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ORIGINAL

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

FILED
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U.S. COURT OF
FEDERAL CLAIMS

MICHAEL SABO, NICHOLAS WELLS,
JUAN PEREZ, ALAN PITTS, AND
BILLY J. TALLEY, on behalf of themselves
and all other individuals similarly situated,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

Case-No. **08-899 C**

CLASS ACTION COMPLAINT

Preliminary Statement

This case arises from the failure of the United States Department of Army (“Army”) to honor its clear and explicit duty – embodied by statute and regulation – that it not abandon its fallen or wounded soldiers or leave them behind.

The Plaintiffs and the proposed class members they seek to represent in this lawsuit are veterans of the on-going wars in Iraq and Afghanistan. During their service in the defense of this country, these veterans were placed in harm’s way and endured what was asked of them in battle. As a result of their service, and the reality of modern warfare, each of these veterans suffer from Post Traumatic Stress Disorder (“PTSD”), which the Army has decided renders them unfit to serve their country. Not only has the Army expelled these soldiers from service, but it has reneged on its statutory obligation to provide these veterans the aid, assistance, and benefits they are due under existing federal law and longstanding federal regulation.

Specifically, the Plaintiffs and the proposed class members all have been diagnosed with PTSD following their experiences in active combat. Under longstanding federal regulations –

and, as of January 28, 2008, current federal law – the Army was required to assign each of these veterans a disability rating of at least 50% based on their PTSD diagnosis. A rating of 50%, as required by law, renders these soldiers eligible for much needed benefits and assistance, including healthcare for the soldiers and their families, and enhanced disability retirement pay. In a deliberate disregard for its legal obligation, the Army instead rated these soldiers below 50% (and in most cases below 30%) in a transparent effort to purge its ranks and eradicate its responsibility to care for its wounded soldiers. On October 14, 2008, the Department of Defense acknowledged the obligation of the military services to assess a minimum PTSD rating of 50% and directed the Army to do so prospectively, yet the Army has done nothing to address its mistreatment of potentially thousands of veterans the Army already has abandoned through its failure to rate properly those separated soldiers suffering from PTSD.

Plaintiffs thus bring this action against Defendant, the United States of America, acting by and through the U.S. Department of Army, not only on behalf of themselves but on behalf of all other individuals similarly mistreated, to seek redress for the Army's failure to follow applicable law and to require the Army finally to fulfill its duty owed to the Plaintiffs and other veterans under existing regulation and statute.

NATURE OF THE ACTION

1. This is an action for disability retirement pay and benefits that the Army has unlawfully failed to provide to service members found unfit for duty due to PTSD.
2. The Army's own rules have long required – and the National Defense Authorization Act for Fiscal Year 2008 now mandates – that the Army follow the Veterans Affairs Schedule for Rating Disabilities (“VASRD”) when rating soldiers found unfit for duty

due to physical or mental disability. *See* National Defense Authorization Act for Fiscal Year 2008 (“NDAA”), Pub. L. No. 110-118, § 1642(a), 122 Stat. 465 (codified at 10 U.S.C. § 1216a).

3. Despite this legal obligation, the Army systematically has ignored its own rules, the NDAA, and the VASRD in assessing soldiers a disability rating of less than 50% for PTSD and separating them from service with minimal benefits. The Army’s longstanding practice of underrating these soldiers is arbitrary, capricious, and contrary to law and has deprived wounded soldiers, who have bravely served their nation in combat, of the much-needed financial support and medical care that they are lawfully entitled to receive under 10 U.S.C. § 1201.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to the Tucker Act, 28 U.S.C. § 1491(a)(1). The statutory basis for invoking jurisdiction is 10 U.S.C. § 1201. Section 1201 requires the payment of disability retirement compensation once a disability is found qualifying and, therefore, constitutes a money-mandating provision.

5. In accordance with 28 U.S.C. § 2501, this action is brought within six years of the date of each Plaintiff’s and Class Members’ discharge from active duty.

6. An Army Physical Evaluation Board has evaluated each Plaintiff’s and each proposed class member’s entitlement to disability benefits. Consequently, this Court has jurisdiction over the disability retirement claims asserted herein.

PARTIES

7. Sgt. Michael Sabo is a citizen of the United States and served in the Army from August 14, 1997 to March 29, 2008 when the Army found him unfit for continued military service due to PTSD, assessed him a disability rating of less than 50% for PTSD, and medically separated him from service. Contrary to applicable statutes and regulations, the Army assigned

him a disability rating of 10% for PTSD, which deprived him of disability retirement pay and other benefits.

8. SPC Nicholas Wells is a citizen of the United States and served in the Army from November 9, 2004 until June 2008 when the Army found him unfit for continued military service due to PTSD, assessed him a disability rating of less than 50% for PTSD, and medically separated him from service. Contrary to applicable statutes and regulations, the Army assigned him a disability rating of 10% for PTSD, which deprived him of disability retirement pay and other benefits.

