

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

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.	)	

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NOTICE OF CLASS ACTION

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**This legal notice has been sent to you by order of a federal court. Please read this Notice carefully and fully. It tells you about the opportunity you now have to join a class action lawsuit that is currently pending before the court.**  
**This is not a solicitation by a lawyer.**

TO: All individuals who (a) served on active duty in the U.S. Army, Navy, Marine Corps, or Air Force, (b) were found by a Physical Evaluation Board to be unfit for continued service due, at least in part, to post traumatic stress disorder (“PTSD”), (c) were assigned a disability rating for PTSD of less than 50%, and, as a result, (d) were released, separated, retired, or discharged from active duty after December 17, 2002, and prior to October 14, 2008 (regardless of whether such release, separation, retirement, or discharge resulted in the individual’s placement on the Temporary Disability Retirement List).

RE: Michael Sabo, Nicholas Wells, Juan Perez, Alan Pitts, Billy J. Talley, Aimee Sherrod, and Tyler Einarson, on their own behalf, and on behalf of a class of others similarly situated, v. United States, Case No. 08-899C, in the United States Court of Federal Claims.

**1. Why did I get this Notice?**

You have been mailed this notice because government records show that between December 17, 2002, and October 14, 2008, you were discharged from military service as a result of a finding by a Physical Evaluation Board (“PEB”) that you were unfit for

continued active duty service due, at least in part, to PTSD, and were assigned a disability rating for PTSD of less than 50%.

The purpose of this notice is to inform you of a class action lawsuit brought against the military services, to advise you of how your rights may be affected by this lawsuit, to inform you how you can join or “opt-in” to the lawsuit if you choose to do so, and to inform you of the opportunity to apply to a military records correction board for a review of the PTSD disability rating that the PEB assigned you. This review will be given priority as a claim pending litigation.

The court is neither encouraging nor discouraging individuals from joining this lawsuit.

## **2. What is this lawsuit about?**

A group of seven veterans filed a lawsuit against the United States in the United States Court of Federal Claims 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 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).

This lawsuit is about whether the military services violated the legal rights of these veterans by assigning them a disability rating below 50% for PTSD. The court has not yet made a decision on this issue.

More detailed information about this lawsuit is contained in the Amended Complaint filed in this lawsuit. The Amended Complaint is available at the following website:  
**PTSDLawsuit.com**

## **3. What are the veterans who filed this lawsuit asking for?**

The veterans who filed this lawsuit seek a Court Order requiring the military services:

- to award to each of them and to each veteran who joins this lawsuit the money and other benefits to which they would have been entitled if they had been assigned at least a 50% disability rating for PTSD from the date of release from active duty to the present;
- to pay the lawyers who represent the veterans who filed this lawsuit their expenses and fees associated with bringing and prosecuting this lawsuit (and without payment of any money by them or those who join this lawsuit); and
- to award any other relief that the Court deems just and proper.

**4. What is a class action and who is involved?**

In a class action lawsuit, one or more people called “Class Representatives” (in this case Michael Sabo, Nicholas Wells, Juan Perez, Alan Pitts, Billy J. Talley, Aimee Sherrod, and Tyler Einarson) sue on behalf of other people who have similar claims. The people together are a “Class” or “Class members.” The people who sued – and all the Class Members who join the lawsuit – are called “plaintiffs.” The United States is called a defendant. The United States Court of Federal Claims will resolve all legal and factual issues for every eligible class member who timely submits a Class Action Opt-In Notice. Those individuals who do not timely submit a Class Action Opt-In Notice will be excluded from the Class in this case.

More information about why the Court has allowed this lawsuit to be a class action is located in the Court’s Order certifying the Class, available at the following website: **PTSDLawsuit.com**

**5. Am I a part of this lawsuit?**

You will need to decide whether you wish to join this lawsuit. You are not part of the Class unless and until you fill out the Class Action Opt-In Notice Form located at the end of this Notice. Rule 23 of the Rules of the United States Court of Federal Claims requires that Class Members wishing to participate in this class action lawsuit must join or “opt in” to this class action lawsuit. If you fit the description in the next question, you may opt in and join this lawsuit.

**6. Who can be part of this lawsuit?**

Under the Rules of the United States Court of Federal Claims, the Court has allowed the lawsuit to be a class action on behalf of the following individuals:

All individuals who (a) served on active duty in the U.S. Army, Navy, Marine Corps, or Air Force, (b) were found by a Physical Evaluation Board to be unfit for continued service due, at least in part, to the individual’s PTSD, (c) were assigned a disability rating for PTSD of less than 50%, and, as a result, (d) were released, separated, retired, or discharged from active duty after December 17, 2002, and prior to October 14, 2008 (regardless whether such release, separation, retirement, or discharge resulted in the individual’s placement on the Temporary Disability Retirement List).

