



Defense's policy of providing one-half separation pay to service members discharged under Don't Ask, Don't Tell.

4. The parties have agreed that class certification is appropriate in this case and have agreed to the following definition of the class:

All United States service members who at any time from November 10, 2004 through the present were involuntarily separated from the military and were, pursuant to 10 U.S.C. § 1174, entitled to full separation pay, but were deemed to be not fully qualified for retention and denied reenlistment or continuation because of homosexuality or homosexual conduct and therefore received one-half separation pay.

The Parties agree that the class definition includes members of the armed forces as defined in 10 U.S.C. § 101(a)(4).

5. The parties subsequently entered into negotiations designed to resolve amicably plaintiffs' claims. Plaintiffs have agreed to settle this case in exchange for payment by the United States of one-hundred percent of the one-half separation pay sought by the class, subject to any offsets and excluding interest, with each party to bear its own costs, attorney fees, and expenses.

6. These terms have been accepted on behalf of the Attorney General.

7. Accordingly, the parties agree that the United States shall make payment of one-hundred percent of the separation pay sought by the class, subject to any offsets, to those service members who opt-in to the class. Separation pay shall be calculated as provided in 10 U.S.C. § 1174.

8. The parties further agree to propose the following class notification schedule to the Court:

a. Within 30 days of the issuance of a Court order setting forth procedures for notifying service members of the option to opt-in to the class and to accept the settlement agreement, defendant shall provide plaintiffs' counsel with a list of service members who fall within the class definition. The list shall also include the last-known address for each service member as reflected in Department of Defense and Coast Guard records. Defendant shall send to each such service member the letter, the settlement agreement and opt-in form attached as Exhibit 1 to this settlement agreement.

b. If there is no response from a particular service member within 60 days, defendant shall send an additional letter to that service member. This letter shall be sent within 21 days after expiration of the 60-day period.

c. If either the first or second letter is returned to defendant within 60 days of the date the letter is sent because it is not deliverable, defendant shall confirm that the notice was sent to the class-member's last known address. If the letter was not sent to the class-member's last known address, defendant shall resend the letter to the corrected address. In the event defendant must resend a letter due to such error, the corrected letter will be considered the first mailing of the letter and all applicable time limits shall be calculated from the date of the mailing of the corrected letter. If defendant confirms that a returned letter was in fact sent to the class-member's last known address, it must notify plaintiffs' counsel of the returned letter within ten days of receipt of such a letter. Within 14 days of being notified of the returned letter, plaintiffs' counsel may provide defendant with an additional address for the service member whose letter was

returned. Defendant shall, within 14 days of receiving the additional address from plaintiffs' counsel, send an additional notice letter, settlement agreement, and opt-in form (Exhibit 1) to the address provided by plaintiffs' counsel.

d. Defendant will include the language "Contains Confidential Information – To Be Opened By Addressee Only" on the envelope of any of the mailings sent to service members.

e. Service members shall be afforded 60 days from the date of mailing to opt-in to the class. If more than one letter is sent to a service member, that service member shall be afforded 60 days from the date of mailing of the last letter. Within 90 days of the mailing date of the last notice letter, defendant shall provide a list to plaintiffs' counsel of the service members who have opted-in to the class.

9. Pursuant to Rule 23 of the Court of Federal Claims Rules, this settlement agreement shall be submitted to the Court for approval and a fairness hearing. If any term, provision, covenant, or condition of this settlement agreement is not approved by the Court, this settlement agreement shall be void.

10. If the Court approves this settlement agreement and enters judgment, defendant shall then make payment as set forth in paragraph 7 to each service member who opts-in to the class.

11. In the event that a service member who does not currently fall within the definition of the class becomes eligible for inclusion in the class prior to the date that defendant provides plaintiffs' counsel with the list of service members eligible for

inclusion in the class as set forth in paragraph 8a, defendant shall notify plaintiffs' counsel of that fact and shall provide notice to the service member as set forth above.

12. The parties agree that defendant has made its best efforts to identify the names of service members who fall within the definition of the class.

13. Within 14 days of approval of this settlement agreement by the Court, plaintiffs agree to join with the United States in stipulating to the entry of judgment in the amount of one-hundred percent of the one-half separation pay sought by the class, subject to any offsets and excluding interest, with each party to bear its own costs, attorney fees, and expenses. The parties will attach to the proposed judgment the name of each service member who opts into the class and the corresponding amount of separation pay due.

14. Upon execution of this settlement agreement, plaintiffs release, waive, and abandon all claims against the United States, its political subdivisions, its officers, agents, and employees concerning separation pay or any claims that are otherwise involved in this case, regardless of whether they were included in the complaint, including but not limited to any claims for costs, expenses, attorney fees, interest, and damages of any sort.

