

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

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MICHAEL SABO, NICHOLAS WELLS,	)	
JUAN PEREZ, ALAN PITTS, BILLY J.	)	
TALLEY, AIMEE SHERROD, and TYLER	)	
EINARSON on behalf of themselves and all	)	
other individuals similarly situated,	)	
	)	Case No. 08-899 C
Plaintiffs,	)	(Judge George W. Miller)
	)	
v.	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	
<hr/>	)	

NOTICE OF PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND FURTHER NOTICE OF HEARING FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

The purpose of this notice is to advise you that a settlement (the "Settlement") has been preliminarily reached in the class action lawsuit styled *Michael Sabo, et al. v. United States*, Case No. 08-0899C, currently pending in the United States Court of Federal Claims, Honorable George W. Miller presiding (the "Lawsuit"). You are receiving this notice because our records show that you opted to become a member of the class of Plaintiffs in the Lawsuit who may be entitled to benefits under the proposed Settlement ("Class Member").

*A federal court has authorized this notice. This is not a solicitation from a lawyer.*

**Please read this notice carefully.** The Court has reviewed the proposed Settlement and preliminarily approved it as fair, reasonable, and adequate. Your legal rights will be affected if the Court gives final approval to the Settlement. This Notice provides a summary of the Settlement, and explains, among other things, what steps, if any, you may take to obtain benefits

available to Class Members or provide objections or comments on the Settlement to the Court before the Court approves the Settlement. These procedures are described in more detail below.

**1. DESCRIPTION OF THE ACTION**

As you know, this is a class action lawsuit, which means a lawsuit in which one or more persons serving as class representatives sue on behalf of themselves and others who have similar claims. In this case, a group of seven veterans filed a lawsuit against the United States on behalf of themselves and all other individuals who served on active duty in the U.S. Army, Navy, Marine Corps, or Air Force and:

- were found by a PEB to be unfit for continued service due, at least in part, to the individual's post traumatic stress disorder ("PTSD");
- were assigned a disability rating for PTSD of less than 50%; and, as a result
- were released, separated, retired, or discharged from active duty on or after December 17, 2002 and before October 14, 2008 (regardless whether such release, separation, retirement, or discharge resulted in the individual's placement on the Temporary Disability Retirement List).

The veterans who filed this lawsuit on December 17, 2008 challenged the less than 50% disability rating for PTSD that the Military Services administratively assigned them at separation. They alleged that, in assigning a less than 50% disability rating, the Military Services were required by law to follow, and failed to follow Veterans Affairs Schedule for Ratings Disabilities ("VASRD") section 4.129. On behalf of themselves and the class, they sought only the money and other benefits to which they would be entitled if they had been assigned at least a 50% rating from the date of release from active duty to the present.

The United States and its Military Services (the Defendant here) have not admitted to the allegations the veterans made in this lawsuit. Initially, the parties sought to resolve the Lawsuit without litigation by providing Class Members an opportunity to obtain the requested relief on a case-by-case basis through an agreed-to, expedited military review board process. Because the lawyers representing the Class Members believed that those military review boards were not reviewing the cases of Class Members in a timely manner, these lawyers filed motions in January 2011 asking the Court to lift the moratorium on the litigation of the Lawsuit and to rule in favor of the Class Members. Shortly after these motions were filed, the parties began to discuss other means of resolving the Lawsuit without further litigation. These discussions took place while the military review boards continued processing claims. Ultimately, after months of discussion, the parties reached agreement over the terms of the proposed Settlement. As described below, if a Class Member already has a decision from one of the military review boards, the proposed Settlement will allow the Class Member the option to keep that decision or choose the relief available under this Settlement.

