

1 Jocelyn Larkin (SBN 110817)  
jlarkin@impactfund.org  
2 **IMPACT FUND**  
2080 Addison Street, Suite 5  
3 Berkeley, CA 94704  
Telephone: (510) 845-3473  
4 Facsimile: (510) 845-3654

Elizabeth Kristen (SBN 218227)  
elizabeth.kristen@cwlc.org  
**CALIFORNIA WOMEN'S LAW CENTER**  
360 N. Pacific Coast Hwy., Suite 2070  
El Segundo, CA 90245  
Telephone: (323) 951-1041

5 David Willingham (SBN 198874)  
dwillingham@kslaw.com  
6 **KING & SPALDING, LLP**  
633 West Fifth Street, Suite 16006  
7 Los Angeles, CA 90071  
Telephone: (213) 443-4433  
8 Facsimile:(213) 443-4310

Chelsea Corey (*pro hac vice*)  
chelsea.corey@haynesboone.com  
**HAYNES AND BOONE, LLP**  
50 S. Tryon Street, Suite 700  
Charlotte, NC 28202  
Telephone: (980) 771-8251  
Facsimile: (980) 771-8201

9  
10 *Attorneys for Plaintiffs (additional counsel listed on signature page)*

11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 SHERRILL FARRELL, JAMES  
14 GONZALES, JULIANNE "JULES" SOHN,  
15 STEPHAN "LILLY" STEFFANIDES,  
individually and on behalf of all others  
similarly situated,

16 Plaintiffs,

v.

17 UNITED STATES DEPARTMENT OF  
18 DEFENSE; LLOYD J. AUSTIN III,  
Secretary, United States Department of  
Defense, in his official capacity;  
19 CHRISTINE WORMUTH, Secretary, United  
States Army, in her official capacity;  
20 CARLOS DEL TORO, Secretary, United  
States Navy, in his official capacity; FRANK  
21 KENDALL, Secretary, United States Air  
Force, in his official capacity,

22 Defendants.  
23

Case No.: 3:23-CV-04013-JCS

CIVIL RIGHTS ACTION

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION AND  
MOTION FOR CLASS CERTIFICATION,  
FINAL APPROVAL OF CLASS ACTION  
SETTLEMENT, AND AWARD OF  
REASONABLE ATTORNEYS' FEES AND  
COSTS, AND MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT**

Judge: Hon. Joseph Spero  
Date: March 12, 2025  
Time: 9:30 a.m.  
Location: Courtroom D, 15<sup>th</sup> Floor

1 **NOTICE OF MOTION AND MOTION**

2 **PLEASE TAKE NOTICE** that Plaintiffs, on behalf of the conditionally certified class,  
3 hereby move pursuant to Federal Rules of Civil Procedure 23 and 54 for an order certifying the class  
4 for settlement purposes, granting final approval of the class action settlement, and awarding  
5 reasonable attorneys' fees and costs.

6 Plaintiffs' motion is based on this Notice of Motion and Motion, the Memorandum of Points  
7 and Authorities set forth below, the concurrently-filed Declaration of Lori Rifkin and the proposed  
8 settlement agreement attached as Exhibit 1 thereto, the concurrently-filed Declaration of Elizabeth  
9 Kristen and Joint Stipulation to Substitute the California Women's Law Center for Legal Aid at  
10 Work, the previously-filed Declarations of class counsel Lori Rifkin (ECF No. 82-1), Elizabeth  
11 Kristen (ECF No. 82-2), Radha Sathe Manthe (ECF No. 82-3), and Chelsea Corey (ECF No. 82-4),  
12 and class representatives Sherrill Farrell (ECF No. 82-8), James Gonzales (ECF No. 82-6), Jules  
13 Sohn (ECF No. 82-7), and Lilly Steffanides (ECF No. 82-5), in Support of Plaintiffs' Motion for  
14 Preliminary Approval, the pleadings and records on file in this action, and argument presented at any  
15 hearing of this motion.

16 Dated: February 12, 2025

17 Respectfully Submitted,

18 CALIFORNIA WOMEN'S LAW CENTER  
19 IMPACT FUND  
20 KING & SPALDING LLP  
21 HAYNES AND BOONE, LLP

22 By:   
23 Fawn Rajbhandari-Korr  
24 Attorneys for Plaintiffs  
25  
26  
27  
28

**TABLE OF CONTENTS**

1

2 TABLE OF AUTHORITIES ..... iii

3 I. INTRODUCTION ..... 1

4 II. FACTUAL AND PROCEDURAL BACKGROUND..... 2

5 III. SUMMARY OF PROPOSED CLASS SETTLEMENT ..... 3

6 A. The Settlement Class..... 3

7 B. Relief Provided by the Settlement ..... 4

8 C. Class Notice ..... 4

9 D. Attorneys’ Fees and Costs ..... 5

10 IV. ARGUMENT ..... 5

11 A. The Court Should Certify the Settlement Class..... 5

12 1. Plaintiffs Satisfy the Requirements for Class Certification under Rule

13 23(a)..... 6

14 2. The Proposed Settlement Class Meets the Requirements of Rule 23(b)(2).... 10

15 B. The Proposed Settlement is Fair, Reasonable, and Adequate..... 10

16 1. The Settlement is a Product of Arm’s Length Negotiations Among

17 Experienced Counsel. .... 11

18 2. The Strength of Plaintiffs’ Claims and Risk of Continued Litigation

19 Weigh in Favor of Approval. .... 12

20 3. The Relief Obtained in Settlement is Fair, Adequate, and Reasonable. .... 13

21 C. The Notice Plan Satisfies the Requirements of Rule 23. .... 15

22 D. Plaintiffs’ Request for Attorneys’ Fees and Costs is Reasonable..... 16

23

24

25

26

27

28

V. CONCLUSION..... 19

**TABLE OF AUTHORITIES**

**Cases**

*Amchem Prods., Inc. v. Windsor*,  
521 U.S. 591 (1997) ..... 6

*Armstrong v. Davis*,  
275 F.3d 849 (9th Cir. 2001) ..... 8

*Barrios v. California Interscholastic Federation*,  
277 F.3d 1128 (9th Cir. 2002) ..... 17

*Bronson v. Samsung Elecs. Am., Inc.*,  
No. C 18-02300 WHA, 2020 WL 1503662 (N.D. Cal. Mar. 30, 2020) ..... 16, 17, 18

*Buckhannon Board and Care Home, Inc. v. West Virginia Dep't of Health and Hum. Resources*,  
532 U.S. 598 (2001) ..... 17

*Carlotti v. ASUS Computer Int'l*,  
No. 18-cv-03369-DMR, 2019 WL 6134910 (N.D. Cal. Nov. 19, 2019) ..... 6

*Churchill Vill., LLC v. Gen. Elec.*,  
361 F.3d 566 (9th Cir. 2004) ..... 11, 12, 15

*Ellis v. Naval Air Rework Facility*,  
87 F.R.D. 15 (N.D. Cal. 1980), *aff'd*, 661 F.2d 939 (9th Cir. 1981) ..... 12

*Hanlon v. Chrysler Corp.*,  
150 F.3d 1011 (9th Cir. 2008) ..... 8, 11

*Hanon v. Dataproducts Corp.*,  
976 F.2d 497 (9th Cir. 1992) ..... 8

*Hernandez v. Cnty. of Monterey*,  
305 F.R.D. 132 (N.D. Cal. 2015) ..... 10

*Hesse v. Sprint Corp.*,  
598 F.3d 581 (9th Cir. 2010) ..... 15

*In re Anthem, Inc. Data Breach Litig.*,  
327 F.R.D. 299 (N.D. Cal. 2018) ..... 9

*In re Bluetooth Headset Prod. Liab. Litig.*,  
654 F.3d 935 (9th Cir. 2021) ..... 11, 16