15. This agreement is in no way related to or concerned with the income or other taxes for which plaintiffs are now liable or may become liable in the future as a result of this agreement.

16. Plaintiffs warrant and represent that no other action or suit with respect to the claims advanced in this suit is pending or will be filed in or submitted to any other court, administrative agency, or legislative body. Plaintiffs further warrant and represent that they have made no assignment or transfer of all or any part of their rights arising out of or relating to the claims advanced in this suit. Should any plaintiff violate any of these

warranties and representations, at the sole option of the United States, any amount paid by the United States to the plaintiff who violated these warranties and representations shall be refunded promptly to the United States, together with interest thereon at the rates provided in 41 U.S.C. § 7109, computed from the date the United States makes payment.

17. Paragraphs 14-16 notwithstanding, nothing in this agreement shall affect plaintiffs' ability to seek additional relief related to claims of separation pay based on any new legislation, regulations, or governmental policies that are enacted after the date of this agreement and provide new relief that was not available to plaintiffs as of the date of this agreement.

18. The service members who opt-in to the class and receive payment pursuant to this settlement agreement shall have such payment treated as if it were separation pay under 10 U.S.C. § 1174. Thus, for example, section (h) of 10 U.S.C. § 1174 shall apply to payments under this settlement agreement.

19. This agreement is for the purpose of settling this case, and for no other. Accordingly, this agreement shall not bind the parties, nor shall it be cited or otherwise referred to, in any proceedings, whether judicial or administrative in nature, in which the parties or counsel for the parties have or may acquire an interest, except as necessary to effect the terms of this agreement.

20. Plaintiffs' counsel of record represents that counsel of record has been and is authorized to enter into this agreement on behalf of plaintiff, individually and as a representative of the Class.

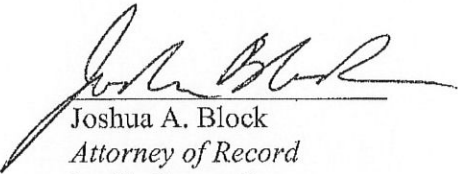
21. This document constitutes a complete integration of the agreement between the parties and supersedes any and all prior oral or written representations, understandings or agreements among or between them.

AGREED TO:

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Attorneys for Defendant

Dated: 1/4, 2013





The purpose of this notice is to inform you of a class action lawsuit brought against the military services, to advise you of how your rights may be affected by this lawsuit, and to inform you how you can join or “opt-in” to the lawsuit if you choose to do so.

**2. What is this lawsuit about?**

Mr. Collins filed a lawsuit against the United States in the United States Court of Federal Claims on behalf of himself and all other individuals who, between November 10, 2004 through the present, were involuntarily separated from the military, and were, pursuant to 10 U.S.C. § 1174, entitled to full separation pay, but were deemed to be not fully qualified for retention and denied reenlistment or continuation because of homosexuality or homosexual conduct and therefore received one-half separation pay.

Mr. Collins alleges that the military services violated the legal rights of these service members by providing them with one-half separation pay, rather than full separation pay.

More detailed information is contained in the complaint filed in this lawsuit. The complaint is available from the Clerk of the United States Court of Federal Claims, 717 Madison Pl., N.W., Washington, D.C. 20005.

More detailed information, which reflects plaintiffs’ views about the case, is also contained on the website for Mr. Collins’s counsel at [www.aclu.org/lgbt-rights/collins-v-united-states-class-action-military-separation-pay](http://www.aclu.org/lgbt-rights/collins-v-<u>united-states-class-action-military-separation-pay</u>).

**3. What is the plaintiff asking for?**

The plaintiff seeks a Court Order requiring the United States:

- To award to him and to each service member who joins this lawsuit full separation pay;
- To be awarded interest;
- To be awarded reasonable costs, expenses and attorney fees; and
- To be awarded any other relief that the Court deems just and proper.

**4. What is proposed settlement to the class?**

Plaintiffs have agreed to settle this case in exchange for payment by the United States of one-hundred percent of the one-half separation pay sought by the class, excluding interest, with each party to bear its own costs, attorney fees, and expenses. This agreement must be approved by the Court before it is binding on the parties.

**5. What is a class action and who is involved?**

In a class action lawsuit, one or more people called “Class Representatives” (in this case, Richard Collins) sue on behalf of other people who have similar claims. The people together are a “Class” or “Class Members.” The people who sued – and all the Class

Members who join the lawsuit – are called “plaintiffs.” The United States is called a defendant. Unless the case is settled, the United States Court of Federal Claims will resolve all legal and factual issues for every eligible class member who timely submits a completed Class Action Opt-In Notice Form. Those individuals who do not timely submit a Class Action Opt-In Notice Form will be excluded from the Class in this case.