9. Sgt. Juan Perez is a citizen of the United States and served in the Army from May 2002 until April 26, 2006, when the Army found him unfit for continued military service due to PTSD, assessed him a disability rating of less than 50% for PTSD, and medically separated him from service. Contrary to applicable statutes and regulations, the Army assigned him a disability rating of 0% for PTSD, which deprived him of disability retirement pay and other benefits.

10. Sgt. Alan Pitts is a citizen of the United States and served in the Army from June 2001 until August 9, 2006 when the Army found him unfit for continued military service due to PTSD, assessed him a disability rating of less than 50% for PTSD, and medically separated him from service. Contrary to applicable statutes and regulations, the Army assigned him a disability rating of 10% for PTSD, which deprived him of disability retirement pay and other benefits.

11. SPC Billy Talley is a citizen of the United States and served in the Army from April 2002 until July 27, 2007 when the Army found him unfit for continued military service due to PTSD, assessed him a disability rating of less than 50% for PTSD, and medically separated him from service. Contrary to applicable statutes and regulations, the Army assigned him a

disability rating of 0% for PTSD, which deprived him of disability retirement pay and other benefits.

12. The Defendant is the United States of America, acting by and through the Department of the Army, a United States government agency. This Complaint may interchangeably refer to the Defendant as “Army,” the “United States,” or “Defendant.”

FACTUAL ALLEGATIONS

PTSD Background

13. PTSD is a mental health disorder that can develop after an individual experiences, witnesses, or undergoes a traumatic event, one that often causes or threatens grave physical harm or death to that person or others involved in the incident.

14. PTSD was classified by the American Psychiatric Association as a distinct mental health disorder in 1980. Prior to 1980, soldiers suffering from combat-stress related disorders were commonly classified as suffering from “shell shock,” “combat fatigue,” or “traumatic war neurosis.” The recognition of PTSD as a distinct mental health disorder has enabled mental health professionals to provide early assessment and diagnosis of the condition so that individuals can receive intervention and proper treatment, thus enabling them to cope with the effects of this devastating disorder and lead healthy and fulfilling lives.

15. Almost 2 million U.S. armed services personnel have been deployed around the world as part of the U.S. efforts to combat global terrorism. Countless thousands of these service men and women have been exposed to traumatic events during combat, and many have returned home with a variety of psychological and mental injuries, including PTSD. Indeed, Operation Enduring Freedom (the official name of the war in Afghanistan) and Operation Iraqi Freedom (the official name of the war in Iraq) have produced an unprecedented number of service

personnel suffering from PTSD, making PTSD the most prevalent psychological disorder resulting from these conflicts.

16. In June 2007, the U.S. Department of Defense estimated that 38% of Soldiers, 50% of the National Guard members, and 31% of the Marines who have served in either of these operations have been inflicted with mental health issues, including PTSD. In addition, the Department of Veterans Affairs has reported that, as of the end of 2006, it had diagnosed PTSD in approximately 34,000 veterans who served in Afghanistan or Iraq.

17. Service personnel that suffer from PTSD exhibit a wide range of symptoms. Those afflicted may suffer crippling flashbacks that cause them to replay the traumatic event or events; others may tend to avoid places, people, or other things that may remind them of the triggering event, thus compromising the daily routine of ordinary life. Many may experience trouble controlling emotions and exhibit abnormal irritability or anger to those around them. Victims of PTSD also may experience shame or guilt at their condition; have difficulty concentrating; have long or short-term memory loss; swing from pangs of grief to emotional numbness; suffer from depression; or have trouble sleeping. These and other symptoms may last for minutes, or continue for days, weeks, or years.

18. Veterans suffering from PTSD face daunting obstacles as a result of their injury, including, but not limited to: difficulty readjusting to work or maintaining employment; difficulty interacting with others; feelings of estrangement or detachment; nightmares and sleep deprivation; impaired functioning; occupational instability; memory disturbances; and family, parenting or marital discord. Many also seek quick fixes through the abuse of alcohol or illicit drugs.

19. Although presently PTSD has no known cure, early treatment can help lessen the severity and symptoms of PTSD and help those veterans afflicted by it lead healthy and fulfilling lives.

The Army's Treatment of Service Members Found Unfit Due to PTSD

20. The Plaintiffs in this litigation, as well as the proposed class members they seek to represent, all have been diagnosed with PTSD during their military careers and were found by the Army to be medically unfit for continued military service and thus were subject to administrative elimination from the Army under Army Regulation 635-40. In separating them from service, however, the Army denied the Plaintiffs and the class members they represent the disability rating to which they were lawfully entitled and, as a consequence, they have been denied the disability compensation to which they otherwise are entitled, access to free medical treatment that can help mitigate the severity and symptoms of their condition and enable them to lead a normal and productive lives, and entitlement of their family members to free medical care.

21. The Army's longstanding pattern or practice of underrating these soldiers' PTSD disability rating is arbitrary, capricious, and contrary to law, and has deprived these wounded soldiers returning home from the battlefield the essential support to which 10 U.S.C. § 1201 entitles them.