*In re Chrysler-Dodge-Jeep Ecodiesel Mktg., Sales Pracs., & Prods. Liab. Litig.*,  
No. 17-md-02777, 2019 WL 536661 (N.D. Cal. Feb. 11, 2019) ..... 6

*In re Hyundai and Kia Fuel Economy Litig.*,  
926 F.3d 539 (9th Cir. 2019) ..... 6

1	<i>In re Netflix Priv. Litig.</i> , No. 5:11-CV-00379 EJD, 2013 WL 1120801 (N.D. Cal. Mar. 18, 2013).....	11
2		
3	<i>In re TD Ameritrade Account Holder Litig.</i> , No. C 07-2852 SBA, 2011 WL 4079226 (N.D. Cal. Sept. 13, 2011).....	14
4	<i>Int’l Woodworkers of Am. AFL-CIO, Local 3-98 v. Donovan</i> , 769 F.2d 1388 (9th Cir. 1985), <i>amended</i> , 792 F.2d 762 (9th Cir. 1985).....	17
5		
6	<i>Lane v. Facebook, Inc.</i> , 696 F.3d 811 (9th Cir. 2012).....	11
7	<i>Linney v. Cellular Alaska Partnership</i> , 151 F.3d 1234 (9th Cir. 1998).....	14
8		
9	<i>McKnight v. Uber Techs., Inc.</i> , No. 14-cv-05615-JST, 2017 WL 3427985 (N.D. Cal. Aug. 7, 2017).....	10, 11
10	<i>Mendoza v. Tuscon Sch. Dist. No. 1</i> , 623 F.2d 1388 (9th Cir. 1980).....	15
11		
12	<i>Moore v. GlaxoSmithKline Consumer Healthcare Holdings (US) LLC</i> , No. 4:20-cv-09077-JSW, 2024 WL 4868182 (N.D. Cal. Oct. 3, 2024).....	15
13	<i>Moreno v. San Francisco Bay Area Rapid Transit District</i> , No. 17-cv-02911-JSC, 2019 WL 343472 (N.D. Cal. Jan. 28, 2019).....	18
14		
15	<i>Ms. L v. U.S. Immigration and Customs Enforcement</i> , No. 18-cv-00428 (S.D. Cal. Nov. 5, 2024).....	19
16	<i>Officers for Justice v. Civ. Serv. Comm’n &amp; Cnty. of San Francisco</i> , 688 F.2d 615 (9th Cir. 1982).....	14
17		
18	<i>Perez–Arellano v. Smith</i> , 279 F.3d 791 (9th Cir.2002).....	17
19	<i>Pirus v. Bowen</i> , 869 F.2d 536 (9th Cir. 1989).....	19
20		
21	<i>Richard S. v. Dep’t of Developmental Servs.</i> , 317 F.3d 1080 (9th Cir.2003).....	17
22	<i>Rodriguez v. Hayes</i> , 591 F.3d 1105 (9th Cir. 2010).....	7, 10
23		
24	<i>Staton v. Boeing Corp.</i> , 327 F.3d 938 (9th Cir. 2003).....	9
25	<i>Thomas v. Peterson</i> , 841 F.2d 332 (9th Cir.1988).....	17
26		
27	<i>Vargas v. Ford Motor Co.</i> , No. cv 1208388, 2020 WL 1164066 (C.D. Cal. Mar. 5, 2020).....	17
28		

1 *Wal-Mart Stores, Inc. v. Dukes*,  
564 U.S. 338 (2011) ..... 7

2

3 *Williams v. Boeing Co.*,  
517 F.3d 1120 (9th Cir. 2008)..... 15

4 *Wortman v. Air New Zealand*,  
326 F.R.D. 549 (N.D. Cal. 2018) ..... 7

5

6 **Statutes**

7 28 U.S.C. §§ 2412..... 5, 17

8 10 U.S.C. § 654 (2006) (repealed 2010)..... 5

9

10 **Federal Rules**

11 Fed. R. Civ. P. 23(a) ..... 6, 7, 8, 9

12 Fed. R. Civ. P. 23(b) ..... 10

13 Fed. R. Civ. P. 23(c) ..... 15

14 Fed. R. Civ. P. 23(e) ..... 11

15 Fed. R. Civ. P. 23(h) ..... 16, 17

16 Fed. R. Civ. P. 54(d) ..... 16

17 **Regulations**

18 32 C.F.R. § 70.4(b) ..... 8

19 **Other Authorities**

20 Department of Defense Directive 1332.41 ..... 8

21 United States Courts for the Ninth Circuit, *Statutory Maximum Rates Under the Equal Access to*  
*Justice Act*, <https://www.ca9.uscourts.gov/attorneys/statutory-maximum-rates/> ..... 18

22

23 United States District Court for the Northern District of California, *Procedural Guidance for Class*  
*Action Settlements* (2018)..... passim

24

25

26

27

28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs request final approval of a settlement that will provide critical injunctive relief to  
4 veterans discharged under Don't Ask, Don't Tell ("DADT"), 10 U.S.C. § 654 (2006) (repealed  
5 2010), and predecessor policies, whose discharge paperwork (Form "DD-214") contains indicators  
6 of sexual orientation. The terms of the settlement are fully set forth in the settlement agreement,  
7 attached as Exhibit 1 to the Declaration of Lori Rifkin in Support of Plaintiffs' Motion for Final  
8 Approval of Class Action Settlement ("Rifkin Decl."), filed herewith ("SA").<sup>1</sup>

9 The settlement will provide veterans discharged under DADT and similar prior policies with  
10 access to streamlined review procedures for requesting changes to their DD-214s. These procedures  
11 will provide a faster, easier, and more effective avenue for veterans to request removal of all  
12 indicators of sexual orientation from their DD-214s than those currently in place. For most veterans  
13 given discharge characterizations below Honorable, the settlement will also provide an expedited  
14 discharge upgrade review. Participating veterans will not have to individually obtain their military  
15 records, gather evidence, or submit individual petitions to the Board. The streamlined review  
16 procedures will be available to class members for at least three years.

17 On January 8, 2025, the Court conditionally certified the settlement class and granted  
18 preliminary approval of the settlement. ECF No. 85. The Court found that it will likely be able to  
19 approve the proposed settlement as fair, reasonable, and adequate under Federal Rule of Civil  
20 Procedure 23(e)(2). *Id.* There have been no changes since preliminary approval that would undercut  
21 certification of the class and final approval of the settlement, including the requested attorneys' fees  
22 and costs, as fair, reasonable, and adequate. The parties have implemented the class notice plan  
23 approved by the Court. Rifkin Decl. ¶¶ 13-15. Class counsel have received substantial positive  
24 feedback about the settlement, and, to date, no class members have submitted objections.<sup>2</sup> *Id.* ¶ 16.  
25 Accordingly, Plaintiffs now move for certification of the settlement class and final approval of the

26 \_\_\_\_\_  
27 <sup>1</sup> Plaintiffs previously filed the settlement agreement with Plaintiffs' Motion for Preliminary  
28 Approval, ECF No. 82-1 at 14 (Exhibit 1), and file it again with the instant motion for the Court's  
convenience in reviewing.

<sup>2</sup> The deadline for objections is February 19, 2025. ECF No. 85 at 3.

1 settlement, including an award of \$350,000 in reasonable attorneys' fees and costs. This motion is  
2 unopposed. Rifkin Decl. ¶ 5.

## 3 **II. FACTUAL AND PROCEDURAL BACKGROUND**

4 Plaintiffs included a detailed factual and procedural history of the litigation, summary of the  
5 settlement negotiations, and a description of the settlement terms in the recently filed motion for  
6 preliminary approval. ECF No. 82 at 10-12. In summary, Plaintiffs brought this class action on  
7 behalf of themselves and tens of thousands of veterans discharged under DADT and similar prior  
8 policies that prohibited individuals from serving in the U.S. armed forces based on actual or  
9 perceived sexual orientation. ECF No. 43 ¶¶ 6, 34. Plaintiffs sought declaratory and injunctive  
10 relief to remedy ongoing constitutional violations caused by these discriminatory discharges, namely  
11 the continuing identification of sexual orientation on affected veterans' discharge papers. *Id.* ¶¶ 122-  
12 23.

