

Exhibit 9

to Plaintiffs' Further Supplemental Brief in
Support of Plaintiffs' Motion for Summary
Judgment

Case No.: 1:20-cv-01104-ESH

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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ANGE SAMMA, et al,

Plaintiffs

v. Civil Action 20-1104-ESH

U.S. DEPARTMENT OF DEFENSE et al,

Defendants

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Washington, D.C.

Thursday, July 16, 2020

2:00 p.m.

TRANSCRIPT OF VIDEO CONFERENCE
BEFORE THE HONORABLE ELLEN SEGAL HUVELLE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Maj. Joseph Nosse
U.S. DEPT. OF ARMY

Court Reporter: Lisa Walker Griffith, RPR
U.S. District Courthouse
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Washington, D.C. 20001
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1 MS. KIM: We don't believe it is necessary, Your
2 Honor. But we do rely upon it as an alternative argument in
3 case the other ones do fail.

4 THE COURT: Mr. Swinton, in the notice and
5 comment, are you conceding that these are legislative
6 ruling, this 0-6 and the service in place? You invoke
7 exceptions to the notice and comment. But you didn't argue
8 the legislative versus interpretive rule dichotomy.

9 MR. SWINTON: Right, Your Honor. And I think the
10 interpreter rule would align well with our internal
11 management rule, which is an internal personnel rule. But
12 correct, we did not make that argument.

13 THE COURT: Super. All right. As I said, unless
14 I get convinced by the plaintiff, I will tentatively rule
15 that on the class cert, that I will grant it. But I guess I
16 have to exclude Mr. Kotab from the reservists, I believe.
17 So I'll have to look at it more carefully. Do you agree
18 that he doesn't belong in the class?

19 MS. ZAFAR: Yes, Your Honor, to the extent that he
20 (unintelligible) N-426, he would be precluded.

21 THE COURT: All right.

22 MS. KIM: Your Honor, would it be okay if I
23 responded very quickly just to two points in rebuttal
24 related to the relationship between Kirwa and this case
25 which Mr. Swinton raised?