

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**

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	)	
RICHARD GULLEY and	)	
JENNIFER WALTERS,	)	
on behalf of themselves and all	)	
other individuals similarly situated,	)	
	)	<b>21-1825 C</b>
Plaintiffs,	)	Case No. _____
	)	
v.	)	
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

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**CLASS ACTION COMPLAINT**

**Preliminary Statement**

This case, which is connected to *Bradley Wolfing, et al. v. United States of America*, U.S. Court of Federal Claims No. 18-523C,<sup>1</sup> arises from the sudden, retroactive, and arbitrary decision of the United States Department of the Army (“Army”) to deny a significant subset of its soldiers their correct housing allowance entitlements,<sup>2</sup> pursuant to 37 U.S.C. § 403 (the money-mandating provision of law at issue in this case). Since in or around 2016 when this unlawful decision was believed to be first instituted, this entitlements denial forced at least hundreds of Reserve Component (“RC”) soldiers to maintain two households with only one entitlement (i.e.: 1) their primary residences that they were activated from; and 2) their residence where they were assigned overseas while mobilized on active duty). The Army’s unlawful denial of BAH entitlements amounts to thousands of dollars improperly refused to each of these

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<sup>1</sup> Ongoing litigation in the *Wolfing* matter is pending and may cause a need to consolidate this complaint with the *Wolfing* matter dependent upon the outcome.

<sup>2</sup> Hereinafter referred to as Basic Allowance for Housing (“BAH”).

soldiers, and which exceeds six figures for some. In fact, the Army's gross negligence to deny this entitlement has been confirmed by the Defense Finance and Accounting Service ("DFAS")—the Agency responsible for the payment of U.S. Treasury monies to servicemembers ("SMs")—and the Army Board for Correction of Military Records ("ABCMR")—the Army's highest level of administrative review, acting on behalf of the Secretary of the Army. Here, the Army has affirmatively chosen to disregard the controlling legal provisions found within the superseding, Department of Defense ("DoD") issued, Joint Travel Regulation ("JTR"),<sup>3</sup> and the Army's own regulations.

The Army's denial of these BAH entitlements has placed at least several hundred of its soldiers in a position of tremendous financial hardship during periods in which they were activated to support the defense of our Nation. These soldiers were left with real concerns that they would be unable to pay their mortgage or rent while serving our country's national security efforts overseas. The Plaintiffs, and the proposed class members they seek to represent in this lawsuit, are or were members of the RC of the Army who were called/ordered to active duty but were denied their BAH entitlements, in violation of the JTR, Ch. 10.<sup>4</sup>

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<sup>3</sup> In 2018, the JTR was substantially reformatted, changing the paragraph numbering of the relevant Housing Allowance chapter, i.e., Chapter (Ch.) 10. In 2019, the controlling Housing Allowance provisions were then transferred to the DoD Financial Management Regulation (FMR), Volume 7A, Ch. 26. However, no substantive changes affected these provisions at any point during the relevant time of this complaint. For ease and lack of confusion, this complaint references the relevant provisions of the JTR in effect in 2016 when the Army's unlawful decision was first known to have been made.

<sup>4</sup> The lead Plaintiff, Army Colonel (O-6) Richard Gulley, is now retired and no longer on military orders. However, other proposed class members are presently on military orders and are still being denied their correct BAH entitlements. From this point forward, the Complaint is written in past tense, but the scope of the Complaint intends to capture all soldiers who are presently impacted, as well as those who were previously impacted, by the Army's unlawful decision to deny these soldiers their correct BAH entitlements.

Pursuant to the JTR, the DoD's governing regulation for the entitlements in dispute, RC members called/ordered to active duty as provided for in Ch. 10, Part E, Section 13, are entitled to receive a BAH for their "*primary residence location* at the time called/ordered to active duty." JTR, Ch. 10, Part E, Section 13, ¶ 10428B (italics added). This location is defined as "the dwelling (e.g., house, townhouse, apartment, condominium, mobile home, houseboat, vessel) where the RC member resides before being ordered to active duty." JTR, Appendix A, Page A-37 (2016 Edition).

