

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

MARTIN JOHNSON and JANE DOE on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

FRANK KENDALL, Secretary of the Air
Force,

Defendant.

No. 3:21-cv-01214

April 24, 2023

STIPULATION AND AGREEMENT OF SETTLEMENT

This Stipulation and Agreement of Settlement (the “Stipulation” or “Settlement Agreement”) is made and entered into by and between: (i) Mr. Alex Wagner, Assistant Secretary of the Air Force for Manpower and Reserve Affairs, duly authorized in his official capacity to execute such agreement on behalf of Defendant Frank Kendall, in his official capacity as Secretary of the Air Force (“Air Force” or “Defendant”), and (ii) Martin Johnson and Jane Doe, on behalf of a class of persons similarly situated (“Plaintiffs”). Plaintiffs and Defendant shall be referred to in this Settlement Agreement individually as a “Party” and collectively as the “Parties.”

I. RECITALS

This Settlement Agreement is made and entered into with reference to the following facts:

A. On September 13, 2021, Plaintiffs commenced this action against Defendant to obtain judicial review of the denial by the Air Force Discharge Review Board (“AFDRB”) of the discharge upgrade applications of Mr. Johnson, Ms. Doe, and others similarly situated. ECF No. 1. The Complaint alleged, among other things, that since the start of military operations in Iraq

and Afghanistan, the Air Force, the Air Force Reserve, and the Air National Guard discharged thousands of men and women with less than Honorable characterizations of service due to misconduct attributable to post-traumatic stress disorder (“PTSD”), traumatic brain injury (“TBI”), and other mental health conditions. Specifically, the Complaint alleged that upon their return from Iraq and Afghanistan, veterans with service-connected PTSD, TBI, and other mental health conditions, or with experiences of military sexual assault, sexual harassment or intimate partner violence, received less than Honorable service characterizations and were systematically denied discharge upgrades by the AFDRB. The Complaint alleged that the AFDRB’s refusal to apply liberal consideration to the discharge upgrade applications of veterans with disabilities violates the Administrative Procedure Act (APA), Department of Defense guidance, the Due Process Clause of the Fifth Amendment, and Section 504 of the Rehabilitation Act. Defendant has denied and continues to deny each and all allegations of wrongdoing.

B. On September 13, 2021, Plaintiffs moved to certify a class of AFDRB applicants similarly situated to Mr. Johnson and Ms. Doe. ECF No. 2.

C. On March 21, 2022, Defendants filed an Answer and three affirmative defenses to Plaintiff’s complaint. ECF No. 37.

D. The same day, the Parties jointly requested that the Court refer the action to a U.S. Magistrate Judge for settlement conferencing. ECF No. 36.

E. On April 8, 2022, the Court referred the case to U.S. Magistrate Judge Robert M. Spector. ECF No. 39.

F. The Parties participated in three joint settlement conferences, on June 15, 2022, July 11, 2022, and September 6, 2022. *See* ECF Nos. 51, 54, 70. The Parties also engaged in a

series of *ex parte* settlement conferences with Judge Spector. *See* ECF Nos. 56, 58, 62, 64. At various times, the Parties also engaged directly with each other in settlement negotiations.

G. During the joint settlement conference on September 6, 2022 with Judge Spector, Plaintiffs and Defendant reached an agreement in principle to settle the Litigation.

H. Based on Plaintiffs' counsel's investigation and evaluation of the facts and law relating to the matters alleged in the pleadings, Plaintiffs agreed to settle the Litigation pursuant to the provisions of this Settlement Agreement after considering, among other things: (1) the substantial benefits available to Plaintiffs under the terms herein; (2) the attendant risks and uncertainty of litigation, especially in complex actions such as this, as well as the difficulties and delays inherent in such litigation; and (3) the desirability of consummating this Settlement Agreement to provide effective relief to Plaintiffs.

I. Defendant has denied and continues to deny each of the claims and contentions alleged by Plaintiffs. Defendant has expressly denied and continues to deny all charges of wrongdoing or liability against it arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in this Litigation.

J. Nonetheless, Defendant has concluded that further defense of the Litigation would be protracted and expensive, and that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in the Settlement Agreement. Defendant also has taken into account the uncertainty and risks inherent in any litigation. Defendant, therefore, has determined that it is desirable and beneficial to the Department of the Air Force, as well as for its Veterans included in the Settlement Class, for the Litigation to be settled in the manner and upon the terms and conditions set forth in the Settlement Agreement.

K. This Settlement Agreement effectuates the resolution of disputed claims and is for settlement purposes only.

II. DEFINITIONS

As used in this Settlement Agreement, the following capitalized terms have the meanings specified below. Unless otherwise indicated, defined terms include the plural as well as the singular.

A. “Air Force Discharge Review Board” or “AFDRB” means the Department of the Air Force board that reviews discharges of former members of the United States Air Force, United States Space Force, Air Force Reserve, and Air National Guard, if an application for review is submitted within 15 years from the date of their discharge, *see* 32 C.F.R. 865.106(b), on the basis of propriety and equity in accordance with 10 U.S.C. § 1553 and 32 C.F.R. § 865.100 *et seq.*

B. “Applicant” means any individual who seeks a discharge review through submission of the Department of Defense Form 293 to the AFDRB.

C. “Settlement Class” means all individuals who are included within the Parties’ stipulated class definition, as set forth in Exhibit “A”. The Parties stipulate that the Settlement Class includes members and former members of the Air Force, Space Force, Air Force Reserve, and Air National Guard who served in the military during the Iraq and Afghanistan eras, defined as those with discharge dates from October 7, 2001 through the Effective Date of Settlement, and who:

1. were discharged from the Air Force, Space Force, Air Force Reserve, or Air National Guard with the following service characterizations: Under Honorable Conditions (General), or Under Other Than Honorable Conditions (UOTHC); but not the following service characterizations: Bad

Conduct Discharges (BCDs), Dishonorable discharges, Uncharacterized discharges, or Dismissals;

2. who, if they submitted a previous discharge upgrade application or application for reconsideration, submitted at least one such application on or after September 13, 2006;
3. have not received upgrades of their service characterizations to Honorable; and
4. have diagnoses of post-traumatic stress disorder (“PTSD”), Traumatic Brain Injury (“TBI”), or other mental health conditions, or have experiences of sexual assault or sexual harassment, or records documenting that one or more symptoms of PTSD, TBI, other mental health conditions, or experiences of sexual assault or sexual harassment existed/occurred during military service, under the Kurta Memo standard of liberal consideration.

D. “Settlement Class Counsel” means, collectively, the Jerome N. Frank Legal Services Organization of Yale Law School and the law firm of Jenner & Block LLP.

E. “Class Notice” means the notice substantially in the form attached to this Settlement Agreement as Exhibit “B,” to be provided to the Settlement Class as set forth in Section IV below.

F. “Court” means the U.S. District Court for the District of Connecticut.

G. “DD-293” means the Department of Defense Form 293, Application for the Review of Discharge or Dismissal from the Armed Forces of the United States.

H. “Defendant” means the Secretary of the Air Force, in his official capacity. The current Secretary of the Air Force is Frank Kendall.

I. “Effective Date of Settlement” means the date of the Final Approval Order.

J. “Fairness Hearing” means the hearing to be held by the Court, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, to determine whether the settlement set forth in this Settlement Agreement should be approved.

K. “Final Approval Order” means the order by the Court, after notice and the holding of the Fairness Hearing, granting approval of this Settlement Agreement under Rule 23(e) of the Federal Rules of Civil Procedure, substantially in the form attached to this Settlement Agreement as Exhibit “C”.

L. The “Automatic Reconsideration Group” is defined below in Section IV.A.

M. The “Reapplication Group” is defined below in Section IV.B.

N. “Honorable” means an Honorable service characterization which is earned when the quality of the member’s service generally has met Department of the Air Force standards of acceptable conduct and performance of duty or when a member’s service is otherwise so meritorious that any other characterization would be inappropriate. *See* Department of the Air Force Instruction 36-3211, *Military Separations*, 24 June 2022, at paragraphs 3.14.1.1 and 14.7.1.

O. “Kurta Memo” means the memorandum issued by then-Acting Under Secretary of Defense for Personnel and Readiness A.M. Kurta on August 25, 2017, issuing guidance clarifying that “[l]iberal consideration will be given to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions.” ECF No. 1-2 at 3.

P. “Kurta Factors” means the four questions provided at paragraph 2 in the attachment to the Kurta Memo.

Q. “Liberal Consideration Cases” refers to the class of Veterans discharged from the Department of the Air Force, United States Space Force, Air Force Reserve, or Air National Guard with the following service characterizations: Under Honorable Conditions (General), or Under Other Than Honorable Conditions (UOTHC); but not the following service characterizations: Bad Conduct Discharges (BCDs), Dishonorable Discharges, Uncharacterized discharges, or Dismissals; who have diagnoses of Post-Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), or other mental health conditions, or have experiences of sexual assault or sexual harassment, or records documenting that one or more symptoms of PTSD, TBI, other mental health conditions, or experiences of sexual assault or sexual harassment existed/occurred during military service, under the Kurta Memo standard of liberal consideration.

R. “Litigation” means the lawsuit captioned *Johnson et al. v. Kendall*, Case No. 3:21-cv-01214 (D. Conn.).

S. “Person” means a natural person, individual, corporation, partnership, association, or any other type of legal entity.

T. “Plaintiffs” means the class representatives Martin Johnson and Jane Doe, on behalf of themselves and the Settlement Class.

U. “Preliminary Approval Order” means the “Order Preliminarily Approving Class Action Settlement, Conditionally Certifying the Settlement Class, Providing For Notice and Scheduling Order,” substantially in the form of Exhibit “D” attached hereto, which, among other things, would preliminarily approve this Settlement Agreement and provide for notification to the Settlement Class and set the schedule for the Fairness Hearing.

V. “PTSD” means Post-Traumatic Stress Disorder.

W. “Settled Claims” means all claims for relief that were brought on behalf of the Settlement Class based on the facts and circumstances alleged in the Complaint. ECF No. 1. The Settled Claims do not include Claims VIII through XIII of the Complaint, which are brought on behalf of the named Plaintiffs individually.

X. “Stipulation and Agreement of Settlement” or “Stipulation” or “Settlement Agreement” means this agreement, including its attached exhibits (which are incorporated herein by reference), duly executed by Settlement Class Counsel and counsel for Defendant.

Y. “TBI” means Traumatic Brain Injury.

Z. “VTC” means Video-Teleconference.

AA. “Wilkie Memo” means the memorandum issued by then-Under Secretary of Defense Robert L. Wilkie on July 25, 2018, providing additional guidance that “[r]equests for relief based in whole or in part on a mental health condition, including post-traumatic stress disorder (PTSD); Traumatic Brain Injury (TBI); or a sexual assault or sexual harassment experience, should be considered for relief on equitable, injustice, or clemency grounds whenever there is insufficient evidence to warrant relief for an error or impropriety.” ECF No. 1-3 at 4.

III. CERTIFICATION OF THE SETTLEMENT CLASS

The Parties agree that the Settlement Class should be conditionally certified, in accordance with the terms of this Settlement Agreement, solely for purposes of effectuating the settlement embodied in this Settlement Agreement.

IV. SETTLEMENT RELIEF

A. Automatic Reconsideration

1. The AFDRB will automatically reconsider its decisions that meet all of the following three criteria: (a) the applicant is a member of the Settlement Class, (b) whose

application was submitted on or after September 13, 2015 to the Effective Date of Settlement, (c) where the grant state indicates the applicant did not receive a full upgrade to Honorable, and (d) where the denial was not based on the discharge date being more than 15 years before the application date. Applicants meeting the above criteria are entitled to automatic reconsideration by the AFDRB under the terms of this settlement, regardless of discharge date. The applicants who are entitled to reconsideration under this paragraph are henceforth referred to as the “Automatic Reconsideration Group Applicants.”

2. Defendant will identify Automatic Reconsideration Group Applicants by searching its electronic database of applications where possible, and will otherwise conduct an individual review of applications. In its searches, Defendant will first identify cases that were not rejected for untimeliness. Defendant will next identify Liberal Consideration Cases. Defendant will next review the files to determine if the applicant’s record indicates they did or did not receive a full upgrade to an Honorable service characterization. Any individual who meets the criteria set out in the paragraph above shall be considered an Automatic Reconsideration Group Applicant.

3. Defendant will send a notice, in the form of Exhibit “E,” to all Automatic Reconsideration Group Applicants, to both their last known mailing and e-mail addresses on file with the AFDRB. The text of that notice, as provided in Exhibit “E,” will state that the AFDRB will reconsider that individual’s case without a need for further response from the Applicant; state that if the Applicant wishes to supplement their application, they should submit supplemental evidence within 60 days of the notice; state that submitting medical evidence in support of the application benefits the Applicant; provide examples of the types of additional evidence that may be relevant; and include information regarding

available resources to assist Applicants in supplementing their applications, including legal and medical services. The AFDRB notice will provide that reasonable extensions will be granted upon request.

4. Defendant will mail and e-mail the notice to Automatic Reconsideration Group Applicants within 120 days of the Effective Date of Settlement. Defendant shall do so at its own cost.

5. The AFDRB will make every effort to complete its reconsideration of Automatic Reconsideration Group Applicants in a timely manner.

B. Notice of Reapplication Rights

1. Plaintiffs will mail a notice to the last known addresses of Settlement Class Members for whom the AFDRB's decisions meet the following two criteria: (a) whose application was submitted between September 13, 2006 and September 12, 2015 with a discharge date after October 6, 2001, and (b) whose grant state indicates the Applicant did not receive a full upgrade to an Honorable service characterization. The Applicants from this group who (a) qualify as Liberal Consideration Cases, and (b) did not receive a full upgrade to Honorable from the AFDRB, are defined here as Reapplication Group Applicants. Reapplication Group Applicants who were discharged 15 years ago or less from the date of application for reconsideration may apply to the AFDRB. Reapplication Group Applicants whose discharge date is older than 15 years as of the date of application must apply to the Air Force Board for Correction of Military Records ("AFBCMR").

2. The AFDRB will provide Plaintiffs with the names and last-known mailing and e-mail addresses (according to AFDRB data) for Applicants whose cases did not

receive an upgrade to an Honorable service characterization by the AFDRB for applications submitted between September 13, 2006 and September 12, 2015. Plaintiffs will send a notice, in the form of Exhibit “F,” to individuals on this list of names and addresses by mail and e-mail, referring them to the Class Notice and informing them of their potential right to reapply if they qualify as a member of the class. That notice, as laid out in Exhibit “F,” will state that the Applicant may reapply to the AFDRB or, if the Applicant’s discharge date is beyond the AFDRB’s 15-year statute of limitations pursuant to 10 U.S.C. § 1553, to the AFBCMR for reconsideration of their case; state that submitting medical evidence in support of the application benefits the Applicant; include information regarding available legal and medical services; and refer to the Class Notice. The notices will not include the name, contact information, or return mailing address of Plaintiffs’ counsel.

