by PSP to provide feedback to the Respondent(s) about the contents of the Respondent’s Reports.
- **“Customer”** means 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.
- **“Non-Personal Information”** means information such as IP address, device information, cookie data, or other session data that cannot lead to an identifiable individual.
- **“Personal Information”** means information such as name, email address, mailing address, telephone number, billing information, and account information, that is necessary for providing or receiving Products or Services of PSP.
- **“Platform”** means the offerings that we currently provide, such as Core Strengths and TotalSDI, and those that we may develop in the future.
- **“Products and Services”** means the products, applications, and services promoted, sold, or available for sale by PSP, such as our Assessments or Reports.
- **“Reports”** means an analysis of the responses provided in connection with an Assessment, which reflects a Respondent’s responses to an Assessment. Reports may be dynamically displayed in our platforms, or statically displayed in print or electronic form.
- **“Respondent”** means an individual who takes, will take, or has taken an Assessment.
- **“Sender”** means an individual who invites a respondent to complete an Assessment and who has access to the Reports generated about the Respondent.
- **“Website”** means this Website and any others owned and operated by PSP.

What Information We Collect

- If you visit our Website, we collect Non-Personal Information that is provided to us by your browser and through our log files. We may record some of this data in one or more cookies that we send to your browser (see “Cookies and Other Technologies”).
- If you register or create an account, we require that you provide certain Personal Information during account registration. We collect your name, contact information, and may ask you for other optional information, such as a photo or an evaluation.
- If you complete an Assessment, we collect your name, contact information, Assessment responses, session data, and other information you may choose to provide or associate



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with your account.

- If you choose to receive marketing communications, we may collect information on the open rate and whether a specific individual has clicked on a link.
- If you are a Customer or other business contact, we may collect your name and other contact information in the regular course of our interaction with you.
- If you interact with third parties regarding our Products or Services, we may receive information about you, such as from Customers, websites where we advertise, business partners, and service providers.

Our Policy Towards Children, Children under 18 are not permitted to use the Website or our Platform without the consent of a parent or guardian.

How We Use the Information We Collect

To facilitate the use of our Platform, we use session data to enhance navigation, to avoid requesting identity information when the visitor moves from page to page, and in general to enhance the quality of our Platform. We may use aggregated session data to better understand how our Platform is navigated, as well as the types of browsers and computer operating systems that our visitors use, and the IP addresses of the visitors.

In connection with Assessments, we use the responses to an Assessment to score the Assessment and to generate Reports and other data related to the Respondent. We may combine data from multiple Respondents; combine Respondent data with our general research data; or compare or associate Respondent data with other Respondent data.

For security purposes, we may use IP addresses and session data to ensure a secure connection, to diagnose problems with our servers, and to administer our Websites and Platforms.

For marketing purposes, we may use email or other contact information to send marketing communications and will always provide an unsubscribe option.

How We Share the Information We Collect

Customers: If you take an Assessment sponsored by a Customer, that Customer (Account Owners, Administrators, Facilitators and Members) may have access to your Assessment Results, based on account settings, in order to provide you with relevant products and services. Account Owners, Administrators, and Facilitators (including Partners) will also have access to individual and team Reports based on your results.

Service providers: We may engage service providers to perform functions and provide services to us, such as customer relationship management, contract management, order fulfillment, hosting and maintenance, database storage and management, business analytics, and marketing. Pursuant to written agreements between PSP and these service providers, each of these service providers only has access to the information necessary to fulfill its obligation to PSP. Providers are not permitted to use the information for any purposes other than those directed by PSP, and are required to act in a manner consistent with the principles outlined in this Privacy Policy.

Distributors or Partners: We may provide information to our distributors or partners in local and foreign markets to improve the Products or Services provided, and the use of such information is in accordance with the principles of this Privacy Policy. Partners providing learning and development services (as Facilitators) will have access to individual and team Reports based on your results.



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Mergers & Acquisition; Bankruptcy, we may disclose, share or transfer some or all of our Customers' information to or with the appropriate entity in preparation of the transaction, as part of the due diligence, or after the transaction has been finalized, so that the successor entity can continue providing our services to our Customers.

Law Enforcement; Litigation, certain federal, state, local, or other government regulations may require that we disclose information that we hold. We will use reasonable efforts to disclose only the information required under applicable law in response to a valid court order, warrant, or subpoena.

To defend or enforce our rights, PSP may use information to protect itself, to prevent fraudulent activity, or where it is otherwise necessary to pursue available remedies. If a Customer neglects to pay amounts due and owed to PSP, PSP may send that Customer's name, contact information, and account information to a third-party service provider for collection of overdue payments.

Cookies and Other Technologies

Most websites, including ours, use a browser feature to set a small file called a "cookie" on your computer's browser. The website placing the cookie can then recognize that browser when you revisit the site to allow automatic login and track how you are using the site. You have the right to block cookies by configuring your browser's preferences or settings to stop accepting cookies, or prompt you before accepting a cookie from a website that you visit.

How We Store and Protect Your Information

We retain your Personal Information for as long as your account remains active or for as long as you continue to do business with us. **Thereafter, we may retain Assessment responses and other data for as long as the information is needed for our research, statistical analysis, product development, or other commercial purposes.**

We follow generally accepted industry standards to protect Personal Information, both during transmission and once we receive it. We use administrative, physical, and technical measures to protect Personal Information from any unauthorized access, loss, misuse, disclosure, alteration, or destruction.

All data collected through our Platforms are transmitted securely over the internet using 256-bit TLS encryption protocols or better.

This Website may link to websites that are operated by third parties. Because such websites are not operated by PSP, they are not subject to this Privacy Policy. We recommend that you read the privacy statements that are posted on these third-party websites to understand their procedures for collecting, using, and disclosing personal information.

EU General Data Protection Regulation ("GDPR") Policy

The GDPR is a set of regulations coming into effect on May 25, 2018 that enhances the data privacy rights of EU individuals. PSP is committed to upholding GDPR compliance among our Products and Services.

We updated our internal policies and external contracts to ensure compliance with the GDPR. PSP processes personal data on the following legal bases: (1) with your consent; (2) as necessary to provide our Products and Services; and (3) as necessary for our legitimate interests in providing the Products and Services where those interests do not override your



fundamental rights and freedom related to data privacy. PSP has put in place safeguards to protect personal privacy and individual choice, including disclosures of its data processing activities and the use of consent mechanisms.

PSP also routinely enters into contracts with organizations where compliance with GDPR is also specified within the contract.

The European Commission can decide that standard contractual clauses offer sufficient safeguards on data protection for the data to be transferred internationally. It has so far issued two sets of standard contractual clauses for data transfers from data controllers in the EU to data controllers established outside the EU or European Economic Area (EEA). It has also issued one set of contractual clauses for data transfers from controllers in the EU to processors established outside the EU or EEA. More information about these EC standard clauses is available here (<https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32010D0087>).

If Customer has a standard contract with GDPR language, we can execute that standard contract. If not, we can offer specific contract clauses as approved by the European Commission.

Right to lodge a complaint, Customer or others that interact with PSP that reside in the EEA or Switzerland have the right to lodge a complaint about our data collection and processing actions with the supervisory authority concerned. The contact details for data protection authorities are available here (https://ec.europa.eu/justice/article-29/structure/data-protection-authorities/index_en.htm).

Transfers, Personal Information we collect may be transferred to, and stored and processed in, the United States or any other country in which we or our affiliates or subcontractors maintain facilities. Upon the start of enforcement of the General Data Protection Regulation (GDPR), we will ensure that transfers of Personal Information to a third country or an international organization are subject to appropriate safeguards as described in Article 46 of the GDPR.

Individual Rights, if you are a resident of the EEA or Switzerland, you are entitled to the following rights. Please note, that in order to verify your identity, we may require you to provide us with personal information prior to accessing any records containing information about you.

The right to access and correction, you have the right to request access to, and a copy of, your personal data at no charge, as well as certain information about our processing activities with respect to your data. You have the right to request correction or completion of your personal data if it is inaccurate or incomplete. You have the right to restrict our processing if you contest the accuracy of the data we hold about you, for as long as it takes to verify its accuracy.

The right to request data erasure, you have the right to have your data erased from our Platform if the data is no longer necessary for the purpose for which it was collected, you withdraw consent and no other legal basis for processing exists, or you believe your fundamental rights to data privacy and protection outweigh our legitimate interest in continuing the processing.

The right to object to our processing, you have the right to object to profiling or other processing if your legitimate interests outweigh the legitimate interests of PSP and so long as it does not interfere with a task carried out for reasons of public interest.

Data breach notification policy, PSP will follow all applicable rules and regulations of the GDPR, along with guidance and instruction from the applicable data protection authorities, in handling, responding, and resolving a data breach.

Data governance obligations, PSP has established procedures for periodically verifying implementation of and compliance with the GDPR Principles. PSP conducts ongoing assessments of our data protection practices to verify the attestations and assertions of our privacy practices have been implemented properly.