Upon information and belief, sometime in 2016, the Army arbitrarily, and without notice, altered its interpretation of the JTR on this topic. As a result, Army finance authorities began retroactively applying Active Duty/Component ("AC") pay and entitlement provisions to RC members (i.e., pursuant to Sections within the JTR other than Ch. 10, Part E, Section 13). This gross misinterpretation by the Army to apply these AC provisions contradicts the plain language of the RC-specific provisions of the JTR, contravening the explicit purpose and intent of JTR, Ch. 10, Part E, Section 13, and Congressional intent that caused 37 U.S.C. § 403 to be modified in or around 2006 to allow for these RC members to receive dual entitlements under the applicable circumstances.

RC members placed on temporary active duty status vary greatly from their AC counterparts. Typically, AC members are sent on accompanied tours (if they have families) and are authorized to move their household goods (HHGs) through a permanent change of station (PCS) order, all at government expense. Whereas military orders for RC members are set up to return them to their primary residences, HHGs, and employers (as applicable) after their tour is over. In this situation, RC members have a need to maintain their primary residence location because they are not authorized to move their HHGs at government expense. Thus, the JTR

logically differentiates between AC and RC members' compensation and entitlements, explaining why the JTR mandates a Reserve-specific portion in the JTR to accommodate RC members' need for primary residence location BAH. Therefore, Section 13 cannot be rendered meaningless as the Army had done here.

At a minimum, hundreds—if not thousands—of RC members are actively being denied (i.e., having to forfeit) their statutorily and JTR-mandated BAH entitlements. Despite Plaintiffs' repeated efforts up the chain-of-command to have this issue corrected, the Army willfully chose to disregard these governing provisions, thus elevating its conduct to the level of gross negligence. Worse yet, the Army applied its decision retroactively, and in some cases, took disciplinary action against RC members pursuant to this *ex post facto* decision (e.g., subjecting RC members to large recoupments, and in some cases, adverse paperwork and the threat of more serious actions under the Uniform Code of Military Justice (“UCMJ”)). At least one affected RC member was known to be court-martialed.

RC members had their primary residence location BAH entitlement cancelled and were forced into a wage garnishment to recoup what the Army began to view as an “unpaid debt balance” to the U.S. Government. For those RC members subjected to greater scrutiny, the Army jeopardized their careers and security clearances by flagging them as subjects to fraud or larceny investigations and/or disciplining them for actions not known to be illegal, and in fact, were not illegal under the plain language of JTR, Ch. 10, Part E, Section 13.

Unfortunately, the Army has not only refused to adequately justify its decision to ignore Section 13, but it has gone so far as to threaten negative consequences in circumstances where RC members continued to voice concerns through the chain-of-command related to this obvious misinterpretation on its part. With internal efforts having failed, Plaintiffs regrettably bring this

28 U.S.C. § 1491, Tucker Act action against Defendant, the United States of America, acting by and through its Agencies, the Army and DFAS, not only on behalf of themselves but on behalf of all other individuals similarly mistreated, seeking redress for the Army's failure to follow applicable law and to require the Army to finally fulfill its duty owed to the Plaintiffs and other applicable RC members under existing statutes and regulations.

### **NATURE OF THE ACTION**

1. This is an action for the recovery of BAH monies that RC members are entitled to receive pursuant to 37 U.S.C. § 403, *Basic Allowance for Housing*, and the JTR, Ch. 10 (Housing Allowances), Part E (Assignment Situations), Section 13 (Reserve Components), and which the Army has unlawfully denied to at least hundreds of eligible SMs.

2. The JTR implements policy and laws establishing travel and transportation allowances of Uniformed SMs and DoD civilian travelers. It also implements certain other allowances/entitlements, like BAH. The JTR has the force and effect of law for DoD members.