3. Along with the notice in the form Exhibit “F,” Plaintiffs will send an additional notice to inform Reapplication Group Applicants of resources available to help answer Applicants’ questions about the application process or to help Applicants supplement their applications. This notice is described in more detail in Section IV.D. An example of this notice is appended as Exhibit “G”.

4. Applications for reconsideration must be submitted and/or postmarked to the AFDRB or AFBCMR within one (1) year of the date of the notice.

5. An Applicant’s notice will be dated to be mailed within 120 days of the Effective Date of Settlement or of Plaintiffs’ receipt of the Applicant’s name, mail, and e-mail addresses from the AFDRB, whichever is later. If the first notice is returned as

undeliverable, Plaintiffs may send a subsequent notice to the Applicant within this same period of time to an address Plaintiffs identify as currently belonging to the Applicant.

6. Plaintiffs will bear the cost of mailing and e-mailing these notices to Reapplication Group Applicants, paid out of the attorneys' fees and costs set forth in Section V(A) below.

C. Online Notice of Reapplication Rights and of Reconsiderations

1. Defendant will post notice of Reapplication Rights, as described above, and Automatic Reconsideration, as described above, in the form of Exhibits "E" and "F," on the main page of its website, within 45 days of the Effective Date of Settlement.

2. The online notices described in this section will be posted in a way that does not create confusion by implying that anyone who accesses the notice on the website is receiving this relief. Confusion will be avoided by including the word "Sample" in any hyperlink(s) to the document(s) and including a watermark of the word "Sample" diagonally across the versions of Exhibits "E" and "F" that are posted online.

3. The AFDRB's website will state that, if an individual believes they are part of the automatic reconsideration or reapplication groups but did not receive a notice, they should contact the AFDRB by e-mail.

4. Defendant will also update the Frequently Asked Questions ("FAQ") section of its website in accordance with the terms of this settlement, an example of which is attached in the form of Exhibit "H".

D. Provision of Additional Information to New and Pending AFDRB Applicants

1. For all discharge upgrade applications submitted to the AFDRB after the Effective Date of Settlement, when the Board writes the Applicant to acknowledge receipt of a submitted DD Form 293, the Board shall provide an additional notice to inform

Applicants of resources available to help answer Applicants' questions about the application process or to help Applicants supplement their applications. This information shall include, but not be limited to: (a) information on the types of evidence that can be submitted to support an applicant's claim; (b) information regarding potential eligibility for mental health treatment and evaluation services offered by the Department of Veterans Affairs ("VA"), and the weblink to locate VA facilities providing such services; (c) general information regarding Veterans Service Organizations that may assist with AFDRB applications, and applicants' right to retain counsel; (d) the link for Stateside Legal, which provides a database of legal services organizations that serve members of the military, veterans, and their families as well as other resources; (e) the weblink to the VA's "Directory of Veterans Service Organizations"; and (f) information regarding reasonable accommodation requests from the AFDRB in the application and adjudication process. The Department of the Air Force will incorporate a non-endorsement clause into such notices to avoid the appearance of bias or partiality toward any particular organization, and to inform applicants that additional organizations may be able to assist them. The notice may take the form of Exhibit "G" or a reasonable equivalent, and changes may be made to the notice as needed to reflect changes in applicable law or policy. If the AFDRB becomes aware of changes to factual information in the notice, such as if weblinks external to the Department of the Air Force are no longer operable, the AFDRB will, with or without notice to any party, update the information, or remove it and replace it with its reasonable equivalent, if any exists.

2. Defendant shall provide the same notice to all AFDRB applicants whose applications were submitted to the AFDRB before the Effective Date of Settlement, but not adjudicated before the Effective Date of Settlement.

3. Defendant shall provide the same notice as an attachment to the Notice of Reapplication Rights described in Section IV.B.

E. Notice Inviting Additional Evidence

1. For applicants who apply to the AFDRB after the Effective Date of Settlement and claim to have PTSD, TBI, or other mental health conditions, or to have experiences of sexual assault or sexual harassment, the AFDRB's medical professional will review the applicant's DD-293, the official military and medical file to which the Department of the Air Force has access, and submitted materials. If the medical professional determines that there may be insufficient records to establish the mental health condition or experience, or that it existed/occurred in service, the medical professional will send the form notice, attached as Exhibit "I," to the applicant.

2. This will be a trial program of one (1) year in duration from the date of the program's implementation, and only applies to new applications and applications not yet assessed by the AFDRB's medical professional at the time of the program's implementation. This program will be implemented within 45 days of the Effective Date of Settlement.

3. At six months and twelve months' time, Defendant will report to Plaintiffs' counsel the following information:

- i. The number of applications reviewed in the time period where the applicant claimed a mental health condition or covered experience;

- ii. The number of applicants to whom the AFDRB sent a letter as per this settlement term;
- iii. The number of applicants who sent additional records (not previously in the AFDRB's possession) within 60 days for consideration;
- iv. The number of applicants who requested an extension; and
- v. The number of applicants who responded to ask that their application remain in processing (*i.e.*, who said they would decline to send additional materials).

The Parties recognize that because an individual may change their mind, send records late, request an extension, or not respond at all, numbers reported in categories iii through v may not total the numbers in categories i or ii.

F. Revised Decisional Documents and Procedures

1. For Liberal Consideration Cases, Defendant has incorporated the text of the four "Kurta Factors" and the following procedure, or a reasonable equivalent, into AFDRB decisional documents, subject to modification due to relevant changes to statutes, regulations, or Department of Defense guidance binding on the AFDRB:

In the event the AFDRB denies an Applicant's request for relief, in this decision the Board will, in accordance with applicable law and regulation: (a) respond to the Applicant's contentions; (b) explain why the Board decided against the Applicant regarding any denied bases for relief; and (c) describe the evidence on which the AFDRB relied in making its determination. In doing so, the Board will articulate a rational connection between facts found and conclusions drawn. If the Applicant claims to have, or the evidence suggests the Applicant may have, post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), another mental health condition, or an experience of sexual assault or harassment in military service, this decision will include a narrative explanation of why the AFDRB decided against the Applicant as to each of the four factors set out at paragraph two of the 2017 Kurta Memo, as applicable. This explanation should restate and answer the applicable Kurta factors, and give a narrative reason why the Board finds insufficient mitigation to support a discharge upgrade. The Board will also

distinguish [explain how the facts or outcome are different] any prior Board decisions cited by the Applicant, in accordance with applicable law and regulation.

2. The AFDRB will append a medical opinion to its decisional document if the conditions of 32 C.F.R. § 865.114(b)(13) are satisfied. That medical opinion will include a narrative explanation as to the following, if applicable: (A) whether the available record reasonably supports that a mental health condition existed at the time of the applicant's military service; (B) whether these conditions were present at the time of the misconduct; (C) whether these conditions were mitigating for the misconduct; and (D) whether the applicant received mental health and/or medical evaluations prior to their administrative separation. The content of the medical opinion and conditions under which it is appended to decisional documents are subject to modification due to relevant changes to statutes, regulations, or Department of Defense guidance binding on the AFDRB.

3. Defendant agrees to disclose, upon request by the applicant, the type of mental health professional providing the opinion, their licenses and certifications, and the identity of the mental health professional if their military pay grade is at or above the O-6 level or its civilian equivalent.

4. Defendant has provided Plaintiffs with the personnel description for the AFDRB mental health professional position. The description is provided as Exhibit "J."

G. Training

1. The Department of the Air Force agrees to additional, routine training, including making its unconscious bias training for supervisors available to AFDRB staff and members.

2. Defendant agrees that AFDRB members and staff will participate in live training specifically tailored to Liberal Consideration Cases and that new AFDRB

members and staff will attend such training prior to participating in discharge upgrade decisions. This training obligation can be met through attendance of trainings conducted by the AFDRB or the Army Discharge Review Board.

3. The live training described in this subsection will: cover posttraumatic stress disorder, military sexual trauma, intimate partner violence, other behavioral health disorders, and traumatic brain injury; include a discussion of liberal consideration including general examples of mitigation, non-mitigation, or possible mitigation; include time for questions and discussion.

4. AFDRB members and staff must attend the live training described in this subsection upon joining the AFDRB and every two years thereafter, or within a reasonable period of time after significant changes to Liberal Consideration requirements.

H. AFDRB Phone Number to be Provided to Applicants

1. Defendant agrees to provide a phone number for applicants with questions to leave voicemail messages. Applicants who call should receive a response to their voicemail via phone, unless the applicant clearly indicates a preference for a written response in the voicemail. This will be a trial program of one (1) year in duration.

I. Video-Teleconference Personal Appearance Hearings

1. Defendant will continue to provide Video-Teleconference (“VTC”) personal appearance hearings for the AFDRB, which will continue to be available to all Applicants who request a Personal Appearance hearing. Defendant will inform Applicants of their ability to opt-in to a VTC AFDRB hearing in the letter acknowledging receipt of their DD-293 application. Applicants can participate in VTC hearings from their personal residences or other locations of their choice.

J. Review of AFDRB Decisions by the Secretarial Review Authority

1. Defendant acknowledges that the Kurta and Wilkie memoranda apply to the exercise of Secretarial Review Authority detailed under 32 C.F.R. § 865.113.

2. Where acting to overturn a favorable AFDRB decision for a Liberal Consideration Case, the Secretary's discussion of issues under 32 C.F.R. § 865.113(e) shall address each issue considered by the AFDRB, including a discussion of each Kurta Factor as considered by the AFDRB under Section IV.F of this agreement.

K. Settlement Compliance Deadlines

1. Unless a compliance deadline is otherwise specified, the Parties shall implement all terms in this agreement within 45 days of the Effective Date of Settlement.

V. ATTORNEYS' FEES AND COSTS

With respect to the issue of attorneys' fees and costs incurred by Plaintiffs and the payment thereof by Defendant, the Parties agree to the following as a complete resolution of the issue:

A. Defendant agrees to pay \$55,000.00 in attorneys' fees and costs to Settlement Class Counsel.

B. Defendant agrees to submit payment of attorneys' fees to Settlement Class Counsel within 90 days of either (a) the Effective Date of Settlement, or (b) Defendant's receipt of Settlement Class Counsel information (including banking information) necessary to effectuate the attorneys' fee transfer, whichever occurs later.

VI. NOTICE AND APPROVAL PROCEDURE

A. Preliminary Approval. As soon as practicable after the execution of this Agreement, the Parties shall jointly move for a Preliminary Approval Order, substantially in the form of Exhibit “D,” preliminarily approving this Settlement Agreement and finding this settlement to be fair, just, reasonable, and adequate; certifying the Settlement Class as defined in Exhibit “A”; approving the Class Notice to the Settlement Class members as described in Section VI.C, *infra*; and setting a Fairness Hearing to consider the Final Approval Order and any objections thereto.

B. Effect of the Court’s Denial of the Agreement. This Settlement Agreement is subject to and contingent upon Court approval under Rule 23(e) of the Federal Rules of Civil Procedure. If the Court rejects this Agreement, in whole or in part, or otherwise finds that the Agreement is not fair, reasonable, and adequate, the Parties agree to meet and confer to work to resolve the concerns articulated by the Court and modify the Agreement accordingly. Except as otherwise provided herein, in the event the Settlement Agreement is terminated or modified in any material respect or fails to become effective for any reason, the Settlement Agreement shall be without prejudice and none of its terms shall be effective or enforceable; the Parties to this Settlement Agreement shall be deemed to have reverted to their respective status in the Litigation as of the date and time immediately prior to the execution of this Settlement Agreement; and except as otherwise expressly provided, the Parties shall proceed in all respects as if this Settlement Agreement and any related orders had not been entered. In the event that the Settlement Agreement is terminated or modified in any material respect, the Parties shall be deemed not to have waived, not to have modified, or not to be estopped from asserting any additional defenses or arguments

available to them. Regardless of the outcome of the Settlement Agreement—whether it is approved, terminated, or modified in any material respect, or meets some other outcome—neither this Settlement Agreement nor any draft thereof, nor any negotiation, documentation, or other part or aspect of the Parties’ settlement discussions, nor any other document filed or created in connection with this settlement, shall have any effect or be admissible in evidence for any purpose in the Litigation or in any other proceeding, and all such documents or information shall be treated as strictly confidential and may not, absent a court order, be disclosed to any person other than the Parties’ counsel, and in any event only for the purposes of the Litigation. Unless and until the Court approves the Settlement Agreement, it is without legal effect.

C. Notice for Fairness Hearing. Not later than 14 calendar days after entry of the Preliminary Approval Order (unless otherwise modified by the Parties or by order of the Court), the Parties shall effectuate the following Class Notice.

1. Plaintiffs shall post the Class Notice substantially in the form of Exhibit “B” as well as a copy of the Settlement Agreement, on the website www.JohnsonAirForceSettlement.com.

2. Defendant shall post the Class Notice substantially in the form of Exhibit “B,” including a copy of the Settlement Agreement, on its website.

3. The Parties shall issue a joint press release, attached as Exhibit “K,” that describes the Class Notice and provides a link to the website listed in Section VI.C.1.

4. Plaintiffs agree to further publicize the Class Notice through outreach to individuals and organizations likely to interface with Class Members. Examples of such outreach include: (a) efforts to engage national and regional news media, (b) efforts to engage military- and Veterans-specific news media, (c) requests to elected officials to

distribute the Class Notice to colleagues and constituents, and (d) attempts to publicize the Class Notice through Veterans' organizations, legal services organizations, and other advocates across the country.

D. Objections to Settlement. Unless otherwise modified by the Parties or by order of the Court, within 21 calendar days before the Fairness Hearing any Class member who wishes to object to the fairness, reasonableness, or adequacy of this Settlement Agreement or the settlement contemplated herein must file with the Clerk of Court and serve on the Parties a statement of objection setting forth the specific reason(s), if any, for the objection, including any legal support or evidence in support of the objection, grounds to support their status as a Class member, and whether the Class member intends to appear at the Fairness Hearing. The Parties will have 14 days following the objection period in which to submit answers to any objections that are filed. The notice to the Clerk of the Court shall be sent to: Clerk of the Court, U.S. District Court for the District of Connecticut, 141 Church Street, New Haven, CT 06510; and both envelope and letter shall state: "Attention: *Johnson v. Kendall*, Case No. 3:18-CV-01214 (CSH) (D. Conn.)." Copies shall also be served on counsel for Plaintiffs and counsel for Defendants.

E. Fairness Hearing. At the Fairness Hearing, as required for Final Approval of the settlement pursuant to Federal Rule of Civil Procedure 23(e)(2), the Parties will jointly request that the Court approve the settlement as final, fair, reasonable, adequate, and binding on the Class, all Class members, and all Plaintiffs.

F. Opt-Outs. The Parties agree that the Settlement Class shall be certified in accordance with the standards applicable under Rule 23(b)(2) of the Federal Rules of Civil Procedure and that, accordingly, no Settlement Class member may opt out of any of the provisions of this Settlement Agreement.