Privacy by Design, PSP has implemented various technical and organizational measures to protect and minimize the amount and use of personal data we receive. We have designed our systems and processes to ensure the necessary safeguards of data protection are met.

Details of staff training and competence, PSP has trained all necessary staff on the privacy regulations in effect and have appointed a global Data Protection Officer to administer the data governance framework globally.

EU-U.S. AND SWISS-U.S. PRIVACY SHIELD POLICY

When PSP, Inc. (hereafter, “PSP” or “we”) transfer personal information from the European Economic Area (“EEA”) and Switzerland to the United States, we comply with the EU-U.S. and Swiss-U.S. Privacy Shield Framework as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of personal data transferred from the EEA and Switzerland to the United States, respectively. If there is any conflict between the terms in this Privacy Policy and the Privacy Shield, the Privacy Shield shall govern. PSP has certified to the U.S. Department of Commerce that it adheres to the Privacy Shield. To learn more about the Privacy Shield program, and to view our certification, please visit: www.privacyshield.gov (<http://www.privacyshield.gov/>).

PSP is subject to the investigatory and enforcement powers of the Federal Trade Commission. If PSP shares EU or Swiss data with a third-party service provider that processes the data solely on PSP’s behalf, then PSP will be liable for that third party’s processing of EU and Swiss data in violation of the Privacy Shield, unless PSP can prove that it is not responsible for the event giving rise to the damage.

PSP’s Privacy Policy, above, describes the types of personal data PSP collects, the types of third parties to which we disclose personal data, and the purposes for which we do so. Residents of the EEA and Switzerland may have the right to access the personal data that PSP holds about you and to request that we correct, amend, or delete it if it is inaccurate or has been processed in violation of the Privacy Shield. These access rights may not apply, including where the burden or expense of providing access would be disproportionate to the risks to the individual’s privacy in the case in question, or where the rights of persons other than the individual would be violated.

If you would like to request access to, correction, amendment, or deletion of your personal data, you can submit a request to privacy@corestrengths.com. We may request specific information from you to confirm your identity.

PSP, Inc. provides choices and means for individuals to limit the use and disclosure of their personal data. Individuals are provided with information regarding the purpose for which personal data is being collected, how it will be used, and the third parties, if any, that would receive personal data. PSP, Inc. also provides a mechanism for registered account holders to delete their account and all associated personal data upon request.

PSP, Inc. will only process personal data in a manner compatible with the purpose that it was collected for. PSP, Inc. maintains reasonable procedures to ensure that EU and Swiss personal data is reliable for its intended use, accurate, complete, and current.

Under certain circumstances, we may be required to disclose your EU or Swiss personal data in response to lawful requests by public authorities, including to meet national security or law enforcement requirements.

For any questions or complaints regarding our compliance with the Privacy Shield Framework, please contact us at: privacy@corestrengths.com. If PSP, Inc. does not resolve your complaint, you may submit your complaint free of charge to <https://www.jamsadr.com/file-an-eu-us-privacy-shield-claim> (<https://www.jamsadr.com/file-an-eu-us-privacy-shield-claim>) PSP, Inc’s



corestrengths

designated independent dispute resolution provider. Under certain conditions specified by the principles of the E.U.S. and Swiss-U.S. Privacy Shield Framework, you may also be able to invoke binding arbitration to resolve your complaint.

Changes to this Privacy Policy

We may change this Privacy Policy from time to time. We will post these changes in the policy and suggest you revisit periodically to stay informed of any changes.

Terms of Service

Use of the platform shall be in all cases subject to the Core Strengths General Terms of Service (<https://www.corestrengths.com/terms-of-service/>) which are incorporated herein by this reference, with the same force and effect as if they were given in full text.

Contact Us

If you have any questions about this Privacy Policy, or need assistance accessing, modifying, or closing your account, please contact us.

Personal Strengths Publishing, Inc. (PSP)

7668 El Camino Real Ste 104716
Carlsbad, CA 92009
United States of America
Email: privacy@CoreStrengths.com
Phone: +1-760-602-0086

Global Data Protection Officer

Tim Scudder, PhD
Personal Strengths Publishing, Inc.
7668 El Camino Real Ste 104716
Carlsbad, CA 92009
United States of America
Email: privacy@CoreStrengths.com

GDPR EEA Representative

Tim Scudder, PhD
Personal Strengths (UK) Ltd.
c/o Morrison & Foerster LLP, 1 Ropemaker St,
London EC2Y 9AW
United Kingdom
Email: privacy@CoreStrengths.com

Still have questions or need clarification?

CONTACT US
([HTTPS://CORESTRENGTHS.COM/GB/CONTACT/](https://corestrengths.com/gb/contact/))

RELATIONSHIP INTELLIGENCE (/RELATIONSHIP-INTELLIGENCE/)

PRODUCTS (/PRODUCTS/)

 Chat with an Expert

EXHIBIT J



**DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010**

MAY 22 2018

MEMORANDUM FOR CHIEF MANAGEMENT OFFICER OF THE DEPARTMENT OF
DEFENSE
SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
CHIEF OF THE NATIONAL GUARD BUREAU
COMMANDERS OF THE COMBATANT COMMANDS
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
DIRECTOR OF COST ASSESSMENT AND PROGRAM
EVALUATION
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
DIRECTOR OF OPERATIONAL TEST AND EVALUATION
CHIEF INFORMATION OFFICER OF THE DEPARTMENT OF
DEFENSE
ASSISTANT SECRETARY OF DEFENSE FOR LEGISLATIVE
AFFAIRS
ASSISTANT TO THE SECRETARY OF DEFENSE FOR PUBLIC
AFFAIRS
DIRECTOR OF NET ASSESSMENT
DIRECTORS OF DEFENSE AGENCIES
DIRECTORS OF DOD FIELD ACTIVITIES

SUBJECT: Mobile Device Restrictions in the Pentagon

1. Purpose. This memorandum prescribes guidance and procedures for mobile device restrictions within the Pentagon.
2. Applicability.
 - a. This memorandum establishes restrictions for mobile devices anywhere within the Pentagon that is designated or accredited for the processing, handling, or discussion of classified information.
 - b. This memorandum applies to all Department of Defense (DoD) and Office of the Secretary of Defense (OSD) Components ("Components"), as well as military personnel, civilian employees, contractors, and visitors in the Pentagon. For purposes of this memorandum, the term "Pentagon" means the Pentagon Office Building and its supporting facilities located on that area of land (consisting of approximately 227 acres) located in Arlington County, Virginia.
 - c. This does not apply to approved medical devices. In evaluating requests to approve medical devices for civilian employees, an individualized assessment will be made consistent with the requirements of the Rehabilitation Act of 1973, as amended.



d. This does not apply to mobile devices having minimal storage and transmission capabilities such as key fobs used for medical alert, motor vehicles, or home security systems.

e. This does not apply to fitness trackers that do not contain camera, microphone, cellular, or Wi-Fi technology.

3. Policy.

a. Personal and Government mobile devices that transmit, store, or record data are prohibited inside secure spaces within the Pentagon.

b. Mobile devices may be used in common areas and spaces within the Pentagon that are not designated or accredited for the processing, handling, or discussion of classified information.

c. Components will comply with any applicable labor relations obligations when implementing this policy.

4. Control Procedures and Device Storage. .

a. Mobile devices must be stored in daily-use storage containers that are located outside the secure space.

b. Mobile devices must be powered off prior to being stored, and must remain powered off until retrieved.

c. Signs displaying the prohibition and control procedures must be posted outside all secure spaces.

5. Requests for Exceptions.

a. Component Senior Agency Officials will submit written requests for exceptions on behalf of their respective Component and will be responsible for compliance.

b. All requests for exceptions must be submitted to the Under Secretary of Defense for Intelligence (USD(I)).

c. Government-issued mobile devices.

(1) The USD(I) and the Department of Defense Chief Information Officer (DoD CIO), may jointly grant exceptions to this policy for government-issued mobile devices pursuant to DoD Manual 5200.01, Vol 1, "DoD Information Security Program: Overview, Classification and Declassification." USD(I) and DoD CIO will prescribe procedures for requesting exceptions and documenting approved exceptions.

(2) Exception requests for unclassified government-issued mobile devices that will regularly be present in secure spaces (for example, a laptop or tablet serving as a desktop

replacement) must have an approved process for disabling the camera and microphone functionality and have technical measures in place to disable Wi-Fi connectivity.

d. Personal mobile devices. Exceptions for personal mobile devices will not be granted. Note, however, that under paragraph 2.c, approved medical devices are not covered by this policy, and paragraphs 2.d and 2.e have further exclusions.