3. The JTR, Chapter 10, Part E, Section 13, provides exception and guidance for RC members that is separate and purposefully distinct from the established guidance for AC members.

4. The JTR, Ch. 10, Part E, Section 13, ¶ 10428.B expressly provides that, "An RC member called/ordered to active duty in support of a contingency operation is authorized BAH [or Overseas Housing Allowance ("OHA")]<sup>5</sup> for the duration of the tour. If the RC member receives a PCS order authorizing HHG transportation, BAH/OHA is based on the new PDS [(Primary Duty Station)]. However, if the member is called or ordered to active duty and a PCS

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<sup>5</sup> This is based merely on the location of the RC members' primary residences. If a primary residence is located in the Continental United States (CONUS), a BAH is mandated. If a primary residence is located Outside the Continental United States (OCONUS), an OHA is mandated.

is not issued, BAH/OHA rate is based (paid) on the primary residence location at the time called/ordered to active duty...”

5. The JTR, Ch. 10, Part E, Section 13, ¶ 10428.E.1 expressly provides that, “An RC member called/ordered to active duty for more than 30 days . . . is authorized primary residence-based BAH/OHA beginning on the first active duty day. This rate continues for the tour duration except as noted [in this Section] below.”

6. The JTR, Ch. 10, Part E, Section 13, ¶ 10428.E.2 expressly provides that, “A Service member called/ordered to active duty in support of a contingency operation is authorized primary residence-based BAH/OHA beginning on the first active duty day . . . This rate continues for the duration of the tour unless the Service member is authorized PCS HHG transportation in which case the PDS rate would apply on the day the Service member reports to the PDS.”

7. Thus, as reflected in JTR, Ch. 10, Part E, Section 13, ¶ 10428.E. and its subparagraphs, the determining factor for when an RC member, with or without dependents, will receive a primary residence location BAH entitlement, is when the RC member is not authorized the shipment of HHGs. In such cases, the primary residence location BAH entitlement shall be paid.

8. The JTR, Appendix K, Part 1, Section A.1 expressly provides that, “OHA is a monthly allowance...and includes the following three components: a. Rent, b. Utility/recurring maintenance expenses...[and] c. Move in housing allowance (MIHA).”

9. The JTR, Ch. 10, Part A, ¶ 10020.A indicates the purpose of OHA, stating, “OHA is authorized to assist a member in defraying the housing costs incurred incident to assignment to

a PDS outside the U.S. Every member authorized to live in private sector leased/owned housing is authorized OHA.” Thus, irrespective of the payment of a primary residence location BAH, when RC members are authorized to live in private sector housing overseas, a separate OHA entitlement shall be paid.

10. Department of the Army Personnel Policy Guidance for Overseas Contingency Operations (09 Aug 13, Page 132 Section 8-3a) (“PPG”) states that “RC Soldiers called to duty in support of a contingency operation are entitled to BAH based on their primary residence, IAW Chapter 10 of the Joint Federal Travel Regulation (JFTR [(now the JTR)]). RC Soldiers whose residence changes while on active duty will continue to receive BAH and per diem entitlements (if applicable) based on their primary residence at the time of call to active duty.” *See also* 2017 Army Mobilization and Deployment Reference (AMDR) at ¶ 6-3 and 2018 AMDR at ¶ 6-3 (both of which reiterate the same primary residence BAH entitlement as was provided for in the PPG).

11. The Army has willfully disregarded these portions of its own regulations and that of the JTR, i.e., a Joint (multi-service) and superseding DoD regulation.

### **JURISDICTION AND VENUE**

12. This Court has jurisdiction over this action pursuant to the Tucker Act, 28 U.S.C. § 1491(a)(1). The statutory basis for invoking jurisdiction is 37 U.S.C. § 403, *Basic Allowance for Housing*. Section 403 provides that “a member of a uniformed service who is entitled to basic pay is entitled to a basic allowance for housing entitlement” and, therefore, constitutes a money-mandating provision.