G. Final Approval Order and Judgment. At the Fairness Hearing, the Parties shall jointly move for entry of the Final Approval Order, substantially in the form of Exhibit “C,” granting final approval of this Agreement to be final, fair, reasonable, adequate, and binding on all Class members; overruling any objections to the Settlement Agreement; ordering that the terms be effectuated as set forth in this Settlement Agreement; and giving effect to the releases as set forth in Section VII.

VII. RELEASES

A. As of the Effective Date, Plaintiffs and Class members, on behalf of themselves; their heirs, executors, administrators, representatives, attorneys, successors, assigns, agents, affiliates, and partners; and any persons they represent, by operation of any final judgment entered by the Court, shall have fully, finally, and forever released, relinquished, and discharged Defendant of and from any and all of the Settled Claims, and Plaintiffs and Class members shall forever be barred and enjoined from bringing or prosecuting any Settled Claim against any of Defendants, and all of their past and present agencies, officials, employees, agents, attorneys, and successors. This Release shall not apply to claims that arise or accrue after the effective date of Agreement.

B. In consideration of the terms and conditions set forth herein, Plaintiffs hereby release and forever discharge Defendant, and all of his past and present agencies, officials, employees, agents, attorneys, successors, and assigns from any and all obligations, damages, liabilities, causes of action, claims, and demands of any kind and nature whatsoever, whether suspected or unsuspected, arising in law or equity, arising from or by reason of any and all known, unknown, foreseen, or unforeseen injuries, and the consequences thereof, resulting from the facts, circumstances and subject matter that gave rise to the Settled Claims, including all claims that were asserted or that Plaintiffs could have asserted on behalf of the Class in the Litigation.

C. For avoidance of doubt, this agreement does not resolve or release any claim that the named Plaintiffs may hold in their individual capacities, including without limitation Claims VIII-XIII of the Litigation.

[Remainder of this page intentionally left blank. Agreement resumes on page 24, which contains only the requisite party signatures.]

FOR PLAINTIFFS:

SO STIPULATED AND AGREED:

Dated: April 24, 2023



Gustavo Berrizbeitia, Law Student Intern
Yael Caplan, Law Student Intern
Grace Fenwick, Law Student Intern
Jun Luke Foster, Law Student Intern
Alexis Kallen, Law Student Intern
Nate Urban, Law Student Intern
Meghan E. Brooks (ct31147)
Michael J. Wishnie (ct27221)
Veterans Legal Services Clinic
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P.O. Box 209090
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Jacob Tracer, pro hac vice
Susan J. Kohlmann, pro hac vice
Jenner & Block LLP
919 Third Avenue, New York, NY 10022-3908
Tel: (212) 891-1678
jtracer@jenner.com

Counsel for Plaintiffs

FOR DEFENDANTS:

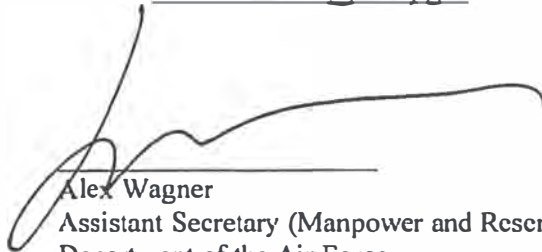
SO STIPULATED AND AGREED:

Dated: April 24, 2023

VANESSA ROBERTS AVERY
UNITED STATES ATTORNEY



Natalie N. Elicker, ct28458
Assistant United States Attorney
157 Church Street
New Haven, CT 06510
Telephone: (203) 821-3700
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E-mail: Natalie.Elicker@usdoj.gov



Alex Wagner
Assistant Secretary (Manpower and Reserve Affairs)
Department of the Air Force

Executed this 11 day of April, 2023

EXHIBIT A

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

MARTIN JOHNSON and JANE DOE on
behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

FRANK KENDALL, Secretary of the Air
Force,

Defendant.

No. 3:21-cv-01214

STIPULATION TO CLASS DEFINITION

The parties stipulate that the class includes members and former members of the Air Force, Space Force, Air Force Reserve, and Air National Guard who served in the military during the Iraq and Afghanistan eras, defined as those with discharge dates from October 7, 2001 through the Effective Date of Settlement, and who:

(1) were discharged from the Air Force, Space Force, Air Force Reserve, or Air National Guard with the following service characterizations: Under Honorable Conditions (General), or Under Other Than Honorable Conditions (UOTHC); but not the following service characterizations: Bad Conduct Discharges (BCDs), Dishonorable discharges, Uncharacterized discharges, or Dismissals;

(2) who, if they submitted a previous discharge upgrade application or application for reconsideration, submitted at least one such application on or after September 13, 2006;

(3) have not received upgrades of their service characterizations to Honorable;
and

(4) have diagnoses of post-traumatic stress disorder (“PTSD”), Traumatic Brain Injury (“TBI”), or other mental health conditions, or have experiences of sexual assault or sexual harassment, or records documenting that one or more symptoms of PTSD, TBI, other mental health conditions, or experiences of sexual assault or sexual harassment existed/occurred during military service, under the Kurta Memo standard of liberal consideration.

EXHIBIT B

Notice of Class Action Settlement

Re: Air Force Discharge Review Board

Important Information — Read Carefully

This is a Court-approved Legal Notice. This is not an advertisement.

1. Are you a member of the Air Force, Space Force, Air Force Reserve, or Air National Guard who was discharged from October 7, 2001 through [date of settlement]?
2. Were you discharged with a “General, Under Honorable Conditions” (General) or “Under Other Than Honorable Conditions” (UOTHC) service characterization?
3. Have you been denied or not yet received a discharge upgrade to Honorable?
4. Do you have a diagnosis of post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), or another mental health condition? If not, do you have records showing that you had symptoms of these conditions in military service? Or, did you experience sexual assault or sexual harassment in service?

If you answered YES to these questions, you may be part of a proposed settlement class.

What Is This Case About?

A settlement has been reached in a class action lawsuit against the Secretary of the Air Force, Frank Kendall, regarding the Air Force Discharge Review Board (AFDRB). The lawsuit, filed by named plaintiffs Martin Johnson and Jane Doe, alleges that the Air Force failed to provide “liberal consideration” as required by law to AFDRB discharge upgrade applicants with PTSD, TBI, other mental health conditions, or experiences of sexual assault or sexual harassment in service

The pending lawsuit is: *Martin Johnson et al. v. Frank Kendall, Secretary of the Air Force*
No. 3:21-cv-01214-CSH
United States District Court for the District of Connecticut

Important Dates

The parties have submitted a settlement agreement to the Court for its approval. This settlement is not yet final. If the Court approves it, all members of the Settlement Class will be bound by the terms of the settlement. If you are a Settlement Class Member, you can object to the settlement if you feel that it is not fair, reasonable, or adequate. The key dates for objecting are:

DATE — Any objections must be filed with the Court by [date] and also sent to the lawyers for the proposed settlement class and the Air Force (details below).

DATE, TIME — The Court will hold a Fairness Hearing over Zoom (details below).

What Are the Terms of the Settlement?

The settlement terms will begin after the Court approves the settlement, except where the Department of the Air Force (DAF) has already taken action. The key terms of the settlement are as follows:

1. **Automatic Reconsideration**: The AFDRB will automatically reconsider discharge upgrade applications that did not result in an Honorable for class members who submitted their applications on or after September 13, 2015 through the date the Court approves the Settlement. The Air Force will provide notice of this automatic reconsideration. Class members do not have to do anything to get reconsideration, but will have 60 days from the date of the notice to submit additional evidence to support their application if they choose.
2. **Reapplication Rights Notice**: Class members who requested a discharge upgrade from the AFDRB between September 13, 2006 and September 13, 2015, but were denied, will be able to request reconsideration of their denial with or without submitting new evidence.
3. **Notice of Additional Resources**: For all discharge upgrade applications submitted to the AFDRB after the Court approves the Settlement, when the AFDRB acknowledges receipt of the application, the AFDRB will inform applicants of resources available to help answer their questions about the application process or to help them supplement their applications.
4. **Medical Professional Review of Evidence**: For applicants entitled to “liberal consideration” who apply to the AFDRB after the Settlement is approved, the AFDRB’s medical professional will review the applicant’s records. If the records are insufficient to establish that the applicant had a mental health condition or sexual assault or sexual harassment experience in military service, the medical professional will send a notice to the applicant and advise them on how to supplement their application.
5. **Decisional Document Revisions**: The AFDRB has revised its decisional document to give applicants more explanation for the AFDRB’s decision on their applications.
6. **Training for AFDRB Members**: AFDRB members and staff will participate in live training specifically tailored to applicants entitled to “liberal consideration” and will repeat such training every two years. New AFDRB members and staff will attend such training prior to participating in discharge upgrade decisions.
7. **Phone Number for Applicants**: The AFDRB will provide a phone number for applicants to call with questions about their applications or the AFDRB’s process, as a trial program.
8. **Remote Appearances**: The AFDRB will continue to provide a Video-Teleconference (“VTC”) Personal Appearance Hearing Program, which will be available to all applicants who request a Personal Appearance hearing.
9. **Review of AFDRB Decisions**: If the Secretary of the Air Force overturns a favorable AFDRB decision for an applicant entitled to “liberal consideration,” the Secretary’s discussion of issues will address each issue considered by the AFDRB.
10. **Attorney’s Fees**: The AFDRB agrees to pay \$55,000 in attorneys’ fees and costs to counsel for the Settlement Class.

Attention all former members of the United States Air Force, United States Space Force, Air Force Reserve, or Air National Guard discharged since October 7, 2001 with an Under Honorable Conditions (General), or Under Other Than Honorable Conditions (UOTHC) service characterization, who, if you submitted a previous discharge upgrade application or application for reconsideration, submitted at least one such application on or after September 13, 2006; and who have not received upgrades of their discharge characterizations to Honorable, and have diagnoses of PTSD, TBI, or other mental health conditions, or have records documenting that one or more symptoms of these conditions existed during military service, or who experienced sexual assault or sexual harassment during military service:

You may benefit from a proposed settlement in the Johnson settlement class action.

Pursuant to Federal Rule of Civil Procedure 23(e) you are notified as follows:

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MARTIN JOHNSON and JANE DOE on
behalf of themselves and all others similarly
situated,

Plaintiffs,

No. 3:21-cv-01214-CSH

v.

[DATE]

FRANK KENDALL, Secretary of the Air
Force,

Defendant.

This is a notice of class members' rights in this class action litigation. This notice proceeds in three parts: (1) background information on the Plaintiffs' claims, the Department of the Air Force's defenses, and the class; (2) a summary and description of the proposed terms of the settlement between the class and the Department of the Air Force; and (3) information on the upcoming settlement hearing.

BACKGROUND

On September 13, 2021, Plaintiffs Martin Johnson and Jane Doe commenced this action against the Defendant Secretary of the Air Force to obtain judicial review of the denial by the Air Force Discharge Review Board ("AFDRB") of the discharge upgrade applications of Mr. Johnson, Ms. Doe, and others similarly situated. The Complaint alleged, among other things, that since the start of military operations in Iraq and Afghanistan, the Air Force, the Air Force Reserve, and the Air National Guard discharged thousands of men and women with less than Honorable characterizations of service due to misconduct attributable to post-traumatic stress disorder ("PTSD"), traumatic brain injury ("TBI"), or other mental health conditions, or misconduct attributable to military sexual trauma ("MST") or intimate partner violence ("IPV"). The Complaint alleged that the AFDRB systematically denied veterans with these disabilities and experiences liberal consideration of their discharge upgrade applications in violation of the Administrative Procedure Act (APA), Department of Defense guidance, the Due Process Clause of the Fifth Amendment, and Section 504 of the Rehabilitation Act. Defendant has denied and continues to deny each of the claims and contentions alleged by Plaintiffs.

A. The Settlement Class

The settlement class in this civil action ("The Settlement Class") is defined as follows:

"Members and former members of the Air Force, Space Force, Air Force Reserve, and Air National Guard who served in the military during the Iraq and Afghanistan eras, defined as those with discharge dates from October 7, 2001 through the Effective Date of Settlement, and who:

- (1) were discharged from the Air Force, Space Force, Air Force Reserve, or Air National Guard with the following service characterizations: Under Honorable Conditions (General), or Under Other Than Honorable Conditions (UOTHC); but not the following service characterizations: Bad Conduct Discharges (BCDs), Dishonorable discharges, Uncharacterized discharges, or Dismissals;

- (2) who, if they submitted a previous discharge upgrade application or application for reconsideration, submitted at least one such application on or after September 13, 2006;
- (3) have not received upgrades of their service characterizations to Honorable; and
- (4) have diagnoses of post-traumatic stress disorder (“PTSD”), Traumatic Brain Injury (“TBI”), or other mental health conditions, or have experiences of sexual assault or sexual harassment, or records documenting that one or more symptoms of PTSD, TBI, other mental health conditions, or experiences of sexual assault or sexual harassment existed/occurred during military service, under the Kurta Memo standard of liberal consideration.”

The “Effective Date of Settlement” is defined as the date the Court orders final approval of the proposed settlement.

B. Class Counsel

The Court named Plaintiffs as settlement class representatives in this civil action and the Jerome N. Frank Legal Services Clinic of Yale Law School and Jenner & Block LLP as Settlement Class Counsel (“Settlement Class Counsel”). Throughout 2022, Plaintiffs and Defendant engaged in discovery and settlement negotiations supervised by the Court. After negotiations and exchanges of multiple proposals, Plaintiffs and Defendant reached an agreement in principle (“Joint Settlement Agreement”) on September 6, 2022 to settle the claims in the Complaint. The Joint Settlement Agreement, if approved by the Court, will settle the claims in the Complaint in the manner and upon the terms summarized and described below.

SUMMARY OF SETTLEMENT TERMS

The full text of the proposed Joint Settlement Agreement can be viewed at www.JohnsonAirForceSettlement.com.

The Joint Settlement Agreement uses the term “Liberal Consideration Cases,” which means veterans discharged from the Department of the Air Force, United States Space Force, Air Force Reserve, or Air National Guard with less-than-Honorable statuses; including Under Honorable Conditions (General) and Under-Other-than-Honorable Conditions (UOTHC) discharges, but excluding Uncharacterized, Bad Conduct, Dishonorable discharges, or Dismissals; who have diagnoses of Post-Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), or other mental health conditions, or have experiences of sexual assault or sexual harassment during military service, or records documenting one or more symptoms of PTSD, TBI, or other mental

health conditions, or experiences of sexual assault or sexual harassment existed/occurred during military service, under the Kurta Memo standard of liberal consideration.

1. Automatic Reconsideration for Certain 2015-2023 Applicants

The AFDRB will automatically reconsider its decisions that meet the following three criteria: (a) Liberal Consideration Cases, (b) where the application was submitted on or after September 13, 2015 to the date the Settlement is approved, and (c) where the applicant did not receive a full upgrade to Honorable. The Defendant will identify these applicants by conducting a search of its electronically-stored AFDRB case files.

