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8 UNITED STATES DISTRICT COURT
 9 CENTRAL DISTRICT OF CALIFORNIA

10 LOG CABIN REPUBLICANS, a non-
 11 profit corporation,
 12 Plaintiff,
 13 v.
 14 UNITED STATES OF AMERICA and
 15 ROBERT M. GATES, SECRETARY
 OF DEFENSE, in his official capacity,
 16 Defendants.

Case No. CV 04-8425 VAP (Ex)

**STIPULATION RE PRIVACY ACT
 CONFIDENTIALITY**

Date: N/A
 Time: N/A
 Courtroom: N/A

Discovery Cutoff: Mar. 15, 2010
 Pretrial Conference: Feb. 22, 2010
 Trial: June 14, 2010

DISCOVERY MATTER

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1 Pursuant to Fed. R. Civ. P. 37(a) and Local Rules 7.1 and 52-4.1, Plaintiff
2 Log Cabin Republicans (“Plaintiff”) and Defendants United States of America and
3 Robert M. Gates, Secretary of Defense (“Defendants” and, collectively with
4 Plaintiff, the “Parties”) hereby enter into the Stipulation (“Stipulation”) set forth
5 below in light of the following facts:

6 A. In 2004, Plaintiff filed this challenge to the federal statute and
7 Department of Defense regulations known as Don’t Ask, Don’t Tell.

8 B. On September 15, 2009, Plaintiff propounded on Defendants its First
9 Set of Requests for Production of Documents (the “Document Requests”).

10 C. On January 12, 2010, Defendants served their responses and objections
11 to the Document Requests.

12 D. Document Request No. 73 (“Request No. 73”) asked Defendants to
13 produce “[a]ll Documents relating to any servicemembers’ having demonstrated
14 during a discharge proceeding all of the elements listed in 10 U.S.C. §
15 654(b)(1)(A)-(E).” In response to Request No. 73, Defendants stated that:

16 Defendants object to this request as overly broad, unduly
17 burdensome and, to the extent it calls for the production of
18 individual servicemembers’ files, subject to the Privacy Act.
19 Accordingly the parties have met and conferred but have been
unable to reach an agreement as to the scope of this request.

20 Subject to the specific and general objections set forth
21 above, Defendants will produce, to the extent reasonably
22 possible, documents relating to any servicemembers’ having
23 demonstrated during a discharge proceeding all of the elements
listed in 10 U.S.C. § 654(b)(1)(A)-(E) and upon the entry of an
appropriate Privacy Act protective order [(the “Order”)].

24 E. Plaintiff, on the one hand, and Defendants, on the other hand, have
25 agreed to enter into this Stipulation in order to resolve Defendants’ objection to
26 Request No. 73.

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1 NOW THEREFORE, in consideration of the foregoing, the Parties, through
2 their undersigned counsel, hereby agree as follows:

3 1. Defendants are authorized to release government records and other
4 information covered by the Privacy Act, 5 U.S.C. § 552a (the "Privacy Act"), that
5 are relevant to the claims or defenses of any party to this action within the meaning
6 of Federal Rule of Civil Procedure 26(b) as set forth herein without obtaining the
7 prior written consent of the individuals to whom such records or information
8 pertain.

9 2. Also included within the scope of this Stipulation are government
10 records and other information currently in the possession of Defendants that contain
11 names, home addresses, and home telephone numbers of individuals.

12 3. Those documents that Defendants identify as containing information
13 subject to the Privacy Act or containing names, home addresses, and home
14 telephone numbers of individuals are hereinafter referred to as "Covered
15 Documents." All information subject to the Privacy Act and names, home
16 addresses, and home telephone numbers of individuals solely derived from Covered
17 Documents, even if incorporated in another document or compilation or referred to
18 in testimony, are hereinafter referred to as "Covered Information." Document
19 summaries, statistical compilations, or other summaries of Covered Documents or
20 Covered Information that do not contain information by which specific individuals
21 can be identified (whether by name, social security number, symbol, description, or
22 other form of personal identification) are not covered by this Stipulation.