13. In accordance with 28 U.S.C. § 2501, this action is brought within six years of the date of each Plaintiff’s and proposed class member’s denial of their lawful BAH entitlements.

14. Because the Army has engaged in gross negligence through its willful disregard of the plain language of 37 U.S.C. § 403 and JTR, Chapter 10, Part E, Section 13, which has resulted in the improper denial of BAH monies to each Plaintiff and each proposed class member, this Court has jurisdiction over this military back pay claim. *See* 37 U.S.C. § 403(k)(2).

### **PARTIES**

15. Retired Colonel (COL (O-6)) Richard Gulley is a citizen of the United States and served honorably in the Army Reserve Component from 1987 to 2017. He served a total of 30 years of military service before retiring in 2017, and he was awarded the Defense Superior Service Medal, one of the military's highest noncombat medals. As a member of the Reserve component of the Army, he was called up to active duty in support of multiple contingency operations (CONOPs) orders in Europe and Africa. While working as a civilian pilot for a major airline, he would generally earn more than double the income he earned when opting to serve on extended tours of duty. He currently resides in New Rochelle, New York, and his primary residence location during the relevant period when he was called to active duty on CONOPs was Mamaroneck, New York. Contrary to applicable statutes and regulations, the Army denied him lawfully owed BAH entitlements for when he was activated overseas in support of our country's national security efforts.

16. Major (MAJ (O-4)) Jennifer Walters is a citizen of the United States and continues to serve honorably for the Army Reserve Component. She has a total of 24 years of military service, has deployed to Afghanistan and Kuwait, and her accolades include a Joint Service Commendation Medal and multiple Army Commendation Medals. As a member of the Reserve component of the Army, she was called up to active duty for operational support (ADOS) orders and CONOPs orders in Germany. She presently resides in Albion, Nebraska, and

her primary residence location during the relevant period when she was called to active duty on ADOS and CONOPs orders was Garden Valley, Idaho, and Marysville, Washington, respectively. Contrary to applicable statutes and regulations, the Army denied her lawfully owed BAH entitlements for when she was activated overseas in support of our country's national security efforts.

17. The Defendant is the United States of America, acting by and through the Army and DFAS, both of which are United States Government Agencies. This Complaint may interchangeably refer to the Defendant as the "Army," the "United States," or "Defendant."

### **CLASS ALLEGATIONS**

18. Although there are multiple potential subclasses of soldiers who are aggrieved as part of this proposed class action (*see* RCFC 23(c)(5)), there are several commonalities among them all: 1) they are all part of the Reserve Component; 2) they were all activated on military orders to serve on active duty; 3) none of them were authorized an HHG shipment at government expense to their duty station; 4) all of them were forced to take efforts and devote monies to accommodate for their personal property (i.e., HHGs, homes, etc.) from where they were activated (i.e., their primary residence location); 5) while in-theater, all of them were required to live off the installation, "on the economy," due to Army policy or a non-availability of government-provided quarters on the installation;<sup>6</sup> and 6) all of them were forced to maintain two households, but were provided only one entitlement to do so, in contravention of the JTR, Chapter 10.

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<sup>6</sup> This entitles a member to an additional BAH entitlement to cover the costs of being placed in housing off the installation while stationed Outside the Continental United States ("OCONUS") (*see* 37 U.S.C. § 403(c)), commonly referred to as an "Overseas Housing Allowance" or "OHA."

19. Upon information and belief, this unlawful decision began affecting RC soldiers in 2016, and continues to affect such soldiers to present day. In 2016, it was confirmed through the Army's Criminal Investigations Division (CID) that at least 140 RC members were identified by the Army to have been affected by this unlawful decision. Further, available evidence suggests that at least 350 RC members have been adversely affected in fiscal year 2017. Figures since that time cannot be fully known, but because the unlawful conduct has continued since at least 2016, thousands are reasonably suspected to have been impacted.