6. Security Violations and Enforcement.

a. Failure to abide by the rules promulgated in this memorandum and other applicable laws and regulations regarding security violations involving classified information may subject military members, civilian employees, and contractors to appropriate disciplinary and/or administrative actions, fines, or other appropriate actions, and may result in a review of the individual's security clearance eligibility. Also, military members may be subject to punishment under chapter 47 of the United States Code (also known as "the Uniform Code of Military Justice" or "UCMJ"). The Secretaries of the Military Departments will maintain regulations that make punishable, under Article 92 of the UCMJ, any violation of the restrictions imposed by this memorandum by persons subject to the UCMJ.

b. Pentagon Force Protection Agency (PFPA), in coordination with tenant space security managers, will randomly conduct security inspections in and around classified spaces to monitor compliance, to include the use of wireless detection capabilities.

c. Tenant managers and/or supervisors in Components will ensure prohibited devices are immediately removed from the space and under appropriate circumstances inspected for activities that could result in the loss or compromise of classified information, such as audio recordings of classified information discussions or photography of classified information from computer screens or paper documents. Security violations will be reported in accordance with DoD Manual 5200.01, Volume 3, "DoD Information Security Program: Protection of Classified Information."

d. In accordance with applicable rules and regulations regarding physical access to the Pentagon, persons who violate this policy may be denied access thereto.

7. Responsibilities.

a. Tenant managers and/or supervisors in Components are responsible for:

- (1) Enforcing the requirements in this memorandum;
- (2) Ensuring that daily-use storage containers are available outside the entry control points to secure spaces within the Pentagon;
- (3) Posting applicable signage delineating a space as a secure space and the restrictions for mobile devices;

(4) Coordinating with Washington Headquarters Services (WHS), Integrated Services Division at 703-693-3768 or <https://my.whs.mil/services/mobile-devices> to obtain information regarding the procurement and installation of identified standard daily-use storage containers to deconflict with fire, safety and construction requirements. Information can be found on the WHS website, and;

(5) Coordinating with USD(I) and DoD CIO for approved disabling instructions prior to introducing government-issued mobile devices into secure space.

b. All tenants will ensure their visitors are aware of the restrictions and requirements in this memorandum.

c. PFPA will report results of random screenings quarterly to senior leadership and brief the Pentagon Governance Council (PGC) on violations.

d. The DoD CIO will ensure the annual Cyber Awareness training includes information on the risks associated with mobile devices in areas processing classified information.

e. USD(I) and DoD CIO will establish a process for assessing technical capabilities of medical devices to inform component Human Resource officials on decisions regarding introduction of these into secure spaces.

f. WHS will issue a Pentagon Building Circular establishing guidance and procedures for WHS daily-use storage containers, including their installation within the Pentagon. In doing so, WHS will coordinate with PFPA regarding security standards and with the Pentagon fire marshal regarding fire safety.

8. Implementation.

a. Components will begin implementation immediately, with complete implementation no later than 180 days after the date of this memorandum.

(1) Government-issued unclassified mobile devices that function as a desktop replacement within a secure space must have approved interim mitigations applied until replaced with compliant devices, no later than 180 days after the date of this memorandum.

(2) Government-issued classified mobile devices may continue to operate as previously approved while a request for exception is submitted as described in Section 5 of this memorandum.

(3) All other government-issued and personal mobile devices must be removed from secure spaces immediately.

b. Components will immediately conduct a survey of mobile devices being used in secure spaces and coordinate with their service provider to implement any needed mitigations.

c. Components will update the PGC monthly on progress and issues until implementation is complete.

9. Definitions. For the purposes of this memorandum only, the following definitions apply:

a. Secure Space: An area that has been designated or accredited for the processing, handling, or discussion of classified information.

b. Senior Agency Official: An official appointed by the Head of a DoD or OSD Component to be responsible, within the Pentagon, for direction, administration, and oversight of the Component's Information Security Program, to include classification, declassification, safeguarding, and security education and training programs.

c. Mobile Device: Also referred to as a portable electronic device, a mobile device is a portable computing device that: (i) has a small form factor such that it can easily be carried by a single individual; (ii) is designed to operate without a physical connection (e.g., wirelessly transmit or receive information); (iii) possesses local, non-removable data storage; and (iv) is powered-on for extended periods of time with a self-contained power source. Mobile devices include but are not limited to laptops, tablets, cellular phones, smartwatches, and other devices with these characteristics, but exclude those devices described in 2.c, 2.d, and 2.e.

d. Disabled: Rendering a capability inoperable in an USD(I)-approved manner that cannot be reversed in software.

e. Interim Mitigation: Examples include but are not limited to the following:

(1) Covering cameras on mobile devices in secure spaces.

(2) Disabling Wi-Fi and audio recording capability on mobile devices in secure spaces.

10. The USD(I) will incorporate this memorandum into a new or existing DoD issuance within 180 days.

11. Points of contact for this memorandum are Mr. Josh Freedman, 703-692-3724, for the USD(I), and Mr. Will Alberts, 571-372-4727, for the DoD CIO.



cc:
Director of National Intelligence



EXHIBIT K

FW: Pfennig, Shelly I CIV USSOCOM USASOC (USA) shared "POL 19-15" with you.

From: Forbes, Michael J SFC USARMY USSOCOM USASOC (USA) (michael.j.forbes.mil@socom.mil)

To: paxmas2007@yahoo.com

Date: Tuesday, April 11, 2023 at 01:17 PM EDT

From: Pfennig, Shelly I CIV USSOCOM USASOC (USA) <shelly.i.pfennig@socom.mil>

Sent: Tuesday, April 11, 2023 12:49 PM

To: Forbes, Michael J SFC USARMY USSOCOM USASOC (USA) <michael.j.forbes.mil@socom.mil>

Subject: Pfennig, Shelly I CIV USSOCOM USASOC (USA) shared "POL 19-15" with you.



Pfennig, Shelly I CIV USSOCOM USASOC (USA) shared a file with you

Here's the document that Pfennig, Shelly I CIV USSOCOM USASOC (USA) shared with you.



[POL 19-15](#)



This link only works for the direct recipients of this message.

Open



[Privacy Statement](#)



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AttachedImage

2.8kB



AttachedImage

812B



AttachedImage

2.1kB



AttachedImage

5kB



image001.png

778B

POLICY OR PRECEDENT**SUBJECT:**

Open Door Policy

DATE: 04 SEP 2018

POLICY NUMBER	ORIGINATING SECTION	ORIGINATOR	PHONE
19-15	AOJA	Dan Peterson	432-5114

APPROVED BY: FRANCIS M. BEAUDETTE, LIEUTENANT GENERAL, USA,
COMMANDING

SYNOPSIS:

1. **PURPOSE.** To establish the Commanding General's (CG) Open Door Policy.
2. **SCOPE.** This policy applies to all military personnel and Department of the Army civilian employees, active or reserve, who are assigned or attached to United States Army Special Operations Command or any subordinate units.
3. **GENERAL.**
 - a. The CG, USASOC extends an open door to all individuals in the command to present facts, concerns, problems of a personal or professional nature, and other issues which the individual has been unable to resolve through other avenues.
 - b. Leaders are expected to address and resolve issues at the appropriate levels. Prior to requesting an open door appointment, individuals should first provide their chain of command or supervisors an opportunity to resolve the concern. If the chain of command or supervisor is unable to resolve the issue in a reasonable amount of time, the individual has the option of speaking with the Command Sergeant Major (enlisted), Command Warrant Officer (warrant officers), Deputy to the Commanding General (civilians) or Chief of Staff (officers). An individual who feels that his or her concern is too sensitive or personal to utilize this process may request an appointment with the Inspector General (IG) directly. All requests to meet with any member of the command group must be routed through the requestor's chain of command for proper scheduling.
 - c. This open door policy will not be used as a substitute for the procedural guidelines contained in applicable laws or regulations that govern matters such as UCMJ action and adverse administrative actions. For UCMJ and adverse administrative actions, individuals are afforded with specific rights and procedures for redress that are usually more effective and efficient for resolution of issues than the open door policy. Nothing in this paragraph is meant to prevent Soldiers or Civilians from using the open door policy regarding facts, concerns or problems. However, the command may elect not to discuss a case or action that is pending or has yet to be adjudicated. Before setting up an appointment with the CG, those facing UCMJ or adverse administrative action must first coordinate through their trial defense counsel and the USASOC Office of the Staff Judge Advocate.

PRESCRIBING DIRECTIVES:

AR 600-20, Army Command Policy, 6 November 2014

DISTRIBUTION:

A5

OTHER POLICIES AFFECTED:

None

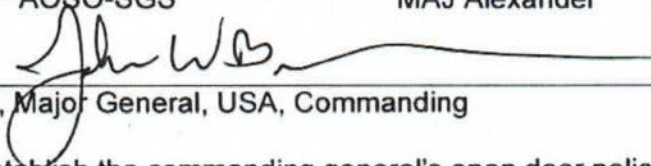
EXHIBIT L

POLICY OR PRECEDENT

SUBJECT:
1st SFC(A) Open Door Policy

DATE: 28 MAY 21

POLICY NUMBER: 1 ORIGINATING SECTION: AOSO-SGS ORIGINATOR: MAJ Alexander PHONE: (910) 432-2377

APPROVED BY: 
JOHN W. BRENNAN, Major General, USA, Commanding

1. PURPOSE: To establish the commanding general's open door policy.
2. SCOPE: This policy applies to all military personnel, active or reserve, and Department of the Army Civilian employees who are assigned or attached to 1st Special Forces Command (Airborne) (1st SFC(A)) or any subordinate units. This policy supersedes all previous policies, and remains in effect until updated or rescinded.