## **2. THE TERMS OF THE SETTLEMENT AGREEMENT**

### ***a. In General***

The Settlement places all the Class Members into one of nine (9) separate categories -- labeled Category 1 through Category 9. These categories are based on several factors, including: (i) the type of separation the Class Member received (that is, medical separation with a severance payment, or placement on the Temporary Disability Retirement List (“TDRL”), or Permanent Military Disability Retirement without being initially placed on the TDRL); (ii) whether or not the Class Member received a decision from a military review board as part of this case; and, for

some categories, (iii) whether or not the Class Member received a disability rating for PTSD from the Department of Veterans Affairs.

Attached to this Notice is a separate individualized “Disclosure Statement.” The Disclosure Statement informs you of your specific settlement category. If your VA PTSD disability rating is relevant to your settlement category, the Disclosure Statement will note your initial disability rating for PTSD assigned by the VA. Please carefully review this Disclosure Statement and the description of your settlement category. If you believe that you are in the wrong category, the Disclosure Statement provides information on how to bring that error to the attention of the lawyers who represent you and other Class Members.

***b. Relief Available to All Class Members if the Court Approves the Settlement***

If the Court approves the settlement, all Class Members, regardless of their settlement category, will have their military records changed to reflect that they were placed on the Temporary Disability Retirement List (“TDRL”) and assigned a disability rating for PTSD of 50% for the first six-month period from the date the veteran was released from active service. Some Class Members may have already received this relief as a result of a decision issued by one of the military review boards.

***c. Additional Relief Available to Some Class Members if the Court Approves the Settlement***

If the Court approves the Settlement, some Class Members will become entitled to Permanent Military Disability Retirement Benefits with a permanent disability rating for PTSD of at least 30%. Disability Retirement Benefits are governed by federal law and may change over time, but currently include:

- entitlement to elect to receive military disability retirement pay;

- entitlement to apply for Combat Related Special Compensation, which may entitle the Class Member to disability payments in addition to whatever payments the Class Member is receiving from the VA or the military services;
- entitlement to military health care benefits (TRICARE) for the rest of the Class Member's life;
- entitlement of the Class Member's spouse to military health care benefits (TRICARE) for the rest of the life of the Class Member's current spouse or anyone the Class Member may marry in the future;
- entitlement of the Class Member's current or future children to military health care benefits (TRICARE) while they are minors;
- entitlement, upon filing a timely application, to reimbursement of qualifying medical expenses incurred by the Class Member, his or her spouse, or minor children, retroactive to the date of initial release from active service;
- Military Commissary and Exchange privileges; and
- eligibility to participate in the military's Survivor Benefit Plan.

You should review carefully your individual Disclosure Statement enclosed with this Notice, as well as the general description of your settlement category, to determine whether you may now be entitled to disability retirement benefits, or if you may become entitled to these benefits in the future.

*d. Description of Categories and Applicable Settlement Relief*

**Category 1:** Category 1 includes more than 780 Class Members. Members in this category include veterans who: (i) have not received a decision from one of the military review boards as part of this litigation; (ii) were medically separated with a less than a 30%

disability rating for PTSD; and (iii) after they were separated from active service, received a disability rating for PTSD of at least 30% from the VA. For each of these Class Members, the attached Disclosure Statement lists the disability rating for PTSD (30% or higher) that the Class Member received from the VA. The Settlement provides that Class Members in Category 1 shall have their military records changed to reflect that they received a 50% disability rating for PTSD for the six-month period beginning on the date of separation from active service, followed by a permanent disability rating for PTSD equal to the VA disability rating for PTSD found on the Disclosure Statement. As a result, the Class Members in this Category shall be entitled to Permanent Military Disability Retirement Benefits, as described in paragraph 2.c. above.