20. While the Army's decision to deny these soldiers' housing entitlements may have varied depending on timing and the status of whether the soldier had dependents or not (*see* Potential Subclasses), in any such variance, the Army's actions were in contravention with JTR, Ch. 10.

#### **Potential Subclasses**

21. Potential Subclass A: The Army subjected certain soldiers to retroactive wage garnishments to recoup BAH monies which they had already been paid. These monies were received by the soldiers prior to the Army's sudden, retroactive, and arbitrary decision to begin denying primary residence location BAH.

22. Potential Subclass B: Certain soldiers were forced to forfeit their entire primary residence location BAH entitlements because they arrived in-theater after the Army made its arbitrary and unlawful decision to deny these entitlements.

23. Potential Subclass C: Certain soldiers were faced with both a recoupment and forfeiture of these BAH monies because their tours of duty overlapped the timeframe before and after the Army's unlawful decision on this matter.

24. Potential Subclass D: Certain soldiers without dependents who were also forced to live “on the economy” due to a non-availability of government quarters were required to choose between receiving either their primary residence location BAH or an OHA for their overseas location—nevertheless forcing them to cover the costs of two households under a single housing entitlement.

25. Potential Subclass E: Certain soldiers, in addition to being denied their lawful BAH entitlements, were also subjected to criminal investigations and/or were disciplined because of the Army’s erroneous view that they intended to defraud the United States by receiving primary residence location BAH,<sup>7</sup> despite the entitlement’s authorization through JTR, Ch. 10, Part E, Section 13. Even if the criminal investigation did not result in an adverse action, the investigation itself had an adverse effect on subsequent military membership, program access, and private employment eligibility. This is because the soldiers appear in the Defense Clearance Investigative Index (DCII) when subjected to subsequent background/security clearance investigations.

26. Notably, soldiers who are placed in government quarters at the primary duty location continue to receive their primary residence location BAH entitlements. This creates a massive inequity where those fortunate enough to receive government quarters receive primary residence location BAH entitlements, while those forced to live “on the economy” have no such compensation or ability and are instead forced to maintain two households using a single housing entitlement. This demonstrates that the Army’s application, or lack thereof, of JTR, Ch. 10, Part E, Section 13 is arbitrary and capricious.

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<sup>7</sup> The common thread for these soldiers appears to be that their dependent(s) joined the members at their own expense because the military orders did not authorize them to be travelled at government expense to the PDS.

## **ADDITIONAL FACTUAL ALLEGATIONS**

### **Basic Allowance for Housing**

27. Title 37 U.S.C. Section 403 provides a general entitlement to members of the uniformed service who are entitled to basic pay to be entitled to basic allowances for housing.

28. BAH is a non-taxed, monthly allowance that is often the second-largest form of compensation that SMs receive. It is determined using several factors to include grade, dependency status, and geographic location. As such, SMs rely heavily on this entitlement. Ownership or lease of a dwelling is not required to warrant the payment of this benefit.

29. OHA is a monthly allowance paid to a SM assigned to an OCONUS duty location who is authorized to live in private housing (i.e., “on the economy”), commonly because of the non-availability of quarters at the member’s OCONUS duty station. OHA is a cost reimbursement-based allowance intended to defray the SM’s housing costs while OCONUS, and when applicable, it is an entitlement received in addition to a primary residence location BAH. OHA is an allowance comprised of three components: 1) rent; 2) utility expenses; and 3) a move in housing allowance.

### **Variance Between Active Component and Reserve Component Members**

30. RC members (excluding Active Guard Reserve (“AGR”) members who have no break in service) placed on active duty status vary greatly from their AC counterparts. First, AC members typically report for duty in an *accompanied* status (if they have dependents) and dependents relocate at U.S. Government expense; RC members typically must report in an *unaccompanied* status, where movement of dependents at Government expense is not authorized.