The Air Force will send notice of this automatic reconsideration process to all eligible applicants, to both their last known mailing and e-mail addresses on file with the AFDRB. The notice will provide that the AFDRB will reconsider that individual's case without a need for further response from the Applicant. It will also state that if the Applicant wishes to supplement their application with additional evidence, they should do so within 60 days of the notice, and that submitting medical evidence in support of the application benefits the Applicant. The notice will provide examples of the types of additional evidence that may be relevant, and include information regarding available resources to assist Applicants in supplementing their applications, including legal and medical services. This notice will be posted to [\[AFDRB WEB LINK\]](#) and www.JohnsonAirForceSettlement.com, and sent to eligible veterans within 120 days of the date the Settlement is approved. The AFDRB's website will state that, if an individual believes they are part of the automatic reconsideration or reapplication groups, but did not receive a notice, they should contact the AFDRB. The AFDRB will also update the Frequently Asked Questions ("FAQ") section of its website in accordance with the terms of this settlement.

2. Reapplication Rights for Certain 2006-2015 Applicants

Previous applicants to the AFDRB who are not eligible for automatic reconsideration according to the paragraph above, but whose cases were either denied or only granted partial relief by the AFDRB between September 13, 2006 and September 12, 2015, will be eligible to reapply to the AFDRB under the Joint Settlement Agreement with or without submitting new evidence. Settlement Class Counsel will send notice to these applicants informing them of their right to reapply if they qualify as a member of the settlement class. The Applicant may reapply to the AFDRB — or if the Applicant was discharged more than 15 years from the date they reapply, to the Air Force Board for Correction of Military Records — for reconsideration of their case.

3. Notice of Additional Resources for New and Pending AFDRB Applicants

For all discharge upgrade applications submitted to the AFDRB after the Court approves the Settlement, when the Board writes the Applicant to acknowledge receipt of a submitted DD Form 293, the Board will provide an additional notice to inform Applicants of resources available to applicants. These resources will include: websites for Applicants to look up lawyers and Veterans Service Organizations who may help Applicants gather evidence and submit discharge upgrade applications; information about Applicants' potential eligibility for mental healthcare treatment; and information about how to make reasonable accommodations requests at the AFDRB.

Defendant will provide the same notice to all AFDRB applicants whose applications were submitted to the AFDRB before the Court approves the Settlement, but have not yet been decided.

4. Medical Professional Review and Notice Inviting Additional Evidence

For applicants who apply to the AFDRB after the Court approves the Settlement and claim to have PTSD, TBI, or other mental health conditions, or to have experiences of sexual assault or sexual harassment, the AFDRB's medical professional will review the applicant's DD Form 293, the Applicant's official military and medical files — including VA mental health treatment records — and materials the Applicant submits. If the medical professional determines that there may be insufficient records to establish that the mental health condition or experience existed in military service, the medical professional will send a notice to the applicant inviting additional evidence.

This will be a trial program lasting one year, and will only apply to new applications and applications not yet assessed by the AFDRB's medical professional at the time of the program's implementation. This program will be implemented within 45 days of the Court's approval of the Settlement.

5. Revised Decisional Documents & Procedures

For Liberal Consideration Cases, the AFDRB has incorporated the text of the four "Kurta Factors" and the following language and procedure, or a reasonable equivalent, into AFDRB decisional documents, subject to modification due to relevant changes to statutes, regulations, or Department of Defense guidance binding on the AFDRB:

In the event the AFDRB denies an Applicant's request for relief, in this decision the Board will, in accordance with applicable law and regulation: (a) respond to the Applicant's contentions; (b) explain why the Board decided against the Applicant regarding any denied bases for relief; and (c) describe the evidence on which the

AFDRB relied in making its determination. In doing so, the Board will articulate a rational connection between facts found and conclusions drawn. If the Applicant claims to have, or the evidence suggests the Applicant may have, post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), another mental health condition, or an experience of sexual assault or harassment in military service, this decision will include a narrative explanation of why the AFDRB decided against the Applicant as to each of the four factors set out at paragraph two of the 2017 Kurta Memo, as applicable. This explanation should restate and answer the applicable Kurta factors, and give a narrative reason why the Board finds insufficient mitigation to support a discharge upgrade. The Board will also distinguish [explain how the facts or outcome are different] any prior Board decisions cited by the Applicant, in accordance with applicable law and regulation.

The AFDRB will include the medical board member's written opinion with the decisional document, if required. The written opinion will include a narrative explanation as to the following, if applicable: (A) whether the available record reasonably supports that a mental health condition existed at the time of applicant's military service; (B) whether these conditions were present at the time of the misconduct; (C) whether these conditions were mitigating for the misconduct; and (D) whether the applicant received mental health and/or medical evaluations prior to their administrative separation.

When the Applicant requests it, the AFDRB will disclose the type of mental health professional providing the opinion, their licenses and certifications, and the identity of the mental health professional if their military pay grade is at or above the O-6 level or its civilian equivalent.

6. Training for AFDRB Members and Staff

AFDRB members and staff will participate in live training specifically tailored to Liberal Consideration Cases prior to participating in discharge upgrade decisions, and will participate in such training every two years or whenever there is a significant change to Liberal Consideration policies, whichever is sooner. This training obligation can be met through AFDRB member and staff attending trainings conducted by the Army Discharge Review Board; or may be otherwise provided by the AFDRB.

7. AFDRB Phone Number to be Provided to Applicants

The AFDRB will provide a phone number for applicants with questions to leave voicemail messages. Applicants who call should receive a response to their voicemail via phone, unless the applicant clearly indicates a preference for a written response in the voicemail. This will be a trial program of one (1) year in duration.

8. Universal Option for Video-Teleconference Personal Appearance Hearing

The AFDRB will continue to provide a Video-Teleconference (“VTC”) Personal Appearance Hearing Program, which will be available to all Applicants who request a Personal Appearance hearing. Defendant will inform Applicants of their ability to opt in to a VTC AFDRB hearing in the letter acknowledging receipt of their DD-293 application. Applicants can participate in VTC hearings from their personal residences or other locations of their choice.

9. Review of AFDRB Decisions by the Secretarial Review Authority

Defendant acknowledges that the “Kurta” and “Wilkie” memoranda describing liberal consideration apply to the exercise of Secretarial Review Authority detailed under 32 C.F.R. § 865.113. Where acting to overturn a favorable AFDRB decision for a Liberal Consideration Case, the Secretary’s discussion of issues under § 865.113(e) will address each issue considered by the AFDRB, including a discussion of each Kurta Factor as considered and implemented by the AFDRB.

10. Attorneys’ Fees and Costs

If the settlement is approved by the Court, Defendant agrees to pay \$55,000 in attorneys’ fees and costs to Settlement Class Counsel. A portion of these fees will be used by Settlement Class Counsel to pay for the production and mailing of notices to some members of the settlement class informing them of their right to reapply to the AFDRB.

THE SETTLEMENT HEARING

Before the settlement can become final, it must be approved by the Court. Any affected person may comment for or against the proposed settlement.

A. Hearing Details

In order to give settlement class members an opportunity to express their comments in support or objection to the settlement, a hearing will be held before the Hon. Charles S. Haight, Jr., via the videoconferencing software Zoom on [SETTLEMENT DATE AND TIME] Eastern Time. Settlement class members or their attorneys can attend the hearing using the following information:

Join by Web-Based Platform

Click: [ZOOM LINK]

or **Join by Phone**

Dial: [ZOOM DIAL IN]
Meeting ID: [ZOOM MEETING ID]
Passcode: [ZOOM PASSCODE]

B. How to Comment and/or Object to the Settlement

If you wish to comment for or against the settlement, you must serve by hand, mail, or e-mail your written objection and support papers, including any legal support for your objection and your status as a settlement class member, upon Settlement Class Counsel or Counsel for the Defendant:

Settlement Class Counsel

Michael J. Wishnie
Jerome N. Frank Legal Services Organization
Yale Law School
P.O. Box 209090
New Haven, CT 06520-9090
johnson.settlement@ylsclinics.org

and **Defendant's Counsel**

Natalie N. Elicker
U.S. Attorney's Office for the District of Connecticut
157 Church St, 25th Floor
New Haven, CT 06510
Natalie.Elicker@usdoj.gov

You must **also** file these documents with the Clerk of the Court:

United States District Court for the District of Connecticut
141 Church Street
New Haven, CT 06510

All written objections must be received by [DEADLINE].

Objections or comments will not be considered by the Court unless you have given notice in the manner described. If you intend to object to the Settlement and desire to present evidence at the fairness hearing, you must include in your written objections the identity of any witnesses you may call to testify and the exhibits you intend to introduce into evidence at the fairness hearing. If you fail to object in the manner described you will be deemed to have waived such objection and will forever be foreclosed from making any objection to any aspect of the Settlement, unless otherwise ordered by the Court. You may present your comments yourself or

you may have an attorney present them for you. You are invited to attend the hearing whether or not you have given notice that you want to comment on the settlement.

This settlement, if approved by the Court, will be a full and final adjudication of the issues raised on behalf of the settlement class in the Complaint and of any and all claims resulting from the facts, circumstances and subject matter that gave rise to the Complaint and that were known to Settlement Class Counsel on the date the settlement is approved.

Dated: New Haven, CT
 [DATE]

EXHIBIT C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

MARTIN JOHNSON and JANE DOE on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

FRANK KENDALL, Secretary of the Air
Force,

Defendant.

No.: 3:21-cv-01214-CSH

_____, 2023

[PROPOSED] FINAL ORDER AND JUDGMENT

WHEREAS:

A. As of _____, _____, Martin Johnson and Jane Doe (collectively “Class Representatives”), individually and on behalf of themselves and a class of persons similarly situated (the “Plaintiffs”), and Mr. Alex Wagner, Assistant Secretary of the Air Force for Manpower and Reserve Affairs, duly authorized in his official capacity to execute such agreement on behalf of Defendant Frank Kendall, in his official capacity as Secretary of the Air Force (the “Air Force”) (“Defendant”), entered into a Stipulation and Agreement of Settlement (the “Stipulation” or “Settlement Agreement”) in the above-titled litigation (the “Action”), which is subject to review under Rule 23 of the Federal Rules of Civil Procedure and which, together with the exhibits thereto, sets forth the terms and conditions of the proposed settlement of the Action and the claims alleged in the Complaint filed on September 13, 2021 (ECF No. 1) on the merits and with prejudice (the “Settlement”);

B. Pursuant to the Order Granting Preliminary Approval of Class Action Settlement, entered _____, 2023 (the “Preliminary Approval Order”), the Court scheduled a hearing for _____, _____, at ____: _____.m. (the “Fairness Hearing”) to, among other things: (i) determine whether the proposed Settlement of the Action on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate, and should be approved by the Court; and (ii) determine whether a judgment as provided for in the Stipulation should be entered;

C. The Court ordered that the Class Notice, substantially in the forms attached to the Stipulation as Exhibit “B,” be provided to Settlement Class members as described in the Stipulation. The Class Notice advised potential Settlement Class members of the date, time, place, and purpose of the Fairness Hearing. The Class Notice further advised that any objections to the Settlement were required to be filed with the Court and served on counsel for the Parties such that they were received by _____, _____;

D. The provisions of the Preliminary Approval Order as to notice were complied with;

E. On _____, _____, Parties moved for final approval of the Settlement, as set forth in the Preliminary Approval Order. The Fairness Hearing was duly held before this Court on _____, _____, at which time all interested Persons were afforded the opportunity to be heard; and

F. This Court has duly considered Plaintiffs’ motion, the affidavits, declarations, memoranda of law submitted in support thereof, the Stipulation, and all of the submissions and arguments presented with respect to the proposed Settlement;

NOW, THEREFORE, after due deliberation, IT IS ORDERED, ADJUDGED AND DECREED that:

1. This Judgment incorporates and makes a part hereof the Stipulation filed with the Court on _____, 2023. Capitalized terms not defined in this Judgment shall have the meaning set forth in the Stipulation.

2. This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all Settlement Class members.

3. The Court hereby affirms its determinations in the Preliminary Approval Order and finally certifies, for purposes of the Settlement only, pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, the Settlement Class of:

Members and former members of the Air Force, Space Force, Air Force Reserve, and Air National Guard who served in the military during the Iraq and Afghanistan eras, defined as those with discharge dates from October 7, 2001 through the Effective Date of Settlement, and who:

- a) were discharged from the Air Force, Space Force, Air Force Reserve, or Air National Guard with the following service characterizations: Under Honorable Conditions (General), or Under Other Than Honorable Conditions (UOTHC); but not the following service characterizations: Bad Conduct Discharges (BCDs), Dishonorable discharges, Uncharacterized discharges, or Dismissals;
- b) who, if they submitted a previous discharge upgrade application or application for reconsideration, submitted at least one such application on or after September 13, 2006;
- c) have not received upgrades of their service characterizations to Honorable; and
- d) have diagnoses of post-traumatic stress disorder (PTSD), Traumatic Brain Injury (TBI), or other mental health conditions, or have experiences of sexual assault or sexual harassment, or records documenting that one or more symptoms of PTSD, TBI, other mental health conditions, or experiences of sexual assault or sexual harassment existed/occurred during military service, under the Kurta Memo standard of liberal consideration.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for purposes of the Settlement only, the Court hereby re-affirms its determinations in the Preliminary Approval Order and finally certifies Martin Johnson and Jane Doe as Class Representatives for the Settlement Class; and finally appoints the Jerome N. Frank Legal Services Organization of Yale Law School and the law firm of Jenner & Block LLP as Class Counsel for the Settlement Class.

5. The Court finds that the publication of the Class Notice (i) complied with the Preliminary Approval Order; (ii) constituted the best notice practicable under the circumstances; (iii) constituted notice that was reasonably calculated to apprise Settlement Class members of the effect of the Settlement, of Class Counsel's request for an award of attorney's fees and payment of litigation expenses incurred in connection with the prosecution of the Action, of Settlement Class members' right to object to the Settlement, and of their right to appear at the Fairness Hearing; (iv) constituted due, adequate, and sufficient notice to all Persons entitled to receive notice of the proposed Settlement; and (v) satisfied the notice requirements of Rule 23 of the Federal Rules of Civil Procedure and the United States Constitution (including the Due Process Clause).

6. [There have been no objections to the Settlement.]

7. In light of the benefits to the Settlement Class, the complexity, expense and possible duration of further litigation against Defendant, the risks of establishing liability and damages, and the costs of continued litigation, the Court hereby fully and finally approves the Settlement as set forth in the Stipulation in all respects, and finds that the Settlement is, in all respects, fair, reasonable and adequate, and in the best interests of the Class Representatives and the Settlement Class. This Court further finds that the Settlement set forth in the Stipulation is the result of arm's-length negotiations between experienced counsel representing the interests of

the Class Representatives, the Settlement Class, and Defendant. The Settlement shall be consummated in accordance with the terms and provisions of the Stipulation.

8. The Complaint filed on September 13, 2021 (ECF No. 1) is dismissed in its entirety, with prejudice, and without costs to any Party, except as otherwise provided in the Stipulation.

9. The Court finds that during the course of the Action, the Parties and their respective counsel at all times complied with the requirements of Rule 11 of the Federal Rules of Civil Procedure.