**Category 2:** Category 2 includes more than 80 Class Members. Members in this category include veterans who: (i) have not received a decision from one of the military review boards as part of this litigation; (ii) were, upon separation from active service, permanently retired for disability but assigned a disability rating for PTSD of 30% or lower; and (iii) after they were separated from active service, received a disability rating for PTSD of at least 30% from the VA. For each of these Class Members, the attached Disclosure Statement lists the disability rating for PTSD (30% or higher) that the Class Member received from the VA. The Settlement provides that Class Members in this Category shall have their military records changed to reflect that they received a 50% disability rating for PTSD for the six-month period beginning on the date of separation from active service, followed by a permanent rating for PTSD equal to the VA disability rating for PTSD found in the Disclosure Statement.

**Category 3:** Category 3 includes more than 670 Class Members. All Class Members in Category 3 (i) were initially placed on the TDRL upon separation from active service with a disability rating for PTSD of 30% or lower; and (ii) have not received a decision

from one of the military review boards under the process previously agreed-to between the parties. The Settlement provides that Class Members in this Category will have their military records changed to reflect that they received a 50% disability rating for PTSD for the entire period that the Class Member remained or remains on the TDRL.

**Category 4:** Category 4 includes more than 245 Class Members. All Class Members in Category 4 (i) have received a decision from one of the military review boards during the process previously agreed-to between the parties; (ii) were medically separated from active service with a less than 30% disability rating for PTSD; and (iii) after they were separated from active service, received a disability rating for PTSD of at least 30% from the VA. For each of these Class Members, the attached Disclosure Statement lists the disability rating for PTSD (30% or higher) that the Class Member received from the VA. The Settlement provides that Class Member in Category 4 shall have the option of (a) relying on whatever records correction was made by the applicable military review board, or (b) having the Class Member's military records changed to reflect receipt of a 50% disability rating for PTSD for the six-month period beginning on the date of separation from active service, followed by a permanent rating for PTSD equal to the VA disability rating for PTSD listed in the Disclosure Statement. Thus, the Settlement provides all Class Members in Category 4 with the right to elect Permanent Military Disability Retirement Benefits, as described in paragraph 2.c. above. Information on how to make this election shall be sent to Class Members after final approval of the Settlement.

**Category 5:** Category 5 includes more than 40 Class Members. All Class Members in Category 5 (i) have received a decision from one of the military review boards under the process previously agreed-to between the parties; (ii) were medically separated from active service with a less than 30% disability rating for PTSD; and (iii) after they were separated from

active service, received a disability rating for PTSD of less than 30% from the VA. For each of these Class Members, the attached Disclosure Statement lists the disability rating for PTSD (less than 30%) that the Class Member received from the VA. The Settlement provides all Class Members in Category 5 with the option of (a) relying on whatever records correction was made by the applicable military review board, or (b) having the Class Member's military records changed to reflect receipt of a 50% disability rating for PTSD for the six-month period beginning on the date of separation from active service, followed by a permanent rating for PTSD equal to the VA disability rating set forth in the Class Member's Disclosure Statement. Information on how to make this election shall be sent to Class Members after final approval of the Settlement.

**Category 6:** This Category includes 10 or more Class Members. All Class Members in Category 6 (i) received a decision from one of the military review boards under the process previously agreed-to between the parties; (ii) were, upon separation from active service, permanently retired for disability with a disability rating for PTSD of 30% or lower; and (iii) after they were separated from active service, received a disability rating for PTSD of at least 30% from the VA. For each of these Class Members, the attached Disclosure Statement lists the disability rating for PTSD (30% or higher) that the Class Member received from the VA. The Settlement provides all Class Members in Category 6 with the option of (a) relying on whatever records correction was made by the applicable military review board, or (b) having the Class Member's military records changed to reflect receipt of a 50% disability rating for PTSD for the six-month period beginning on the date of separation from active service, followed by a permanent rating for PTSD equal to the VA disability rating for PTSD. Information on how to make this election shall be sent to Class Members after final approval of the Settlement.