**6. Am I a part of this lawsuit?**

You will need to decide whether you wish to join this lawsuit. You are not part of the Class unless and until you fill out the Class Action Opt-In Notice Form located at the back of this Notice. Rule 23 of the Rules of the United States Court of Federal Claims requires that Class Members join or “opt-in” to a class action lawsuit.

**7. How can I join this lawsuit?**

Enclosed you will find a document titled “Class Action Opt-In Notice Form.” To join this lawsuit and potentially participate in any recovery that may result, you must read, sign and return the Class Action Opt-In Notice Form by mail to the following address:

L. Misha Preheim  
Senior Trial Counsel  
Commercial Litigation Branch  
Civil Division  
Department of Justice  
P.O. Box 480  
Ben Franklin Station  
Washington, D.C. 20044

The Class Action Opt-In Notice Form must be sent by mail to the above address within 60 days of the date this Notice is postmarked.

If you do not wish to participate in the lawsuit, you need not take any action.

If you join this lawsuit, any payment you receive may be deducted from any retirement or retainer pay or disability compensation you receive from the military.

**8. What happens if I do not join this lawsuit?**

If you do not submit a Class Action Opt-In Notice Form by the deadline, you cannot participate as a Class Member in this case and you will not receive any money or benefits that may be paid in this case by the defendant. You will not be legally bound by any decision of the Court in this class action, and you will retain the right to sue the military services separately about the same legal claims in this lawsuit if such a lawsuit is filed within the applicable statute of limitations. Service members have the opportunity to opt into this lawsuit if they were discharged on or after November 10, 2004, but if you bring

a separate lawsuit the suit must be filed within six years of the date of your discharge in order to fall within the statute of limitations governing such claims.

**9. Does joining the lawsuit cost any money?**

The lawyers representing the plaintiffs are doing so on a pro bono basis, which means that they are not charging a fee for their services. These lawyers have agreed not to charge you a fee if you join this lawsuit.

**10. Do I have a lawyer in this case?**

The Court has decided that Joshua A. Block, LGBT and AIDS Project, ACLU Foundation, 125 Broad Street, Floor 18, New York, New York 10004, and his co-counsel are qualified to represent you and all others who join this lawsuit. Collectively, these lawyers (referred to here as "Class Counsel") are experienced in handling similar cases and class action lawsuits.

**11. Should I get my own lawyer?**

You do not need to hire your own lawyer to join this lawsuit because Class Counsel will work on your behalf. However, you are permitted to hire your own lawyer to advise you and to appear in court and speak for you.

**12. How can I obtain additional information about this notice and this lawsuit?**

The pleadings and other records in this lawsuit may be examined at any time during regular business hours at the Office of the Clerk of the United States Court of Federal Claims. The address for the Court is:

United States Court of Federal Claims  
717 Madison Place, N.W.  
Washington, D.C. 20005

You may also obtain additional information by contacting Class Counsel at the following address:

Joshua A. Block  
ACLU Foundation  
125 Broad Street, Floor 18  
New York, New York 10004

PLEASE DO NOT CALL OR CONTACT THE COURT, THE OFFICE OF THE CLERK OF COURT, OR THE MILITARY SERVICES WITH QUESTIONS REGARDING THIS NOTICE.

Dated: \_\_\_\_\_, 2013

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Christine O.C. Miller  
Judge  
United States Court of Federal Claims

CLASS ACTION OPT-IN NOTICE FORM  
UNITED STATES COURT OF FEDERAL CLAIMS  
Collins v. United States  
Case No. 10-778c

1. Fill out this form completely and legibly. It must be mailed to the address below within 60 days of the date of the postmark of the Notice.

2. Please write the full name (including any alternate names, e.g., maiden name or previous married name) and the other requested information of the individual who is opting into the class.

Name (including any alternate names, e.g., maiden name or previous married name): \_\_\_\_\_

Social Security Number: \_\_\_\_\_

Service in which you served on active duty:

Army  Navy  Marine Corps  Air Force  Coast Guard

3. Please fill in the information below.

Home Address: \_\_\_\_\_

Home Telephone: \_\_\_\_\_

Work Telephone: \_\_\_\_\_

Cell Telephone: \_\_\_\_\_

E-Mail Address, if any: \_\_\_\_\_

4. Mail this completed form to:

L. Misha Preheim  
Senior Trial Counsel  
Commercial Litigation Branch  
Civil Division  
Department of Justice  
P.O. Box 480  
Ben Franklin Station  
Washington, D.C. 20044

5. By signing your name below, you are consenting to join the lawsuit described in the accompanying notice.

Sign Your Name: \_\_\_\_\_ Date: \_\_\_\_\_

Print Your Name: \_\_\_\_\_