13 Defendants moved to dismiss the entirety of Plaintiffs' case, challenging timeliness, standing  
14 and exhaustion of remedies, and the sufficiency of Plaintiffs' allegations. ECF No. 50. After the  
15 Court denied Defendants' motion to dismiss, the parties engaged in six months of contentious arm's  
16 length settlement negotiations, including bi-weekly meet and confer calls via videoconference and  
17 an in-person settlement meeting in Washington D.C. ECF No. 82-1 ¶¶ 16-22.

18 Plaintiffs' counsel—who have decades of experience litigating civil rights actions and class  
19 actions—assessed the settlement based on their thorough investigation of this case, consultations  
20 with the named Plaintiffs, information gathered from other advocates for LGBTQ+ veterans, their  
21 own prior litigation experience, and additional information obtained through the course of settlement  
22 discussions. ECF No. 82-1 ¶ 32; ECF No. 82-2 ¶ 15; ECF No. 82-3 ¶ 17; ECF No. 82-4 ¶ 14.  
23 Plaintiffs' counsel weighed the strengths and weaknesses of the legal issues, the relief they were able  
24 to obtain through settlement versus the relief possible through litigation, and the benefits and risks of  
25 proceeding with further litigation. ECF No. 82-1 ¶ 33; ECF No. 82-2 ¶ 15; ECF No. 82-3 ¶ 17; ECF  
26 No. 82-4 ¶ 14. If approved, the settlement would provide meaningful and timely relief to tens of  
27 thousands of veterans experiencing ongoing harm related to their discharge paperwork and status.  
28 Named Plaintiffs and their counsel concluded that the substantial relief obtained for the putative

1 class through this settlement as compared to the potential delay and substantial risks of ongoing  
2 litigation make this settlement an excellent outcome. ECF No. 82-8 ¶ 31; ECF No. 82-6 ¶¶ 45-47;  
3 ECF No. 82-7 ¶ 35; ECF No. 82-5 ¶¶ 45-47.

4 Plaintiffs moved for preliminary approval of the settlement on January 6, 2025. ECF No. 82.  
5 The same day, Defendants filed a Statement of Nonopposition and requested the Court consider the  
6 matter submitted on the papers for immediate determination. ECF No. 84. On January 8, 2025, the  
7 Court conditionally certified the settlement class and granted preliminary approval of the settlement.  
8 ECF No. 85.

9 Pursuant to the Court’s order, the parties implemented the notice plan to advise class  
10 members of the proposed settlement and its terms, and how to exercise their rights to object and/or  
11 participate. *See id.* at 2-3; Rifkin Decl. ¶¶ 13-14. The final class notice, updated per the Court’s  
12 Order (“Notice”), is attached as Exhibit 2 to the Rifkin Declaration. The Notice was posted on  
13 public-facing Department of Defense websites and class counsel’s case website.<sup>3</sup> Rifkin Decl. ¶ 14.  
14 Class counsel also distributed the Notice and a summary of the settlement to LGBTQ+  
15 organizations, veterans’ organizations, veterans’ legal clinics, and related listservs across the  
16 country. *See id.* ¶ 4; SA ¶ 24. The parties issued press releases with information about the  
17 settlement, and class counsel posted a summary of information contained in the Class Notice to  
18 social media channels. *See* Rifkin Decl. ¶¶ 14-15; SA ¶ 24.

19 Class counsel have received substantial positive feedback from class members, and no class  
20 members have submitted objections. Rifkin Decl. ¶ 16.

### 21 **III. SUMMARY OF PROPOSED CLASS SETTLEMENT**

#### 22 **A. The Settlement Class**

23 The proposed settlement class is the same as the class conditionally certified by the Court in  
24 its January 8, 2025 Order:

25 [V]eterans of the U.S. Army, U.S. Navy, U.S. Air Force, and U.S. Marine Corps who  
26 were administratively separated prior to September 20, 2011, and whose most recent  
27 Service separation document shows their basis for discharge was sexual orientation,

28 <sup>3</sup> *See* <https://www.defense.gov/Spotlights/Dont-Ask-Dont-Tell-Resources/>;  
<https://www.milreviewbds.mil/>; <https://www.justiceforlgbtqveterans.com/>

1 homosexual conduct, homosexual admission, homosexual marriage, similar language,  
2 or a policy title or number signifying separation for sexual orientation.

3 SA ¶ 4(d).

4 **B. Relief Provided by the Settlement**

5 The settlement establishes two corrections procedures for class members. The first is an  
6 administrative change process to remove sexual orientation indicators from the DD-214s of class  
7 members with Honorable and Uncharacterized/Entry Level discharges (“Administrative Change  
8 Process”). The following changes to class members’ DD-214s may be obtained through the  
9 Administrative Change Process: (1) the narrative basis (i.e., reason) for separation changed to  
10 “Secretarial Authority,” (2) the Separation Program Designator Code<sup>4</sup> changed to correspond to the  
11 new narrative basis, and (3) the Re-Entry code be upgraded to RE-1 if it was RE-2 or lower.<sup>5</sup> The  
12 Administrative Change Process will not require Board review and will be available for at least three  
13 years. SA ¶¶ 6-7.

14 The second streamlined corrections procedure is an expedited group discharge upgrade  
15 review process for class members discharged with characterizations of General Under Honorable  
16 Conditions or Under Other Than Honorable Conditions (“Discharge Upgrade Review Process”).  
17 Defendants will submit group discharge upgrade requests for Board review on behalf of eligible class  
18 members who opt into this process. The first series of group applications will be submitted within  
19 nine months after the Final Approval order is entered. Defendants will continue to submit group  
20 applications at approximately three-month intervals, and this process will remain available for at least  
21 three years. SA ¶ 7.

22 **C. Class Notice**

23 The Court approved the notice plan set forth in the settlement, with the notice to be updated  
24 to provide time and location details for the final approval hearing and class member objections, as  
25

26 <sup>4</sup> Separation Program Designator Code is a three-character alphabetic combination identifying the  
reasons for and type of separation.

27 <sup>5</sup> RE-1 signifies that the veteran is eligible for reenlistment. See Office of the Naval Inspector  
28 General, *What is a Reenlistment Code?*, SECRETARY OF THE NAVY,  
<https://www.secnav.navy.mil/ig/Lists/FAQs/DispForm.aspx?ID=641> (last visited January 3, 2025).

1 described in the Court’s Order. ECF No. 85 at 2-3. As described above, the parties have  
2 implemented this notice plan. *See supra*, Section II.

3 The settlement also provides that, following final approval, Defendants will prepare a class  
4 list utilizing their records database and send letters to certain class members describing how to  
5 access the settlement’s expedited DD-214 corrections procedures. Information about how veterans  
6 can request DD-214 corrections pursuant to the settlement will be posted on the Department of  
7 Defense and each military department’s websites, as well as class counsel’s case website. SA ¶¶ 10-  
8 12.

9 **D. Attorneys’ Fees and Costs**

10 The settlement permits Plaintiffs to move for an award of reasonable attorneys’ fees and  
11 costs in the amount of \$350,000, but is not conditioned upon the Court’s approval of any attorneys’  
12 fees or costs. SA ¶ 34; Rifkin Decl. ¶ 20. As detailed further below, this amount is reasonable and  
13 justified under the Equal Access to Justice Act, 28 U.S.C. §§ 2412 (“EAJA”).