10. Upon the Effective Date of the Settlement and as specified in the Stipulation, the Class Representatives and each and every other Settlement Class Member, on behalf of themselves and each of their respective heirs, executors, trustees, administrators, predecessors, successors, and assigns, shall be deemed to have fully, finally, and forever waived, released, discharged, and dismissed each and every one of the Settled Claims against the Defendant, and shall forever be barred and enjoined from commencing, instituting, prosecuting, or maintaining any and all of the Settled Claims against the Defendant.

11. Each Settlement Class member is bound by this Judgment, including, without limitation, the release of claims as set forth in the Stipulation.

12. Defendant shall pay Class Counsel's fees and costs in the amount of \$55,000, as specified in the Attorney Fee Agreement. This amount does not include any time, if necessary, to enforce any breach of the Stipulation. The Court finds that this award is fair and reasonable.

13. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

14. The Parties are hereby directed to consummate the Stipulation and to perform its terms.

15. The Court retains jurisdiction over this discontinued action, in the event disputes arise over the implementation of the Settlement Agreement.

DATED this _____ day of _____, _____

BY THE COURT:

Honorable Charles S. Haight, Jr.
UNITED STATES DISTRICT JUDGE

EXHIBIT D

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

MARTIN JOHNSON and JANE DOE on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

FRANK KENDALL, Secretary of the Air
Force,

Defendant.

No.: 3:21-cv-01214-CSH

_____, 2023

**[PROPOSED] ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT**

WHEREAS, as of _____, 2023, Martin Johnson and Jane Doe (“Plaintiffs”), and Mr. Alex Wagner, Assistant Secretary of the Air Force for Manpower and Reserve Affairs, duly authorized in his official capacity to execute this settlement agreement on behalf of Defendant Frank Kendall, in his official capacity as Secretary of the Air Force (the “Air Force”) (“Defendant”), entered into a Stipulation and Agreement of Settlement (the “Stipulation” or “Settlement Agreement”) in the above-titled litigation (the “Action”), which is subject to review under Rule 23 of the Federal Rules of Civil Procedure and which, together with the exhibits thereto, sets forth the terms and conditions of the proposed settlement of the Action and the claims alleged in the Complaint filed on September 13, 2021 (ECF No. 1) on the merits and with prejudice (the “Settlement”); and

WHEREAS, the Court has reviewed and considered the Stipulation and the accompanying exhibits; and

WHEREAS, the Parties to the Stipulation have consented to the entry of this order; and

WHEREAS, all capitalized terms used in this order that are not otherwise defined herein have the meanings defined in the Stipulation;

NOW, THEREFORE, IT IS HEREBY ORDERED, this _____ day of _____, 2023 that:

1. The Court has reviewed the Stipulation and preliminarily finds the Settlement set forth therein to be fundamentally fair, reasonable, adequate, and in the best interests of the Settlement Class members, especially in light of the benefits achieved on behalf of them, the risks and delay inherent in continued litigation, and the limited amount of potential recovery that could be shared by the Settlement Class members. Furthermore, the Parties' Settlement Agreement was the result of good-faith, arm's-length negotiations between experienced counsel under the supervision of Magistrate Judge Robert M. Spector, and is without any obvious deficiencies.

2. Pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, the Court has made a preliminary determination to certify the following Settlement Class for the purposes of settlement only:

Members and former members of the Air Force, Space Force, Air Force Reserve, and Air National Guard who served in the military during the Iraq and Afghanistan eras, defined as those with discharge dates from October 7, 2001 through the Effective Date of Settlement, and who:

- a) were discharged from the Air Force, Space Force, Air Force Reserve, or Air National Guard with the following service characterizations: Under Honorable Conditions (General), or Under Other Than Honorable Conditions (UOTHC); but not the following service characterizations: Bad Conduct Discharges (BCDs), Dishonorable discharges, Uncharacterized discharges, or Dismissals;
- b) who, if they submitted a previous discharge upgrade application or application for reconsideration, submitted at least one such application on or after September 13, 2006;

- c) have not received upgrades of their service characterizations to Honorable; and
- d) have diagnoses of post-traumatic stress disorder (PTSD), Traumatic Brain Injury (TBI), or other mental health conditions, or have experiences of sexual assault or sexual harassment, or records documenting that one or more symptoms of PTSD, TBI, other mental health conditions, or experiences of sexual assault or sexual harassment existed/occurred during military service, under the Kurta Memo standard of liberal consideration.

3. The Court finds and concludes that the prerequisites of class action certification under Rule 23 of the Federal Rules of Civil Procedure have been satisfied for the Settlement Class defined herein and for the purposes of the Settlement only, in that:

- (a) the members of the Settlement Class are so numerous that joinder of all Settlement Class members is impracticable;
- (b) there are questions of law and fact common to the Settlement Class members;
- (c) the claims of the Class Representatives are typical of the Settlement Class's claims;
- (d) Class Representatives and Class Counsel have fairly and adequately represented and protected the interests of the Settlement Class;
- (e) there are no conflicts of interest between the Class Representatives and members of the Settlement Class;

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of the Settlement only, Martin Johnson and Jane Doe are certified as Class Representatives. The Jerome N. Frank Legal Services Organization of Yale Law School and the law firm of Jenner & Block LLP are appointed as Class Counsel.

5. A hearing (the “Fairness Hearing”) pursuant to Rule 23(e) of the Federal Rules of Civil Procedure is hereby scheduled to be held before the Court on _____, at ___:___ [a.m. or p.m.] (a day at least sixty (60) days after the entry of this Order). At the Fairness Hearing, the Court will address: (a) whether to grant final approval to the Settlement as fair, reasonable, and adequate, and issue the Final Approval Order dismissing the Amended Complaint with prejudice and releasing the claims set forth in the Stipulation; (b) whether the Settlement Class should be finally certified for purposes of the Settlement only; (c) whether the relief provided to the Settlement Class for reconsideration and reapplication of discharge upgrade applications is fair, reasonable, and adequate; (d) whether to approve the Stipulation’s award of attorneys’ fees and costs; and (e) any other matters the Court may deem appropriate.

6. The Court reserves the right to approve the Settlement with or without modification and with or without further notice to the Settlement Class of any kind. The Court may also adjourn the Fairness Hearing or modify any of the dates herein without further notice to members of the Settlement Class.

7. The Court finds that the distribution of the Class Notice attached as Exhibit B to the Stipulation in the manner set forth in the Stipulation is the best notice practicable under the circumstances, consistent with due process of law, and constitutes due and sufficient notice of this Order and the Settlement to all persons entitled thereto and is in full compliance with the requirements of Rule 23 of the Federal Rules of Civil Procedure.

8. Class Counsel are directed to undertake the extensive outreach strategy described in the Stipulation that includes issuance of a joint press release with Defendant as well as the following efforts: (a) engagement with both traditional media outlets and social media, (b) engagement with military- and veterans-specific news media, (c) collaboration with key elected

officials, and (d) publicizing the settlement with veterans' organizations, legal services offices, and veterans advocates across the country. Recipients of communications from Class Counsel should receive copies of the Stipulation and Agreement of Settlement.

9. Defendant shall publicize the Settlement and Class Notice through the issuance of the joint press release with Class Counsel.

10. Plaintiffs shall cause the Class Notice to be distributed to Settlement Class members in accordance with the terms of the Stipulation no later than fourteen (14) days after the entry of this Order.

11. Settlement Class members shall be bound by all orders, determinations and judgments in this Action concerning the Settlement, whether favorable or unfavorable.

12. Any Settlement Class member may appear in person or through counsel (at their own expense) at the Fairness Hearing and be heard in support of or in opposition to the fairness, reasonableness, and adequacy of the proposed Settlement, award of counsel fees, and the reimbursement of costs. The Court will consider any Settlement Class member's objection to the Settlement only if such Settlement Class member has served upon Class Counsel, by hand, mail, or e-mail, their written objection and supporting papers (including any legal support or evidence in support of the objection and grounds to support their status as a Class member) such that they are received on or before twenty-one (21) calendar days before the Fairness Hearing by: Michael J. Wishnie, Jerome N. Frank Legal Services Organization, Yale Law School, P.O. Box 209090, New Haven, CT 06520-9090, johnson.settlement@ylsclinics.org; and Defendant's Counsel: Natalie N. Elicker, U.S. Attorney's Office for the District of Connecticut, 157 Church St, 25th Floor, New Haven, CT 06510, Natalie.Elicker@usdoj.gov; and has filed said objections and supporting papers with the Clerk of the Court, United States District Court for the District of

Connecticut, 141 Church Street, New Haven, CT 06510. Any Settlement Class member who does not make his, her, or its objection in the manner provided for in the Class Notice shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to any aspect of the Settlement, unless otherwise ordered by the Court. Attendance at the Fairness Hearing is not necessary; however, persons wishing to be heard orally in opposition to the approval of the Settlement are required to indicate in their written objection their intention to appear at the hearing. Persons who intend to object to the Settlement and desire to present evidence at the Fairness Hearing must include in their written objections the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the Fairness Hearing.

13. Settlement Class members do not need to appear at the hearing or take any other action to indicate their approval.

14. Pending final determination of whether the Settlement should be approved, the Class Representatives, all Settlement Class members, and each of them, and anyone who acts or purports to act on their behalf, shall not institute, commence or prosecute any action which asserts the Settled Claims in the Stipulation against the Defendant.

15. Class Counsel shall file and serve its application for final approval of the Settlement no later than seven (7) days prior to the date of the Fairness Hearing. Along with this application, Class Counsel shall file and serve an affidavit stating and describing in detail the communications between Class Counsel and recipients of the outreach efforts referred to in Paragraph 8 of this Order.

16. If the Settlement fails to become effective as defined in the Stipulation or is terminated, then both the Stipulation, including any amendment(s) thereof, except as expressly

provided in the Stipulation, and this Preliminary Approval Order shall be null and void, of no further force or effect, and without prejudice to any Party, and may not be introduced as evidence or used in any actions or proceedings by any person or entity against the Parties, and the Parties shall be deemed to have reverted to their respective litigation positions as of the date and time immediately prior to the execution of the Stipulation.

17. The Court retains jurisdiction over this discontinued action, in the event disputes arise over the implementation of the Settlement Agreement.

DATED this _____ day of _____, 2023

BY THE COURT:

Honorable Charles S. Haight, Jr.
UNITED STATES DISTRICT JUDGE

EXHIBIT E

[Date]

Applicant Name
Address Line 1
Address Line 2
City, ST #####

NOTICE OF AUTOMATIC RECONSIDERATION

You are receiving this letter as part of a settlement agreement in a class-action lawsuit filed in federal court in Connecticut, *Johnson et al. v. Kendall*, Case No. 3:21-cv-01214. As part of the settlement, the Department of the Air Force has agreed to automatically reconsider the application you submitted to the Air Force Discharge Review Board (AFDRB). You may submit additional evidence in support of your reconsideration. However, it is important to note that reconsideration may occur as early as 60 days from the date of this notice. Any supplemental materials submitted after the Board has reconsidered your case will not be considered.

Review of the AFDRB's file system indicates that you submitted an application that qualifies for automatic reconsideration. Accordingly, your application records are being retrieved from archives for review under current guidance for reconsideration.

Your application will receive automatic reconsideration because: (1) you applied to the AFDRB and requested an upgrade of your discharge characterization; (2) you did not receive an upgrade to an Honorable service characterization; (3) you submitted a request to upgrade your discharge between September 13, 2015 and [effective date of settlement]; and (4) your application may have raised evidence of Post-Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), other mental health conditions, or sexual assault or sexual harassment.

Your case is being automatically reconsidered to ensure appropriate application of Department of Defense and Department of the Air Force guidance regarding the effect of PTSD, TBIs, mental health conditions, sexual assault or sexual harassment upon service members, and how such effects may have affected conduct ultimately leading to an individual's discharge characterization.

You are not required to take any action regarding this reconsideration and will receive reconsideration whether you submit additional documentation to the AFDRB or not. It is important to understand the following about this process:

- You do not need to submit an application to the AFDRB. The AFDRB will take a fresh look at your previous application. You may receive a discharge upgrade even if you choose not to contact the AFDRB.

- You are entitled to supplement your previous application by submitting a new DD Form 293 application (available online at <https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd0293.pdf>) and/or additional evidence to assist with reconsideration if you choose.
- Submitting additional evidence, including medical evidence, in support of your application may benefit you and your application's reconsideration. Relevant evidence includes, but is not limited to:
 - Diagnoses from a medical professional, such as a physician, clinical psychologist, or psychiatrist, either in military service or after military service, of PTSD or TBI (including if related to sexual trauma or intimate partner violence) and/or other mental health conditions that existed during military service;
 - Documentation, either from military service or after such service, of in-service traumatic experiences;
 - Documentation from a medical professional (such as a physician, clinical psychologist or psychiatrist) or licensed social worker recording symptoms that are associated with PTSD, TBI, sexual assault, sexual harassment, and/or other behavioral health issues, even if a formal diagnosis was not made; and
 - Letters from people who knew you before, during, or after your military service that can describe any behavioral changes or symptoms as a result of PTSD, TBI, sexual assault, sexual harassment and/or other behavioral health issues.
 - This evidence may come from evaluation and treatment you received from a private medical practitioner.

If possible, you or a medical professional should explain how these symptoms or diagnoses mitigate or outweigh any misconduct contained in your military record.

- You may also be eligible for mental health evaluation and treatment at the Department of Veterans Affairs, even if you do not have an Honorable or General discharge service characterization. You may contact the Department of Veterans Affairs at 1-844-698-2311 to learn more.
- You can get help to submit written materials. A directory of free legal service programs is available through Stateside Legal at <https://www.statesidelegal.org>. The Department of Veterans Affairs also

publishes a Directory of Veterans Service Organizations at <https://www.va.gov/vso/>.

Please be advised that the AFDRB cannot endorse any particular legal aid, veteran, or referral organization and will not be held liable for actions of any third-party organizations in this Notice. Many organizations provide free or low-cost legal assistance to veterans. Applicants should conduct appropriate research before using an organization for assistance.

All additional materials to be considered by the AFDRB for your application's reconsideration must be received before the AFDRB reconsiders your case, which may be as early as 60 days from the date of this notice. Submit any materials to the following address:

Air Force Discharge Review Board
3351 Celmers Lane
Joint Base Andrews, MD 20762

More information about the AFDRB, application process, resources, and frequently asked questions can be located on the AFDRB's website. Follow the link labeled AFDRB Special Reconsiderations available online at the link below.

- Web Link: <https://afrba-portal.cce.af.mil/>.

You may additionally review Department of Defense and Department of the Air Force guidance documents, on the AFDRB's website. The guidance documents most applicable to the automatic reconsiderations include the (1) September 3, 2014 Department of Defense memorandum signed by Secretary Chuck Hagel (often referred to as the "Hagel Memo"); (2) the August 25, 2017 Department of Defense memorandum signed by Under Secretary A.M. Kurta (often referred to as the "Kurta Memo"); and (3) the July 25, 2018 Department of Defense memorandum signed by Secretary Robert K. Wilkie (often referred to as the "Wilkie Memo").

