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13 AND ANTHONY J. LOVERDE

14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA

16 MICHAEL D. ALMY, JASON D. KNIGHT,
and ANTHONY J. LOVERDE,

17 Plaintiffs,

18 v.

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

23 Defendants.
24

Case No. 10-cv-05627-RS

**JOINT CASE MANAGEMENT
STATEMENT**

Date: August 25, 2011

Time: 10:00 a.m.

Courtroom: 3

Judge: Hon. Richard Seeborg

1 **I. INTRODUCTION**

2 On December 13, 2010, plaintiffs Michael D. Almy, Anthony J. Loverde, and Jason D.
3 Knight (collectively, “Plaintiffs”) filed the instant lawsuit against the United States Department of
4 Defense; Robert Gates, Secretary of Defense; Department of the Air Force; Michael Donley,
5 Secretary, Department of the Air Force; Department of the Navy; and Ray Mabus, Secretary,
6 Department of the Navy (collectively, “Defendants”). The Plaintiffs were all discharged under
7 the federal law colloquially known as “Don’t Ask, Don’t Tell,” concerning gay, lesbian, and
8 bisexual armed forces service members (“DADT”). The lawsuit seeks Plaintiffs’ reinstatement in
9 their respective branches of the military.

10 The Court has set a Case Management Conference for August 25, 2011, continuing a Case
11 Management Conference previously set for March 24, 2011. On March 4, 2011, counsel for both
12 sides met and conferred by telephone. Lead counsel for both sides further met and conferred by
13 telephone on March 10, 2011. Since that time, counsel for both sides have continued to
14 communicate by telephone and email as necessary. Pursuant to the Court’s Standing Order Re:
15 Initial Case Management, and Civil Local Rule 16-9, the parties respectfully submit the following
16 Joint Case Management Statement and Proposed Order.

17 **II. ISSUES**

18 **A. Date Case Was Filed**

19 The case was filed on December 13, 2010.

20 **B. Description of Parties**

21 Below is a brief description of the allegations set forth in Plaintiffs’ First Amended
22 Complaint:

23 All three Plaintiffs volunteered to serve in the U.S. military. The following is a short
24 summary of their military service.

25 Plaintiffs allege that Mr. Almy entered active duty in the U.S. Air Force on June 20, 1993,
26 having been in the Air Force ROTC program during college. After serving for more than 13
27 years and attaining the rank of Major, Mr. Almy was involuntarily discharged under DADT on
28 July 21, 2006.

1 Plaintiffs allege that Mr. Loverde enlisted in the U.S. Air Force on February 13, 2001.
2 After serving for approximately seven and a half years and attaining the rank of Staff Sergeant,
3 Mr. Loverde was involuntarily discharged under DADT on July 13, 2008.

4 Plaintiffs allege that Mr. Knight served in the U.S. Navy for a total of nearly five years.
5 Mr. Knight first joined the Navy on April 4, 2001. After serving for four years, Mr. Knight was
6 involuntarily discharged under DADT on April 3, 2005. Due to a clerical error by the Navy, Mr.
7 Knight was recalled to active duty in 2006. After serving for almost a year in the Navy as an
8 openly gay man and attaining the rank of Petty Officer Second Class, Mr. Knight was
9 involuntarily discharged for a second time under DADT on May 18, 2007.

10 The Defendants are the U.S. Department of Defense; Robert M. Gates, Secretary of
11 Defense; the Department of the Air Force; Michael B. Donley, Secretary of the Department of the
12 Air Force; the Department of the Navy; and Ray Mabus, Secretary of the Department of the
13 Navy. Defendants dispute certain of the factual allegations that are set forth above and that are
14 included in the First Amended Complaint, including, but not limited to, Plaintiffs' description of
15 Mr. Knight's 2005 discharge. Defendants also dispute Plaintiffs' characterization of their
16 discharges.

