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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14

15 MARY JENNINGS HEGAR, JENNIFER
HUNT, ALEXANDRA ZOE BEDELL,
16 COLLEEN FARRELL, AND SERVICE
WOMEN'S ACTION NETWORK,

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18 Plaintiffs,

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19 v.

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20 LEON PANETTA, Secretary of Defense,

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21 Defendant.

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CASE NO.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 Plaintiffs Mary Jennings Hegar, Jennifer Hunt, Alexandra Zoe Bedell, Colleen
2 Farrell, and Service Women’s Action Network allege as follows:

3 **INTRODUCTION**

4 1. The Plaintiffs in this action challenge as unconstitutional the official policy
5 of the Department of Defense (“DoD”) that categorically excludes them, and all women,
6 from assignment to units whose primary mission is to engage in direct ground combat
7 (hereinafter “combat exclusion policy”). As a result of this policy, women are barred
8 from more than 238,000 positions across the Armed Forces, including all infantry
9 positions, and from certain military occupational specialties and training schools. No
10 United States statute requires this categorical exclusion of women. Instead, the DoD has
11 *itself* decided to close these positions to servicewomen *solely because they are women*.

12 2. The combat exclusion policy is based on outdated stereotypes of women and
13 ignores the realities of the modern military and battlefield conditions. Women make up
14 an increasingly significant percentage of the Armed Forces, with more than 280,000
15 having served in Iraq and Afghanistan alone. The battlefields in Iraq and Afghanistan
16 lack any clear boundaries or front lines, and the demands of these wars on the ground
17 have required participation from troops across the Armed Forces. In addition, the unique
18 circumstances and demands of fighting in Iraq and Afghanistan have led to a greater need
19 for women on the ground. As a result, servicewomen across the Armed Forces, including
20 the Plaintiffs, have risked their lives and continue to risk their lives serving *in combat* in
21 our nation’s active theatres of war.

22 3. Servicewomen across the Armed Forces are harmed by the combat
23 exclusion policy in a variety of ways. Those already serving in combat are not only
24 barred from formal assignment to combat arms positions for which they have already
25 proven themselves suited, but they are also denied the official recognition they need to
26 advance their careers. They are prohibited from applying to certain schools, such as
27 infantry schools, further limiting their potential for career advancement. Moreover, even
28 though women are already serving in combat, the policy creates a presumption that

1 women *are not* serving in combat, which further disadvantages women compared to men,
2 even as veterans. The combat exclusion policy sends a clear message to the world that
3 women are not capable of serving their country to the same extent as men.

4 4. The U.S. Supreme Court has made it clear that governmentally-mandated
5 discrimination based on sex is unconstitutional unless it is supported by an “exceedingly
6 persuasive” justification that is “substantially related” to “important governmental
7 objectives.” *U.S. v. Virginia*, 518 U.S. 515, 533 (1996). Any such justification must be
8 genuine, not hypothetical, and cannot rely on “overbroad generalizations about the
9 different talents, capacities, or preferences of males and females.” *Id.* The DoD’s policy
10 of categorically excluding women from certain combat positions, regardless of their
11 individual qualifications and capacities, does not and cannot meet this exacting standard.

12 5. The DoD’s policy is one of the last vestiges of federal *de jure* discrimination
13 against women. Nearly a century after women first earned the right of suffrage, the
14 combat exclusion policy still denies women a core component of full citizenship—serving
15 on equal footing in the military defense of our nation. Plaintiffs respectfully ask this
16 Court to: (1) declare that the DoD’s combat exclusion policy is unconstitutional and
17 violates Plaintiffs’ rights to equal protection of the laws under the Due Process Clause of
18 the Fifth Amendment; and (2) enjoin the DoD from enforcing the combat exclusion policy
19 in the future.

20 JURISDICTION

21 6. This Court has original jurisdiction under 28 U.S.C. § 1331 because
22 Plaintiffs’ claims arise from and under the U.S. Constitution, as set forth herein.