**7. How can I join this lawsuit?**

Enclosed you will find a document titled “Class Action Opt-In Notice Form.” If you choose to participate in this lawsuit, and potentially participate in any recovery that may result from this lawsuit, including any recovery resulting from your application for prioritized review by a military records correction board, **it is extremely important** that

you read, sign and return the Class Action Opt-In Notice Form by mail or facsimile to Class Counsel at the following address:

National Veterans Legal Services Program  
c/o **SABO CLASS ACTION LITIGATION**  
P.O. Box 65762  
Washington, DC 20035  
Facsimile: [To Be Determined]

The Class Action Opt-In Notice Form must be faxed or postmarked on or before 180 days after the date of this Notice, that is, on or before \_\_\_\_\_, 2010.

If you do not wish to participate in the lawsuit, you need not take any action.

**8. What happens if I do not join this lawsuit?**

If you do not submit a Class Action Opt-In Notice Form postmarked or faxed on or before \_\_\_\_\_, 2010, you cannot participate as a Class Member in this case. As a result, you will not be able to apply to a military records correction board for a prioritized review of your PTSD disability rating, and you will not receive any money or benefits from either the Court or the prioritized review. However, you keep the right to apply to a military records correction board for a decision within the normal time it takes to process such applications. You will also still have the right to hire your own lawyer or proceed without counsel to sue the military services separately about the same legal claims in this lawsuit and you will not be legally bound by any decision of the Court in this class action.

**9. What happens once I join this lawsuit?**

If you join this lawsuit, you will be given the opportunity to, but are not required to, apply for a prioritized review by a military records correction board, as described in paragraph 10 below. You will be sent a preformatted application requesting assignment of higher rating(s) for PTSD than you received from the PEB.

If you file the application described in the prior paragraph, the board will correct your military records to show that your disability rating for PTSD was at least 50% for the six-month period following the date you were released from the service. In addition, the board will determine whether – between the date six months after your release from the service to the date of the board’s review – your PTSD disability rating of at least 50% should be increased, decreased, or remain the same, but absent fraud or unforeseen circumstances, your application will not result in the board reducing the PTSD rating(s) that the PEB previously assigned to you. In other words, you cannot end up with lower disability ratings for PTSD by joining this lawsuit and applying for prioritized review, and you cannot lose any other collateral military benefits you currently receive such as entitlement to health care, ID card, commissary, and PX privileges, unless fraud or unforeseen circumstances are found to exist.

If you were medically separated or permanently retired by the PEB, then the PTSD rating assigned by the military records correction board for the later period (that is the date six months after your release to the date of the board's decision) will be a permanent disability rating for PTSD.

If you are currently on the Temporary Disability Retirement List ("TDRL"), and you join this lawsuit and file your application for prioritized review, the military records correction board cannot take you off the TDRL and separate you without giving you permanent disability retirement benefits.

Likewise, absent fraud or unforeseen circumstances, the Court will not reduce your PTSD disability rating(s) assigned to you by the PEB. You cannot, in other words, end up with a lower disability rating by joining this lawsuit, and any collateral benefits you currently receive, such as health care, ID card, commissary, and PX privileges, will not be negatively impacted unless fraud or unforeseen circumstances are found to exist. If the board does not give you at least a 50% final disability rating, you have the right to ask the Court to give you a permanent 50% rating.

**10. What process will I go through if I join this lawsuit and apply to a military records correction board?**

If you join this lawsuit, you will be sent a special preformatted application form for use in applying to one of two military records correction boards – the Physical Disability Board of Review or the Board for Correction of Military Records of the service branch in which you served. Included with the application will be written advice from the lawyers who represent the veterans in this lawsuit about to which of the boards you should apply, and how to complete the application form to receive prioritized review.

After the board receives your application, it will obtain the medical records that were reviewed by the PEB in your case. If you have already applied for VA benefits and consent to the release of your VA records, the board may obtain from the VA a copy of the records that are in your VA claims file. These documents include the decisions made by the VA on your VA claims and the medical records that the VA reviewed in making its decisions on your claims. In addition, you may submit evidence about your PTSD that may not be in your PEB or VA claims file.

You will not have to travel to appear before the board, and the board will not hold a hearing. The board will make a decision based on the records described above and any documents you may submit.

Additional information about the potential benefits you could receive by joining this lawsuit can be found at the following website: **PTSDLawsuit.com**.