**Category 7:** This Category includes more than 215 Class Members. All Class Members in Category 7 (i) received a decision from one of the military review boards under the process previously agreed-to between the parties; and (ii) were initially placed on the TDRL upon separation from active service with a disability rating for PTSD of 30% or lower. The Settlement provides all Class Members in Category 7 with the option of (a) relying on whatever records correction was made by the applicable military review board, or (b) having the Class Member's military records changed to reflect that they received a 50% disability rating for PTSD for the entire period that the Class Member remained or remains on the TDRL. Information on how to make this election shall be sent to Class Members after final approval of the Settlement.

**Category 8:** This Category includes 40 or more Class Members. All Class Members in Category 8 (i) have not received a decision from one of the military review boards under the process previously agreed-to between the parties; (ii) were either medically separated from active service with severance pay or permanently retired for disability without first being placed on the TDRL, with a disability rating for PTSD of 30% or lower; and (iii) after release from active service, received a disability rating for PTSD of less than 30% from the VA. For each of these Class Members, the attached Disclosure Statement lists the disability rating for PTSD (lower than 30%) that the Class Member received from the VA. The Settlement provides all Class Members in Category 8 with the option of (a) applying to a military review board of review for relief or (b) having the Class Member's military records changed to reflect receipt of a 50% disability rating for PTSD for the six-month period beginning on the date of separation from active service, followed by a permanent rating for PTSD equal to the VA disability rating for PTSD listed on the Class Member's Disclosure Statement. Information on how to make this election shall be sent to Class Members after final approval of the Settlement.

**Category 9:** This Category includes more than 60 Class Members. All Class Members in Category 9 (i) were medically separated from active service with severance pay or permanently retired for disability without being placed on the TDRL, with a disability rating for PTSD of 30% or lower and (ii) have not received a disability rating from the VA for the PTSD that led to their separation or retirement for disability. The Settlement provides that if a Class Member in Category 9 applies to the VA for disability benefits for PTSD within 60 days of the date the Settlement is finally approved and thereafter receives a rating decision or Statement of the Case from the VA providing the Class Member with a VA disability rating for the PTSD that led to his or her separation or retirement for disability, the Class Member may choose to have his or her military records changed to reflect that he or she received a 50% disability rating for PTSD for the six-month period beginning on the date of separation or retirement for disability, followed by a permanent rating for PTSD equal to the VA disability rating. Information on how to make this election shall be sent to Class Members after final approval of the Settlement.

*e.* **Class Member Applications that are Currently Pending before a Military Review Board** Some Class Members have filed an application with one of the military review boards under the process previously agreed-to between the parties, but they have not yet received a decision. If the Settlement is finally approved, the military review board will not issue a decision on that application because the Settlement will control the relief to which the Class Member is entitled. However, if the application of the Class Member to the military review board requested a correction of records in addition to a change in the disability rating assigned for PTSD, the military review board will continue to consider that non-PTSD part of the application and issue a decision.

*f.*     **Releases and Waivers**

Upon final approval of the Settlement, the Class Members will be deemed to have fully released and waived all claims against the Government with respect to the manner under which the Government applied the VASRD Section 4.129 and the specific disability rating they will receive under the provisions of the Settlement.

*g.*     **Attorneys' Fees**

The lawyers representing the Class Members are doing so on a *pro bono* basis, which means that the lawyers are not charging the Class Members a fee for their services. At a later date, lawyers representing the Class Members may seek to recover reasonable attorneys' fees and costs from the Defendant either by agreement or by application to the Court. The award of any such fees and costs will not affect any of the benefits made available to the Class Members under this Settlement.

**3. FINAL APPROVAL HEARING**

The Court will hold a final approval hearing to consider the fairness, reasonableness, and adequacy of the Settlement on **Monday, December 12, 2011, at 10:00 a.m. eastern time at the United States Court of Federal Claims, Howard T. Markey National Courts Building, 717 Madison Place, NW, Washington, D.C.** The courtroom number and location will be posted in the lobby of the National Courts Building on that date.