14 **IV. ARGUMENT**

15 **A. The Court Should Certify the Settlement Class.**

16 The proposed settlement class definition is coextensive with the class proposed in Plaintiffs’  
17 operative complaint. *See* United States District Court for the Northern District of California,  
18 *Procedural Guidance for Class Action Settlements* ¶ 1(a) (2018) (“N.D. Cal. Class Settlement  
19 Guidance”). The settlement class definition contains greater detail than the class definition in the  
20 operative complaint to clarify the scope of the proposed class and facilitate Defendants’ provision of  
21 relief. *Compare* SA ¶ 4(d) *with* ECF No. 43 ¶ 112. The parties jointly drafted this definition, which  
22 incorporates information Plaintiffs did not have at the time they filed the operative complaint. ECF  
23 No. 82-1 ¶ 23. The settlement does not propose a subclass because the injunctive relief negotiated  
24 for the entire proposed settlement class addresses the discharge upgrade claims of the subclass  
25 defined in Plaintiffs’ operative complaint. *Id.*

26 There is no substantive difference between the proposed settlement class definition and  
27 Plaintiffs’ original proposed class definition that would impede certification for settlement purposes.  
28 Indeed, courts routinely approve more extensive departures from proposed class definitions. *See*,

1 e.g., *Carlotti v. ASUS Computer Int'l*, No. 18-cv-03369-DMR, 2019 WL 6134910, at \*14 (N.D. Cal.  
2 Nov. 19, 2019) (approving settlement class narrower than class in complaint); *In re Chrysler-Dodge-*  
3 *Jeep Ecodiesel Mktg., Sales Pracs., & Prods. Liab. Litig.*, No. 17-md-02777, 2019 WL 536661, at  
4 \*\*3-7 (N.D. Cal. Feb. 11, 2019) (approving settlement with “simpler” class definition).

5 1. Plaintiffs Satisfy the Requirements for Class Certification under Rule 23(a).

6 The proposed settlement class meets Rule 23 requirements for class certification. *See*  
7 *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) (explaining that certification requires that  
8 all four elements of Rule 23(a) and at least one prong under Rule 23(b) be satisfied). The Court  
9 previously found that it “will likely be able to certify the proposed class for the purposes of  
10 settlement.” ECF No. 85 ¶ 1. There have been no changes to the settlement class since the Court’s  
11 conditional certification in January 2025. Applying the required rigorous analysis to confirm that  
12 the requirements of Rule 23 are met, the Court may readily conclude that it can now finally certify  
13 the settlement class. *See In re Hyundai and Kia Fuel Economy Litig.*, 926 F.3d 539, 556 (9th Cir.  
14 2019).

15 a) *The Settlement Class is Sufficiently Numerous.*

16 The proposed settlement class meets the numerosity requirement of Rule 23(a) because  
17 “joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). The Department of Defense  
18 website states that 32,837 veterans were discharged under DADT and predecessor policies,<sup>6</sup> and  
19 Defendants’ response to Plaintiffs’ Freedom of Information Act request indicated there are at least  
20 35,801 veterans who are in this group. ECF No. 43 ¶ 114. These tens of thousands of veterans are  
21 presumptively members of the proposed Settlement Class because Defendants themselves have  
22 characterized these veterans’ discharges as based on their sexual orientation.<sup>7</sup> While some of those  
23 veterans may have received relief through the existing Board review process and a limited initiative  
24 Defendants announced in September 2023,<sup>8</sup> it is undisputed that the majority have not. Therefore,  
25

26 <sup>6</sup> *Spotlight: Don’t Ask Don’t Tell Resources*, U.S. DEPARTMENT OF DEFENSE,  
<https://www.defense.gov/Spotlights/Dont-Ask-Dont-Tell-Resources/> (last visited February 5, 2025).

27 <sup>7</sup> *Id.*

28 <sup>8</sup> After Plaintiffs filed this lawsuit, the Department of Defense announced that it would initiate a

1 the proposed settlement class is sufficiently numerous. *See Wortman v. Air New Zealand*, 326  
2 F.R.D. 549, 556 (N.D. Cal. 2018) (holding that a class of at least forty-one class members will  
3 presumptively meet the numerosity requirement, and plaintiffs may make a reasonable estimate as to  
4 class numbers).

5 *b) There are Common Questions of Law and Fact.*

6 Rule 23(a)(2) requires that there be “questions of law or fact common to the class.” Fed. R.  
7 Civ. P. 23(a)(2). The commonality requirement looks to “shared legal issues or a common core of  
8 facts.” *Rodriguez v. Hayes*, 591 F.3d 1105, 1122 (9th Cir. 2010) (abrogated on other grounds by  
9 *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022)). In other words, class claims “must  
10 depend upon a common contention,” which “must be of such nature that it is capable of classwide  
11 resolution—which means that determination of its truth or falsity will resolve an issue that is central  
12 to the validity of each one of the claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S.  
13 338, 350 (2011). This case poses numerous overarching questions that are common to the proposed  
14 Settlement Class, including:

- 15 • Whether Defendants violated class members’ equal protection rights by (1) issuing DD-  
16 214s that identified class members’ actual or perceived sexual orientation, while not  
17 identifying the actual or perceived sexual orientation of other veterans, and  
18 (2) maintaining a policy expressly disclaiming an intention to systematically remove  
19 indicators of sexual orientation on class members’ DD-214s following the repeal of  
20 DADT;
- 21 • Whether Defendants’ maintenance of a policy that refuses to systematically remove  
22 indicators of sexual orientation from DD-214s is a continuing violation of class members’  
23 constitutional right to privacy;
- 24 • Whether Defendants have violated due process by maintaining a policy that refuses to  
25 systematically remove sexual orientation indicators from DD-214s; and
- 26 • Whether the discharge upgrade and record correction processes that Defendants have put  
27 in place are constitutionally inadequate.

28 records review of veterans who may have been discharged under Don’t Ask Don’t Tell and consider  
processing upgrades to eligible veterans. *See* U.S. Department of Defense, *Statement by the  
Secretary of Defense Lloyd J. Austin on the Twelfth Anniversary of the Repeal of ‘Don’t ask Don’t  
Tell’* (September 20, 2023), <https://www.defense.gov/News/Releases/Release/Article/3531561/> (last  
visited February 5, 2025). In October 2024, the Department of Defense announced it had granted  
relief to 824 veterans through that review. *See Spotlight: Don’t Ask Don’t Tell Resources*, U.S.  
DEPARTMENT OF DEFENSE, <https://www.defense.gov/Spotlights/Dont-Ask-Dont-Tell-Resources/>  
(last visited February 5, 2025).

1 The central facts underlying the class claims are also common. For example, Defendants’  
2 inclusion of sexual orientation indicators on the DD-214s of Settlement Class members uniformly  
3 resulted from discharges under DADT and predecessor policies. Likewise, federal regulations and  
4 Department of Defense directives explicitly require “uniformity among the Military Departments in  
5 the rights afforded applicants in discharge reviews.” 32 C.F.R. § 70.4(b)(2); Department of Defense  
6 Directive 1332.41. As a result, the process for reviewing and correcting military records to remove  
7 indicators of sexual orientation or obtain a discharge upgrade is the same or substantially similar for  
8 all veterans in all branches of service. These common questions of law and fact meet the  
9 requirements under Rule 23(a)(2).

10 c) *Named Plaintiffs’ Claims are Typical of the Class.*

11 Rule 23(a)(3) requires that “the claims or defenses of the representative parties are typical of  
12 the claims or defenses of the class.” The purpose of the typicality requirement is to ensure that the  
13 interests of the named Plaintiffs align with the interests of the class. *Hanon v. Dataproducts Corp.*,  
14 976 F.2d 497, 508 (9th Cir. 1992). “[R]epresentative claims are ‘typical’ if they are reasonably co-  
15 extensive with those of absent class members; they need not be substantially identical.” *Hanlon v.*  
16 *Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 2008), *overruled on other grounds by Wal-Mart*, 564  
17 U.S. 338. The typicality requirement measures whether the named Plaintiffs’ legal claims all arise  
18 from essentially the same conduct as their fellow class members’ claims, and whether the named  
19 Plaintiffs and their fellow class members suffered the same legal injury. *Hanon*, 976 F.2d at 508.

