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Department of the Air Force, *et. al.*

**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. 1:10-cv-00402-EJL

**STIPULATION TO WITHDRAW  
PLAINTIFF'S MOTION FOR  
PRELIMINARY INJUNCTION  
AND TO STAY CASE**

Plaintiff, Lieutenant Colonel Victor J. Fehrenbach ("Plaintiff"), and Defendants, Department of the Air Force, et. al ("Defendants"), hereby stipulate as follows.

1. Plaintiff currently is a lieutenant colonel, serving on active duty in the United States Air Force with the 366th Operations Support Squadron, 366th Fighter Wing stationed at Mountain Home Air Force Base. Defendants represent that neither the Secretary of the Air Force nor his designee has made a decision whether to discharge or separate Plaintiff from active duty in the Air Force.

2. On January 14, 2011, Plaintiff was informed by the Air Force that his request to retire from active duty service on September 30, 2011 has been approved. Defendants also have informed Plaintiff that the Air Force's investigation and potential discharge of Plaintiff under "Don't Ask, Don't Tell" remains pending.

3. In light of the foregoing, Plaintiff agrees to withdraw his pending motion for a preliminary injunction and the parties agree to stay the case. Plaintiff, however, shall be permitted to move to lift the stay and to re-file his motion for a preliminary injunction in the event Defendants inform Plaintiff or his lead counsel that the Secretary or his designee intends to proceed with Plaintiff's discharge prior to his approved retirement date.

4. Defendants agree to notify Plaintiff's lead counsel (by electronic mail and telephone) and the Court within one day in the event the Secretary of the Air Force or his designee makes a decision to discharge Plaintiff. In order to permit Plaintiff to move the Court to lift the stay and to maintain the *status quo*, Defendants agree that they will not take any steps to execute or process Plaintiff's discharge or separation, to give any effect to a decision to discharge or separate Plaintiff, or to establish any date for the discharge or separation of Plaintiff, for 21 days following such notification.

5. In the event that Defendants notify Plaintiff that the pending discharge proceeding under "Don't Ask, Don't Tell" has been terminated, or upon Plaintiff's retirement, whichever is earlier, Plaintiff will dismiss his Verified Complaint for Injunctive Relief.

Respectfully submitted,

Dated: February 3, 2011

By: /s/ M. Andrew Woodmansee  
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Dated: February 3, 2011

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