If you have any questions regarding this notice, or if you believe you will need more than 60 days to provide additional materials to the AFDRB for their review, please contact the AFDRB Administrative Staff, available via e-mail at SAF.MR.DRB.workflow@us.af.mil, or by telephone at [telephone number to be provided after AFDRB moves offices]. Reasonable extensions will be granted upon request.

Sincerely,

Air Force Discharge Review Board

EXHIBIT F

[Date]

Applicant Name
Address Line 1
Address Line 2
City, ST #####

NOTICE OF POTENTIAL RIGHT TO APPLY FOR RECONSIDERATION

You are receiving this notice as part of a settlement agreement in a class-action lawsuit filed against the Department of the Air Force in federal court in Connecticut, *Johnson et al. v. Kendall*, Case No. 3:21-cv-01214. As part of the settlement, the Department of the Air Force has agreed to permit certain applicants to the Air Force Discharge Review Board (AFDRB) to apply and request reconsideration of their cases to ensure appropriate application of Department of Defense and Department of the Air Force guidance regarding the potential effects of Post-Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), other mental health conditions, and sexual assault or sexual harassment on conduct leading to an individual's discharge characterization. Review of the AFDRB's file system indicates that you may qualify as a class member with the right to apply for reconsideration.

Class members with the right to apply for reconsideration are former airmen and guardians who received Under Honorable Conditions (General) or Under Other Than Honorable Conditions (UOTHC) discharge service characterizations, who applied to the AFDRB between September 13, 2006 and September 12, 2015, and who have not received an upgrade to an Honorable service characterization.

To exercise your right to reconsideration of your case, you must apply for reconsideration to the correct review board. If you were discharged 15 years ago or less as of the day you apply for reconsideration, you may apply to the AFDRB. If the date of your discharge is older than 15 years as of the day you apply for reconsideration, you must apply to the Air Force Board for Correction of Military Records (AFBCMR).

Once you apply for reconsideration, the AFDRB will obtain your prior application records from its archives for the reconsideration. You are not required to submit additional evidence to either the AFDRB or AFBCMR. If you apply for reconsideration, you will receive reconsideration whether you submit additional documentation or not. However, you are entitled to supplement your previous application with new evidence if you choose. More information regarding supporting materials or evidence you may wish to submit with your application can be found in this notice's enclosure, **"Additional Information for AFDRB Applicants."**

To apply to the AFDRB for a new review and determination regarding your case, please submit your online request at <https://afrba-portal.cce.af.mil/#board-info/drb/navbar> or written request with a new DD Form 293 application to the following address:

Department of the Air Force
Air Force Discharge Review Board
SAF/MRB
3351 Celmers Lane
Joint Base Andrews, MD 20762-6435

Your application for reconsideration, with your new DD Form 293 and any evidence you wish to provide, must be submitted and/or postmarked to the AFDRB within one (1) year of this notice. If your new DD Form 293 is not postmarked within one (1) year of this notice, it will not be considered. It is imperative that you submit a new Form DD 293 and any additional information or new evidence you wish to be considered together.

More information about the AFDRB, application process, resources, and frequently asked questions can be located on the AFDRB's website.

- Web Link: <https://afrba-portal.cce.af.mil/#board-info/drb/navbar>
- See also an online version of the DD Form 293 at:
<https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd0293.pdf>

To apply to the AFBCMR for a new review and determination regarding your case, you must submit your written request and application, and any supporting materials, to the AFBCMR online at <https://afrba-portal.cce.af.mil/#board-info/bcmr/navbar>, by e-mail at SAF.MRBC.workflow@us.af.mil, or by mail to:

Air Force Board for Correction of Military Records
3351 Celmers Lane
Joint Base Andrews, MD 20762

Application submissions may include whatever supporting unclassified documentary evidence the applicant wishes to submit. However, all applications for reconsideration submitted to the AFBCMR must include a completed DD Form 149 application, available online at <https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd0149.pdf>.

More information about the AFBCMR, application and review process, resources, and frequently asked questions can be located on the AFBCMR website, available online at the following location: <https://www.afpc.af.mil/Career-Management/Military-Personnel-Records/>.

You may additionally review Department of Defense and Department of the Air Force guidance documents, on the AFDRB's website. The guidance documents most applicable to the application for reconsiderations include: (1) the September 3, 2014 Department of Defense memorandum signed by Secretary Chuck Hagel (often referred to as the "Hagel Memo"); (2) the August 25, 2017 Department of Defense memorandum signed by Under Secretary A.M. Kurta (often referred to as the "Kurta Memo"); and (3) the July 25, 2018 Department of Defense memorandum signed by Secretary Robert K. Wilkie (often referred to as the "Wilkie Memo").

If you have any questions regarding this notice, please feel free to reach out to the AFDRB Administrative Staff, available via e-mail at SAF.MR.DRB.workflow@us.af.mil, or by telephone at [phone number to be updated after AFDRB moves offices], for additional information.

Sincerely,

Air Force Discharge Review Board

Enclosure: Additional Information for AFDRB Applicants

EXHIBIT G

[Date]

[Addressee]

ADDITIONAL INFORMATION FOR AFDRB APPLICANTS

Below is information you may find useful as you decide what materials to submit to the Air Force Discharge Review Board (AFDRB) in support of your application, as well as additional information regarding resources and your option to retain counsel.

I. Evidence of PTSD, TBI, Other Mental Health Conditions, or Sexual Assault or Sexual Harassment

The AFDRB is required to give “liberal” consideration to applicants seeking discharge status upgrades or changes when their application is based on matters relating to mental health conditions, including Post-Traumatic Stress Disorder (PTSD); Traumatic Brain Injury (TBI); and experiences of sexual harassment and/or sexual assault.

If you have one of these conditions or experiences, you can—and are encouraged to—submit evidence to the AFDRB to support your claim. Evidence can include documentation of a diagnosis, or documentation of or testimony about symptoms or signs of any of these conditions or experiences while in military service, even without a diagnosis. You may include medical records from the Department of Veterans Affairs (VA) or from private medical professionals, such as physicians, clinical psychologists, or psychiatrists who have examined or treated you during or after service. You may also submit signed statements from other people, such as family, peers, doctors, counselors, or service members who served with you, that explain how they know that you had a mental health condition or one or more traumatic experiences in military service, including experiences of sexual assault or sexual harassment, or intimate partner violence that led to PTSD or TBI. In some instances, misconduct, including any misconduct underlying your discharge, may also be evidence of a mental health condition that would receive liberal consideration. Misconduct, including misconduct that underlies your discharge, may also be subject to review for mitigation due to any then-existing mental health conditions. Some misconduct, however, may outweigh any mitigation from mental health conditions.

It is to your benefit to provide this type of evidence. All evidence must be received before your Records Review or Personal Appearance Hearing. If you need more time to submit evidence, you may contact the Board to ask for a reasonable extension.

II. Mental Health Treatment at Department of Veterans Affairs Facilities

Some veterans can receive mental-health treatment and evaluation from the VA, even if they do not have an Honorable service characterization. If you qualify, you may be able to access certain mental-health treatment and evaluation even while your application is pending with the AFDRB, and regardless of the outcome of your application. To access this type of care, you can contact your nearest VA Medical Center or Vet Center or call 866-222-8387. If you have hearing difficulties, please call TTY: 800-877-8339.

III. Finding VA Facilities

To find a VA facility, in-network community care provider, or a Vet Center near you, visit <https://www.va.gov/find-locations/>.

IV. Right to Retain Counsel

An attorney may be able to assist you in identifying additional areas of evidence relevant to your case, to obtain statements in support of your case, and to present your claims and support for relief to the AFDRB in a clear and comprehensive manner.

Numerous state and volunteer legal aid organizations exist and may be available to you based on each program's eligibility guidelines and resource availability. One resource, Stateside Legal, provides a database of legal service organizations that serve members of the military, veterans, and their families as well as other resources. The website is <https://www.statesidelegal.org>. Additionally, visit <https://www.va.gov/vso/> for a directory of Veterans Service Organizations (VSOs), many of which provide representation or assistance to former service members in discharge upgrade cases.

The AFDRB does not endorse any particular legal aid, veteran, or referral organizations and will not be held liable for actions of any third-party organizations in this Notice.

V. Accommodations

You may request reasonable accommodations, including but not limited to accommodations of a physical or mental health disability, from the AFDRB in the application and adjudication process. An example of a reasonable accommodation is an extension of time. You also may request reasonable accommodations during your personal appearance hearing, such as taking short breaks, etc.

VI. Contact Information

If you have questions, you may contact the AFDRB at SAF.MR.DRB.workflow@us.af.mil or [phone number to be inserted after AFDRB moves offices]. If you would like to receive a phone response from the AFDRB instead of a written response, please state such preference to the AFDRB when you contact them.

EXHIBIT H

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Frequently Asked Questions (for AFDRB website)

1. What is the purpose of the AFDRB?

- The AFDRB provides former United States Air Force (USAF), Air National Guard, Air Force Reserve, and United States Space Force (USSF) members the opportunity to request a review of their discharge (except for a discharge or dismissal by general courts-martial) within 15 years of the date of separation. The objective of the AFDRB is to examine an applicant's discharge and to consider changing the characterization of service and the reason for discharge, based on standards of propriety or equity. Discharges are deemed proper and equitable unless the applicant provides compelling evidence to prove that was not the case.
- Pursuant to statutory limitations in 10 U.S.C. § 1553, the AFDRB can only consider discharges issued within 15 years from the date of application. Applicants with discharges older than 15 years must apply to the Air Force Board for Correction of Military Records (AFBCMR): <https://afriba-portal.cce.af.mil/#application-submission-bcmr>.

2. What is the composition of the AFDRB?

- The AFDRB consists of three members who are commissioned officers, civilians, and senior noncommissioned officers.
- If an applicant has been diagnosed with post-traumatic stress disorder (PTSD) or a traumatic brain injury (TBI) by a physician, clinical psychologist, or psychiatrist as a consequence of a deployment in support of a contingency operation while serving on active duty, the board will include a member who is a medical expert. This member is a clinical psychologist or psychiatrist, or a physician with training on mental health issues connected with PTSD or TBI.
- If an applicant claims that his or her PTSD or TBI is based in whole or in part on sexual trauma, intimate partner violence, spousal abuse, or combat or was diagnosed with a mental health disorder while serving in the military, then the board will also include a member who is a mental health expert.
- The board includes a member who is a mental health expert when the application shows diagnoses or symptoms of mental health conditions in certain other circumstances as well. The mental health expert is a clinical psychologist or psychiatrist, a physician with training on mental health issues connected with PTSD or TBI, or a social worker with training on mental health issues associated with PTSD or TBI or other trauma.

3. Can I request a Personal Appearance for my case?

- Yes. You can request a "records-only" review or personal appearance. In a records-only review, the Board reviews available military personnel records, service medical records (if applicable to your case), and documentary evidence you provide with your application.
- If you are not satisfied with the results of the records-only review, you may request to personally appear before the AFDRB, with or without counsel. In a personal appearance, you have the opportunity to speak to the AFDRB panel considering your case in person through video-teleconference from a location of your choosing. You may present witnesses and additional evidence. You may also request an initial personal appearance. In other

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words, you are not required to request a records-only review before requesting a personal appearance. However, once a personal appearance hearing is held, you will no longer be entitled to a records-only review.

- To request a personal appearance, you should check the second selection of box 19 in Section 3 on the DD Form 293.
- If requesting a personal appearance, the military will not bear the cost of private counsel or expenses related to your appearance before the Board.
- You have the right to engage counsel at your own expense. A number of organizations provide counsel at no cost or a representative to assist applicants. An attorney may be able to assist you in identifying additional evidence relevant to your case, to obtain statements in support of your case, and to present your claims and support for relief to the AFDRB in a clear and comprehensive manner.
- Numerous state and volunteer legal services organizations exist and may be available to you based on each program's eligibility guidelines and resource availability. One resource, Stateside Legal, provides a database of legal service organizations that serve members of the military, veterans, and their families as well as other resources. The website is <https://www.statesidelegal.org>. Additionally, visit <https://www.benefits.va.gov/vso/varo.asp> for a directory of Veterans Service Organizations (VSOs), many of which provide representation or assistance to former service members in discharge upgrade cases. Other organizations that may be able to provide assistance include the American Legion, Disabled American Veterans, and Veterans of Foreign Wars. The AFDRB does not endorse any particular legal aid, veteran, or referral organization and will not be held liable for actions of any third-party organizations included above.

4. What forms of relief are available through the AFDRB?

- The AFDRB has the authority to upgrade the applicant's Characterization of Service (Block 24 on the DD Form 214) and/or change the Narrative Reason for Separation (Block 28 on the DD Form 214). In some cases, the board may also change the applicant's reenlistment code. The board may grant, or deny, in whole or in part, the requested relief. The AFDRB may not overturn a discharge or issue a less favorable discharge than what the applicant received at the time of separation. Each case is considered on its own merit and there are no "automatic upgrades."
- ***The AFDRB does not have the authority to:***
 - a. Change the Narrative Reason for Separation from or to Physical Disability or Medical Discharge;
 - b. Upgrade a discharge for the sole purpose to become eligible for VA benefits (e.g., GI Bill, home loans, medical treatment, or disability payments);
 - c. Upgrade a discharge to improve civilian or government employment opportunities;
 - d. Automatically upgrade a discharge based solely on the passage of time or good conduct subsequent to leaving USAF, Air National Guard, Air Force Reserve, or USSF Service;
 - e. Reinstate an Applicant into the USAF, Air National Guard, Air Force Reserve, or USSF;
 - f. Recall a former member to active duty;
 - g. Cancel or void enlistment contracts;
 - h. Review a discharge or dismissal resulting from a General Court-Martial;

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- i. Alter the judgment of a Special Court-Martial; however, the AFDRB can upgrade the discharge or dismissal if clemency is warranted; or
- j. Revoke any discharge or dismissal.

5. What should I include in my application?

- Your submission to the AFDRB must include a completed and signed DD Form 293. You may supplement your application with documents to support your discharge upgrade, including documents relating to your discharge, your achievements, your service to country or community, your work performance, and more.
 - By signing your application, you have authorized the AFDRB to review medical records available to it through the U.S. government's systems of records, which generally include the following: your official military personnel file; your in-service medical records; records of providers who are employed by the Department of Veterans Affairs (VA); records of providers who participate in Tricare, or other insurance providers who partner with the VA, and whose records are saved in the VA's system of electronic medical records; and any records from civilian health care providers that have been given to the VA already. However, because it is possible that such government records may be incomplete, you may wish to provide to the AFDRB copies of your military records (for example, DD Form 214) and medical records yourself.
- Additionally, the AFDRB is required to give "liberal" consideration to applicants seeking discharge status upgrades or changes when their application is based on matters relating to mental health conditions, including Post-Traumatic Stress Disorder (PTSD); Traumatic Brain Injury (TBI); other mental health conditions; and experiences of sexual harassment and/or sexual assault that existed/occurred during military service. "Liberal consideration" is further described in the Department of Defense memoranda linked at the top of this page. It is to your benefit to provide evidence showing you are eligible for liberal consideration. Relevant evidence includes, but is not limited to:
 - Diagnoses from a medical professional, either in military service or after military service, of PTSD or TBI (including if related to sexual trauma or intimate partner violence), and/or other behavioral health issues that existed during military service;
 - Documentation, either from military service or after such service, of in-service traumatic experiences;
 - Documentation from a medical professional or licensed social worker recording symptoms that are associated with PTSD, TBI, sexual assault, sexual harassment, and/or other mental health issues, even if a formal diagnosis was not made; and
 - Letters from people who knew you before, during, or after your military service that can describe any behavioral changes or symptoms as a result of PTSD, TBI, sexual assault, sexual harassment and/or other mental health issues.
- All evidence must be received before your records-only review or personal appearance. If you need more time to submit evidence, you may contact the AFDRB to ask for a reasonable extension.

