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 LIEUTENANT COLONEL VICTOR J. FEHRENBACH

**UNITED STATES DISTRICT COURT  
 DISTRICT OF IDAHO**

LIEUTENANT COLONEL VICTOR J.  
 FEHRENBACH,

Plaintiff,

v.

DEPARTMENT OF THE AIR FORCE;  
 ROBERT M. GATES, Secretary of Defense;  
 MICHAEL B. DONLEY, Secretary,  
 Department of the Air Force; LT. GENERAL  
 GLENN SPEARS, Twelfth Air Force  
 Commander, COL. RONALD BUCKLEY,  
 366th Fighter Wing Commander,

Defendants.

Case No.

**DECLARATION OF M. ANDREW  
 WOODMANSEE IN SUPPORT OF  
 APPLICATION FOR TEMPORARY  
 RESTRAINING ORDER AND  
 PRELIMINARY INJUNCTION**

I, M. Andrew Woodmansee, declare:

1. I am a member in good standing of the state bar of California and am a partner with the law firm of Morrison & Foerster LLP, which represents Plaintiff Lieutenant Colonel Victor J. Fehrenbach in this action. I have personal knowledge of the facts stated herein and, if called as a witness, I could and would testify competently as to them.

2. Attached hereto as Exhibit 1 is a true and correct copy of the Ruling on Motion For Declaratory Judgment, dated February 9, 2009 from the matter of the *United States v. Lieutenant Colonel Victor J. Fehrenbach*.

3. Attached hereto as Exhibit 2 is a true and correct copy of a news transcript titled, "DOD News Briefing with Secretary Gates and Adm. Mullen from the Pentagon" dated March 25, 2010.

4. Attached hereto as Exhibit 3 is a true and correct excerpt of the Summary of Changes Revisions to the "Don't Ask, Don't Tell" regulations, prepared by the Office of the Secretary of Defense.

5. Attached hereto as Exhibit 4 is a true and correct copy of excerpts from the Department of Defense Authorization For Appropriations For Fiscal Year 2011, And To Receive Testimony Relating To The "Don't Ask, Don't Tell" Policy, dated February 2, 2010.

6. Attached hereto as Exhibit 5 is a true and correct copy of an article written by Om Prakash titled *The Efficacy of "Don't Ask, Don't Tell"*, JFQ, 4<sup>th</sup> Quarter 2009, issue 55.

7. Attached hereto as Exhibit 6 is a true and correct copy of excerpts from the Hearing To Receive Testimony Relating To The "Don't Ask, Don't Tell" Policy, dated March 18, 2010.

8. Attached hereto as Exhibit 7 is a true and correct copy of excerpts from the report titled *Sexual Orientation and U.S. Military Personnel Policy: Options and Assessment*, published by RAND (1993).

9. Attached hereto as Exhibit 8 is a true and correct copy of the Air Force Instruction 36-2909 (“AFI 36-2909”), dated May 1, 1999.

10. Attached hereto as Exhibit 9 is a true and correct copy of the Air Force Instruction 36-3206 (“AFI 36-3206”), dated June 9, 2004.

11. Attached hereto as Exhibit 10 is a true and correct copy of the news article written by Bruce Rolfsen titled, “*They asked, he told, but he might get to stay*” MilitaryTimes (Oct. 24, 2009).

12. Attached hereto as Exhibit 11 is a true and correct copy of a transcript titled, “*Remarks By The President At LGBT Pride Month Reception*”, dated June 29, 2009.

13. On August 4, 2010, I received an email from the Honorable Charles A. Blanchard, General Counsel to the Secretary of the Air Force. A true and correct copy of that email chain is attached hereto as Exhibit 12. In that email, Mr. Blanchard confirmed that the Air Force Personnel Board had met and made a recommendation to the Secretary’s designated separation authority in this case (the MRB). Notwithstanding Mr. Blanchard’s statements to the contrary, Air Force regulations clearly state that, had the AFPB concluded that Lt. Col. Fehrenbach should be retained, no action by the Secretary or the MRB would be required. AFI 36-3206 Chapter 6.10 (“When the AFPB recommends retaining the respondent, HQ

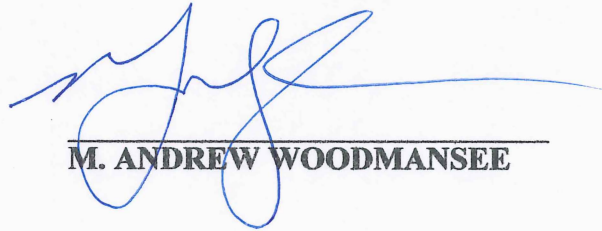
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AFPC/DPRS advises the respondent, through the SCA, that the AFPB's determination ends the action."); and Chapter 6.10.1 ("When the AFPB recommends removal from active duty, discharge, or other action, the AFPB sends the case to the SAF.")

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed on August 10, 2010, in San Diego, California.



M. ANDREW WOODMANSEE