20 Here, named Plaintiffs and the proposed settlement class all suffered the identical injury of a  
21 military discharge based on actual or perceived sexual orientation and all have DD-214s that contain  
22 indicators of sexual orientation. ECF No. 82-8 ¶ 4; ECF No. 82-6 ¶ 22; ECF No. 82-7 ¶ 4; ECF No.  
23 82-5 ¶ 21. Named Plaintiffs and the proposed settlement class are all challenging the continued  
24 inclusion of sexual orientation indicators on their DD-214s, Defendants’ refusal to systematically  
25 correct DD-214s, and Defendants’ constitutionally infirm process that places the burden on affected  
26 veterans to obtain corrections. *See Armstrong v. Davis*, 275 F.3d 849, 869 (9th Cir. 2001) (typicality  
27 requirement met when “the cause of the injury is the same—here, the Board’s discriminatory policy  
28 and practice”). Named Plaintiffs’ claims are therefore typical of the proposed settlement class.

1 d) *Named Plaintiffs and Their Counsel Have, and Will Continue to,*  
2 *Fairly and Adequately Protect the Interests of the Class.*

3 The final Rule 23(a) requirement is that named Plaintiffs will “fairly and adequately protect  
4 the interests of the class.” Fed. R. Civ. P. 23(a)(4). This inquiry asks whether there are any conflicts  
5 of interest between named Plaintiffs and the class they seek to represent, thereby guarding the right  
6 of absent class members not to be bound to a judgment without adequate representation by the  
7 parties participating in the litigation. *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 309  
8 (N.D. Cal. 2018). The court must determine whether the class representatives “have any conflicts of  
9 interest with other class members” and will “prosecute the action vigorously on behalf of the class”  
10 through qualified counsel. *Staton v. Boeing Corp.*, 327 F.3d 938, 957 (9th Cir. 2003). Named  
11 Plaintiffs meet this requirement.

12 As this Court determined in its preliminary approval Order, named Plaintiffs satisfy the Rule  
13 23 requirements for class representatives. ECF No. 85 ¶ 3. They have no interest antagonistic to, or  
14 in conflict with, the interests of the class members they seek to represent. Instead, the proposed  
15 settlement class members’ interests are aligned because they all share the common goal of removing  
16 the discriminatory and harmful indicators of sexual orientation on their DD-214s and the resulting  
17 harms. Each named Plaintiff has also devoted significant time to the investigation, prosecution, and  
18 settlement of this case. ECF No. 82-8 ¶ 30; ECF No. 82-6 ¶ 44; ECF No. 82-7 ¶ 34; ECF No. 82-5  
19 ¶¶ 36, 41. Named Plaintiffs have prioritized the primary goal to obtain relief on behalf of the entire  
20 class. ECF No. 82-8 ¶¶ 29, 33; ECF No. 82-6 ¶¶ 43, 48; ECF No. 82-7 ¶¶ 33, 38; ECF No. 82-5  
21 ¶¶ 42-43.

22 Plaintiffs’ counsel also continue to satisfy the requirements for class counsel under Rule  
23 23(g).<sup>9</sup> Plaintiffs’ counsel undertook significant research and investigation in preparation for filing  
24 the complaint in this case, and vigorously litigated the case. ECF No. 82-1 ¶ 44; ECF No. 82-2 ¶¶ 6-  
25 7; ECF No. 82-3 ¶ 10; ECF No. 82-4 ¶ 7. Counsel are well-versed in complex class litigation and

26 \_\_\_\_\_  
27 <sup>9</sup> Because one of the attorneys the Court appointed as class counsel in its preliminary approval order  
28 has subsequently changed employment, the parties are concurrently filing a joint stipulation and  
proposed order to substitute California Women’s Law Center for Legal Aid at Work as class  
counsel.

1 LGBTQ+ civil rights actions, and devoted substantial time and expertise for the benefit of the class.  
2 ECF No. 82-1 ¶¶ 41-50; ECF No. 82-2 ¶¶ 3-9; ECF No. 82-3 ¶¶ 2-9; ECF No. 82-4 ¶¶ 2-6. The case  
3 has been hard fought through Defendants’ motion to dismiss and lengthy settlement negotiations.  
4 ECF No. 82-1 ¶¶ 13, 16-22; ECF No. 82-2 ¶¶ 10-13; ECF No. 82-3 ¶¶ 12-15; ECF No. 82-4 ¶¶ 9-12.  
5 While class counsel Eliabeth Kristen has changed organizations to the California Women’s Law  
6 Center, the CWLC will continue to represent the class and should be substituted as class counsel for  
7 LAAW pursuant to the Stipulation and Declaration of Elizabeth Kristen filed herewith.

8 2. The Proposed Settlement Class Meets the Requirements of Rule 23(b)(2).

9 Federal Rule of Civil Procedure 23(b)(2) requires that “the party opposing the class has acted  
10 or refused to act on grounds that apply generally to the class, so that final injunctive relief or  
11 corresponding declaratory relief is appropriate respecting the class as a whole.” Fed. R. Civ. P.  
12 23(b)(2). “Rule 23(b)(2) is almost automatically satisfied in actions primarily seeking injunctive  
13 relief.” *Hernandez v. Cnty. of Monterey*, 305 F.R.D. 132, 151 (N.D. Cal. 2015).

14 This case satisfies the Rule 23(b)(2) requirements because Defendants uniformly identified  
15 the actual or perceived sexual orientation of veterans discharged under DADT and predecessor  
16 policies on their DD-214s. Further, Defendants are now subjecting all proposed settlement class  
17 members to the same policy that requires veterans with sexual orientation indicators on their DD-  
18 214s to individually petition for relief and carry the burden of demonstrating that relief should be  
19 granted. A uniform injunction would cure each alleged violation of proposed settlement class  
20 members’ Fifth and Fourteenth Amendment rights resulting from Defendant’s uniform policies and  
21 procedures. In other words, proposed settlement class members seek “relief from a single practice.”  
22 *See Rodriguez*, 591 F.3d at 1126. Therefore, this case is particularly suited to certification under  
23 Rule 23(b)(2).

24 **B. The Proposed Settlement is Fair, Reasonable, and Adequate.**

25 The Court should grant final approval of the settlement. The Ninth Circuit maintains a  
26 “strong judicial policy” that favors settlement of class actions. *McKnight v. Uber Techs., Inc.*, No.  
27 14-cv-05615-JST, 2017 WL 3427985, at \*2 (N.D. Cal. Aug. 7, 2017) (quoting *Class Plaintiffs v.*  
28 *City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992)). Final approval is appropriate if the proposed

1 settlement is “fair, reasonable, and adequate” under Rule 23(e)(2). *See In re Bluetooth Headset*  
2 *Prod. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2021). Rule 23(e) requires the Court to consider  
3 whether representation of the class was adequate; whether the proposal was negotiated at arm’s  
4 length; the adequacy of the relief provided for the class; and the treatment of class members relative  
5 to each other. Fed. R. Civ. P. 23(e)(2)(A)-(D).

6 The Ninth Circuit has also identified specific factors that courts should consider when  
7 evaluating whether a settlement is fair, reasonable, and adequate: the strength of plaintiff’s case;  
8 risk, expense, complexity, and likely duration of further litigation; risk of maintaining class action  
9 status throughout trial; amount offered in settlement; extent of discovery completed and stage of the  
10 proceedings; experience and views of counsel; presence of a governmental participant; and reaction  
11 of class members to the proposed settlement. *In re Bluetooth*, 654 F.3d at 946 (quoting *Churchill*  
12 *Village, LLC v. Gen. Elec.*, 361 F.3d 566 at 575).