6. What does "Presumption of Regularity" mean, and how does it affect me?

4.21.23 Tab 7 FAQ

- The AFDRB will, absent evidence to the contrary, "presume regularity" in the conduct of governmental affairs, meaning it will presume military and civilian personnel involved in a member's discharge carried out their duties correctly, lawfully, and in good faith. Applicants must submit substantial credible evidence to overcome this presumption.

7. What are the AFDRB's standards of review?

- The AFDRB will only grant relief if it determines the discharge was improper or inequitable. The board reviews every case on an individual basis.
- A discharge is deemed proper unless an error of fact, law, procedure, or discretion occurred and prejudiced a member's rights. A discharge may also be considered improper if a change in Department of the Air Force policy, made expressly retroactive to include the discharge date and type of discharge, requires a change to an applicant's discharge.
- A discharge is deemed equitable unless: (1) there is substantial doubt that a member would have received the same discharge if current policies and procedures had been in effect at the time of discharge, (2) the discharge was inconsistent with disciplinary standards in effect at the time of discharge, and/or (3) relief is warranted based on the applicant's service record and other evidence, including the quality of service and capability to serve.
- The standards used by the AFDRB are set forth in Department of Defense Instruction 1332.28, *Discharge Review Board (DRB) Procedures and Standards*, 4 Apr 04, linked at the top of this page.

8. Can I apply if I received a dismissal or bad conduct discharge through a special court-martial?

- Former Airmen or Guardians who received a dismissal or bad conduct discharge through a special court-martial may apply to the AFDRB on the basis of clemency. If there is good cause, the board can substitute an administrative discharge for a dismissal or punitive discharge. The decision to grant clemency would largely be based on the applicant's post-service conduct and accomplishments.

9. What can I do if I am not satisfied with the decision of the AFDRB in my case?

- A variety of avenues of appeal are available to you if you are not satisfied with the AFDRB's decision:
 1. If you requested a records-only review of your discharge, you may request a personal appearance before the AFDRB, appeal to the AFBCMR, or in some cases, appeal to U.S. District Court.
 2. If you appear before the AFDRB in person or via video (either initially or subsequent to a records only review), you may appeal the decision to the AFBCMR, or in some cases, to U.S. District Court.
 3. You may not seek a records-only review as an appeal to a personal appearance decision; a personal appearance decision may only be appealed to the AFBCMR, or in some cases, to U.S. District Court.

4.21.23 Tab 7 FAQ

4. If your date of discharge is on or after December 20, 2019, and you have exhausted all appeals with the AFDRB and AFBCMR, you may appeal to the Department of Defense Discharge Appeal Review Board (DARB). Information concerning the DARB can be found here: <https://afrba-portal.cce.af.mil/#board-info/darb/navbar>.

10. Are mental health resources available to me if I do not have an Honorable service characterization?

- Some veterans can receive mental-health treatment and evaluation from the VA, even if they do not have an Honorable service characterization. If you qualify, you may be able to access certain mental-health treatment and evaluation even while your application is pending with the AFDRB, and regardless of the outcome of your application. To access this type of care, you can contact your nearest VA Medical Center or Vet Center or call 866-222-8387. If you have hearing difficulties, please call TTY: 800-877-8339.
- To find a VA facility, in-network community care provider, or a Vet Center near you, visit <https://www.va.gov/find-locations/>.

11. What if I have more questions?

- If you have questions, you may contact the AFDRB at SAF.MR.DRB.workflow@us.af.mil [phone contact information to be added after AFDRB moves offices]. If you would like to receive a phone response from the AFDRB instead of a written response, please make sure to state such preference.

Please note that you may request reasonable accommodations, including but not limited to accommodations of a physical or mental health disability, from the AFDRB in the application and adjudication process. An example of a reasonable accommodation is an extension of time. You also may request reasonable accommodations during your personal appearance hearing, such as taking short breaks, etc.

EXHIBIT I

Dear Applicant:

The AFDRB is reviewing your application. We have identified that your application indicates a claim of a mental health condition or experience of sexual assault or sexual harassment that existed or occurred during military service. We have identified that your application may not contain sufficient records of your claimed condition or experience and/or that it existed or occurred during military service. If you would like the AFDRB to consider any additional records, please mail them to us within 60 days of the date of this letter.

We remind you that, by signing your application, you have authorized the AFDRB to review medical records available to it through the U.S. government's systems of records, which generally includes the following:

- your in-service medical records;
- records of providers who are employed by the Department of Veterans Affairs (VA);
- records of providers who participate in Tricare, or other insurance providers who partner with the VA, and whose records are saved in the VA's system of electronic medical records;
- any records from civilian health care providers that have been given to the VA already.

However, the AFDRB is unable to view or consider other civilian health care records unless you send a copy of them to us.

If you would like the AFDRB to consider additional records, including evidence showing that a particular experience occurred or your mental health condition existed in service, please mail them to us within 60 days of the date of this letter. You may also refer to the FAQs at [\[URL\]](#) for examples of such records and medical and legal referrals. Please send any further information to the following address:

Air Force Review Boards Agency
Attn: Discharge Review Board
3351 Celmers Lane
Joint Base Andrews, MD 20762-6602

Or e-mail them to SAF.MR.DRB.workflow@us.af.mil. Consideration and processing of your application will be suspended for 60 days while we wait for your response. If at the end of the 60 days we have not received a response or a request for an extension, processing of your application will proceed without additional records. You may also request additional time if necessary by contacting the AFDRB by mail or e-mail.

If you would prefer not to send any additional materials, please let us know at your earliest convenience by e-mailing SAF.MR.DRB.workflow@us.af.mil or sending a letter to the address above, and we will continue processing your application without further delay.

EXHIBIT J

AIR FORCE STANDARD CORE PERSONNEL DOCUMENT (CPD)

ORGANIZATION:	SAF/MRB	CPD NUMBER:	64007
SUPV LEVEL CODE:	8	COMP LEVEL CODES:	162A
TARGET GRADE:	14	FLSA:	Exempt
JOB SHARE:	No	CAREER PROG ID:	K
SENSITIVITY:	Non-Critical Sensitive	BUS:	8888
EMERGENCY ESS:	No	DRUG TEST:	No
KEY POSITION:	No	POSITION HIST:	New

CLASSIFICATION: CLINICAL PSYCHOLOGIST GS-0180-14

ORG & FUNC CODE: MDY Medical

CLASSIFICATION CERTIFICATION: CPD adequately and accurately reflects the local work situation to meet classification, staffing, and performance management purposes.

Michelle M. Jackson
 CLASSIFIER'S SIGNATURE

19 September 2016
 DATE

SUPERVISOR'S CERTIFICATION: I certify that this SCPD is an accurate statement of the major duties, knowledge, skills, and abilities, responsibilities, physical and performance requirements of this position and its organizational relationships. The position is necessary to carry out government functions for which I am responsible. This certification is made with the knowledge that this information is to be used for statutory purposes relating to appointment and payment of public funds and that false or misleading statements may constitute violations of such statutes or their implementing regulations.

LOGRANDE.MICH
 AEL.F.1015021884

Digitally signed by
 LOGRANDE.MICHAEL.F.1015021884
 DN: c=US, o=U.S. Government, ou=DoD,
 ou=PKI, ou=USAF,
 cn=LOGRANDE.MICHAEL.F.1015021884
 Date: 2016.08.09 12:51:05 -0400

 SUPERVISOR'S SIGNATURE

 DATE

PERFORMANCE PLAN CERTIFICATION:

Rater/Supv.				
Date				
Reviewer				
Date				
Employee*				
Date				

*Signature acknowledges receipt. It does not indicate agreement/disagreement.

PURPOSE OF POSITION AND ORGANIZATIONAL LOCATION:

The primary purpose of this position is: Within the framework of management objectives and priorities, the incumbent renders advice on, or provides behavioral health case review and analysis on medical issues related to cases being considered by the Air Force Review Boards Agency, (AFRBA). May serve as a voting member in other Secretary of the Air Force Personnel Council (SAFPC) Boards/panels where mental health-related issues are involved. Incumbent is delegated complete responsibility to plan, analyze, evaluate and advise on psychological findings pertaining to behavioral health cases and make final assessments for inclusion in case files. Work is considered technically authoritative and is accepted in final consideration in determining service related behavioral health conditions.

The organizational location of this position is: SAF/MRBM, Medical Directorate, Air Force Review Boards Agency, 1500 West Perimeter Road, Suite 3700, Joint Base Andrews, MD 20762.

ORGANIZATIONAL GOALS AND OBJECTIVES:

The organizational goals or objectives of this position are: Act for the Secretary in deciding statutorily mandated actions before the Air Force Personnel Council, the Air Force Board for Correction of Military Records, the Air Force Civilian Appellate Review Office, the Security Protection Directorate and the Physical Disability Board of Review. Provide fair and equitable treatment of Air Force Personnel. Provide consistent decisions across the Air Force and over time. Foster an environment where Air Force personnel can concentrate on their mission. Safeguard the integrity and reputation of the Air Force Review Boards Agency and ensure that all cases are processed and agency actions are finalized within a timely manner.

DUTY 1:**60% Critical**

Serves as a Psychologist and advisor to the Secretary of the Air Force Personnel Council on medical cases related to Behavioral Health (BH) issues being considered by the AFRBA. Incumbent is thoroughly familiar with all pertinent Air Force and DoD regulations (medical/ administrative), as well as separation and discharges related to BH issues. Incumbent examines and analyzes cases involving critical behavioral health issues and provides fair and accurate mental health assessment and adjudication. Receives cases referred for appellate review from the Informal and Formal Physical Evaluation Boards. Performs the initial review of incoming cases, decides if all necessary information is in the case file or if additional information is required to resolve the matter in a fair and equitable manner. Obtains any required documentation that is not in the case file, analyzes findings and recommendations made by those boards. In light of all the facts and circumstances of the case, and the governing directives, develops and presents the case file with recommendation to the board(s). Participates in case deliberation and discussion, answer questions other board members may have, and secures any additional information requested. May serve as a voting member on a board/panel. Accurately inputs data into the Agency's electronic case management system. Following board deliberation, ensures that the board decision concerning a case is properly documented in a decision memorandum for signature by the appropriate decision authority.

STANDARDS:

- A. Continually researches, prepares and presents mental health briefs and advisories concerning all cases involving behavioral issues or related policy interpretation in a timely, accurate and professional manner.
- B. Exercises judgment and fairness in board case evaluations ensuring compliance with public law/Air Force policy relating to mental health issues as established by Congress, SECDEF or SECAF.
- C. Cases resolutions are timely, well documented, and correctly entered in the Agency automated tracking system.

DUTY 2:**40% Critical**

Acts as a consultant to AFRBA panels/boards, including the Air Force Board for Correction of Military Records (BCMR) and the Discharge Review Board (DRB), where evaluating mental health evidence is required. Provides written advisory opinions in response to appellants' contentions presented to the Air Force BCMR. Confers with the analysts, as necessary, on cases where the applicant has been diagnosed with a behavioral health condition during military service and his or her appeal is related to a behavioral health issue involving. Consultative advice or opinions may also involve requests for change in reasons for discharge from misconduct to medical, change in reenlistment code to allow return to service, change of less than Honorable discharge to Honorable, alleged combat-related injuries, Line of Duty determinations, and fitness determinations where a mental health-related issue is involved. Serves as voting member of the Discharge Review Board (DRB), with particular attention to requests for an upgrade of discharge characterization when based upon an alleged or documented mental disorder, such as Post-Traumatic Stress Disorder, or a Traumatic Brain Injury. Serves as consultant to members of other AFRBA boards/panels in evaluating and correlating medical evidence where mental-health related issues may affect outcome, so that a sound medical conclusion is presented for final adjudication of cases. Maintains currency in DoD and USAF policies and applicability to individual Board cases and provides key interpretation on cases involving mental health issues.

STANDARDS:

- A. Provides advice and decisions with particularly outstanding, authoritative, high degree of professional leadership in the field of mental health/psychology.
- B. Decisions/recommendations made are in compliance with medical standards, regulations, law, policies, and procedures.
- C. Regularly analyzes and studies changes to public law/established policy relating to mental health standards/restrictions to ensure maximum compliance of each Board Action.

KSA: 1 - 6**RECRUITMENT KNOWLEDGES, SKILLS, AND ABILITIES:**

- 1. Expert knowledge in the field of Psychology and experience in the treatment of patients having mental health issues acquired through a PhD in Psychology.
- 2. Knowledge of the substantive medical standards contained and/or prescribed in applicable federal laws, Department of Defense and Air Force regulations, policies, and principles pertaining to current and former service members or eligible next of kin
- 3. Knowledge of medical treatment facility operations, Medical Evaluation Board procedures, Physical Evaluation Board appeal procedures, determinants of unfitness, eligibility for disability compensation, and the full range of the mental illnesses, or aberrational behavior and the interpretation of physical examination findings, evaluation of medical records, diagnostic tests, and patient interviews to determine appropriate outcome of claims.
- 4. Ability to review and evaluate medical evidence and information reported by clinical medical officers or specialty consultants in order to prepare a sound evaluation for Board consideration.
- 5. Knowledge of Congressional legislation, DoD Directives, Department of Veterans Affairs, and Air Force policy guidance on all facets of Air Force Review and Correction of Records Process with primary emphasis on defined medical statutes, laws, policies, and requirements.

6. Skill in preparing written communication/presentations and effective oral communication on matters, issues and inquiries relating to well-founded facts and precedents which involve medical/behavioral observations and/or opinions that contribute, support, and uphold board reviews and decisions.

CLASSIFICATION CRITERIA:

Factor 1, Knowledge Required By the Position

Level 1-8 -- 1550 Points

--Expert knowledge and experience in the practice clinical psychology.

-- Expert mastery of the principles and concepts of the relevant laws, directives, regulations, and court decisions relating to medically-based cases to plan, organize, manage, coordinate, execute, and evaluate/support/defend decisions made by the AFRBA.