22. Chapter 61 of Title 10, U.S.C., establishes the process through which the Army discharges disabled service members. It authorizes an Army Physical Evaluation Board ("PEB") to discharge military personnel found by a PEB to be unfit for continued military service due to physical or mental disability. The Army maintains three PEBs: one in Washington, D.C. at the Walter Reed Army Medical Center; a second at Fort Sam Houston in San Antonio, Texas; and a third at Fort Lewis in Fort Lewis, Washington.

23. The PEB process begins with a Medical Evaluation Board (“MEB”), the first stage in the Army’s evaluation into whether an injured service member is fit to remain on active duty. The purpose of a MEB is to document a service member’s medical status and duty limitations and determine whether he or she meets the Army’s retention standards.

24. The decision to begin a MEB rests entirely with the Army through its chain of command. A service member may not refer himself to a MEB.

25. The MEB evaluates the service member through a series of examinations. If, after such evaluation, the MEB is unsure about a service member’s ability to return to active duty or convinced a service member cannot return to active duty, then the MEB refers the service member to a PEB for a fitness determination.

26. A PEB is the sole Army forum responsible for determining a service member’s unfitness for duty as a result of a physical or mental disability. A PEB can render a determination of unfitness only when a disability rises to the level of interrupting a service member’s service career.

27. The PEB process has four possible outcomes. A service member can be:
- a. Found *fit for duty*;
 - b. Found *unfit for duty but ineligible for disability benefits* because, among other reasons, the disabling condition was not incurred in the line of duty, existed prior to service, was the result of intentional misconduct or willful neglect, or was incurred during an unauthorized absence;
 - c. Found *unfit for duty and eligible for medical retirement* with monthly disability retirement pay and other benefits; or

d. Found *unfit for duty and eligible for medical separation* with disability severance pay;

28. If a service member is found unfit and eligible for disability benefits (that is, under outcomes “c” and “d” above), then the PEB must assign a percentage disability rating for each unfitting condition. A PEB’s disability rating controls the amount of military benefits and services to which the service member is entitled upon discharge. The rating dictates whether a service member is “medically retired” with monthly disability retirement pay and other benefits such as free health care (outcome “c”) or “medically separated” with a one-time lump sum severance payment and no additional benefits (outcome “d”).

29. For each physical or mental disability found by a PEB to render the service member unfit for continued military service, the PEB must assign a disability rating from 0% to 100%, in increments of 10%.

30. A PEB rates only impairments which separately render the service member unfit. *See* Army Regulation 635-40, ¶ 4-19.

31. A service member rated at 30% or higher is deemed “medically retired” and is entitled to disability retirement pay. *See* 10 U.S.C. § 1201.

32. A medically retired service member is entitled to receive monthly disability retirement payments for the rest of his or her life. The Army computes the amount of retirement pay using one of two formulas: (1) disability rating times retired pay base; or (2) 2.5% of years of service times retired pay base. Actual compensation is based on the higher of the two computations. *See id.* § 1401.

33. A service member who is deemed medically retired also receives free medical care for life, including spousal and eligible dependent coverage.

34. A service member who is deemed medically retired also receives commissary and exchange privileges.

35. A service member rated below 30% is deemed “medically separated” and receives a one-time lump sum disability severance payment equal to two months of the service member’s basic pay for each year of service up to twelve years. *See id.* §§ 1203, 1212.

36. A medically separated service member receives no corresponding disability retirement pay, no corresponding medical benefits from the Army, and no corresponding commissary and exchange privileges.

37. The disability evaluation process for each Plaintiff and, upon information and belief, each proposed class member, began with the Army’s decision to initiate a MEB. The Army then referred each service member to a PEB. In every case, the PEB resulted in an unfitness finding and a rating below 50%. The Army-controlled disability evaluation process ends with the termination of each Plaintiff’s active duty military service and each proposed class member’s active duty military service.

38. During the process applied to these Plaintiffs, and, on information and belief, to the proposed class members found unfit for continued military service due, in whole or in part, to PTSD, the Army failed to follow its own regulations and federal law applicable to the assignment of the disability rating for PTSD when it is found to render the service member unfit for continued duty.

39. The VASRD schedule dictates that a service member found unfit due to PTSD receive a minimum 50% disability rating for PTSD. *See* 38 C.F.R. § 4.129.

40. Army regulations implementing Chapter 61 require the PEBs to follow the VASRD schedule when rating service members, except to the extent a military department creates an exception.

41. The Army has never created an exception authorizing it to circumvent the provisions of 38 C.F.R. § 4.129.

42. Between December 17, 2002 and January 27, 2008, the Army deemed numerous service members unfit for continued military service due to PTSD. The Army then disregarded the controlling VASRD schedule when it discharged those soldiers and failed to provide a disability rating of at least 50% for PTSD.