13 When the class has not already been certified, the Court must also closely review class  
14 settlements “for evidence of collusion or other conflicts of interest . . . before securing the court’s  
15 approval as fair.” *Id.* at 946-47. This review “ensure[s] that class representatives and their counsel  
16 do not secure a disproportionate benefit ‘at the expense of the unnamed plaintiffs who class counsel  
17 had a duty to represent.’” *Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012) (quoting  
18 *Hanlon*, 150 F.3d at 1027). The proposed settlement in this case meets this standard.

19 1. The Settlement is a Product of Arm’s Length Negotiations Among Experienced  
20 Counsel.

21 The fairness and reasonableness of a settlement agreement is presumed “where that  
22 agreement was the product of non-collusive, arm’s length negotiations conducted by capable and  
23 experienced counsel.” *In re Netflix Priv. Litig.*, No. 5:11-CV-00379 EJD, 2013 WL 1120801, at \*4  
24 (N.D. Cal. Mar. 18, 2013). Defendants agreed to participate in settlement discussions after the Court  
25 ruled on their motion to dismiss. ECF No. 82-1 ¶ 16. Counsel then engaged in nearly six months of  
26 weekly and bi-weekly negotiations that were adversarial in nature. ECF No. 82-1 ¶ 19; ECF No. 82-  
27 2 ¶ 10; ECF No. 82-3 ¶ 12; ECF No. 82-4 ¶ 9. Counsel made incremental progress each week  
28 through hard-fought compromises. *Id.* The proposed settlement was finally reached on January 3,

1 2025, after a substantial exchange of information, extensive investigation and analysis, and a full day  
2 of arm’s-length negotiations in Washington, D.C., with Plaintiffs’ counsel who have considerable  
3 expertise in class actions and civil rights litigation on behalf of LGBTQ+ individuals. ECF No. 82-1  
4 ¶¶ 20, 22; ECF No. 82-2 ¶¶ 11, 13; ECF No. 82-3 ¶¶ 13, 15; ECF No. 82-4 ¶¶ 10, 12.

5 Plaintiffs and their counsel agreed to accept and propose this settlement to the Court because  
6 it provides substantial relief to class members and avoids both the risk of loss in litigation and the  
7 further harm of delaying relief to tens of thousands of veterans who have already waited for decades.  
8 ECF No. 82-1 ¶¶ 5, 34; ECF No. 82-2 ¶ 14; ECF No. 82-3 ¶ 16; ECF No. 82-4 ¶ 13. Courts  
9 recognize that the opinion of experienced counsel supporting settlement after arm’s-length  
10 negotiations “is entitled to considerable weight.” *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15,  
11 18 (N.D. Cal. 1980), *aff’d*, 661 F.2d 939 (9th Cir. 1981). The settlement was zealously negotiated,  
12 and Plaintiffs’ counsel strongly support the settlement as fair, reasonable, and adequate. ECF No.  
13 82-1 ¶¶ 5, 34; ECF No. 82-2 ¶ 14; ECF No. 82-3 ¶ 16; ECF No. 82-4 ¶ 13.

14 2. The Strength of Plaintiffs’ Claims and Risk of Continued Litigation Weigh in  
15 Favor of Approval.

16 In evaluating the settlement, the Court should weigh the strength of Plaintiffs’ case against  
17 the risk and expense of continued litigation. *Churchill*, 361 F.3d at 575. While Plaintiffs believe  
18 they have a strong case on the merits, they also recognize the inherent risks and uncertainty of  
19 litigation, including that the proposed settlement class could ultimately receive no relief at all, and  
20 understand the benefit of providing significant injunctive relief now. ECF No. 82-1 ¶ 30. Plaintiffs  
21 also appreciate the value of working collaboratively with Defendants to draft complex procedures  
22 that involve each of the military service branches, an option that may not be available if the parties  
23 proceed with litigation to a final judgment. *Id.* ¶ 31.

24 Plaintiffs recognize that timeliness of relief is a crucial consideration to this proposed  
25 settlement class, giving an added value to resolving these claims without protracted litigation. ECF  
26 No. 82-1 ¶ 30. All members of the proposed settlement class have lived with discriminatory DD-  
27 214s for more than a decade—many for multiple decades. *Id.* Indeed, some veterans did not receive  
28 relief in their lifetime. *Id.* If approved, the settlement will yield expedited, certain, and substantial

1 recovery for the proposed settlement class, without the considerable burdens, risks, and delays of  
2 ongoing federal court litigation. *Id.*

3 3. The Relief Obtained in Settlement is Fair, Adequate, and Reasonable.

4 The relief negotiated by the parties is fair, adequate, and reasonable. The expedited  
5 corrections and review processes established through the settlement allow for the prompt removal of  
6 stigmatizing markers from the discharge paperwork of veterans separated pursuant to DADT or its  
7 predecessor policies, protect class members' privacy, and do not require veterans to individually  
8 navigate the lengthy and burdensome individual Board records correction process. SA ¶¶ 6-8.  
9 Discharge upgrades will enable class members to obtain federal, state, and local benefits they have  
10 been denied. ECF No. 43 ¶¶ 46-49, 69. Critically, these relief measures will be implemented within  
11 three months of final approval, which is a significant benefit to veterans who have waited decades  
12 for a viable remedy and would otherwise face additional years of litigation in this case. SA ¶¶ 6-7;  
13 ECF No. 82-1 ¶ 30.

14 The relief in the proposed settlement is also reasonable when compared with the potential  
15 class recovery if Plaintiffs had fully prevailed on each of their claims. *See* N.D. Cal. Class  
16 Settlement Guidance ¶ 1(c). All Plaintiffs raised the following federal constitutional claims against  
17 Defendants: Equal Protection (claim one); Substantive Due Process, Privacy Interest (claim two);  
18 and Procedural Due Process (claim four). Plaintiffs Farrell, Gonzales, and Steffanides also raised a  
19 Substantive Due Process, Liberty Interest (claim three) claim against Defendants. The proposed  
20 settlement provides full injunctive relief under claims one and two, and a better result could not have  
21 been obtained after a successful trial on the merits. The relief achieves the primary goal of this  
22 litigation: to provide an accessible and effective avenue to remove the markers of sexual orientation  
23 from veterans' DD-214s and implement a comprehensive and expedited DD-214 correction process  
24 that alleviates the burdens of the current individualized process for the settlement class.

25 The proposed settlement does not achieve full relief under claims three and four because  
26 veterans with Uncharacterized/Entry Level discharge codes will not be eligible for discharge  
27  
28

1 upgrades under the Settlement Agreement.<sup>10</sup> SA ¶ 4(y), 4(bb), 4(ee), 7; See N.D. Cal. Class  
2 Settlement Guidance ¶ 1(c). Veterans with these codes were discharged under a protocol preventing  
3 any discharge “characterization” from being assigned (whether Honorable or below Honorable)  
4 because the veteran was administratively separated before they served a specified minimum number  
5 of days (the specific minimum number of days has varied over time). Defendants represent that they  
6 do not have the authority to retroactively provide Honorable discharges to these veterans on a group-  
7 wide basis, and it is unclear whether Plaintiffs would prevail on this issue at trial. ECF No. 82-1  
8 ¶ 27. Plaintiffs recognize that litigating this narrow issue carries significant risk that is outweighed  
9 by a global settlement agreement that provides a path toward removal of sexual orientation  
10 indicators from DD-214s for all class members and provides the majority discharged without an  
11 Honorable characterization the opportunity to opt into an expedited group application process for  
12 discharge upgrades. *Id.* Settlement class members with Uncharacterized/Entry Level Discharges  
13 will not waive or release their individual claims under the terms of the settlement and retain their  
14 right to apply individually for discharge upgrades through the regular Board review process. SA  
15 ¶ 32-33, 46.

