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| **UNITED STATES OF AMERICA** | ) | |
| | ) | **GOVERNMENT NOTICE** |
| **v.** | ) | **OF INABILITY TO COMPLY** |
| | ) | **WITH PARAGRAPH 2c OF** |
| **Manning, Bradley E.** | ) | **COURT SCHEDULING ORDER** |
| **PFC, U.S. Army,** | ) | **DATED 11 DECEMBER 2012** |
| **HHC, U.S. Army Garrison,** | ) | |
| **Joint Base Myer-Henderson Hall** | ) | **21 December 2012** |
| **Fort Myer, Virginia 22211** | ) | |

1. On 11 December 2012, after consultation with the parties to this court-martial, the Court published a scheduling order detailing the timeline of submissions relating to the use of classified information during the court-martial. *See* Appellate Exhibit CDXLIV. On 20 December 2012, the Court, in response to the Government's inquiry, notified the parties that paragraph 2c of the Court's Scheduling Order requires the Government to provide notice of whether it objects to the defense's proposed use of classified information in all defense filings to date by 10 January 2013. *See* Enclosure. Paragraph 2c also requires the Government to propose specific alternatives to closure of the Court for consideration of classified information the defense intends to use during the court-martial, in the event the Government does not object to the relevance and necessity of the information. *See* paragraph 2c and 3b of Appellate Exhibit CDXLIV.

2. At this time, the Government is unable to comply with paragraph 2c of the Court Scheduling Order because the defense has failed to provide the requisite specificity in its Military Rule of Evidence (MRE) 505(h) filings to date, and has acknowledged as much. *See, e.g.*, paragraph 4 of the Defense Notice under MRE 505(h), dated 14 December 2012 ("The Defense will provide by separate classified filing with the requisite specificity under MRE 505(h) that we intend to elicit with each witness after we have completed our interviews of all of the Government witnesses."). The Government cannot address the relevance and necessity of classified information, or propose alternatives to classified information, if it does not know the specific classified information the defense intends to use with each Government witness.

3. On 6 July 2012 and 17 August 2012, the defense provided notice of intent to disclose classified information under MRE 505(h). *See* Appellate Exhibits CLXXXV and CCLXI. On 11 July 2012 and 22 August 2012, the Government responded to the relevant defense notice, and identified the inadequacies of the notice relating to either a lack of particularity and/or the failure to identify witnesses. *See* Appellate Exhibits CCIV and CCLXII. Portions of the defense notice with respect to three damage assessments were superseded by the defense notice provided on 14 December 2012, but the defense has yet to provide adequate specificity with respect to other portions of the defense notice filed on 17 August 2012 and responded to by the Government on 22 August 2012. Because of these issues and others, on 17 October 2012, the Court ordered the Government to file a pleading that both addresses the requirements for defense notice under MRE 505(h) and proposes a timeline for filings by the parties. The Government complied on 18 October 2012. *See* Appellate Exhibit CCCLVII. Among other things, that timeline required the defense, by 16 November 2012, to provide specific notice of classified information the defense intends to disclose during trial through prosecution witness testimony. *See* Appellate Exhibit CCCLVII, at 4. The 16 November 2012 date proposed by the Government was based, in part, on

the Government's estimate that 45-60 days would be required for coordination. *See* Appellate Exhibit CCCLVII, at 4. As acknowledged by the defense in its filing on 14 December 2012, that notice is still outstanding. *See supra* paragraph 2. Accordingly, because of the lack of time for coordination, the Government believes the *Grunden* issues in paragraph 2c, as well as the Court's Calendar, must be shifted to the right, or the defense should be precluded from eliciting classified information through prosecution witnesses during trial.

JODEAN MORROW
CPT, JA
Assistant Trial Counsel

I certify that I served or caused to be served a true copy of the above on Mr. David E. Coombs, Civilian Defense Counsel, via electronic mail, on 21 December 2012.

JODEAN MORROW
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Assistant Trial Counsel