3. GENERAL:

a. The CG, 1st SFC(A), extends an open door policy to all individuals in the command to present facts, concerns, or problems of a personal or professional nature, and other issues which the individual has been unable to resolve by other means.

b. Most problems are best resolved at lower levels. Prior to requesting an open door appointment, individuals should first provide their chain of command or supervisors an opportunity to resolve the concern. If the chain of command or supervisor is unable to resolve the issue in a reasonable amount of time, an appropriate member of the command group (i.e. Deputy Chief of Staff, Chief of Staff, Command Sergeant Major and/or Deputy Commanding General) should interview the individual seeking assistance in an attempt to resolve the issue. An individual who feels his or her concern is too sensitive or personal to utilize this process may request an appointment with the Inspector General (IG) directly. All requests to meet with any member of the command group must be routed through the requestor's chain of command for proper scheduling.

c. This open door policy will not be used as a substitute for the procedural guidelines contained in applicable laws or regulations that govern matters such as UCMJ and adverse administrative action. For UCMJ and adverse administrative actions, individuals are afforded with specific rights and procedures for redress that are usually more effective and efficient for resolution of issues than the open door policy. Nothing in this paragraph is meant to prevent Soldiers or Civilians from using the open door policy regarding facts, concerns or problems. However, the command may elect not to discuss a case or action that is pending or has yet to be adjudicated.

PRESCRIBING DIRECTIVE: AR 600-20, Army Command Policy, 24 July 2020



DEPARTMENT OF THE ARMY
HEADQUARTERS, 1ST SPECIAL FORCES COMMAND (AIRBORNE)
H-3531 9TH INFANTRY STREET (STOP A)
FORT BRAGG, NORTH CAROLINA 28310-8500

FEB 22 2022

AOSO-CG

MEMORANDUM FOR RECORD

SUBJECT: Adoption of Current 1st Special Forces Command (Airborne) (1st SFC(A)) Policies

I hereby adopt all 1st SFC(A) policies signed and approved by Major General John W. Brennan (Policies 1 to 45). This adoption will remain in effect while I am in command and until I rescind and renew any of the adopted policies.



RICHARD E. ANGLE
Major General, USA
Commanding

EXHIBIT M

Forbes, Michael J SFC USARMY USSOCOM USASOC (USA)

From: Sanchez, Manuel D LTC USARMY USSOCOM USASOC (USA)
Sent: Friday, December 2, 2022 9:27 AM
To: Johnson, Timothy J MAJ USARMY USSOCOM USASOC (USA); Lowrie, Patrina A CPT USARMY USSOCOM USASOC (USA); Ahmed, Saleh A SGM USARMY USSOCOM USASOC (USA); Forbes, Michael J SFC USARMY USSOCOM USASOC (USA); Bellendir, James S MAJ USARMY USSOCOM USASOC (USA); Leggett, Julie A MAJ USARMY USSOCOM USASOC (USA); Davis, Patrick W MAJ USARMY USSOCOM USASOC (USA); Weber, Andrew J MAJ USARMY USSOCOM USASOC (USA); Markle, Trinity M (<not set>) SFC USSOCOM USASOC (USA); DeBaugh, Lauren A MAJ USARMY USSOCOM USASOC (USA); Koak, Mike J SFC USARMY USSOCOM USASOC (USA); Philbin, Jeffrey M MAJ USARMY USSOCOM USASOC (USA); Murray, Gabrielle L MAJ USARMY USSOCOM USASOC (USA); Morris, Danavon N MSG USARMY USSOCOM USASOC (USA); Colbert, William MAJ USARMY USSOCOM USASOC (USA); Collado, Edison MSG USARMY USSOCOM USASOC (USA)
Cc: Forte, Joseph J CPT USARMY USSOCOM SOCOM (USA); Racaza, Rhea L MAJ USARMY USSOCOM USASOC (USA); Rivera, Alvaro F MAJ USARMY USSOCOM USASOC (USA); Sawyer, Robert C MAJ USARMY USSOCOM USASOC (USA)
Subject: Assess the Un-assessed USASOC Pilot Priority
Signed By: manuel.d.sanchez-diaz.mil@mail.mil
Importance: High

Good morning Team,

I'm sending this e-mail to emphasize the priority and urgency of complying with the HPW team on the Assess the Un-assessed USASOC Pilot program. This program has GO visibility and is been closely monitored. We have until the end of March to complete the assessment of over 800 Soldiers.

There are specific requirements published by the BDE S3 that are not negotiable. They require a by name list with specified information every week, to fill assessments slots for Tuesday's and Thursdays.

The assessed SM will go thru the assessment from 0600 to 1100.

All of us will have to be part of the assessment.

Let me know if you have any questions or concerns during our closeout today, or stand up next Monday. If needed, we'll spend the Staff synch, identifying names to fill next week's slots, to ensure we meet the requirements and don't get behind schedule.

Thanks,

V/r, Manny
LTC Manuel D. Sanchez Diaz
Executive Officer/DCO, 528th SB (SO)(A)
1st Special Forces Command (A)
Office: (910) 432-7720 (DSN 239)

Cell: (910) 703-2573

SVoIP: 239-7721

NIPR: manuel.d.sanchez.mil@socom.mil

SIPR: manuel.d.sanchez.mil@socom.smil.mil

Forbes, Michael J SFC USARMY USSOCOM USASOC (USA)

From: Surorodriguez, Edgar V SFC USSOCOM USASOC (USA)
Sent: Friday, December 2, 2022 1:43 PM
To: Markle, Trinity M (<not set>) SFC USSOCOM USASOC (USA); Forbes, Michael J SFC USARMY USSOCOM USASOC (USA); Meredith, Joseph R SSG USSOCOM USASOC (USA); Riley, Jeremy SFC USARMY USSOCOM USASOC (USA); Burgos-santiago, Edwin A MSG USARMY USSOCOM USASOC (USA); Koak, Mike J SFC USARMY USSOCOM USASOC (USA); Morris, Danavon N MSG USARMY USSOCOM USASOC (USA)
Cc: Ahmed, Saleh A SGM USARMY (USA)
Subject: RE: HPW Assessment
Signed By: edgar.v.surorodriguez.mil@army.mil

Team corrections per SGM Ahmed guidance. All STB must complete HPW assessment NLT 15 DEC 2022. Below are those that completed HPW on 1 DEC 2022 and also the list I received for those attending on 6 DEC 2022. Thanks in advance and have a great weekend!

Completed HPW on 1 DEC 2022

HPW Dates

PFC VAZQUEZ
SSG PARTIN
SFC SURO
MSG KAZMIERSKI
1LT RAMIREZ

06DEC22 – x 20 PAX
08DEC22 – x 20 PAX
13DEC22 – x 30 PAX
15DEC22 – x 30 PAX

Scheduled to attend on 6 DEC 2022:

- 1) SSG CARTER
- 2) SFC KOAK
- 3) SFC FELIN
- 4) MAJ DEBAUGH
- 5) SGM AHMED
- 6) MAJ PHILBIN
- 7) CPT EILER
- 8) SGT HAMILTON

v/r

SFC Edgar V. Suro
Brigade S3/Brigade Primary Staff Platoon Sergeant/DTMS Manager/ Barracks Manager
528th Sustainment Brigade (Special Operations) (Airborne) 1st Special Forces Command (Airborne)
NIPR: 910-908-6061
cell: 910-224-9426

From: Surorodriguez, Edgar V SFC USSOCOM USASOC (USA)
Sent: Tuesday, November 29, 2022 5:25 PM
To: Markle, Trinity M (<not set>) SFC USSOCOM USASOC (USA) <trinity.markle@socom.mil>; Forbes, Michael J SFC

USARMY USSOCOM USASOC (USA) <michael.j.forbes.mil@socom.mil>; Meredith, Joseph R SSG USSOCOM USASOC (USA) <joseph.meredith@socom.mil>; Riley, Jeremy SFC USARMY USSOCOM USASOC (USA) <jeremy.riley.mil@socom.mil>; Burgos-santiago, Edwin A MSG USARMY USSOCOM USASOC (USA) <edwin.burgos-santiago@socom.mil>; Koak, Mike J SFC USARMY USSOCOM USASOC (USA) <mike.j.koak.mil@socom.mil>; Morris, Danavon N MSG USARMY USSOCOM USASOC (USA) <danavon.n.morris.mil@socom.mil>
Cc: Ahmed, Saleh A SGM USARMY (USA) <saleh.a.ahmed.mil@army.mil>
Subject: FW: HPW Assessment

Good afternoon team!