16 Less-than-total relief for all class members desiring discharge upgrades does not preclude a  
17 determination by the Court that the settlement is fair, adequate, and reasonable. A settlement is not  
18 judged solely against what might have been recovered had Plaintiffs prevailed at trial as to all  
19 aspects of their claims. *Linney v. Cellular Alaska Partnership*, 151 F.3d 1234, 1242 (9th Cir. 1998)  
20 (noting that fairness of a proposed settlement “is not to be judged against a hypothetical or  
21 speculative measure of what *might* have been achieved by the negotiators.”); *In re TD Ameritrade*  
22 *Account Holder Litig.*, No. C 07-2852 SBA, 2011 WL 4079226, at \*4 (N.D. Cal. Sept. 13, 2011).  
23 Instead, a compromise generally involves both parties giving up something they might have won had  
24 they proceeded with litigation in exchange for saving costs and eliminating risks. See *Officers for*  
25 *Justice v. Civ. Serv. Comm’n & Cnty. of San Francisco*, 688 F.2d 615, 624 (9th Cir. 1982).

---

26 <sup>10</sup> Class members with Uncharacterized/Entry level discharges will still be eligible to receive  
27 corrections to their DD-214s to remove sexual orientation indicators through the Administrative  
28 Change Process. SA ¶ 6. All other class members with discharge characterizations below  
Honorable will be eligible for the Discharge Upgrade Review Process. SA ¶ 7.

1 The proposed release of claims included in the settlement is consistent with Ninth Circuit  
2 law. *See, e.g., Hesse v. Sprint Corp.*, 598 F.3d 581, 590 (9th Cir. 2010) (quoting *Williams v. Boeing*  
3 *Co.*, 517 F.3d 1120, 1133 (9th Cir. 2008) (“A settlement agreement may preclude a party from  
4 bringing a . . . released claim [that] is ‘based on the identical factual predicate as that underlying the  
5 claims in the settled class action.’”)); N.D. Cal. Class Settlement Guidance ¶ 1(b). The release in the  
6 settlement tracks the claims in the operative complaint and releases only the claims asserted on  
7 behalf of the putative class in the complaint. SA ¶ 32. All settlement class members maintain their  
8 rights to apply individually through the usual Board review processes for any relief not obtained  
9 through the procedures set forth in this settlement. SA ¶ 7(c)-(d). All class members also maintain  
10 their rights to pursue claims for damages because no such relief was sought as part of this case.  
11 SA ¶ 32.

12 **C. The Notice Plan Satisfies the Requirements of Rule 23.**

13 The approved notice plan is appropriate under Rule 23(c)(2), which permits but does not  
14 mandate notice when a class is certified under Rule 23(b)(2) and provides only injunctive relief. *See*  
15 *Fed. R. Civ. P. 23(c)(2)(A); Moore v. GlaxoSmithKline Consumer Healthcare Holdings (US) LLC*,  
16 *No. 4:20-cv-09077-JSW*, 2024 WL 4868182, at \*4 (N.D. Cal. Oct. 3, 2024); *see also* N.D. Cal.  
17 *Class Settlement Guidance* ¶ 3 (providing additional guidance on class notice). A class settlement  
18 notice “is satisfactory if it ‘generally describes the terms of the settlement in sufficient detail to alert  
19 those with adverse viewpoints to investigate and to come forward and be heard.’” *Churchill*, 361  
20 F.3d at 575 (quoting *Mendoza v. Tuscon Sch. Dist. No. 1*, 623 F.2d 1388, 1352 (9th Cir. 1980)).

21 The parties implemented the approved notice plan as described above in Sections II and  
22 III.C, utilizing multiple methods of communication to make settlement class members aware of the  
23 settlement, the relief it would provide, and how to exercise their rights to object and/or participate.  
24 Rifkin Decl. ¶¶ 13-16.

25 The settlement also provides that, following final approval, Defendants will send letters by  
26 U.S. Mail to settlement class members who can be identified using Defendants’ computerized  
27 records. SA ¶ 8. These letters will inform class members of the availability of a process to request  
28 changes to their DD-214s but will not directly reference this lawsuit or sexual orientation to protect

1 class members' privacy, given that mail delivery to last-known addresses does not guarantee  
2 confidentiality. Rifkin Decl. ¶ 17. While Defendants will not be able to identify settlement class  
3 members discharged before 1980 because they do not maintain computerized records from that time,  
4 all veterans who meet the class definition will be eligible for relief under the settlement, even if they  
5 do not receive a letter from Defendants. SA ¶¶ 6, 7; ECF No. 82-1 ¶ 40. Defendants will also post  
6 information about how to access the Administrative Change Process and the Board Discharge  
7 Upgrade Review Process on the Department of Defense website and each military department's  
8 website, and Plaintiffs' counsel will post similar information on their case website along with links  
9 to the Department of Defense website. SA ¶¶ 9, 11, 24(d).

10 This notice plan is reasonable given the size, composition, and particular privacy concerns of  
11 this settlement class, and the nature of the injunctive relief provided.

12 **D. Plaintiffs' Request for Attorneys' Fees and Costs is Reasonable.**

13 Pursuant to Federal Rules of Civil Procedure 23(h) and 54(d)(2), the Court may award  
14 reasonable attorneys' fees and nontaxable costs as authorized by law or by the parties' agreement  
15 upon timely motion and with appropriate notice to the class. In granting preliminary approval of the  
16 settlement, the Court found that it would "likely be able to approve the proposed settlement as fair,  
17 reasonable, and adequate," "including its provisions for... reasonable attorneys' fees and costs."  
18 ECF No. 85 at 2. The Court approved notice to the class that Plaintiffs would be seeking \$350,000  
19 in fees and costs, and directed Plaintiffs to move for such fees and costs at the time of the final  
20 approval motion. ECF No. 85. The parties provided Notice, and no class member has objected to  
21 Plaintiffs' fees request.

22 "A district court must ensure that attorneys' fees are 'fair, adequate, and reasonable,' even if  
23 the parties have entered into a settlement agreement that provides for those fees." *Bronson v. Samsung*  
24 *Elect. Am., Inc.*, No. C 18-02300 WHA, 2020 WL 1503662, at \*3 (N.D. Cal. Mar. 30, 2020) (citing  
25 *Staton v. Boeing Co.*, 327 F.3d 938, 963–64 (9th Cir. 2003)); *see also In re Bluetooth*, 654 F.3d at 941.  
26 Here, the settlement provides the class with a substantial benefit that is consistent with the injunctive  
27 relief sought in the operative complaint; the fees were negotiated independent of the injunctive relief  
28 set forth in the settlement; the settlement is not conditioned upon the Court's approval of fees; and the

1 fees will not be deducted from a monetary class settlement. ECF No. 82-1 ¶¶ 26, 55; *see Bronson*,  
2 2020 WL 1503662, at \*3; *Vargas v. Ford Motor Co.*, No. cv 1208388, 2020 WL 1164066, at \*12  
3 (C.D. Cal. Mar. 5, 2020) (attorneys’ fee provision was “not problematic” when, among other things,  
4 fees were negotiated separately from class relief).

5 This Court may properly award Plaintiffs \$350,000 in reasonable attorneys’ fees and costs  
6 pursuant to Rule 23(h). EAJA entitles litigants to recover attorneys’ fees and costs from the federal  
7 government if: (1) they are the prevailing party; (2) the government fails to show that its position  
8 was substantially justified or that special circumstances make an award unjust; and (3) the requested  
9 fees and costs are reasonable. *See Perez–Arellano v. Smith*, 279 F.3d 791, 793 (9th Cir.2002).  
10 EAJA also provides for the recovery of costs that are ordinarily billed to a client and that are routine  
11 under all other fee statutes. *See Int’l Woodworkers of Am. AFL-CIO, Local 3-98 v. Donovan*, 769  
12 F.2d 1388, 1392 (9th Cir. 1985), *amended*, 792 F.2d 762 (9th Cir. 1985).