**11. If I join the lawsuit, will it benefit me?**

Whether you will receive any financial benefits by joining this lawsuit depends on your individual circumstances. You may receive some financial benefits or other benefits, or no benefits. If you have questions about whether you will receive any benefits from joining the lawsuit, you should consult a lawyer. Information about lawyers can be found in the answers to the questions below.

**12. Does this lawsuit affect my disability ratings from the U.S. Department of Veterans Affairs (VA)?**

This lawsuit does not involve the disability ratings that the VA may have given you. Your VA disability ratings cannot be reduced as a result of joining this lawsuit. Any additional benefits you receive from this lawsuit may be offset by your VA benefits, depending on your individual circumstances.

**13. Does joining the lawsuit cost any money?**

Joining this lawsuit will **not** cost you money. The lawyers who represent the veterans who brought this lawsuit are doing so on a *pro bono* basis, meaning that they are not charging them a fee for their services. These lawyers have agreed not to charge you a fee if you join this lawsuit.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT</b>	
<b>Ask to Be Included (Opt In)</b>	<p><b>Participate in this lawsuit. Obtain the right to have a prioritized review of your case by a military records correction board.</b></p> <p>By asking to be included in this lawsuit you acquire rights to any money or benefits that result from the court’s decision in this lawsuit. You also acquire the right to a prioritized review by a military records correction board, and the right to any money or benefits that the board awards you. Joining this lawsuit does not require you to apply for review by a military records correction board, but failing to apply for review by such board may delay the receipt of any money or benefits to which you are entitled. You will not give up any legal rights if you join this lawsuit. However, if you join this lawsuit, you will be bound by the outcome, whether favorable or unfavorable to you. This means that if you join this lawsuit, you cannot sue the military services separately (at another time through another lawsuit) about the same legal claims asserted in this lawsuit.</p>

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT</b>	
<b>Do Nothing</b>	<p><b>Get no benefits from the lawsuit. Keep rights to sue the military services separately (with or without counsel) and the right to have a military records correction board review any application you submit.</b></p> <p>By doing nothing, you will not be included in this lawsuit and you will have no rights to any money or benefits that may come from the court’s decision. You will not have the right to seek a prioritized review by a military records correction board. However, you keep the right to hire your own lawyer or proceed without counsel to sue the military services separately about the same legal claims in this lawsuit and you will not be legally bound by any decision of the Court in this class action. You also will have the right individually to pursue relief from a military records correction board.</p>

**14. Do I have a lawyer in this case?**

The Court has decided that Barton F. Stichman and Amy F. Fletcher of the National Veterans Legal Services Program (NVLSP), and Brad Fagg, James J. Kelley II, Richard W. Black and Charles P. Groppe of the law firm of Morgan, Lewis & Bockius LLP are qualified to represent you and all others who join this lawsuit. Collectively, these lawyers (referred to here as “Class Counsel”) are experienced in handling similar cases and class action lawsuits. More information about these lawyers, including NVLSP; Morgan, Lewis & Bockius LLP; their respective practices; and their lawyers’ experience is available at [www.nvlsp.org](http://www.nvlsp.org) and [www.morganlewis.com](http://www.morganlewis.com).

Please note, however, that the representation of you and others who join this lawsuit by NVLSP and Morgan, Lewis & Bockius LLP, and any other attorneys with whom they associate, is limited to the certification of this lawsuit as a class action, the acceptance of timely opt-in forms from you and other eligible veterans, providing limited advice to you and other individuals who have received this notice about the decision whether to join this lawsuit, and the litigation of this lawsuit. If you join this lawsuit, you will be given the opportunity to apply for a prioritized review by a military records correction board. Representation by NVLSP, Morgan, Lewis & Bockius LLP, and any attorneys with whom they associate, includes giving you limited advice in connection with any application to such a board that you may file, but does not include representing you before the board if you do apply.

**15. Should I get my own lawyer?**

You do not need to hire your own lawyer to *join* this lawsuit because Class Counsel will work on your behalf. However, you may hire your own lawyer to advise you, and to

appear in court and speak for you. If you decide to join this class action and later wish to apply for a prioritized review by a military records correction board, Class Counsel will not represent you before the board. There is no requirement that you have someone represent you before the board, but you may choose your own representation if you wish to be represented.

If you do not join the lawsuit you will also retain the right to hire your own counsel or proceed without counsel to sue the military services separately about the same legal claims in this lawsuit.