Please, read below and provide me the names with the dates of availability to complete this assessment. It is mandatory by USASOC. Thanks in advance!

Current Break Down:

1 DEC 2022:

- 1) SFC Surorodriguez, Edgar (S3)
- 2) SSG Carter, Troy (S4)
- 3) 1LT Ramirez-Pharr, Jourdan (S4)
- 4) PFC Vazquez, Janie (S1)

6 DEC 2022:

- 1) SGM Ahmed, Saleh
- 2) Maj Philbin, Jeffrey
- 3) CPT Eiler, William

v/r

SFC Edgar V. Suro

Brigade S3/Brigade Primary Staff Platoon Sergeant/DTMS Manager/ Barracks Manager

528th Sustainment Brigade (Special Operations) (Airborne) 1st Special Forces Command (Airborne)

NIPR: 910-908-6061

cell: 910-224-9426

From: Ahmed, Saleh A SGM USARMY USSOCOM USASOC (USA) <saleh.a.ahmed.mil@socom.mil>

Sent: Tuesday, November 29, 2022 10:21 AM

To: Surorodriguez, Edgar V SFC USSOCOM USASOC (USA) <edgar.v.surorodriguez@socom.mil>

Subject: FW: HPW Assessment

See the email below.

All names need to be turned in the day before to the HPW team.

V/r,

SGM Saleh A. Ahmed

Operations Sergeant Major

528th Sustainment Brigade (Special Operations) (Airborne)

Office (910) 908-8295 (DSN 239)

Gov't Cell: (910) 703-3830

VOSIP: (706)-239-6110

Personal Cell: (910) 747-1057

NIPR: saleh.a.ahmed.mil@socom.mil

Enterprise: saleh.a.ahmed.mil@army.mil

SIPR: saleh.a.ahmed.mil@socom.smil.mil

From: Philbin, Jeffrey M MAJ USARMY USSOCOM USASOC (USA) <jeffrey.m.philbin.mil@socom.mil>

Sent: Tuesday, November 29, 2022 10:05 AM

To: Ahmed, Saleh A SGM USARMY USSOCOM USASOC (USA) <saleh.a.ahmed.mil@socom.mil>

Subject: HPW Assessment

SGM, here's the verbiage from the OPORD

1. Provide SMs for assessment on the following dates
 - a. 29NOV22 - x 10 PAX
 - b. 01DEC22 - x 10 PAX
 - c. 06DEC22 - x 20 PAX
 - d. 08DEC22 - x 20 PAX
 - e. 13DEC22 - x 30 PAX
 - f. 15DEC22 - x 30 PAX
 - g. 10JAN23 through 31MAR23
 - STB will provide 11 SMs each day until complete, may be required to provide more depending on availability.

Respectfully,

Jeff Philbin

MAJ, LG

Brigade S3

528th SB (SO) (A)

O: 910-432-4897

C: 802-598-3358

FW: HPW Tasker

From: Forbes, Michael J SFC USARMY USSOCOM USASOC (USA) (michael.j.forbes.mil@socom.mil)

To: paxmas2007@yahoo.com

Date: Wednesday, June 7, 2023 at 03:51 PM EDT

Cordially,

Michael J. Forbes


528th Sustainment Brigade (SO) (A),

S2, NCOIC

SMO: W0GKAA6

 NIPR: (910) 908-8788

 BB: (910) 929-7078

 Staff Office: (910) 908-8787

 SIPR: 239-3425

NIPR: michael.j.forbes.mil@socom.mil

SIPR: michael.j.forbes.mil@socom.smil.mil

From: Partin, Skyler J SSG USARMY USSOCOM USASOC (USA) <skyler.j.partin.mil@socom.mil>

Sent: Friday, December 2, 2022 12:38 PM

To: Forbes, Michael J SFC USARMY USSOCOM USASOC (USA) <michael.j.forbes.mil@socom.mil>

Subject: HPW Tasker

SFC Forbes,

Here is the entire tasker. The attachment is straight from TMT.

Requesting Org: 528th BDE HPW

Who: 528th SB / STB / 112th / 389th

When: Reference OPORD // Soft Start 29NOV22 // 0630-1130 Tues and Thurs based on OPORD

Where: 528th BDE HPTC

What: to complete HPW individual assessment

Why: To meet USASOC / 1st SFC directive // Capture Unit baseline

Report To: CPT Forte 910-908-5062

Uniform/Equipment: PT / Black on Black physical fitness cloths

Special Instructions: All 528 SB (SO) (A) service members will participate in HPW assessment from 29NOV22 through 31MAR23. BN S3 required submitting names with Civilian emails the Friday prior to assessment week. All service members utilize aBridge Athletics / Bridge Tracker. All SMs are required to start the initial assessment after fasting. This is a 10 hr fast, meaning that the SM does not eat or drink anything besides water after dinner. The SM should refrain from eating, drinking (other than water), tobacco prior to inbody assessment.

POC(s) Info: CPT Forte // 910-908-5062 // joseph.forte@socom.mil

V/R

SSG Partin, Skyler

528 BDE CBRN and Tasking NCO

910-908-8774

skyler.j.partin.mil@socom.mil



smime.p7s
6.5kB



OPORD 22_ XXX 528th SB (SO) (A) HPW Assessment V2.docx
51.9kB

FW: HPW program pending orders

From: Forbes, Michael J SFC USARMY USSOCOM USASOC (USA) (michael.j.forbes.mil@socom.mil)

To: paxmas2007@yahoo.com

Date: Tuesday, April 18, 2023 at 08:52 AM EDT

Cordially,

Michael J. Forbes


528th Sustainment Brigade (SO) (A),

S2, NCOIC

SMO: W0GKAA6

 NIPR: (910) 908-8788

 BB: (910) 929-7078

 Staff Office: (910) 908-8787

 SIPR: 239-3425

NIPR: michael.j.forbes.mil@socom.mil

SIPR: michael.j.forbes.mil@socom.smil.mil

From: Howsden, Christopher L LTC USSOCOM USASOC (USA) <Christopher.Howsden@socom.mil>

Sent: Friday, December 2, 2022 2:41 PM

To: Forbes, Michael J SFC USARMY USSOCOM USASOC (USA) <michael.j.forbes.mil@socom.mil>

Subject: RE: HPW program pending orders

SFC Forbes, I would need more details of the program to provide any kind of an answer. I recommend reaching out to your HPW team with your questions. They can probably answer your questions faster than I could. We are happy to help, however, so If you have a complaint or concern, we will send you an IG Action Request and I'll link you up with an IG to assist you.

V/R,
Chris

LTC Christopher Howsden

Command Inspector General

1st Special Forces Command (Airborne)

OFFICE: 910-806-3317

MOBILE: 910-494-6768

SVOIP: 239-7928

christopher.howsden@socom.mil / christopher.howsden@usasoc.socom.smil.mil

Room 202, Building H-3743, Gruber Road, Fort Bragg, NC 28310-8500

INSPECTOR GENERAL CONTROLLED UNCLASSIFIED INFORMATION: The information contained in this email and any accompanying attachments may contain Inspector General Controlled Unclassified Information, which is protected from mandatory disclosure under 5 USC 552. Matters within IG records are often pre-decisional in nature and do not represent final approved DA policy. Dissemination is prohibited except as authorized under AR 20-1. Do not release outside of DA channels without prior authorization from The Inspector General. If you are not the intended recipient of this information, any disclosure, copying, distribution, or the taking of any action in reliance on this information is prohibited. If you received this email in error, please notify us immediately by return email or by calling 910-806-3317.

From: Forbes, Michael J SFC USARMY USSOCOM USASOC (USA) <michael.j.forbes.mil@socom.mil>

Sent: Friday, December 2, 2022 1:40 PM

To: Howsden, Christopher L LTC USSOCOM USASOC (USA) <Christopher.Howsden@socom.mil>

Subject: HPW program pending orders

Sir:

I have heard of a program that is going to require a civilian email account to be provided and also mandatory use of a QR code (which would require a camera; likely on a phone) to be used to track your activities at home maybe. What regulation drives this program? Having a hard time finding it.

