

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

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|------------------------------------|---|---------------------------------|
| ISRAEL ALVARADO, <i>et al.</i> , | : | |
| | : | |
| <i>Plaintiffs,</i> | : | |
| v. | : | |
| | : | Case No.: 1:22-cv-00876-AJT-JFA |
| LLOYD AUSTIN, III, <i>et al.</i> , | : | |
| | : | |
| <i>Defendants.</i> | : | |
| | : | |

PLAINTIFFS’ MOTION FOR CLASS CERTIFICATION

Forty-two military chaplain Plaintiffs, on behalf of themselves and similarly situated class members, respectfully move the Court to enter an order certifying the following class and subclasses under Rule 23(b)(2) of the Federal Rules of Civil Procedure:

- a) the class of all military chaplains who are subject to the Department of Defense’s (“DOD”) COVID-19 vaccine mandate (“DOD Mandate”) and who have submitted a Religious Accommodation Request (“RAR”) (“Military Chaplain Class”);
- b) a subclass of the Military Chaplain Class who have sufficient time in service to retire and who do not wish to retire, but are faced with the draconian threat either to retire or face disciplinary actions and forfeit everything they have worked for their entire careers (“Constructively Discharged Subclass”);
- c) a subclass of the Military Chaplain Class who have reached or almost reached 18 years of service, entitling them to “sanctuary” status until they reach 20 years of service and are eligible for retirement (“Sanctuary Subclass”); and
- d) a subclass of the Military Chaplain Class who have natural immunity from a previous documented COVID-19 infection and should be eligible either for religious accommodation or a medical exemption (“Natural Immunity Subclass”).

Plaintiffs further request that the Court enter an order (1) appointing Plaintiffs’ counsel as class counsel under Rule 23(g) of the Federal Rules of Civil Procedure, and (2) designating twelve specific identified plaintiffs as Class and subclass Representatives.

The accompanying Memorandum in Support of Class Certification demonstrates the four “prerequisites of Rule 23(a) have been satisfied.” *See Comcast Corp. v. Behrend*, 569 U.S. 27, 33 (2013) (citation and quotation marks omitted). In addition to meeting the four criteria in Rule 23(a),

Plaintiffs demonstrate that the putative class complies with at least one of the requirements of Rule 23(b). *Id.* Here, Plaintiffs seek certification of the class pursuant to Rule 23(b)(2). In this case, Plaintiffs affirmatively demonstrate herein that the prerequisites of Rule 23 are *in fact* satisfied and are supported by the extensive factual record submitted in support of certification. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350-351 (2011) (“*Wal-Mart*”).

Plaintiffs show that at least one named class representative has Article III standing, *see Dreher v. Experian Info. Sols., Inc.*, 856 F.3d 337, 343 (4th Cir. 2017); the members of the proposed class and subclasses are readily identifiable, *EQT Production Co. v. Adair*, 764 F.3d 347, 358 (4th Cir. 2014) (“*EQT*”) (citation and quotation marks omitted); and counsel are qualified under Rule 23(g) to represent the class.

Dated: September 30, 2022

Respectfully Submitted,

/s/ Arthur A. Schulcz, Sr.

Arthur A. Schulecz, Sr.

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

This is to certify that on this 30th day of September 2022, the foregoing Plaintiffs' Motion for Class Certification was e-filed using the CM/ECF system.

Respectfully Submitted,

/s/ Arthur A. Schulz
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