23 INTRADISTRICT ASSIGNMENT

24 7. The challenged policy is enforced, and the impact of it is felt, throughout the
25 Northern District of California, including in Contra Costa County and Monterey County,
26 where the DoD maintains several bases, such as Camp Parks in Dublin and Fort Hunter
27 Liggett in Monterey County.

1 PARTIES

2 8. The Plaintiffs are individual servicewomen, each acting in her own
3 individual capacity, and the Service Women’s Action Network, a nonprofit organization
4 that supports, defends, and empowers servicewomen and veterans.

5 9. All of the individual Plaintiffs have served in Afghanistan and/or Iraq. Two
6 were assigned to units in Female Engagement Teams (“FETs”) in the Marines. These
7 teams were created by the Marines for the express purpose of allowing female Marines to
8 serve alongside all-male infantry units, with the primary goal of engaging with Afghan
9 civilians, particularly Afghan women.

10 10. Two of the Plaintiffs were awarded the Purple Heart after being wounded
11 while serving in combat. Two received medals in recognition of their combat service—
12 the Air Force Combat Action Medal and the Army Combat Action Badge. One earned a
13 Distinguished Flying Cross with a Valor Device for extraordinary achievement and
14 heroism while engaging in direct ground fire with the enemy after being wounded when
15 her helicopter was shot down over Afghanistan.

16 **Major Mary Jennings Hegar**

17 11. Plaintiff Major Mary Jennings Hegar is a combat helicopter pilot currently
18 serving as an Air Guardsman for the California Air National Guard based in Mountain
19 View, California. She served three tours over two deployments in Afghanistan.

20 12. In December of 1999, Major Hegar was commissioned in the Air Force,
21 where she served for five years as a maintenance officer. She subsequently spent six
22 years in the Air National Guard, where she trained as a pilot. In her final tour in
23 Afghanistan, Major Hegar flew several medevac missions in extremely dangerous combat
24 conditions, taking direct fire on almost a daily basis.

25 13. In order to qualify to fly over enemy territory in Afghanistan, Major Hegar
26 successfully completed a grueling training program called Survival, Evasion, Resistance,
27 and Escape (“SERE”) training. SERE training is widely regarded as one of the most
28 physically and mentally demanding forms of training offered to military personnel. To

1 complete this training, Major Hegar was placed in command of half of the class
2 participants and was required to hike over mountainous terrain carrying heavy gear, in
3 addition to other physically and mentally arduous tasks. Major Hegar also achieved
4 expert marksman status in both of her service weapons (handgun and rifle).

5 14. As a result of her rescue missions, Major Hegar was involved in ground
6 combat. In July 2009, when she was a captain, her aircraft was shot down by enemy fire
7 over Afghanistan, as she and her crew were evacuating three injured soldiers. Major
8 Hegar was injured by a bullet that penetrated the helicopter and, once on the ground, she
9 returned fire and successfully completed the rescue mission under fire. As a result of this
10 incident, Major Hegar was awarded the Purple Heart and the Distinguished Flying Cross
11 with a Valor Device, two of the highest decorations possible for a pilot. The citation
12 accompanying her Distinguished Flying Cross emphasized her “outstanding heroism and
13 selfless devotion to duty.” Within a week of being shot down, Major Hegar and her crew
14 were returned to flying status to resume their medevac missions.

15 15. Despite Major Hegar’s SERE training, her success as a combat pilot, and
16 her recognized valor in ground combat, the combat exclusion policy bars her categorically
17 from competing for certain combat positions. If she were not barred from these positions,
18 Major Hegar would seek to cross-train for a ground combat position, which would be
19 advantageous for her career. Because she is automatically excluded from even applying
20 for such positions based on her sex, Major Hegar is transitioning out of the Air National
21 Guard and into a Reservist Liaison position.

22 **Staff Sergeant Jennifer Hunt**

23 16. Plaintiff Staff Sergeant Jennifer Hunt is a noncommissioned officer in the
24 United States Army Reserves. Staff Sergeant Hunt enlisted in the United States Army
25 Reserves in 2001, in the wake of the September 11 attacks on the United States. She
26 currently serves in the Civil Affairs Military Occupational Specialty.