13 Plaintiffs are a prevailing party under EAJA because the relief obtained through the  
14 settlement materially alters the relationship of the parties and Court approval of the settlement would  
15 judicially sanction this alteration. *See Buckhannon Board and Care Home, Inc. v. West Virginia*  
16 *Dep’t of Health & Hum. Resources*, 532 U.S. 598, 604–05 (2001) (holding that a litigant is a  
17 prevailing party if the lawsuit resulted in a “material alteration of the legal relationship of the  
18 parties” and the alteration was “judicially sanctioned”); *Perez–Arellano*, 279 F.3d at 793 (holding  
19 that the *Buckhannon* rule regarding prevailing party status governs EAJA fee applications). The  
20 “material alteration” inquiry asks whether the relief modifies a defendant’s behavior in a way that  
21 directly benefits the plaintiff. *Richard S. v. Dep’t of Developmental Servs.*, 317 F.3d 1080, 1087  
22 (9th Cir.2003) (citing *Barrios v. California Interscholastic Federation*, 277 F.3d 1128 (9th Cir.  
23 2002)). Here, Defendants’ implementation of expedited DD-214 correction and review processes  
24 under the settlement agreement benefits the class of veterans separated pursuant to DADT and its  
25 predecessor policies. For purposes of settlement, Defendants also do not contend that the  
26 government’s position was substantially justified or that an award of attorneys’ fees and costs is  
27 unjust. *See* 28 U.S.C. § 2412(d)(1)(A); *Thomas v. Peterson*, 841 F.2d 332, 335 (9th Cir.1988)  
28 (holding that a prevailing party in litigation against the government receives a rebuttable

1 presumption that it is entitled to EAJA fees unless the government is able to show its position was  
2 substantially justified); ECF No. 82-1 ¶ 35.

3 The requested award of \$350,000 in total attorneys' fees and costs is reasonable. When  
4 calculated at the 2024 EAJA statutory maximum rate of \$251.84 per hour,<sup>11</sup> this compensates  
5 Plaintiffs' attorneys for approximately 1,389.8 hours of work. Rifkin Decl. ¶ 23. As set forth in  
6 Plaintiffs' motion for preliminary approval, as of September 2024, counsel had spent approximately  
7 4,577.1 hours on this matter and incurred approximately \$17,000 in costs and litigation expenses.  
8 ECF No. 82-1 ¶ 52. Since September 2024, Plaintiffs' attorneys have done substantial additional  
9 work necessary to the litigation, including negotiating with Defendants to finalize the settlement  
10 agreement, preparing class notice, preparing and filing the motion for conditional class certification  
11 and preliminary approval and supporting declarations, implementing the class notice plan, and  
12 preparing and filing the instant motion for class certification, final approval, and award of fees.  
13 Rifkin Decl. ¶ 25. The requested amount of \$350,000 in fees and costs is thus more than a 70%  
14 reduction of Plaintiffs' lodestar at the 2024 EAJA rate, which more than accounts for the diligent  
15 exercise of billing judgment and adjustments for the application of prior years' EAJA rates for work  
16 performed in those years. *Id.* ¶ 23; ECF No. 82-1 ¶ 54; ECF No. 82-2 ¶ 20; ECF No. 82-3 ¶ 22; ECF  
17 No. 82-4 ¶ 19; *see also Bronson*, 2020 WL 1503662, at \*5 (approving requested fee award of  
18 \$487,000 where "[t]he amount comports with the settlement" and "the fees sought represent  
19 approximately thirty-four percent of the claimed lodestar, yielding a 'negative multiplier.'"); *Moreno*  
20 *v. San Francisco Bay Area Rapid Transit District*, 17-cv-02911-JSC, 2019 WL 343472, at \*6 (N.D.  
21 Cal. Jan. 28, 2019) (finding requested fee award of \$57,000 as set forth in settlement reasonable  
22 where counsel agreed "to accept a very significant lodestar discount. The fees sought represent  
23 approximately one third of Class Counsel's actual lodestar."). Indeed, even when considering only  
24 the work of the two primary attorneys at each co-counsel organization, Plaintiffs' counsel spent  
25 more than 2,663 hours on this matter and are requesting compensation at EAJA rates for only

26 \_\_\_\_\_  
27 <sup>11</sup> United States Courts for the Ninth Circuit, *Statutory Maximum Rates Under the Equal Access to*  
28 *Justice Act*, <https://www.ca9.uscourts.gov/attorneys/statutory-maximum-rates/> (last visited February  
3, 2025). Plaintiffs' motion for preliminary approval cited the 2023 EAJA rate because the 2024 rate  
had not yet been posted.

1 approximately half of those hours. Rifkin Decl. ¶ 24.

2 The requested fees are also reasonable in light of courts' discretion to award a fee higher than  
3 the statutory EAJA rate based on special factors, such as when plaintiffs' attorneys possess a  
4 specialty practice or distinctive knowledge and skills, the distinctive knowledge and skills are  
5 necessary to the litigation in question, and similar skills could not have been obtained at the statutory  
6 rate. See *Pirus v. Bowen*, 869 F.2d 536, 541-42 (9th Cir. 1989); *Ms. L v. U.S. Immigration and*  
7 *Customs Enforcement*, No. 18-cv-00428 (S.D. Cal. Nov. 5, 2024), ECF No. 757 at 1-2. Plaintiffs  
8 could reasonably argue this special factor applies here and justifies a rate enhancement, but in the  
9 interest of obtaining timely relief for the settlement class, Plaintiffs forego seeking these higher rates.

10 **V. CONCLUSION**

11 For the foregoing reasons, Plaintiffs respectfully request that the Court certify the settlement  
12 class, grant final approval of the settlement, award \$350,000 in reasonable attorneys' fees and costs  
13 to Plaintiffs, and enter final judgment in this action.

14 Dated: February 12, 2025

CALIFORNIA WOMEN'S LAW CENTER  
IMPACT FUND  
KING & SPALDING, LLP  
HAYNES AND BOONE, LLP

15  
16  
17  
18 By:  \_\_\_\_\_  
19 Fawn Rajbhandari-Korr

20 Jocelyn Larkin (SBN 110817)  
21 Lindsay Nako (SBN 239090)  
22 Lori Rifkin (SBN 244081)  
23 Fawn Rajbhandari-Korr (SBN 315888)  
24 Meredith Dixon (SBN 346864)  
25 IMPACT FUND  
26 2080 Addison Street, Suite 5  
27 Berkeley, CA 94704  
28 Telephone: (510) 845-3473  
jlarkin@impactfund.org  
lnako@impactfund.org  
lrifkin@impactfund.org  
fkorr@impactfund.org  
mdixon@impactfund.org

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Elizabeth Kristen (SBN 218227)  
CALIFORNIA WOMEN’S LAW CENTER  
360 N. Pacific Coast Hwy., Suite 2070  
El Segundo, CA 90245  
Telephone: (323) 951-1041  
elizabeth.kristen@cwlc.org

David K. Willingham (SBN 198874)  
Rachel Yeung (SBN 317361)  
KING & SPALDING LLP  
633 West Fifth Street, Suite 1600  
Los Angeles, CA 90071  
Telephone: (213) 443-4433  
dwillingham@kslaw.com  
ryeung@kslaw.com

Radha Manthe, *pro hac vice*  
KING & SPALDING LLP  
1180 Peachtree Street, NE, Suite 1600  
Atlanta, GA 30309  
rmanthe@kslaw.com

Chelsea Corey, *pro hac vice*  
HAYNES AND BOONE, LLP  
50 S. Tryon Street, Suite 700  
Charlotte, NC 28202  
Telephone: (980) 771-8251  
chelsea.corey@haynesboone.com

*Attorneys for Plaintiffs*