43. Congress amended Chapter 61 of Title 10 effective January 28, 2008 to require the PEBs to rate service members in accordance with the VASRD unless the Secretaries of Veterans Affairs and Defense jointly prescribe an exception that would result in a higher disability rating than required by the VASRD. *See* 10 U.S.C. § 1216a.

44. There have been no exceptions granted by the Secretaries of Veterans Affairs and Defense as permitted under 10 U.S.C. § 1216a.

45. Even after Congress explicitly ordered the PEBs to follow VASRD, the PEBs continued to disregard 10 U.S.C. § 1216b and 38 C.F.R. § 4.129 in their rating of service members found unfit for continued service due to PTSD. Many service members permanently separated from the Army due to PTSD since January 28, 2008, have been assigned a disability rating below 50% for PTSD.

46. The PEBs' systematic failure to rate service members found unfit for service and discharged due to PTSD in accordance with the NDAA and VASRD has deprived those service members of disability retirement pay and benefits to which they are entitled under 10 U.S.C. §

1201, including lifetime disability retirement pay, health care benefits, and commissary and exchange privileges.

47. The Army has chosen to abandon, rather than to protect and provide for, its wounded veterans suffering from PTSD severe enough to render them unfit for continued military service. The Army has left these veterans without the basic support they need and deserve and to which they are entitled to under the law.

48. As a result of the Army's deliberate failure to comply with applicable law, the Plaintiffs and the proposed class members have been deprived of the medical and financial benefits to which they are entitled to under the law. In addition to withholding desperately needed compensation and health care, the Army has deprived soldiers diagnosed with unfitting PTSD of the savings associated with commissary and exchange privileges. Newly-separated soldiers trying to reintegrate into civilian life while dealing with a serious mental illness are precisely the soldiers who would benefit from such savings.

49. By going to war, these soldiers demonstrated a willingness to sacrifice their lives for the Army and for the nation. The Army, through its failure to comply with existing law, has chosen to dishonor its soldiers' sacrifice and visit additional injury on these veterans.

INDIVIDUAL PLAINTIFFS' ALLEGATIONS

Michael Sabo

50. Plaintiff Michael Sabo is a veteran of the United States Army who was diagnosed with PTSD after serving the United States of America in two separate tours of Iraq as part of Operation Iraqi Freedom.

51. Sgt. Sabo served during Operation Iraqi Freedom as a Communications Specialist – Multi-Channel Transmission Systems Operator.

52. Sgt. Sabo first deployed to Iraq from Fort Carson, Colorado in March 2003 with the 3rd Brigade, 4th Infantry Division. Sgt. Sabo returned to the United States following his first deployment in April 2004.

53. During his first deployment, Sgt. Sabo was principally located in Ba'Qubah, Iraq and served in close proximity to multiple explosions and live fire, including explosions from car bombs and improvised explosive devices ("IEDs"). Sgt. Sabo was required to routinely go on patrols in and around Ba'Qubah that placed him at significant risk of imminent harm.

54. After returning to the United States following his first deployment, Sgt. Sabo began to suffer from recurring nightmares, severe headaches and mood swings.

55. Sgt. Sabo deployed to Iraq for a second time with the 2nd Brigade, 2nd Infantry Division in October 2006, from Fort Carson, Colorado. During his second deployment, Sgt. Sabo was principally located at Camp Rustamiyah, south of Baghdad, Iraq, and was again regularly exposed to explosions, mortar attacks and small arms fire that threatened his life.

56. In recognition of his service to the United States in Iraq, Sgt. Sabo received a certificate of achievement and commendation medals.

57. In March 2007, approximately six months into his second deployment, Sgt. Sabo returned to the United States on emergency leave in order to care for his five children while his wife underwent surgery. Upon his return, Sgt. Sabo suffered from recurring nightmares, severe headaches and violent mood swings that severely impacted him and his family.

58. Sgt. Sabo sought medical help for his condition following his return to the United States in March 2007 and was diagnosed with PTSD and Post-Concussive Syndrome. The Army initiated Sgt. Sabo's PEB process in approximately June 2007.

59. In February 2008, the PEB found Sgt. Sabo unfit for service due to PTSD and assigned a 10% disability rating to his PTSD. The PEB also assigned a 10% disability rating to Sgt. Sabo's Post-Concussive Syndrome. In contrast, the Department of Veterans Affairs later assigned Sgt. Sabo a 50% disability rating for PTSD, as well as an additional 30% disability rating for various other injuries he incurred during his service.

60. Sgt. Sabo's PTSD was rated at only 10% disability despite the fact that the federal law and the VASRD dictate that a service member who, like Sgt. Sabo, is found unfit due to PTSD must receive a minimum 50% disability rating.

61. Because the PEB rated Sgt. Sabo's disabilities at less than a 30% rating, he was not deemed "medically retired," but, instead, was medically separated from the United States Army.

62. As a result of being medically separated, Sgt. Sabo received a one-time lump sum disability severance payment and was deprived of the lifetime disability retirement pay, free medical coverage for himself, his spouse, and his children, and commissary and exchange privileges to which he would have been entitled had his disabilities been rated at 30% or higher, and to which he was entitled as a veteran found unfit for continued service due to PTSD.