27 17. Staff Sergeant Hunt deployed to Afghanistan in August 2004 with a unit
28 engaged in provincial reconstruction. In addition to her regular duties as a Civil Affairs

1 Specialist, which involved coordinating civil-military operations, Staff Sergeant Hunt also
2 was called upon to accompany male combat arms soldiers on “door-kicking missions,”
3 searching villages for insurgents. During these missions, Staff Sergeant Hunt served,
4 usually as the only woman, alongside male combat arms soldiers; they were dropped off
5 together by helicopter in the mountains, and they wore the same body armor and carried
6 the same weapons. After completing this deployment successfully, Staff Sergeant Hunt
7 returned to the United States in July 2005.

8 18. In August 2007, Staff Sergeant Hunt deployed to Iraq with a unit engaged in
9 reconstruction projects. While in Iraq, Staff Sergeant Hunt’s Humvee vehicle was hit by
10 an Improvised Explosive Device (“IED”), causing shrapnel injuries to her face, arms, and
11 back. Staff Sergeant Hunt was awarded a Purple Heart in connection with this attack.
12 After completing her deployment, she returned to the United States in May 2008.

13 19. The combat exclusion policy made it difficult, and continues to make it
14 difficult, for Staff Sergeant Hunt to serve our nation to the best of her abilities. Although
15 she has served in the same roles as male combat soldiers, Staff Sergeant Hunt was not
16 officially part of the all-male combat arms units she accompanied on missions in
17 Afghanistan. She did not have the opportunity to train with them, learn their standard
18 operating procedures, acclimate to unit leadership, and obtain mission-specific training.
19 As a result, although Staff Sergeant Hunt was able to overcome these disadvantages, she
20 and the combat arms units she served with were endangered by the operation of the
21 combat exclusion policy.

22 20. In addition, Staff Sergeant Hunt’s career options have been significantly
23 limited by the combat exclusion policy. Because of the policy, Staff Sergeant Hunt could
24 not even apply to attend combat leadership schools that are closed to women, and she is
25 categorically excluded from positions that often enhance a soldier’s chances for
26 promotion to First Sergeant and Sergeant Major. Her service in combat situations is not
27 recognized to the same degree as that of the male combat arms soldiers with whom she
28 served, because under the policy her combat experience was necessarily “unofficial.”

1 Together, these effects of the combat exclusion policy put Staff Sergeant Hunt at a
2 disadvantage in her chances for career progression compared with male soldiers.

3 21. Staff Sergeant Hunt is interested in competing for opportunities to serve
4 directly with combat units in positions that are currently closed to women, as well as
5 training opportunities that are closed or restricted for women. If the combat exclusion
6 policy were lifted, she would have the opportunity to pursue these interests.

7 **Captain Alexandra Zoe Bedell**

8 22. Plaintiff Captain Alexandra Zoe Bedell was commissioned as an officer in
9 the Marine Corps in 2007 and assigned to the Military Occupational Specialty of Logistics
10 Officer. While serving on active duty, she deployed twice to Afghanistan out of Marine
11 Corps Base Camp Pendleton in California. She is currently a captain in the United States
12 Marine Corps Reserves.

13 23. After commissioning, Captain Bedell graduated with honors from The Basic
14 School, which is the first phase of Marine Corps officer training. This means that she
15 ranked in the top 10% of her class of approximately 300 Marines for the twenty-six week
16 course, which includes training on weapons, tactics, leadership, and other skills.

17 24. Although she succeeded in Marine Corps officer training, Captain Bedell
18 was barred, solely because she is a woman, from competing for assignment to a combat
19 arms military occupational specialty (“MOS”), such as the infantry. Instead, she became a
20 Logistics Officer, an occupational specialty in the Marine Corps that is open to women.
21 Had combat arms MOS’s, including the infantry, been open to women in the Marine
22 Corps, Captain Bedell would have pursued them, because she viewed those jobs as
23 encompassing the core mission of the Marine Corps.

