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 14 and ANTHONY J. LOVERDE

15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA

17 MICHAEL ALMY, JASON KNIGHT, and
 ANTHONY LOVERDE,

18 Plaintiffs,

19 v.

20 UNITED STATES DEPARTMENT OF
 21 DEFENSE; ROBERT M. GATES, Secretary
 of Defense; DEPARTMENT OF THE AIR
 22 FORCE; MICHAEL B. DONLEY, Secretary,
 Department of the Air Force; DEPARTMENT
 23 OF THE NAVY; and RAY MABUS,
 Secretary, Department of the Navy,

24 Defendants.
 25

Case No. cv 10-5627 (RS)

**DECLARATION OF M. ANDREW
 WOODMANSEE IN SUPPORT OF
 PLAINTIFFS' MOTION FOR LEAVE
 TO FILE AMENDED COMPLAINT**

Date: May 5, 2011
 Time: 1:30 p.m.
 Place: Courtroom 3, 17th Floor
 Honorable Richard Seeborg

1 I, M. Andrew Woodmansee, hereby declare as follows:

2 1. I am a member of the bar of the State of California. I am a partner with the law
3 firm of Morrison & Foerster LLP, counsel for plaintiffs Michael D. Almy, Jason D. Knight, and
4 Anthony J. Loverde (“Plaintiffs”) in the above-captioned action. I have personal knowledge of
5 the facts set forth herein, and if called upon to do so, I could and would testify competently
6 thereto.

7 2. Attached hereto as Exhibit 1 is a true and correct copy of Plaintiffs’ proposed First
8 Amended Complaint.

9 3. Attached hereto as Exhibit 2 is a true and correct copy of a redline comparing the
10 proposed First Amended Complaint with the Complaints as filed.

11 4. On Friday, March 11, 2011, I met and conferred with Paul Freeborne, counsel for
12 Defendants, regarding whether the Defendants would stipulation to Plaintiffs’ request to file an
13 amended complaint. The Government indicated it would stipulate only if Plaintiffs agreed to
14 waive any future claims (administratively or in the Court of Claims) seeking credit towards
15 retirement for the time they were separated from active duty service under Don’t Ask; Don’t Tell.

16 5. On March 14, 2011, I conferred again with Defendants regarding the proposed
17 amendment. In an email message, I proposed a solution that would have mooted the Defendants’
18 objections. Plaintiffs proposed filing a stipulated amended complaint in this Court seeking only
19 the equitable remedy reinstating Plaintiffs on active duty military service. Plaintiffs then would
20 have filed (and then voluntarily stayed) a complaint in the Court of Federal Claims seeking other
21 relief that Defendants contend is “monetary.” Defendants rejected that proposal in an email to me
22 on March 15, 2011.

23 6. On March 16, 2011, counsel for Defendants emailed me to advise that Defendants
24 would not agree to the proposed amended complaint.

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 16, 2011, at San Diego, California.

By: /s/ M. Andrew Woodmansee
M. Andrew Woodmansee
mawoodmansee@mofo.com

MORRISON & FOERSTER LLP
Attorneys for Plaintiffs
Michael D. Almy, Jason D. Knight, and
Anthony J. Loverde

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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record, who are deemed to have consented to electronic service, are being served this 16th day of March, 2011, with a copy of this document via the Court's CM/ECF system.

/s/ M. Andrew Woodmansee
M. Andrew Woodmansee