Cordially,

Michael J. Forbes

528th Sustainment Brigade (SO) (A),

S2, NCOIC

SMO: W0GKAA6

 NIPR: (910) 908-8788

 BB: (910) 929-7078

 Staff Office: (910) 908-8787

 SIPR: 239-3425

NIPR: michael.j.forbes.mil@socom.mil

SIPR: michael.j.forbes.mil@socom.smil.mil

“In peace there's nothing so becomes a man As modest stillness and humility: But when the blast of war blows in our ears, Then imitate the action of the tiger; Stiffen the sinews, summon up the blood, Disguise fair nature with hard-favour'd rage; Then lend the eye a terrible aspect;” – William Shakespeare

Recommended reading from LTC Hamman's farewell email to 528th staff:

<https://fromthegreennotebook.com/2019/08/23/the-map-on-the-wall/>



smime.p7s

5.4kB

Forbes, Michael J SFC USARMY USSOCOM USASOC (USA)

From: Lutz, Cathy M CIV USSOCOM USASOC (USA) <Catherine.Lutz@socom.mil>
Sent: Friday, December 16, 2022 3:09 PM
To: Forbes, Michael J SFC USARMY USSOCOM USASOC (USA)
Cc: Allemand, Brenda CIV USSOCOM USASOC (USA)
Subject: FW: Forbes, Michael J SFC USARMY USSOCOM USASOC (USA) wants to access 'Documents'
Signed By: catherine.m.lutz.civ@army.mil

This site is restricted to HPW personnel only.

From: Forbes, Michael J SFC USARMY USSOCOM USASOC (USA) <no-reply@sharepoint-mil.us>
Sent: Friday, December 16, 2022 2:33 PM
To: Lutz, Cathy M CIV USSOCOM USASOC (USA) <Catherine.Lutz@socom.mil>
Subject: Forbes, Michael J SFC USARMY USSOCOM USASOC (USA) wants to access 'Documents'

I'd like access, please.

[Accept](#) or [Decline](#) this request

Requested resource: <https://socom.sharepoint-mil.us/sites/usasoc-hq-hpw/Shared%20Documents>

Requested by: Forbes, Michael J SFC USARMY USSOCOM USASOC (USA)(michael.j.forbes.mil@socom.mil)

Forbes, Michael J SFC USARMY USSOCOM USASOC (USA)

From: Lutz, Cathy M CIV USSOCOM USASOC (USA)
Sent: Friday, December 16, 2022 3:37 PM
To: Forbes, Michael J SFC USARMY USSOCOM USASOC (USA)
Cc: Forte, Joseph J CPT USARMY USSOCOM SOCOM (USA); Morgan, Larry 1SG USARMY USSOCOM USASOC (USA)
Subject: RE: (Awareness) HHC Announcement USASOC HPW Assessment
Signed By: catherine.m.lutz.civ@army.mil

Sorry, I only maintain the portal. Did you look at the HPW contact list?

<https://socom.sharepoint-mil.us/sites/usasoc-hq-hpw/Lists/Contacts/Cards.aspx>

Cathy Lutz
Comm: 910-396-0473

From: Forbes, Michael J SFC USARMY USSOCOM USASOC (USA) <michael.j.forbes.mil@socom.mil>
Sent: Friday, December 16, 2022 3:24 PM
To: Lutz, Cathy M CIV USSOCOM USASOC (USA) <Catherine.Lutz@socom.mil>
Cc: Forte, Joseph J CPT USARMY USSOCOM SOCOM (USA) <joseph.forte@socom.mil>; Morgan, Larry 1SG USARMY USSOCOM USASOC (USA) <larry.morgan.mil@socom.mil>
Subject: FW: (Awareness) HHC Announcement USASOC HPW Assessment

Ma'am

I am just looking for the USASOC Directive and 1SFC Directive. I went to 1SFC G3 today and they could not find a directive. May I have the USASOC Directive? Or do you know who I may contact?

Cordially,

Michael J. Forbes
528th Sustainment Brigade (SO) (A),
S2, NCOIC
SMO: W0GKAA6
☎ NIPR: (910) 908-8788
☎ BB: (910) 929-7078
☎ Staff Office: (910) 908-8787
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NIPR: michael.j.forbes.mil@socom.mil
SIPR: michael.j.forbes.mil@socom.smil.mil

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From: Morgan, Larry 1SG USARMY USSOCOM USASOC (USA) <larry.morgan.mil@socom.mil>
Sent: Friday, December 16, 2022 7:19 AM

To: Forte, Joseph J CPT USARMY USSOCOM SOCOM (USA) <joseph.forte@socom.mil>
Cc: Forbes, Michael J SFC USARMY USSOCOM USASOC (USA) <michael.j.forbes.mil@socom.mil>
Subject: FW: (Awareness) HHC Announcement USASOC HPW Assessment

Sir,
SFC Forbes would like a copy of the USASOC and 1st SFC (A) directives referenced in the HPW OPORD, is this something you can provide?

v/r
1SG Larry Morgan
Headquarters and Headquarters Company
528th Sustainment Brigade (SO) (A)
Office: (910) 432-4194
Email: larry.morgan.mil@socom.mil

From: Forbes, Michael J SFC USARMY USSOCOM USASOC (USA) <michael.j.forbes.mil@socom.mil>
Sent: Friday, December 16, 2022 7:08 AM
To: Morgan, Larry 1SG USARMY USSOCOM USASOC (USA) <larry.morgan.mil@socom.mil>
Subject: RE: (Awareness) HHC Announcement USASOC HPW Assessment

1SG Morgan:

May I have a copy of the USASOC and 1SFC directives referenced in the OPORD 22-XXX?

"The 528th SB (SO) (A) Soldiers will complete a Human Performance and Wellness (HPW) assessment to meet USASOC and 1st SFC directive."

Thank you.

Cordially,

Michael J. Forbes
528th Sustainment Brigade (SO) (A),
S2, NCOIC
SMO: W0GKAA6
☎ NIPR: (910) 908-8788
☎ BB: (910) 929-7078
☎ Staff Office: (910) 908-8787
☎ SIPR: 239-3425
NIPR: michael.j.forbes.mil@socom.mil
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<https://fromthegreennotebook.com/2019/08/23/the-map-on-the-wall/>

From: Morgan, Larry 1SG USARMY USSOCOM USASOC (USA) <larry.morgan.mil@socom.mil>
Sent: Friday, December 16, 2022 7:00 AM

To: 528SB-STB-Members <528SB-STB-Members@socom.mil>

Subject: (Awareness) HHC Announcement USASOC HPW Assessment

Importance: Low

HEADHUNTERS! A new item was added on the HHC ANNOUNCEMENTS PAGE - Click here for details:

https://socom.sharepoint-mil.us/sites/usasoc-1sfc-528sb-stb-hq-hhc/_layouts/15/listform.aspx?PageType=4&ListId=ea393bfc%2Dbc8d%2D47e4%2Da4c0%2D037fbfb08d16&ID=9&ContentTypeID=0x010400A3D881A92FD9EB40BB1E0CBD0A803B59True DO NOT REPLY TO

THIS EMAIL - CONTACT POC FOR DETAILS

Forbes, Michael J SFC USARMY USSOCOM USASOC (USA)

From: Lutz, Cathy M CIV USSOCOM USASOC (USA)
Sent: Monday, December 19, 2022 7:24 AM
To: Forbes, Michael J SFC USARMY USSOCOM USASOC (USA)
Subject: FW: (Awareness) HHC Announcement USASOC HPW Assessment
Signed By: catherine.m.lutz.civ@army.mil

See the email below from LTC Webb.

Cathy Lutz
Comm: 910-396-0473

From: Webb, George S LTC USARMY USSOCOM USASOC (USA) <george.s.webb.mil@socom.mil>
Sent: Sunday, December 18, 2022 7:54 AM
To: Lutz, Cathy M CIV USSOCOM USASOC (USA) <Catherine.Lutz@socom.mil>; Allemand, Brenda CIV USSOCOM USASOC (USA) <brenda.allemand@socom.mil>; Morgan, Larry 1SG USARMY USSOCOM USASOC (USA) <larry.morgan.mil@socom.mil>; Forte, Joseph J CPT USARMY USSOCOM SOC (USA) <joseph.forte@socom.mil>
Subject: RE: (Awareness) HHC Announcement USASOC HPW Assessment

Team,

The USASOC Directive is still in draft.

Per my meeting with Joe last week, once complete I will socialize with 528th for input prior to putting into TMT (G3 channels).

You guys are way ahead of us on this, apologies for playing pickup.

George

v/r

LTC George Webb
Human Performance Optimization Division
USASOC Human Performance and Wellness
U.S. Army Special Operations Command
Cell: (315) 777-0980

***NEW NUMBER* Office: (910) 806-3310**

NIPR: george.s.webb.mil@socom.mil

SIPR: george.s.webb.mil@socom.smil.mil

From: Lutz, Cathy M CIV USSOCOM USASOC (USA) <Catherine.Lutz@socom.mil>
Sent: Friday, December 16, 2022 3:38 PM
To: Allemand, Brenda CIV USSOCOM USASOC (USA) <brenda.allemand@socom.mil>; Webb, George S LTC USARMY USSOCOM USASOC (USA) <george.s.webb.mil@socom.mil>
Subject: FW: (Awareness) HHC Announcement USASOC HPW Assessment

Do you know who he needs to contact?

Also, do you know who the Portal POC is so I can remove my name for approvals?

