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18 **UNITED STATES DISTRICT COURT**
19 **SOUTHERN DISTRICT OF CALIFORNIA**

20 SERGEANT GARY A. STEIN,
21
22 Plaintiff,
23
24 v.
25 COLONEL C.S. DOWLING, *et al.*,
26
27 Defendants.

Case No. 12-cv-0816 H (BGS)

**PLAINTIFF'S RENEWED EX PARTE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND
ORDER TO SHOW CAUSE WHY
PRELIMINARY INJUNCTION
SHOULD NOT ISSUE**

28
29 Plaintiff, through undersigned counsel, , hereby makes this renewed *ex parte* application
30 to the Court for issuance of a Temporary Restraining Order ("TRO") and Order to Show Cause re
31 Preliminary Injunction to stop and enjoin Defendants, Colonel C. S. Dowling, Ray Mabus,
32 Secretary of the United States Navy, United States Department of Defense, United States of
33 America, And, Brigadier General Daniel Yoo, as set forth in more detail in the accompanying
34 memorandum of points and authorities in support hereof, from proceeding with any order,
35 directive or action involuntarily separating Stein from the Armed Forces of the United States
36 unless and until it is determined in this case, wherein Stein has challenged the legality of the
37 military proceedings instituted against him, that the military action against Stein is not illegal and
38

1 should not be further stayed.

2 This application is based upon Federal Rule of Civil Procedure 65(b), upon the attached
3 Memorandum of Points and Authorities in support of this motion, and upon the Declaration of
4 Gary G. Kreep, all filed herewith. This application is made upon the grounds that Stein now has
5 exhausted the administrative remedies available to him, and that any further administrative
6 proceeding would be futile, the conduct sought to be enjoined, if allowed to occur, will cause
7 immediate and irreparable injury to Stein, in that Defendants intend to discharge Stein from the
8 Armed Forces following the panel's recommendation in the administrative separation
9 proceedings against Stein on Thursday, April 5, 2012, without due process being afforded to
10 Stein, resulting in Stein's immediate discharge from the U.S. Marine Corps, under "other than
11 honorable conditions." Issuing the Temporary Restraining Order will preserve the status quo
12 pending a hearing on the requested Preliminary Injunction, as, given the intent of Defendants to
13 discharge Stein from service in the Marine Corps immediately, there is insufficient time for a
14 noticed motion and hearing thereon. The U.S. Marine Corps has demonstrated no willingness to
15 allow Stein to pursue judicial remedies, including an appeal to the U.S. Court of Appeals for the
16 Ninth Circuit. Without this court's entering a Temporary Restraining Order, Sergeant Stein will
17 be separated from the Marine Corps within hours.

18 Stein also requests the Court to issue an Order to Show Cause affording Defendants the
19 opportunity to appear and show cause why a Preliminary Injunction should not issue restraining
20 and enjoining them in the same manner for the remainder of this litigation. A copy of this
21 Application, the accompanying Memorandum of Points and Authorities, and supporting papers is
22 served on Defendants counsel by e-filing today. Stein is not yet aware if Defendants will oppose
23 this Application but expects they will.

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1 Dated: April 6, 2012

Respectfully submitted,

2 s/David Loy

3 David Loy
4 Attorney for Plaintiff

5 Of counsel:

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