63. The failure of the PEB to rate Sgt. Sabo's PTSD disability at least 50% in accordance with the NDAA and the VASRD has left Sgt. Sabo's family without medical coverage. Though Sgt. Sabo is currently employed, he is not able to obtain medical coverage through his employer. This lack of medical coverage significantly and adversely impacts Sgt. Sabo and his family, including his four-year-old daughter who suffers from multiple disabilities.

64. Sgt. Sabo has suffered damages and has been deprived of benefits to which he is entitled as a result of the Army's actions in failing to comply with federal law and the VASRD and, in particular, failing to assign at least a 50% disability rating to Sgt. Sabo's PTSD.

Nicholas Wells

65. Plaintiff SPC Nicholas Wells is a veteran of the United States Army who was diagnosed with PTSD after serving in Iraq during Operation Iraqi Freedom.

66. SPC Wells joined the Army on November 9, 2004 and was first deployed to Iraq approximately one year later on November 28, 2005 as a member of the Third Brigade Combat team in the 4th Infantry Division.

67. During his deployment, SPC Wells served as a scout and lead Humvee gunner in, among other places, Ad Dawr, Iraq. SPC Wells' squadron came under fire on numerous occasions during its daily patrols, drawing routine small arms fire as well as more than 20 IED explosions. In one incident, an IED exploded just as SPC Wells' armored personnel carrier was passing over it. In light of his service, SPC Wells received among other achievements two Army commendation medals, a combat action badge, and an Exemplary Action Award for his service during Operation Iraqi Freedom.

68. SPC Wells' tour in Iraq lasted approximately 12 months, with a short break home in Fort Carson, Colorado in March 2006 for R&R. SPC Wells first began experiencing signs of PTSD during his March 2006 leave, but was told by treating physicians that his anxiety attacks were normal for his situation. When he ultimately returned from Iraq in November 2006, however, he was still subject to severe anxiety attacks and other symptoms of PTSD.

69. For almost two years, SPC Wells received intermittent treatment from the Army for both his recurring anxiety attacks and for several physical injuries he sustained during his

service. The Army's treatment, however, was designed solely to ready SPC Wells for redeployment to Iraq in late 2007. Not until December 2007 did the Army cancel his redeployment orders and initiate the PEB process that separated SPC Wells from the Army because of his disabilities, including PTSD.

70. On May 19, 2008, the PEB found SPC Wells' PTSD unfit for continued military service due to PTSD, but assigned him a disability rating of 10% for PTSD. In contrast, when the Department of Veterans Affairs later rated him, SPC Wells received a 50% disability rating for PTSD, as well as an additional 10% disability rating for his physical injuries.

71. SPC Wells' PTSD was rated at only 10% disability despite the fact that federal law and the VASRD dictate that a service member who, like SPC Wells, is found unfit for service due to PTSD must receive a minimum 50% disability rating.

72. Because the PEB unlawfully rated SPC Wells' disabilities, he was not deemed "medically retired," but, instead, was medically separated from the United States Army.

73. As a result of being medically separated, SPC Wells received a one-time lump sum disability severance payment and was deprived of the lifetime disability retirement pay, free medical coverage, and commissary and exchange privileges to which he would have been entitled had his disabilities been rated at 30% or higher, and to which he is entitled as a veteran found unfit for continued military service due to PTSD.

74. SPC Wells has suffered damages and has been deprived of benefits to which he is entitled as a result of the Army's actions in failing to comply with federal law and the VASRD and, in particular, failing to assign at least a 50% disability rating stemming from SPC Wells' diagnosis of PTSD.

Juan Perez

75. Plaintiff Juan Perez is a veteran of the United States Army who was diagnosed with PTSD after serving the United States of America in two separate tours of Iraq as part of Operation Iraqi Freedom.

76. Mr. Perez enlisted in the United States Army in May 2002, shortly after the terrorist attacks of September 11, 2001. Following the completion of basic training in Fort Knox, Kentucky, Mr. Perez was deployed to Iraq in April 2003 from Fort Carson, Colorado, as part of Operation Iraqi Freedom. Mr. Perez returned to the United States following his first deployment in approximately April 2004.

77. During his first deployment, Mr. Perez was principally located near the border of Iraq and Syria, and served in close proximity to multiple explosions, including mortar rounds, IEDs, and small arms fire. As a cavalry scout, Mr. Perez was required to go routinely on patrols, reconnaissance missions and raids near the Iraq-Syria border that exposed him to several IED explosions and small arms fire that placed him at significant risk of imminent harm. In one incident, a tank transporting Mr. Perez was exploded by an IED.

78. After returning to the United States following his first deployment, Mr. Perez began to suffer from recurring nightmares, insomnia, irritability, extreme tension, stress, and paranoia.