Cathy Lutz

Comm: 910-396-0473

From: Forbes, Michael J SFC USARMY USSOCOM USASOC (USA) <michael.j.forbes.mil@socom.mil>
Sent: Friday, December 16, 2022 3:24 PM
To: Lutz, Cathy M CIV USSOCOM USASOC (USA) <Catherine.Lutz@socom.mil>
Cc: Forte, Joseph J CPT USARMY USSOCOM SOCOM (USA) <joseph.forte@socom.mil>; Morgan, Larry 1SG USARMY USSOCOM USASOC (USA) <larry.morgan.mil@socom.mil>
Subject: FW: (Awareness) HHC Announcement USASOC HPW Assessment

Ma'am

I am just looking for the USASOC Directive and 1SFC Directive. I went to 1SFC G3 today and they could not find a directive. May I have the USASOC Directive? Or do you know who I may contact?

Cordially,

Michael J. Forbes

528th Sustainment Brigade (SO) (A),

S2, NCOIC

SMO: W0GKAA6

☎ NIPR: (910) 908-8788

☎ BB: (910) 929-7078

☎ Staff Office: (910) 908-8787

☎ SIPR: 239-3425

NIPR: michael.j.forbes.mil@socom.mil

SIPR: michael.j.forbes.mil@socom.smil.mil

"In peace there's nothing so becomes a man As modest stillness and humility: But when the blast of war blows in our ears, Then imitate the action of the tiger; Stiffen the sinews, summon up the blood, Disguise fair nature with hard-favour'd rage; Then lend the eye a terrible aspect;" – William Shakespeare

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<https://fromthegreennotebook.com/2019/08/23/the-map-on-the-wall/>

From: Morgan, Larry 1SG USARMY USSOCOM USASOC (USA) <larry.morgan.mil@socom.mil>
Sent: Friday, December 16, 2022 7:19 AM
To: Forte, Joseph J CPT USARMY USSOCOM SOCOM (USA) <joseph.forte@socom.mil>
Cc: Forbes, Michael J SFC USARMY USSOCOM USASOC (USA) <michael.j.forbes.mil@socom.mil>
Subject: FW: (Awareness) HHC Announcement USASOC HPW Assessment

Sir,

SFC Forbes would like a copy of the USASOC and 1st SFC (A) directives referenced in the HPW OPORD, is this something you can provide?

v/r

1SG Larry Morgan
Headquarters and Headquarters Company
528th Sustainment Brigade (SO) (A)
Office: (910) 432-4194
Email: larry.morgan.mil@socom.mil

From: Forbes, Michael J SFC USARMY USSOCOM USASOC (USA) <michael.j.forbes.mil@socom.mil>
Sent: Friday, December 16, 2022 7:08 AM
To: Morgan, Larry 1SG USARMY USSOCOM USASOC (USA) <larry.morgan.mil@socom.mil>
Subject: RE: (Awareness) HHC Announcement USASOC HPW Assessment

1SG Morgan:

May I have a copy of the USASOC and 1SFC directives referenced in the OPORD 22-XXX?

"The 528th SB (SO) (A) Soldiers will complete a Human Performance and Wellness (HPW) assessment to meet USASOC and 1st SFC directive."

Thank you.

Cordially,

Michael J. Forbes
528th Sustainment Brigade (SO) (A),
S2, NCOIC
SMO: W0GKAA6
NIPR: (910) 908-8788
BB: (910) 929-7078
Staff Office: (910) 908-8787
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NIPR: michael.j.forbes.mil@socom.mil
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From: Morgan, Larry 1SG USARMY USSOCOM USASOC (USA) <larry.morgan.mil@socom.mil>
Sent: Friday, December 16, 2022 7:00 AM
To: 528SB-STB-Members <528SB-STB-Members@socom.mil>
Subject: (Awareness) HHC Announcement USASOC HPW Assessment
Importance: Low

HEADHUNTERS! A new item was added on the HHC ANNOUNCEMENTS PAGE - Click here for details:
<https://socom.sharepoint-mil.us/sites/usasoc-1sfc-528sb-stb-hq-hhc/layouts/15/listform.aspx?PageType=4&ListId=ea393bfc%2Dbc8d%2D47e4%2Da4c0%2D037fbfb08d16&ID=9&ContentTypeID=0x010400A3D881A92FD9EB40BB1E0CBD0A803B59True> DO NOT REPLY TO THIS EMAIL - CONTACT POC FOR DETAILS

EXHIBIT N

FW: Phone incident today.

From: Forbes, Michael J SFC USARMY USSOCOM USASOC (USA) (michael.j.forbes.mil@socom.mil)

To: paxmas2007@yahoo.com

Date: Tuesday, April 18, 2023 at 08:53 AM EDT

Cordially,

Michael J. Forbes

528th Sustainment Brigade (SO) (A),

S2, NCOIC

SMO: W0GKAA6

 NIPR: (910) 908-8788

 BB: (910) 929-7078

 Staff Office: (910) 908-8787

 SIPR: 239-3425

NIPR: michael.j.forbes.mil@socom.mil

SIPR: michael.j.forbes.mil@socom.smil.mil

From: Forbes, Michael J SFC USARMY USSOCOM USASOC (USA)

Sent: Wednesday, December 7, 2022 10:41 AM

To: Howsden, Christopher L LTC USSOCOM USASOC (USA) <Christopher.Howsden@socom.mil>; Hylton, Jesse R SFC USSOCOM USASOC (USA) <jesse.r.hylton@socom.mil>

Subject: Phone incident today.

Thank you Sir.

SFC Hilton:

I was just approached in a closed door meeting with my new OIC that someone felt my professionally and factually asking them to take their phone to their car when they were using it in our USASOC building, that I was "dominant."

The facts are this:

I was reposting signage of the USASOC Policy 18-19, Personal Cell Phone Policy on all exterior doors and other interior doors, given the guidance that was put out to SMs here (that I personally witnessed).

I was answering LTC Furlow's questions about ETPs when I witnessed a SM in our building with her phone.

I approached her and said, "Please take your phone to your car."

She asked, "My phone?"

I said, "Yes Ma'am, your phone, they cannot be in this facility."

She said, "But I am using the Bridge app."

I said, "I understand but it's a USASOC Policy... oh here you can have your own copy. Please remove it and thank you very much."

I proceeded to hang more signs in and on our facility.

My OIC just left my office in which she stated that someone complained to BN Leadership that I was perceived to be dominant in my communication. This is not true.

I will likely need that appointment because I was told that anytime I witness a cell phone infraction going forward I must contact the OIC first.

I guess I am not allowed to professionally give on-the-spot-corrections anymore.

When can I meet with whomever. I don't want to loose a job I love and am passionate about because I am being wrongly perceived.

My OIC stated that "any further behavior like this will be dealt with."

Later, upon clarification, she stated that I am allowed to do my job just not in a dominant way.

I fear this is the beginning of a perception onslaught because I am professionally and confidently reminding SMs of what they agreed to being informed of in USASOC 18-19 upon in-processing here. I was polite and confident. The SM did not leave the facility with her phone until I went the entire perimeter of the building and LTC Furlow was in the same area and witnessed this request to remove the phone.

There is more background on this. When can I meet with you?

Cordially,

Michael J. Forbes

528th Sustainment Brigade (SO) (A),

S2, NCOIC

SMO: W0GKAA6

📞 NIPR: (910) 908-8788

📞 BB: (910) 929-7078

📞 Staff Office: (910) 908-8787

📞 SIPR: 239-3425

NIPR: michael.j.forbes.mil@socom.mil

SIPR: michael.j.forbes.mil@socom.smil.mil

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<https://fromthegreennotebook.com/2019/08/23/the-map-on-the-wall/>

From: Howsden, Christopher L LTC USSOCOM USASOC (USA) <Christopher.Howsden@socom.mil>

Sent: Wednesday, December 7, 2022 10:38 AM

To: Forbes, Michael J SFC USARMY USSOCOM USASOC (USA) <michael.j.forbes.mil@socom.mil>; Hylton, Jesse R SFC

USSOCOM USASOC (USA) <jesse.r.hylton@socom.mil>

Subject: RE: HPW program pending orders

SFC Forbes,

Please contact SFC Jesse Hilton to begin an IG case. He is in the cc line.

V/R,
Chris

From: Forbes, Michael J SFC USARMY USSOCOM USASOC (USA) <michael.j.forbes.mil@socom.mil>

Sent: Tuesday, December 6, 2022 4:49 PM

To: Howsden, Christopher L LTC USSOCOM USASOC (USA) <Christopher.Howsden@socom.mil>

Subject: RE: HPW program pending orders

Sir

Thank you. And I was clear about that. I am notifying you there is another mandatory one coming in right after that one (with cognitive, spiritual and behavioral surveys with outside 3rd parties) and the SMs are being reported for not participating in this "privilege." Phones are being encouraged and IPADs are in use, in PED-forbidden buildings by civilian contractors, etc.

Let me know who I should speak with to do what must be done. Thank you.