31. Second, AC dependents receive *command sponsorship*, granting them full access to government facilities and amenities at a Primary Duty Station (“PDS”); RC dependents are typically prohibited from command sponsorship at the PDS.

32. Third, AC members (even if reporting in an unaccompanied status) receive Permanent Change of Station (“PCS”) orders that authorize relocation of at least some portion of their HHGs at government expense; RC members in the affected class were not authorized an HHG shipment.

33. Fourth, barring exception or unforeseen circumstances, an AC members’ PCS order typically ranges from two to three years, and these orders do not direct the return of the SMs to their previous unit of ownership; RC members most often receive orders for durations of 180 to 365 days, and while the order may state “Permanent Change of Station,” the RC members do not permanently relocate. Instead, they are released from active duty and return to their parent RC units upon tour completion. Further, an RC member’s orders can be curtailed or revoked at a moment’s notice for any number of reasons (e.g., early mission completion, insufficiency of funds, superseding mission requirement with RC parent unit, state of emergency due to natural disaster in CONUS; failure to maintain individual readiness metrics, etc.). Stated differently, RC members serve temporarily and return to their homes and civilian employers upon tour completion.

34. Fifth, AC members are permitted to change the geographic location for which they receive BAH (in instances where dependents move to and reside at a different location); RC members, absent an exception, must use the primary residence location (for BAH purposes) for the dwelling or legal residence in use at the time of their call to active duty, for the duration of

the tour. Changes to this primary residence location for RC members are typically not permitted, and dependent location is not a factor.

35. Because of these differences between AC and RC members, the JTR contains a Section (JTR, Ch. 10, Part E, Section 13) to address Reserve Component Housing Allowances.

### **INDIVIDUAL PLAINTIFF'S ALLEGATIONS**

#### **COL (Ret.) Richard Gulley**

36. On or about October 1, 2015, COL Gulley activated on CONOPs orders with duty at Stuttgart, Germany.

37. At the time he was called to active duty, his primary residence location was Mamaroneck, NY, and he had one or more dependents.

38. His orders reflect that he was not authorized a shipment of his HHGs at government expense.

39. COL Gulley continued to serve on CONOPs orders until on or about February 20, 2017, when he activated on ADOS orders with duty at Stuttgart, Germany.

40. His entitlements were audited/investigated three times within a seven year period. Twice by the Army's Criminal Investigations Division (CID) in or around 2011 and 2017, and once by the European Command's ("EUCOM") Inspector General (IG) in early 2016. In the first two investigations, COL Gulley was cleared of any wrongdoing and his dual primary residence location BAH and OHA entitlements remained unaffected. However, based on the third investigation, without any meaningful change in circumstances, COL Gulley was punished for BAH fraud on or about June 27, 2017, the same day of his retirement ceremony where he was awarded the Defense Superior Service Medal, due to the Army's sudden, retroactive, and arbitrary decision to disregard JTR, Ch. 10.

41. As punishment, he received a General Officer Memorandum of Reprimand (GOMOR) from the Army Service Element Commander. Also, the Army subjected COL Gulley to a recoupment of approximately \$136,500.00, for what the Army viewed as a “debt,” due to him receiving BAH for his primary residence location upon being called to active duty.

**MAJ Jennifer Walters**

42. On or about March 8, 2017, MAJ Walters activated on ADOS orders with duty at Wiesbaden, Germany.

43. At the time she was called up to active duty on ADOS orders, her primary residence location was Garden Valley, Idaho, and she had no dependents.

44. MAJ Walters was on ADOS orders until on or about October 1, 2017. She subsequently activated on CONOPs orders with duty at Wiesbaden, Germany.

45. During the time she was called up to active duty on CONOPs orders, her primary residence location was Marysville, Washington.

46. Both of her orders reflected that she was not authorized a shipment of her HHGs at government expense.

47. Due to the non-availability of government quarters, MAJ Walters was forced to live “on the economy” while on her ADOS and CONOPs orders.