79. Mr. Perez deployed to Iraq for a second time in approximately April 2005 from Fort Carson, Colorado. During his second deployment, Mr. Perez was principally located in Baghdad, Iraq with the 1/3 ACR Division, and served as a gunner for his commanding officer. He was regularly exposed to explosions, mortar attacks and small arms fire that threatened his life.

80. Approximately one month into his second deployment, Mr. Perez was severely injured. As a result of his injury, Mr. Perez was medically evacuated to Germany. Following treatment, Mr. Perez was sent back to the United States.

81. Upon his return to the United States, Mr. Perez again suffered from recurring nightmares insomnia, irritability, extreme tension, stress, and paranoia that severely impacted him and his family, including his wife and five young children.

82. During Mr. Perez's service in Operation Iraqi Freedom, he received several commendations, including an Army Commendation Medal and a Combat Action Badge.

83. Mr. Perez sought medical assistance and evaluation following his return to the United States and was diagnosed with Traumatic Brain Injury and PTSD. The Army initiated Mr. Perez's PEB process in approximately March 2006.

84. In April 2006, the PEB found Mr. Perez unfit for continued military service due to PTSD, but assigned a 0% disability rating to his PTSD.

85. Mr. Perez's PTSD was rated at 0% disability despite the fact that the VASRD dictated that a service member who, like Mr. Perez, is found unfit due to PTSD must receive a minimum 50% disability rating for PTSD.

86. Because the PEB rated Mr. Perez's disabilities at less than a 30% rating, he was not deemed "medically retired," but, instead, was medically separated from the United States Army.

87. As a result of being medically separated, Mr. Perez received a one-time lump sum disability severance payment and was deprived of the lifetime disability retirement pay, medical coverage for himself, his spouse, and his children, and commissary and exchange privileges to which he is entitled.

88. The failure of the PEB to rate Mr. Perez's PTSD disability at 50% in accordance with the VASRD has left Mr. Perez's family without adequate medical coverage. The medical coverage that Mr. Perez is able to obtain through his employer for his family carries deductibles so high that, as a practical matter, his family has been left with no medical coverage. This lack of adequate medical coverage significantly and adversely impacts Mr. Perez and his family.

89. Mr. Perez has suffered damages and has been deprived of benefits to which he is otherwise entitled as a result of the Army's actions in failing to comply with the VASRD and, in particular, failing to assign at least a 50% disability rating to Mr. Perez's PTSD.

Alan Pitts

90. Plaintiff Sgt. Alan Pitts is a veteran of the United States Army who was diagnosed with PTSD after serving a tour of duty in Iraq during Operation Iraqi Freedom.

91. Sgt. Pitts enlisted in the Army in June 2001. Following basic training, Sgt. Pitts was stationed in South Korea for approximately three years before he was deployed to Iraq in August 2004.

92. At the time of his deployment to Iraq, Sgt. Pitts served as the team leader with 21 Alpha Company Engineer Unit, a combat engineer unit that was part of the 2nd Brigade Combat Team based in Fort Carson, Colorado.

93. On October 10, 2004, Sgt. Pitts took part in an operation in Ar Ramadi, Iraq to shut down an Iraqi National Guard compound. Sgt. Pitts's armored personnel carrier was one of many that participated in the operation. Enemy combatants ambushed Sgt. Pitts's convoy as it returned to base following the military action. During this attack, the driver of Sgt. Pitts' vehicle was shot in the head, causing it to crash and become separated from the rest of the convoy.

94. At the time of the ambush, Sgt. Pitts was riding in the vehicle's troop hatch. When his vehicle crashed, Sgt. Pitts was rendered unconscious for a short period of time. When he regained consciousness, Sgt. Pitts found he had briefly lost feeling in both his legs.

95. During this military operation, Sgt. Pitts was shot, fractured his hip, and suffered a herniated disc that required steroid injections into his spine. After receiving treatment in Iraq over the course of several weeks, Sgt. Pitts was flown to Germany on November 23, 2004 for further treatment before he ultimately returned to Fort Carson for additional care. Sgt. Pitts was awarded the Purple Heart for the injuries he received.

96. During January 2005, Sgt. Pitts was diagnosed with PTSD. As a result of his injury, he suffered from insomnia, headaches, dizziness, and nausea. In addition, he experienced anxiety attacks and frequent flashbacks to his combat experience. He also found himself angry and irritable and in a constant state of anxiety.

97. The Army initiated Sgt. Pitts' PEB process shortly after his return to Fort Carson. On July 24, 2006, Sgt. Pitts was found unfit for continued military service and received a 10% disability rating due to his PTSD, as well as a 10% disability rating stemming from his herniated disc. In contrast, when the Department of Veterans Affairs later assessed him, Sgt. Pitts received a 100% disability rating for PTSD, as well as an additional 30% disability rating for his back injuries and a 20% disability rating for continued numbness in his legs.

98. Because his PEB rating was less than 30%, Sgt. Pitts was not deemed "medically retired." Instead, he was medically separated from the Army.