-- As a recognized expert, provides advisory services issues throughout the agency using knowledge of applicable laws, regulations, statutes, directives, executive orders, policies, methods, precedent decisions and expert knowledge of mental health/behavioral issues.

-- Possess the acumen to review, analyze, and brief detailed mental health conditions and procedures for board adjudication.

-- Knowledge of Air Force mission, organizations, and structure.

-- Skill in extremely difficult and responsible assignment in fact finding, analysis, and problem solving to identify and define and develop solutions or assist in assessing and executing recommendations to change policies and practices to improve agency operation.

-- Must be able to communicate and negotiate policies, guidance and issues, in written and oral form, to federal executive level management, mid-level officials, employees, and organizations.

Factor 2, Supervisory Controls

Level 2-5 -- 650 Points

Incumbent works under the very general supervision of the Director, Medical Directorate.

Incumbent, as an authority in his field provides summaries and recommendations to adjudicating bodies. The incumbent independently plans the approach and develops decision, report, brief, opinion, or product utilizing available facts of the record. Results of work and advice given are considered as technically authoritative and accepted without significant change by immediate supervisor. Review of work is limited to such matters as fulfillment of program objectives, the potential effect of advice and influence on the overall program, or the contribution to overall Air Force and or SECAF-defined goals and objectives.

Factor 3, Guidelines

Level 3-5 -- 650 Points

The applicable guidelines of the position are those included in public law, executive orders, regulations, federal government/DOD [to include Department of Veterans Affairs] and Air Force policies concerning board activities, application procedures, and applicant rights in the Air Force. Guidelines are also provided in the form of medical literature and the Diagnostics and Statistical Manual (DSM) for Mental Disorders [current and past versions] Incumbent must interpret the guidelines using sound judgment, ingenuity, accepted medical principles, and experience in rendering opinions pertaining to mental health and in the adjudication of cases. Guidelines may also include peer reviewed textbooks, medical journals and internet articles.

Factor 4, Complexity

Level 4-6 -- 450 Points

The incumbent reviews, analyzes and advises on decisions involving highly complex applicant mental health cases. Problems may involve significant and in-depth analysis of policies that vary in application and incorporate voluminous amounts of information. Decisions made may consist of unprecedented issues and complex enforcement policies or precedents or include issues that have a major effect on future board actions. As a mental health consultant and/or voting board member, incumbent must deal with cases which require evaluating and

correlating conflicting behavioral and medical evidence to ensure the issues in the cases are clearly presented to other board/panel members who do not have the required expertise. A great degree of complexity is also present in “dual-action” board cases involving both legal and mental health related issues.

Factor 5, Scope and Effect

Level 5-5 -- 325 Points

The incumbent’s duties, responsibilities, and advice significantly impact the total Air Force review board’s process and may have longstanding effect on Department of the Air Force policies and practices relating to a wide array of Air Force personnel, medical, entitlement, and benefit programs. The primary task of the incumbent is to provide for an equitable, impartial, non-biased, and credible review of cases with mental health issues under the jurisdiction of the AFRBA. The professional knowledge and experience brought to bear by the incumbent has a significant effect on the decisions made by the Boards and impact on the welfare and morale of service members.

Factor 6, Personal Contacts

(see Factor 7 below)

Incumbent requires interaction, discussion, and face-to-face meetings with senior-level representatives from the Office of the Secretary of Defense, Secretary of the Air Force Manpower and Reserve Affairs, the Air Force Review Boards Agency, Air Force Personnel Center (AFPC), and the Department of Veterans Affairs. Additionally, contacts with applicants, their legal counsel and representatives involving consultation and negotiation may be necessary to settle highly complex board review decisions or to simplify issues at hand. Interaction with sister Service counterparts is encouraged to assure transparency and consistency of processes across the Department of the Defense and to benchmark best practices.

Factor 7, Purpose of Contacts

Level 3c – 180 Points

To sit as a voting member in highly complex AFRBA cases involving mental health issues, providing interpretation and clarifications of mental health conditions encompassing conflicting medical evidence, and influencing managers or other officials to accept and implement findings and recommendations of the board. The incumbent works in close relationship with board’s senior officials and leaders in SAF/MR and MRB to develop policies, programs, and special initiatives within assigned areas.

Factor 8, Physical Demands

Level 8-1—5 Points

-- The work is mostly sedentary involving some walking, standing, and carrying of light items. Work is performed in a typical office setting requiring normal safety precautions.

Factor 9, Work Environment

Level 9-1—5 Points

-- The work is performed in a typical office setting. Special safety precautions are not required.

OTHER SIGNIFICANT FACTS PERTAINING TO THIS POSITION:

1. Work may occasionally require travel away from the normal duty station on military or commercial aircraft.
2. The employee may be required to work other than normal duty hours, which may include evenings, weekends, and/or holidays.
3. Overtime and/or emergency overtime may be required.
4. Must be eligible for secret security clearance and must maintain such clearance.

CLASSIFICATION SUMMARY:

CLASSIFICATION STANDARD(S) USED:

U.S. OPM, Position Classification Standard (PCS) for Psychology Series, GS-0180, TS-71 June 1968
U.S. OPM Administrative Analysis Grade Evaluation Guide, TS-98, August 1990, (HRCD-6, January 1999).

DETERMINATION OF SERIES AND TITLE: The position is responsible for the applications of cognitive, behavioral, and social science principles and methodologies needed in adjudicating cases involving medical/behavioral issues. The position meets the definition of the Psychology Series, GS-0180 which includes positions involving professional work relating to the behavior, capacities, traits, interests and activities of human and animal organisms. The title *Psychologist* is appropriate in that the position includes work in areas that have no established specializations and no one specialization predominates. The position series and title is that of Psychologist, GS-0180.

GRADE DETERMINATION: The GS-0180 distinguishes among grade levels on the basis of two broad classification factors, i.e., Factor I. Nature of Assignments and Factor II. Level of Responsibility.

Factor I. Nature of Assignments. The employee functions as “a primary subject matter expert,” advisor, consultant, and resource person with full professional responsibility for their actions and advice concerning critical behavioral health issues. Incumbent requires interaction, discussion, and face-to-face meetings with senior-level representatives from the Office of the Secretary of Defense, Secretary of the Air Force Manpower and Reserve Affairs, the Air Force Review Boards Agency, Air Force Personnel Center (AFPC), the Department of Veterans Affairs as well as applicants/appellants and their representatives. Serves as an authoritative source of information in the area of psychology. Incumbent’s decision and guidance pertain to widely diversified mental health issues and have an impact on the well-being of retirees, active duty members, and their families throughout the nation. Accordingly, the nature of assignments of this position exceed what is described in the PCS at the GS-13 level in that at that level the psychologists serve as resource people to other psychologists, staff members, and operating officials. They provide consultation to members of the staff on problems related to their specialized field.

Factor II. Level of Responsibility. Position requires doctoral degree (Ph.D. or equivalent) directly related to professional work in psychology. Incumbent exercises full professional responsibility for the findings, interpretations, decision, recommendations and reports. Incumbent is responsible to keep abreast of new concepts and techniques in his specialty areas and apply them as appropriate. He must be thoroughly familiar with all aspects of the Agency’s policies, program objectives, and established practices, and act with full professional authority within those policies, precedents, etc. The findings, conclusions or recommendations are accepted as being professionally sound, and are given substantial weight by his professional and organizational superiors. Incumbent maintains liaison and active relationships with counterparts affiliated with DoD and Federal governmental agencies for the purpose of exchanging training methodology and remaining current on emerging psychology developments. This responsibility also exceeds the GS-13 level as described in the standard i.e. Psychologists exercising full professional responsibility for their findings, interpretations, decision, recommendations and reports in dealing with clients who have complex vocational rehabilitation or personal adjustment problems or serve as leaders in a patient-care team.

As stated in the GS-0180 PCS, the grade-level guides do not provide criteria for the evaluation of psychologist positions at bureau or departmental levels that operate in a staff capacity in planning or in providing policy direction, guidance and review to programs at lower organizational echelons. Criteria covering these types of positions are not included because of the diverse nature of the organizations and programs in which such positions are found. However, the criteria in this standard can be helpful in appraising the professional (as opposed to administrative) judgment inherently demanded by such assignments. The PCS further states that the absence of descriptions of grades GS-14 and GS-15 is not intended to preclude the evaluation of individual nonsupervisory psychologist positions to these levels provided the nature of the work assignment and the level of responsibility of a position clearly exceeds that described at the GS-13 level in this standard.

The Administrative Analysis Grade Evaluation Guide was used to evaluate the position’s case management and adjudication responsibilities. The guide utilizes factor levels to determine the grade of a position.

The following factor and point levels were assigned to this position:

FL1-8/1550; FL2-5/650; FL3-5/650; FL4-6/450; FL5-5/325; FL6/7 3c/180; FL8-1/5; FL9-1/5
Total Points: 3815
GS-14 Point Range: 3605-4050

CLASSIFICATION REMARKS:

The paramount duties of this position requires the incumbent to serves as a Psychologist and advisor to the Secretary of the Air Force Personnel Council on medical cases that are related to Behavioral Health (BH) issues being considered by the Air Force Review Boards Agency (AFRBA). The incumbent will serves as a voting member of the Discharge Review Board (DRB), with particular attention to the requesting for an upgrade of discharge characterization based on alleged or documented mental disorders, such as Post-Traumatic Stress or a Traumatic Brain Injury. Furthermore, the incumbent will serves as a consulting member of AFRBA boards/panels in evaluating and correlating various medical evidence related to mental- health outcomes.

Supervisory Controls:

Incumbent works under the very general supervision of the Director, Medical Directorate. Incumbent, as an authority in his field provides summaries and recommendations to adjudicating bodies. The incumbent independently plans the approach and develops decision, report, brief, opinion, or product utilizing available facts of the record. Results of work and advice given are considered as technically authoritative and accepted without significant change by immediate supervisor.

Guidelines:

The applicable guidelines of the position are those included in public law, executive orders, regulations, federal government/DOD [to include Department of Veterans Affairs] and Air Force policies concerning board activities, application procedures, and applicant rights in the Air Force. Guidelines are also provided in the form of medical literature and the Diagnostics and Statistical Manual (DSM) for Mental Disorders [current and past versions] Incumbent must interpret the guidelines using sound judgment, ingenuity, accepted medical principles, and experience in rendering opinions pertaining to mental health and in the adjudication of cases. Guidelines may also include peer reviewed textbooks, medical journals and internet articles.

Environmental Factors:

The work is mostly sedentary involving some walking, standing, and carrying of light items. Work is performed in a typical office setting requiring normal safety precautions. The work is performed in a typical office setting. Special safety precautions are not required.

Final Classification Determination: Psychologist GS-0180 (81) -14

Functional Classification Code that meets this position is 81 for clinical practice, counseling, and ancillary medical services.

Bargaining Unit Status (BUS) Citation: 5 USC 7112 (b) 8888

Fair Labor Standards Act (FLSA) Citation: 5 CFR 551.208 professional /exempt

EXHIBIT K

Department of the Air Force to Review Discharges of Veterans with Mental Health Conditions & Experiences of Sexual Trauma

NEW HAVEN, CT – The Department of the Air Force (DAF) has agreed to review the discharges of thousands of veterans affected by post-traumatic stress disorder (“PTSD”), Traumatic Brain Injury (“TBI”), or other mental health conditions, or who experienced sexual assault or sexual harassment. The DAF will also implement administrative reforms for individuals who apply to have their discharge statuses upgraded in the future. These reforms follow a settlement reached in the nationwide class action *Johnson v. Kendall*, brought by Air Force veterans Martin Johnson and Jane Doe.

Under the settlement, the Air Force Discharge Review Board (AFDRB) will automatically reconsider decisions on applications received between September 13, 2015 and [date of settlement], in which the AFDRB denied the discharge upgrade requests of veterans who claimed their mental health conditions or sexual assault or sexual harassment experiences caused their characterization of service to be Under Honorable Conditions (General) or Under Other Than Honorable Conditions (UOTHC). The settlement also expands the right to reapply for an upgrade to eligible applicants who were discharged and applied to the AFDRB between September 13, 2006 and September 12, 2015, but received an adverse AFDRB decision.

“I am pleased that the Air Force is taking steps through this settlement to make the AFDRB more accessible to veterans like me who love and have served this country,” said Martin Johnson, an Air Force veteran with PTSD who brought the suit on behalf of the settlement class. “I am glad the Air Force is committed to taking less-than-Honorably discharged veterans’ mental health and trauma seriously.”

“The Department of the Air Force’s actions to resolve this case underscore our continued commitment to provide former Airmen and Guardians fairness, due process, equity, and justice in all cases that are submitted to our review boards,” said Dr. Gerald Curry, Director, Air Force Review Boards Agency.

The settlement also ensures that Air Force, Air National Guard, Air Force Reserve, and Space Force veterans who submit applications for discharge upgrades in the future will benefit from procedural reforms and new protocols for decision-making in cases involving symptoms or diagnoses of PTSD, TBI, other mental health conditions, or evidence of experiences of sexual trauma. The settlement requires the AFDRB to establish a one-year pilot program giving veterans who claim a mental health condition or experience of sexual trauma, but who fail to submit sufficient evidence of the condition or experience an opportunity to supplement the record; to commit required medical opinions to writing; to provide a phone number for applicants to call with inquiries; to train its members and staff on how mental health conditions can lead to misconduct and how to identify and combat unconscious bias against persons with disabilities or who have had an experience of sexual trauma; to provide a universal video teleconference option for veterans who wish to have a personal appearance but cannot travel to Washington, D.C.; and to advise applicants of their right to request accommodations, including for disabilities.

“The *Johnson* settlement ensures that veterans who develop disabilities because of their service, such as Mr. Johnson and Ms. Doe, receive the support they have earned from the country they gave years of their lives to serve. We are hopeful this settlement will allow the AFDRB to implement the changes needed to allow veterans with disabilities an equal opportunity to apply for benefits they deserve,” said Yael Caplan, a law-student intern in the Veterans Legal Services Clinic at Yale Law School, which represents the plaintiffs with co-counsel Jenner & Block LLP.

Veterans of the Department of the Air Force who were discharged with less-than-fully-honorable service characterizations while having a diagnosis of, or showing symptoms of, the conditions or experiences listed above may be eligible for relief. Discharge upgrades are not guaranteed, and applications will be decided on a case-by-case basis. Eligible veterans who have been identified by the Department of the Air Force will receive notice of their rights under the settlement. However, Department of the Air Force veterans who do not receive notice may still be eligible for relief.

The full text of the settlement can be found at www.JohnsonAirForceSettlement.com. For more information, please contact the Yale Veterans Legal Services Clinic at johnson.settlement@ylsclinics.org.

Class members may wish to become more active in the lawsuit either through joining the final approval hearing or objecting. The final approval hearing for this settlement will be held on [date to be inserted], and all class members are welcome to join. If class members wish to object to the class, they can do so by filing an objection with the court and voicing their argument in the final approval hearing. Judge Charles S. Haight, Jr. of the United States District Court for the District of Connecticut will take any objections into account when deciding whether to grant final approval of the settlement.