48. While on these orders, the Army unlawfully forced MAJ Walters to choose between receiving only BAH or only OHA, but not both, due to the Army’s sudden, retroactive, and arbitrary decision to disregard JTR, Ch. 10. MAJ Walters chose to receive BAH and was wrongfully denied OHA.

**CAUSE OF ACTION**

**(28 U.S.C. § 1491(a)(1); 37 U.S.C. § 403)**

**The Army Acted with Gross Negligence by Willfully Disregarding JTR, Ch. 10**

49. Plaintiffs re-allege and incorporate by reference the allegations contained in paragraphs 1 through 48 above as if fully set forth herein.

50. 37 U.S.C. § 403 confers a substantive right to monetary benefits against the United States by mandating the payment of BAH entitlements to SMs.

51. Plaintiffs and the proposed class members have been denied their full and correct BAH entitlements.

52. Rather than applying JTR, Ch. 10, Part E, Section 13 to determine RC members' correct BAH entitlements, the Army has willfully disregarded that section and began to apply Active Component JTR provisions instead.

53. This forced both named Plaintiffs and those they seek to represent into having to maintain two households with only one entitlement.

54. The named Plaintiffs and affected RC members they seek to represent have been damaged, both financially and (in many instances) professionally, because of the Army's unlawful decision. Central to this Tucker Act claim is the resultant improper denial of significant monies owed to RC members through their BAH entitlements.

55. Because of its willful disregard of this JTR section, the Army's decision amounts to gross negligence, as the Army rendered JTR, Ch. 10, Part E, Section 13 meaningless.

56. Upon information and belief, this arbitrary and retroactive decision was made sometime during calendar year 2016 and has continued through the present day without interruption.

57. The Plaintiffs and/or several proposed class members repeatedly inquired about this error through the chain-of-command, as well as within their responses to criminal investigations and the adverse paperwork they endured. The basis for these inquiries reached the Army's Deputy Chief of Staff for Manpower and Personnel Plans, Programs, and Policies (Army G-1) office at the Pentagon, and specifically the Compensation and Entitlements Division within that office, yet the Army's actions were affirmed by this Pentagon level office as a final decision on the matter.

58. The Plaintiffs and/or several proposed class members were informed through their chain-of-command that any future inquiries into this issue would be met with negative consequences, and that the denial of the housing entitlement was a final decision.

59. By denying the BAH entitlements, the Army has forced the affected members to maintain two households using a single entitlement, in violation of the plain language and intent of the governing statutes and regulations, thus creating a severe financial hardship for these RC members.

60. Courts interpret statutes and regulations "to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case. Our inquiry must cease if the statutory language is unambiguous and the statutory scheme is coherent and consistent." *Pennzoil-Quaker State Col v. United States*, 511 F.3d 1365, 1373 (Fed. Cir. 2008) (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997)). "Absent a clear expressed legislative intention to the contrary, [the statute's plain] language must ordinarily be regarded as conclusive." *Wyeth v. Kappos*, 591 F.3d 1364, 1369 (Fed. Cir. 2010) (quoting *Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980)) (alternation in original).

61. JTR, Ch. 10, Part E, Section 13 clearly and unambiguously directs that the primary residence location BAH rate continues for the duration of the tour unless the member is authorized HHG transportation. This language must be given effect, and thus, any conflicting provision of the JTR cannot be applied to the Reserve Component. Ignoring this JTR Section is unlawful, arbitrary, and capricious.

62. Further, JTR Ch. 10, Part A ¶ 10020.A states, “OHA is authorized to assist a member in defraying the housing costs incurred incident to assignment to a PDS outside the U.S. Every member authorized to live in private sector leased/owned housing is authorized OHA.” Ignoring this JTR Section is unlawful, arbitrary, and capricious.