99. As a result of this action, Sgt. Pitts received a one-time lump sum disability severance payment and was deprived of a lifetime disability retirement benefit. In addition, he was deprived of other benefits, including medical coverage to which he is lawfully entitled.

100. Sgt. Pitts has suffered damages and has been deprived of benefits to which he is otherwise entitled as a result of the Army's failure to comply with the VASRD and specifically its deliberate refusal to assign Sgt. Pitts at least a 50% disability rating for his PTSD.

Billy J. Talley

101. Plaintiff SPC Billy J. Talley is a veteran of the United States Army who was diagnosed with PTSD after serving two separate tours of duty in Afghanistan and Iraq during Operation Enduring Freedom and Operation Iraqi Freedom.

102. SPC Talley joined the Army in April 2002. Mr. Talley was deployed to Afghanistan in March 2004 as a Field Direction Chief with the 7th Field Artillery. SPC Talley arrived in Afghanistan one month prior to the arrival of the main artillery battery to which he was assigned, and immediately began conducting combat operations principally as a forward observer in support of U.S. Army Special Forces.

103. During his deployment, SPC Talley conducted combat patrols throughout Afghanistan's mountainous border region with Pakistan, engaging in several firefights while providing target data in support of on-going operations.

104. While deployed in Afghanistan, SPC Talley was promoted to the rank of E4 Specialist. In addition, he received both a commendation for his battle field service and a combat action badge. He also was recommended for an award by his unit for his meritorious service and dedication to duty, as well as his skill and "unmatched bravery" during Operation Enduring Freedom.

105. SPC Talley's tour in Afghanistan lasted 13 months, after which he returned to Fort Carson. Upon his return, SPC Talley began experiencing symptoms of PTSD, including panic attacks, sleeplessness, nightmares, depression, paranoia, and irritability towards his family.

SPC Talley did not seek medical attention for his symptoms because of his desire to remain a soldier and his belief that he could work out his problems on his own.

106. During the fall of 2006, SPC Talley was deployed to FOB Loyalty located in east Baghdad, Iraq where he was assigned to a field reaction force and casualty evacuation team. During this deployment, SPC Talley's unit came under daily mortar attack and small arms fire as it performed an almost continuous cycle of patrols around Baghdad in support of active combat operations.

107. Among other duties, SPC Talley's unit was engaged in casualty evacuation, rushing immediately to assist other patrols that had come under enemy attack. During his first few months in Iraq, SPC Talley's PTSD symptoms worsened.

108. After four months in Iraq, SPC Talley returned to Fort Carson, Colorado for two weeks of R&R with his wife and family. While home, SPC Talley experienced difficulty sleeping, and suffered nightmares when he ultimately was able to sleep. In addition, he began to experience frequent panic attacks. Nonetheless, at the end of his R&R, SPC Talley began preparations to return to Iraq and fulfill his duties to the Army and his fellow soldiers.

109. On January 7, 2007, while en route to Iraq, SPC Talley suffered another panic attack and could not board his connecting flight in Dallas, Texas. Instead, after several hours pacing the Dallas-Fort Worth airport, he purchased his own airplane ticket back to Fort Carson where, within days of his return, he was diagnosed with severe PTSD.

110. Despite his diagnosis, SPC Talley's rear detachment's chain of command sought to redeploy him back to Iraq. In addition, the Army initiated nonjudicial punishment (Article 15) proceedings against him. Ultimately, the Army demoted SPC Talley's rank from E4 to E1

because of his failure to report back to Iraq in January 2007, resulting in a one-third cut in pay. SPC Talley was medically separated from service on July 27, 2007.

111. In addition to its nonjudicial punishment proceedings, the Army also initiated a PEB process to medically separate SPC Talley from the Army. Despite his initial diagnosis of severe PTSD when he first returned to Fort Carson during January 2007, the PEB found SPC Talley unfit for continued military service due to PTSD, but assigned SPC Talley a rating of 0% for PTSD rating on May 23, 2007.

112. As a result of his separation, SPC Talley received a one-time separation payment from the Army. The Army's PEB rating for PTSD deprived SPC Talley of lifetime disability retirement pay, as well as free medical coverage for himself, his spouse and his children, and other benefits that would have been due him had he been properly rated for his PTSD disability as required by federal law.

113. The Army's failure to give SPC Talley an initial disability rating of at least 50% in accordance with the VASRD has left SPC Talley and his family without adequate medical coverage and other benefits to which he is lawfully entitled.

114. SPC Talley has suffered damages as a result of the Army's failure to comply with the VASRD and specifically its gross failure to assign SPC Talley at least a 50% disability rating for SPC Talley's diagnosis of PTSD.

CLASS ALLEGATIONS

115. This complaint is filed on behalf of the named Plaintiffs and all others similarly situated. An Army PEB has evaluated each Plaintiff's and Class Member's entitlement to disability retirement and rendered a final decision. The Class consists of Army service members evaluated and discharged from active duty between December 17, 2002 and October 13, 2008

due to a finding that (a) the individual's PTSD renders the individual unfit for continued military service and (b) the individual merits a disability rating below 50% for PTSD.

