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12 **UNITED STATES DISTRICT COURT**
 13 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
EASTERN DIVISION

14 LOG CABIN REPUBLICANS,)	No. CV04-8425 VAP (Ex)
15 Plaintiff,)	DEFENDANTS' NOTICE OF
16 v.)	MOTION TO RETAX COSTS
17 UNITED STATES OF AMERICA AND)	HEARING: April 4, 2011
18 ROBERT M. GATES, Secretary of)	TIME: 2:00 P.M.
19 Defense,)	PLACE: Courtroom 2, 2nd Floor,
20 Defendants.)	United States District Court,
21)	3470 Twelfth St., Riverside CA.
22)	

23 Filed herewith:
 24 1. Notice of Motion and Motion to Retax Costs;
 25 2. Memorandum of Points And Authorities in Support of
 Motion to Retax Costs; and
 26 3. Proposed Order.

1 **NOTICE OF MOTION AND MOTION TO RETAX COSTS**

2 **NOTICE IS HEREBY GIVEN** that on April 4, 2011, at 2:00 P.M., in the
3 Courtroom of the Honorable Virginia A. Phillips, United States District Judge,
4 Defendants United States and Secretary of Defense Robert M. Gates (hereafter
5 “Defendants”), by and through counsel, will move to retax costs assessed by the
6 Clerk by order entered February 22, 2011. The motion will be based upon these
7 moving papers, the attached Memorandum of points and authorities, and upon such
8 further arguments, documents, and grounds as may be advanced in the future.

9 As a threshold matter, any assessment of costs in this case is inappropriate.
10 The government has appealed the Court’s injunction against the government’s
11 implementation of 10 U.S.C. § 654, the “Don’t Ask, Don’t Tell” statutory policy.
12 Given the importance and complexity of the constitutional issues presented, any
13 award of costs is inappropriate. In addition, in light of the government’s appeal,
14 any assessment of costs should await final appellate resolution. Because the
15 appeal may very well result in the reversal of the Court’s judgment and worldwide
16 permanent injunction, interests of judicial economy weigh strongly in favor of
17 awaiting final appellate resolution before costs are assessed.

18 At a minimum, the costs awarded by the Clerk should be reduced. The
19 airfare of two of Plaintiff’s witnesses, Phillip Bradley (\$1,159.58) and Christopher
20 M. Meekins (\$1,819.40), well exceed the amount charged for the fares of other
21 witnesses. Because Plaintiff has failed to show that these rates were the most
22 economical rates reasonably available to Plaintiff, as required by 28 U.S.C.
23 § 1821(c)(1), neither charge is appropriately taxed to Defendants. Accordingly,
24 the airfares charged for both witnesses should be excluded from the amount taxed.

25 The Motion is made following the conference of counsel pursuant L.R. 7-3,
26 which took place on February 23, 2011.

1 Dated: March 1, 2011

Respectfully submitted,

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4 United States Attorney

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6 Director

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8 /s/ Ryan B. Parker
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