**4. COMMENTS ON THE PROPOSED SETTLEMENT**

Prior to this Hearing, Class Members may express to the Court their views in support of, or in opposition to, the fairness, reasonableness, or adequacy of the proposed Settlement. Attached to this Notice is a form entitled Individual Class Member's Comments. Class Members may use this form to submit such comments to the Court. In order to be considered, Class

Members must return their submissions to the Clerk of the Court. The submissions must be postmarked no later than 45 days following the date this Notice was mailed to you. The address to mail the form is as follows:

Clerk of the Court  
United States Court of Federal Claims  
Howard T. Markey National Courts Building,  
717 Madison Place, NW, Room 103  
Washington, D.C. 20439

**5. ADDITIONAL INFORMATION**

This Notice is a summary and does not describe all details of the proposed Settlement or the proceedings in this lawsuit. For further information, or if you wish to discuss this lawsuit or have any questions concerning this Notice or your rights or interests with respect to these matters, please contact the lawyers who represent the Class Members in this lawsuit. Their toll-free telephone number is 877-345-8387; their e-mail address is [info@ptsdlawsuit.com](mailto:info@ptsdlawsuit.com); and their mailing address is National Veterans Legal Services Program, *Sabo* Lawsuit, P.O. Box 65762, Washington, D.C. 20035.

Dated: September 20, 2011



Comments:

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**B. REQUEST TO SPEAK**

*[If you are a Class Member, and only if you expressed your objection, approval, or other comment by the deadline set forth above, you may (but are not required to) speak at the Hearing at which the Court will consider whether to give final approval to the Settlement. You do not need to speak or appear at the Hearing to remain in the class or have the Court consider your written commentary.]*

\_\_\_\_\_ I wish to appear at the Fairness Hearing.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Please mail this form (postmarked no later than November 4, 2011) to:

Clerk of the Court  
United States Court of Federal Claims  
Howard T. Markey National Courts Building,  
717 Madison Place, NW, Room 103  
Washington, D.C. 20439

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EINARSON on behalf of themselves and all	)	
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	)	Case No. 08-899 C
Plaintiffs,	)	(Judge George W. Miller)
	)	
v.	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

INDIVIDUAL CLASS MEMBER'S DISCLOSURE STATEMENT

To: \_\_\_\_\_  
Name  
\_\_\_\_\_

Identification Number

As explained in the Notice of Preliminary Approval of Class Action Settlement, this Disclosure Statement contains information that should help you understand the rights and benefits you would be entitled to under the proposed Settlement of this Lawsuit.

**Your Category.** As explained in the Notice, the Settlement places all Class Members into one of nine (9) separate categories. The Settlement places you in

**Category** \_\_\_\_\_.

**Additional Information.** If the Settlement places you in Category 1, 2, 4, 5, 6, or 8, the Settlement takes into consideration the VA disability rating that you received from the VA for the PTSD that led to your separation from active service. The VA has informed the parties that the VA disability rating that you received for PTSD was:

\_\_\_\_\_ %

If the Settlement places you in Category 3 or 7, there is no % listed above because the VA disability rating you may have received for PTSD does not affect your rights under the

Settlement. If the Settlement places you in Category 9, the VA has informed the parties that it has never given you a disability rating for PTSD, but you have the right to apply to the VA for such a rating within the time limits set forth in the part of the Notice entitled "Category 9" and the results of that VA application may affect your rights under the Settlement.

**What the Settlement Would Provide You.** To understand what the Settlement would provide you if it is finally approved, you should read the information in the Notice under the Category number into which you have been placed. If you believe that the description of your Category does not accurately reflect what your military status was when you were initially released from active service, or whether you received a decision from a military review board, or the VA disability rating for PTSD that was assigned to you by the VA, please contact the lawyers who represent you in this lawsuit. Their toll-free telephone number is 877-345-8387; their e-mail address is [info@ptsdlawsuit.com](mailto:info@ptsdlawsuit.com); and their mailing address is

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