Cordially,

Michael J. Forbes

528th Sustainment Brigade (SO) (A),

S2, NCOIC

SMO: W0GKAA6

 NIPR: (910) 908-8788

 BB: (910) 929-7078

 Staff Office: (910) 908-8787

 SIPR: 239-3425

NIPR: michael.j.forbes.mil@socom.mil

SIPR: michael.j.forbes.mil@socom.smil.mil

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From: Howsden, Christopher L LTC USSOCOM USASOC (USA) <Christopher.Howsden@socom.mil>

Sent: Tuesday, December 6, 2022 4:44 PM

To: Forbes, Michael J SFC USARMY USSOCOM USASOC (USA) <michael.j.forbes.mil@socom.mil>

Cc: Hylton, Jesse R SFC USSOCOM USASOC (USA) <jesse.r.hylton@socom.mil>

Subject: RE: HPW program pending orders

SFC Forbes,

Thank you for this. 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. That is not to say that it isn't your commander's requirement. In your case, your commander exempted you from the SDI assessment.

In order to move forward with any additional assistance with the HPW program / assessment at 528th or any other issue, I will need to link you up with an IG who will do a more formal intake with you. We do this to ensue proper protections are in place for you and anyone involved in the complaint. This process will also allow you to clearly describe what you want the IG to do for you. Please let me know if you want to proceed with IG assistance and I'll get the ball rolling for you.

V/R,
Chris

LTC Christopher Howsden
Command Inspector General
1st Special Forces Command (Airborne)
OFFICE: 910-806-3317
MOBILE: 910-494-6768
SVOIP: 239-7928
christopher.howsden@socom.mil / christopher.howsden@usasoc.socom.smil.mil
Room 202, Building H-3743, Gruber Road, Fort Bragg, NC 28310-8500

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From: Forbes, Michael J SFC USARMY USSOCOM USASOC (USA) <michael.j.forbes.mil@socom.mil>
Sent: Monday, December 5, 2022 10:34 AM
To: Howsden, Christopher L LTC USSOCOM USASOC (USA) <Christopher.Howsden@socom.mil>
Subject: FW: HPW program pending orders

Sir

This is very similar to what I addressed with you last week and you commented via our tele convo that was not mandatory and my BDE CDR exempted me (via email) from attending due to the privacy concerns it mandatorily invites into SM lives.

That said, I am attempting to get more information for you, but having a little difficulty. Please see the attachments, which include the unsigned OPORD that is currently in implementation as seen by the attached email from our BDE Staff PSG and the cell phone policy which most, if not all have signed.

I know there is another forced survey (consisting of using IPADs with APS on them that ask, "spiritual, cognitive" and behavioral questions online from come ATL company per the POTFF website and a SM who took it. The Order states

SMs have to provide a civilian email account, must participate using at least one outside provider app on there personal phone and use a QR Code (on a personal phone with a third party corporation called Bridge[unk]...). Also, I attended the MI BN Physical Pillar of in-brief this morning and the "Coach" had commented that there is "no problem in using the app offline while you are at work." I spoke up and commented that, "Ma'am, these are actually intel Soldiers and they work in a building in which they cannot take personal electronic devices in." she commented, "Well, that sucks." Mind you she is in a building in which she has her phone and it is forbidden and I know of no ETP for this HPW program. We may need to request a sweep here soon.

I will read more this weekend. I printed DODD 6490.03 and .04 and attempt to get more information Monday. I am heading to LDS at some point to see what they think.

I have contacted LDS and they are expecting me any day. i have begun a congressional draft complaint but only just begun.

Attached the OPORD ← DO NOT KNOW IF THIS IS A FINAL but they are administering the program as seen by the email also attached.

Cordially,

Michael J. Forbes

528th Sustainment Brigade (SO) (A),
S2, NCOIC
SMO: W0GKAA6

📞 NIPR: (910) 908-8788

📞 BB: (910) 929-7078

📞 Staff Office: (910) 908-8787

📞 SIPR: 239-3425

NIPR: michael.j.forbes.mil@socom.mil

SIPR: michael.j.forbes.mil@socom.smil.mil

"In peace there's nothing so becomes a man As modest stillness and humility: But when the blast of war blows in our ears, Then imitate the action of the tiger; Stiffen the sinews, summon up the blood, Disguise fair nature with hard-favour'd rage; Then lend the eye a terrible aspect;" – William Shakespeare

Recommended reading from LTC Hamman's farewell email to 528th staff:
<https://fromthegreennotebook.com/2019/08/23/the-map-on-the-wall/>

From: Howsden, Christopher L LTC USSOCOM USASOC (USA) <Christopher.Howsden@socom.mil>

Sent: Friday, December 2, 2022 2:41 PM

To: Forbes, Michael J SFC USARMY USSOCOM USASOC (USA) <michael.j.forbes.mil@socom.mil>

Subject: RE: HPW program pending orders

SFC Forbes, I would need more details of the program to provide any kind of an answer. I recommend reaching out to your HPW team with your questions. They can probably answer your questions faster than I could. We are happy to help, however, so If you have a complaint or concern, we will send you an IG Action Request and I'll link you up with an IG to assist you.

V/R,
Chris

LTC Christopher Howsden

Command Inspector General

1st Special Forces Command (Airborne)

OFFICE: 910-806-3317

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SVOIP: 239-7928

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From: Forbes, Michael J SFC USARMY USSOCOM USASOC (USA) <michael.j.forbes.mil@socom.mil>

Sent: Friday, December 2, 2022 1:40 PM

To: Howsden, Christopher L LTC USSOCOM USASOC (USA) <Christopher.Howsden@socom.mil>

Subject: HPW program pending orders

Sir:

I have heard of a program that is going to require a civilian email account to be provided and also mandatory use of a QR code (which would require a camera; likely on a phone) to be used to track your activities at home maybe. What regulation drives this program? Having a hard time finding it.

Cordially,

Michael J. Forbes


528th Sustainment Brigade (SO) (A),

S2, NCOIC

SMO: W0GKAA6

 NIPR: (910) 908-8788

 BB: (910) 929-7078

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NIPR: michael.j.forbes.mil@socom.mil

SIPR: michael.j.forbes.mil@socom.smil.mil

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Recommended reading from LTC Hamman's farewell email to 528th staff:

<https://fromthegreennotebook.com/2019/08/23/the-map-on-the-wall/>



smime.p7s
5.4kB

EXHIBIT O

Office of U.S. Representative Richard Hudson



Privacy Authorization Release Form

Authorization in Accordance with the 1974 Privacy Act

Due to the provisions of the Privacy Act of 1974 (Title 5, Section 552A of the United States Code) permission in writing is required before making an inquiry on your behalf. Completing and signing this form authorizes U.S. Representative Richard Hudson to make inquiries to the appropriate officials on your behalf. In accordance with the provisions of the Privacy Act, I hereby authorize U.S. Representative or his representative to receive information on my behalf and discuss my records with the agency involved.

Name: SFC FORBES, MICHAEL J. Date of Birth: 12 APR 1968Address: 614 NORTHAMPTON RD.City: FAYETTEVILLE State: NC Zip: 28303Home Phone: (910) 336 5966 Other Phone: (910) 336 5457 (MFE SARRMA)Email: parmas2007@yahoo.comSocial Security Number 188 54 7907 Case/Account/Inquiry Number _____
(Please provide the appropriate identification number pertaining to the assistance with which you are seeking our help.)

Have you contacted any other elected official regarding this case?

Yes/No (circle one) If so, who N/A

Please describe the specific information you are requesting or the exact nature of the problem you are experiencing. Send copies of relevant information. Please do not send originals. Use extra paper if necessary.

OPORD 22-XX IS BEING EXECUTED WITHOUT PROPER VETTING.THIS CAN ARGUABLY BE CONSIDERED A COMMAND DIRECTED BEHAVIORAL ASSESSMENT
VARIOUS
HEALTH BASELINES WHICH WOULD FALL UNDER A DODI 6490 DOCUMENTS.I DISCOVERED THERE IS NO CURRENT DIRECTIVE BUT SOLDIERS AREBEING ORDERED TO PARTICIPATE W/ 3RD PARTY CORPORATE APPS IN USASOC
FACILITIES.
(SEE NOTE)Which federal agency does this involve? US ARMYSIGNATURE: [Signature] Date: 19 DEC 2022

Please return the completed form to: U.S. Representative Richard Hudson/Casework

225 Green Street, Suite 202

Fayetteville, NC 28301

Phone: (910) 997-2070

NOTE: I WAS BATTERED (PHYSICALLY REMOVED FROM IN FRONT OF INFORMATION AS I WAS PUTTING OUT A PROHIBITION OF PERSONAL ELECTRONIC DEVICE (PED) MESSAGE TO PREVENT PHONES FROM BEING BROUGHT INTO OUR FACILITY. IT WAS BEING AN INFORMATIONAL ISSUE IN THE AREA AND DO FOR BODILY NC. 26310. 520 SB (SO) CA).