**16. How will the lawyers be paid?**

Both NVLSP and Morgan, Lewis & Bockius LLP are representing the veterans who filed this lawsuit and those who decide to join this lawsuit without charging any of these veterans any money. However, if Class Counsel obtains money or benefits for any of these veterans, they may ask the Court to order the government to pay their fees and expenses. Under no circumstances will any of these fees and expenses come from the money or benefits to which you may become entitled as a result of this lawsuit.

**17. Who should I contact if I am not sure if I can be part of this lawsuit?**

If you are not sure whether you can be included in this lawsuit, you can contact the Class Counsel in this case at the address provided in paragraph 7 above.

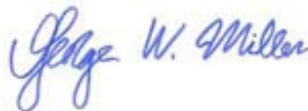
**18. How can I obtain additional information about this notice and this lawsuit?**

The lawyers who represent the veterans who filed this lawsuit have set up a website on the internet that contains answers to frequently asked questions about this notice, your rights, and how best to pursue your case. The purpose of this website is to provide legal advice to you. The website is located at: **PTSDLawsuit.com**.

The pleadings and other records in this lawsuit may be examined at the website: PTSDLawsuit.com.

**PLEASE DO NOT CALL OR CONTACT THE COURT, THE OFFICE OF THE CLERK OF COURT, THE MILITARY SERVICES, THE UNITED STATES GOVERNMENT OR DEFENSE COUNSEL WITH QUESTIONS REGARDING THIS NOTICE.**

Dated: December 18, 2009



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George W. Miller  
Judge  
United States Court of Federal Claims

## CLASS ACTION OPT-IN NOTICE FORM

UNITED STATES COURT OF FEDERAL CLAIMS

*Sabo, et al. v. United States*

Case No. 08-889-C

**1. Fill out this form completely and legibly. It must be mailed or faxed to Class Counsel at the address below and must be postmarked or faxed by \_\_\_\_\_, 2009.**

PLEASE NOTE: A notice has been sent to your address based on information contained in the Government's records regarding your service with either the United States Army, the United States Navy, the United States Marine Corps, or the United States Air Force (collectively identified as the "United States" for purposes of this lawsuit). It is your responsibility to ensure that the information you provide on this form is complete and accurate. If the veteran to whom this notice has been sent is deceased or has been declared legally incompetent and there is a legal representative (such as a guardian or executor) of this veteran, then the veteran's heir or legal representative should complete this form on behalf of the veteran and is responsible to ensure that the information is complete and accurate.

**2. Please write the full name (*including any alternate names, e.g., maiden name or previous married name*) and the other requested information of the veteran, that is, the individual who served on active duty in the U.S. Army, Navy, Marine Corps, or Air Force, was found by a Physical Evaluation Board to be unfit for continued service due, at least in part, to the individual's post traumatic stress disorder (PTSD), was assigned a disability rating for PTSD of less than 50%, and, as a result, was released, separated, retired, or discharged from active duty after December 17, 2002, and prior to October 14, 2008 (regardless whether such release, separation, retirement, or discharge resulted in the individual's placement on the Temporary Disability Retirement List).**

Veteran's Name (*including any alternate names, e.g., maiden name or previous married name*): \_\_\_\_\_

Veteran's Social Security Number:  
\_\_\_\_\_

Check The Military Branch In Which the Veteran Served On Active Duty: \_

Army     Navy     Marine Corps     Air Force

**3. Please fill in the information below (for the person completing this form).**

Home Address: \_\_\_\_\_  
\_\_\_\_\_

Home Telephone: \_\_\_\_\_

Work Telephone, if any: \_\_\_\_\_

Cell Telephone, if any: \_\_\_\_\_

E-Mail Address, if any: \_\_\_\_\_

**4. By signing your name in the space below, you understand that you are indicating that you desire to join (or you desire that the veteran you represent join) the class action lawsuit described in the accompanying notice. You are also declaring, under penalty of perjury under the laws of the United States and applicable state laws, that the veteran:**

**(a) served on active duty in the U.S. Army, Navy, Marine Corps, or Air Force;**

**(b) was found by a Physical Evaluation Board to be unfit for continued service due, at least in part, to PTSD;**

**(c) was assigned a disability rating for PTSD of less than 50%, and, as a result;**

**(d) was released, separated, retired, or discharged from active duty after December 17, 2002, and prior to October 14, 2008 as indicated in the accompanying Notice.**

Sign Your Name: \_\_\_\_\_ Date: \_\_\_\_\_

Print Your Name: \_\_\_\_\_

Relationship to Veteran: \_\_\_\_\_

**5. Mail or fax this completed form to:**

National Veterans Legal Services Program  
c/o **SABO CLASS ACTION LAWSUIT**  
P.O. Box 65762  
Washington, DC 20035  
Fax No.: **[TBD]**