23 4. Covered Documents and Covered Information may be used only for
24 the purposes of this civil action and any appeals thereof. All Covered Documents
25 and all copies thereof must be returned to Defendants or their counsel within 60
26 days after the termination of this civil action and any appeals thereof. Any
27 pleadings or other court filings created or filed by Plaintiff that contain Covered
28 Information and are retained by Plaintiff as part of its litigation files remain subject

1 to the terms of this Stipulation. Any other documents created by Plaintiff, or
2 anyone working with Plaintiff or on its behalf, that contain Covered Information
3 must be destroyed by Plaintiff or returned to Plaintiff within 60 days after the
4 termination of this civil action and any appeals thereof. Plaintiff will certify to
5 Defendants' counsel after the termination of this civil action and any appeals
6 thereof that such documents have been returned or destroyed.

7 5. Covered Documents shall be marked by Defendants prior to
8 production as "PRODUCED SUBJECT TO PROTECTIVE ORDER", "SUBJECT
9 TO PROTECTIVE ORDER", or contain a similar marking. For any Covered
10 Documents, such as computer data, whose medium makes such stamping
11 impracticable, the diskette case and any accompanying paper or e-mail cover letter
12 shall be marked "PRODUCED SUBJECT TO PROTECTIVE ORDER",
13 "SUBJECT TO PROTECTIVE ORDER", or contain a similar marking. Answers
14 to interrogatories by Defendants, if any, that contain protected information derived
15 from records subject to the Privacy Act also shall be marked "PRODUCED
16 SUBJECT TO PROTECTIVE ORDER", "SUBJECT TO PROTECTIVE
17 ORDER", or contain a similar marking. Except as provided in paragraph 6 below,
18 no person who obtains access to Covered Documents or Covered Information
19 pursuant to this Stipulation shall disclose those records or that information without
20 further order of the Court.

21 6. Plaintiff may only disclose Covered Documents and Covered
22 Information to (a) the Court and its personnel, including court reporters; (b) the
23 attorneys of record for the parties and persons regularly in the employ of such
24 attorneys who have a need for Covered Documents or Covered Information in the
25 performance of their duties; (c) employees of Defendants; (d) Board members of
26 Plaintiff; (e) experts or other consultants retained by any party to the above-
27 captioned matter and only if necessary for their expert opinion and/or testimony; (f)
28 any potential witness or deposed witness as needed for the purposes of this civil

1 action, including any appeals thereof; and (g) any mediator retained by the Parties.
2 Any disclosure by Plaintiff or anyone working with Plaintiff or on its behalf shall
3 be made only for litigation purposes related to this civil action and any appeals
4 thereof.

5 7. Any person listed in paragraph 6 (except those listed in paragraphs (a),
6 (b), (c) and (d)) to whom disclosure of Covered Documents or Covered Information
7 is to be made must sign the Acknowledgment of Privacy Act Protective Order
8 attached hereto as Exhibit "A" before disclosure.

9 8. Plaintiff shall not disclose Covered Documents or Covered Information
10 to any persons except to those indicated in paragraph 6 without obtaining the prior
11 express written approval of Defendants. If Defendants do not consent to disclosure,
12 then Plaintiff may, on motion, seek modification of the Order from the Court.

13 9. All individuals to whom Covered Documents and Covered Information
14 are disclosed by Plaintiff shall return any and all records and copies thereof in their
15 custody, possession, or control to Plaintiff upon termination of this civil action,
16 including any appeals thereof or when they are no longer assigned or retained to
17 work on this case, whichever comes earlier.

18 10. Those portions of any filings with the Court that include Covered
19 Documents or Covered Information shall be made under seal. Those portions of
20 any depositions in which any such information is revealed shall be placed under
21 seal.

22 11. The designation, or failure to designate, any materials as Covered
23 Documents or Covered Information shall not constitute a waiver of any party's
24 assertion that the materials are or are not covered by this Stipulation.
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1 Dated: March 2, 2010

WHITE & CASE LLP

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By: /s/ Patrick Hunnius

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Patrick Hunnius
Attorneys for Plaintiff
Log Cabin Republicans

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6 Dated: March 2, 2010

UNITED STATES DEPARTMENT OF
JUSTICE, CIVIL DIVISION, FEDERAL
PROGRAMS BRANCH

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By: /s/ Paul Freeborne

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Paul Freeborne
Attorneys for Defendants
United States of America and Robert M.
Gates, Secretary of Defense

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