116. Plaintiffs also bring this action on behalf of themselves and a portion of the Class described as Subclass A. Subclass A is defined as Army service members discharged from active duty between December 17, 2002 and January 27, 2008 due to unfitting PTSD who received a disability rating below 50% for PTSD.

117. Plaintiffs also bring this action on behalf of themselves and a portion of the Class described as Subclass B. Subclass B is defined as Army service members discharged from active duty between January 28, 2008 and October 13, 2008 due to unfitting PTSD who received a disability rating below 50% for PTSD.

118. The members of the Class and Subclasses are so numerous that joinder of all members is impracticable.

119. While the exact number of Class Members is not presently known to Plaintiffs and can only be ascertained through discovery, Plaintiffs believe that, between December 17, 2002 and the present, thousands of individuals were evaluated and permanently separated from service by the Army due to unfitting PTSD and received a disability rating below 50% for PTSD.

120. This Complaint involves common questions of law and fact including but not limited to:

a. Whether, in failing to assign a disability rating to all wounded veterans found unfit for continued military service due to PTSD in accordance with the VASRD between December 17, 2002 and January 27, 2008, the Army violated applicable regulations and law with respect to the Plaintiffs and proposed class members;

b. Whether, in failing to assign a disability rating to all wounded veterans found unfit for continued military service due to PTSD in accordance with the NDAA and the VASRD between January 28, 2008 and the present, the Army violated applicable regulations and law with respect to the Plaintiffs and proposed class members;

c. Whether, between December 17, 2002 and January 27, 2008, the Army arbitrarily, capriciously, and unlawfully disregarded the VASRD when rating wounded veterans suffering from unfitting PTSD;

d. Whether, between January 28, 2008 and the present, the Army arbitrarily, capriciously, and unlawfully disregarded the NDAA and the VASRD when rating wounded veterans suffering from unfitting PTSD;

e. Whether a valid justification exists for the Army's policy of ignoring the NDAA and the VASRD provisions applicable to PTSD; and

f. Whether the Army deprived all Plaintiffs and proposed class members of the disability retirement pay and other benefits to which they are entitled under 10 U.S.C. § 1201.

121. The named Plaintiffs' claims are typical of the Class and Subclasses A and B.

122. The named Plaintiffs will adequately and fairly protect the interests of the Class and Subclasses A and B, and they are represented by legal counsel experienced in class action litigation.

123. The Army's actions have generally affected the entire Class, thus making final relief appropriate with respect to the Class as a whole. The common questions of law and fact involved in this action thus predominate over individual questions, if any. Class action treatment is the superior method for fair and efficient adjudication of this controversy because it permits

numerous persons to prosecute their common claims jointly in a single forum and thus avoids unnecessary duplication and the potential for inconsistent rulings. A class action provides an efficient, manageable method to adjudicate fairly Plaintiffs', and the proposed class members', rights and obligations.

COUNT I

(28 U.S.C. § 1491(a)(1); 10 U.S.C. § 1201)

124. Plaintiffs re-allege and incorporate by reference the allegations contained in paragraphs 1 through 123 above as if fully set forth herein.

125. 10 U.S.C. § 1201 confers a substantive right to monetary benefits against the United States by specifying the disability retirement pay and benefits to be paid to a qualified discharged service member.

126. Plaintiffs and the proposed class members have been denied the disability retirement pay and benefits to which they are entitled under 10 U.S.C. § 1201 as a result of the Army's decision to disregard and circumvent the NDAA and the VASRD.

127. The Army's decision to assign PTSD disability ratings below 50% to service members separated from the service due to PTSD was arbitrary, capricious, and contrary to law.

128. As a direct result of the Army's arbitrary and capricious decision to disregard existing regulations and federal law, Plaintiffs and the proposed class members have been, and continue to be, deprived of the disability retirement pay and benefits to which they are entitled under 10 U.S.C. § 1201.

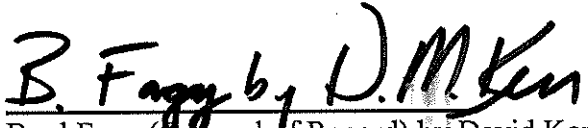
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court enter judgment against Defendant and award the following relief:

- a. Certify this action as a class action on behalf of the proposed Class and Subclasses;
- b. Designate Michael Sabo, Nicholas Wells, Juan Perez, Alan Pitts, and Billy J. Talley as representatives of the class;
- c. Designate Plaintiffs' Counsel of Record as Class Counsel;
- d. Enjoin the Army's arbitrary, capricious, and contrary to law practice of disregarding the VASRD when rating service members found unfit due to PTSD;
- e. Award Plaintiffs money benefits that are formulaic in nature in an amount to be determined at trial;
- f. Award Plaintiffs interest, costs, and attorneys' fees; and
- g. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

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Dated: December 17, 2008

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