17 C. Summary of All Claims

18 Plaintiffs allege that their discharges under DADT violated their substantive due process
19 rights under the Fifth Amendment, as recognized in *Lawrence v. Texas*, 539 U.S. 558 (2003)
20 (first, second, and third causes of action); violated their equal protection rights under the Fifth
21 Amendment (fifth, sixth, and seventh causes of action); and violated their freedom of speech and
22 association rights under the First Amendment (eighth, ninth, and tenth causes of action).
23 Furthermore, Plaintiffs allege that DADT and the regulations, policies, and guidance that
24 implement it, subject service members to discharge for exercising their substantive due process
25 rights under the Fifth Amendment, as recognized in *Lawrence*, and therefore are facially
26 unconstitutional (fourth cause of action). Plaintiff Almy also alleges that the administrative
27 proceedings that led to his discharge violated the Administrative Procedures Act (eleventh cause
28 of action).

1 No counter-claims, cross-claims, or third-party claims have been filed.

2 **D. Underlying Events**

3 The underlying events in this action are the discharges of the Plaintiffs under DADT.

4 **E. Relief**

5 Plaintiffs seek equitable relief in the form of a mandatory injunction ordering the military
6 to reinstate Plaintiffs into active duty in their respective branches of the military.

7 **F. Status of Discovery**

8 The parties have made no initial disclosures and have taken no discovery. Discovery in
9 this case is expected to be limited.

10 **G. Procedural History**

11 This action was originally assigned to Magistrate Judge Spero. On December 15, 2010,
12 the case was reassigned to this Court. (Docs. 7, 8.)

13 On February 11, 2011, Defendants filed a Motion to Transfer this action to the U.S. Court
14 of Federal Claims or, in the alternative, to dismiss the action. (Doc. 19.)

15 On March 15, 2011, Plaintiffs filed a Motion for Leave to Amend the Complaint in order
16 to limit the requested relief to reinstatement in the military. (Doc. 30.)

17 On May 3, 2011, when the Motion to Transfer and the Motion for Leave to Amend were
18 fully briefed, this Court granted Plaintiffs' Motion for Leave to Amend, mooting Defendants'
19 Motion to Transfer. (Doc. 37.)

20 On May 4, 2011, Plaintiffs filed their First Amended Complaint. (Doc. 38.)

21 On June 23, 2011, the Parties participated in an ADR Conference.

22 On July 27, 2011, Plaintiffs filed a Partial Motion for Summary Judgment. (Doc. 43.)

23 **H. Other Deadlines**

24 On August 19, 2011, Defendants will file their response to the First Amended Complaint
25 and to the Plaintiffs' Partial Motion for Summary Judgment.

26 On September 2, 2011, Plaintiffs will file their response to any dispositive motion filed by
27 Defendants in response to the First Amended Complaint and any reply in support of their partial
28 motion to dismiss.

1 On September 9, 2011, Defendants will file a reply in support of any dispositive motions
2 filed in response to the First Amended Complaint.

3 On October 13, 2011, the Parties' motions will be heard.

4 **I. Proposed Schedule**

5 It is proposed that this case shall be ready for trial six months after the close of discovery.

6 To accommodate that schedule, it is proposed that discovery shall close six months after
7 the Court rules upon the parties' motions that will be heard on October 13, 2011.

8 To the extent the parties' dispositive motions that are the subject of the October 13, 2011
9 hearing are denied, in whole or in part, any additional dispositive motions shall be heard no later
10 than three months after the close of discovery.

11 **J. Magistrate Judge**

12 The parties do not consent to a magistrate judge for trial.
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Dated: August 18, 2011

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Dated: August 18, 2011

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CERTIFICATE OF SERVICE

The undersigned certifies that on August 18, 2011, a true and correct copy of the foregoing document was filed electronically in with this Court. As such, this document was served on all counsel who have consented to electronic service.

/s/ M. Andrew Woodmansee
M. Andrew Woodmansee