63. Thus, Plaintiffs and the affected RC members they seek to represent were entitled to both a primary residence location BAH and an OHA for the duration of the tours they served when they were mobilized on active duty without HHG authorization and denied government-provided housing at the PDS.

#### **PRAYER FOR RELIEF**

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

- a. Certify this action as a class action on behalf of the proposed Class and Subclasses;
- b. Designate Richard Gulley and Jennifer Walters as representatives of the class;
- c. Designate Plaintiffs’ Counsel of Record as Class Counsel;
- d. Award Plaintiffs back pay for the proper BAH entitlements they are owed— an amount which would be formulaic in nature and to be determined at trial;
- e. Award Plaintiffs interest, costs, and attorneys’ fees pursuant to the Equal Access to Justice Act or through any other legally applicable means;

- f. Award the named Plaintiffs an incentive payment to compensate them for their efforts and participation in this class action;
- g. Order all affected personnel records to be corrected to entirely expunge the Army's actions in violation of the applicable regulations and statutes, to include any adverse paperwork and "titling"<sup>8</sup> within the DCII (*see* 28 U.S.C. § 1491(a)(2));
- h. Enjoin the Army's unlawful, arbitrary, and capricious practice of denying these entitlements owed to eligible RC members pursuant to the applicable regulations and statute; and
- i. Grant such other relief as the Court deems just and proper.

Dated: September 9, 2021

Respectfully submitted,

/s/ Patrick J. Hughes  
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*Counsel for Plaintiffs*

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<sup>8</sup> "Titling refers to the inclusion of an investigated subject's name and personal identifying data in the title block of a criminal investigative report or similar document," to include the DCII. *See* Department of Defense Policy Concerning Titling and Indexing of Individuals in the Defense Clearance and Investigations Index, at 4, n.1, found at <https://apps.dtic.mil/sti/pdfs/ADA400229.pdf>.

# In The United States Court of Federal Claims

## Cover Sheet

Plaintiff(s) or Petitioner(s)

21-1825 C

Names: Richard Gulley and Jennifer Walters

Location of Plaintiff(s)/Petitioner(s) (city/state): New Rochelle, NY; Albion, NE

(If this is a multi-plaintiff case, pursuant to RCFC 20(a), please use a separate sheet to list additional plaintiffs.)

Name of the attorney of record (See RCFC 83.1(c)): Patrick J. Hughes

Firm Name: Patriots Law Group of Lyons & Hughes, P.C.

Contact information for pro se plaintiff/petitioner or attorney of record:

Post Office Box:

Street Address:

5819 Allentown Road

City-State-ZIP:

Suitland, Maryland 20746

Telephone Number:

(301) 952-9000

E-mail Address:

patrickhughes@patriotslaw.com

Is the attorney of record admitted to the Court of Federal Claims Bar?  Yes  No

Nature of Suit Code: 340

Select only one (three digit) nature-of-suit code from the attached sheet.

Agency Identification Code: ARM

Number of Claims Involved: 1

Amount Claimed: \$ Class Action; >\$10M

Use estimate if specific amount is not pleaded.

Bid Protest Case (required for NOS 138 and 140):

Indicate approximate dollar amount of procurement at issue: \$ \_\_\_\_\_

Is plaintiff a small business?

Yes

No

Was this action proceeded by the filing of a protest before the GAO?

Yes

No

Solicitation No. \_\_\_\_\_

If yes, was a decision on the merits rendered?

Yes

No

Income Tax (Partnership) Case:

Identify partnership or partnership group: \_\_\_\_\_

Takings Case:

Specify Location of Property (city/state): \_\_\_\_\_

Vaccine Case:

Date of Vaccination: \_\_\_\_\_

Related case:

Is this case directly related to any pending or previously filed  Yes  No

case(s) in the United States Court of Federal Claims? If yes, you are required to file a separate notice of directly related case(s). See RCRC 40.2.

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Claims Army Reserve Soldiers Unlawfully Denied Housing Allowances While Overseas](#)

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