24 25. Captain Bedell first deployed to Afghanistan in 2009 as a lieutenant, where
25 she served as her unit’s Current Operations Officer, overseeing all logistical support for a
26 Marine Regimental Combat Team. As a collateral duty, she also oversaw the unit’s
27 Female Engagement Teams (“FETs”).
28

1 26. Captain Bedell deployed again to Afghanistan in 2010, and on this
2 deployment, she served full-time as the Officer-in-Charge of the First Marine
3 Expeditionary Force Female Engagement Team, in which capacity she trained and
4 deployed 46 Marines to serve as FET members in direct support of the division's infantry
5 regiments and the battalion units underneath it.

6 27. On both of Captain Bedell's deployments, FET members lived and worked
7 with the male infantry Marines with whom they served. They lived in the same conditions
8 and managed the lack of privacy in the combat outposts and small patrol bases where they
9 were located for extended periods of time. In providing support to the combat operations
10 of the infantrymen, including participating in daily patrols, FET members wore the same
11 body armor as the infantrymen, carried the same weapons as the infantrymen, and, along
12 with infantrymen, regularly encountered ground combat.

13 28. The combat exclusion policy interfered with Captain Bedell's ability as
14 Officer-in-Charge of the FET program to fulfill her mission of providing support to
15 combat and counterinsurgency operations. In Captain Bedell's experience, while the
16 combat commanders on the ground were generally supportive of women Marines and
17 fully appreciated the additional troops, some FET missions were cancelled because
18 higher-ranking officers were concerned that sending women on missions in which they
19 were likely to encounter ground combat could run afoul of the DoD's combat exclusion
20 policy.

21 29. Based on the same concern about violating the DOD's combat exclusion
22 policy, Marine commanders required all FET members to return (or, in military parlance,
23 "reset") to their main forward operating base (Leatherneck) every 45 days. This artificial
24 and unnecessary maneuver disrupted operations and put both men and women serving in
25 and supporting these units in danger. To accommodate the policy, the women Marines
26 were forced to travel to and from the base on dangerous roads, and they were often taken
27 out of crucial missions, sometimes for a week's time.

28

1 30. Captain Bedell left active duty in August 2011 in part because the DoD's
2 combat exclusion policy restricted her assignments based on her gender, rather than her
3 proven ability and performance. In addition, she knew that, because of the DoD's policy,
4 the combat leadership experience she gained during her deployments could not be
5 considered for promotion decisions in the same way it would be if she were a male
6 Marine, because "officially" she had never served in a ground combat unit.

7 **First Lieutenant Colleen Farrell**

8 31. Plaintiff First Lieutenant Colleen Farrell is an active duty officer in the
9 United States Marine Corps, currently stationed at Marine Base Camp Pendleton in
10 California. She was commissioned in 2008 and was assigned the position of Air Support
11 Control Officer. First Lieutenant Farrell deployed to Afghanistan in 2010, where she
12 served as team leader of her unit's FETs.

13 32. First Lieutenant Farrell was stationed in Afghanistan from September 2010
14 until April 2011, during which she and between 12 and 20 FET members she supervised
15 went on missions and patrols with the male infantry Marines, performing outreach with
16 Afghan civilians, particularly Afghan women. Like the infantrymen with whom they
17 served, First Lieutenant Farrell and the women in her charge were regularly in danger of
18 drawing enemy fire, being ambushed, or hit by IEDs. Three teams of women Marines
19 under First Lieutenant Farrell's charge were awarded Combat Action Ribbons for
20 receiving and returning fire. In 2012, First Lieutenant Farrell served as the Executive
21 Officer (second-in-command) for another group of FETs, preparing them for deployment
22 and coordinating with the infantry troops the FETs would be supporting.

23 33. The combat exclusion policy made it difficult for First Lieutenant Farrell
24 and the women in her charge to perform in their assigned positions. Out of concern about
25 violating the DOD's combat exclusion policy, Marine commanders required all FET
26 members to return (or, in military parlance, "reset") to their main forward operating base
27 (Leatherneck) every 45 days. This artificial and unnecessary maneuver disrupted
28 operations and put both men and women serving in and supporting these units in danger.

1 To accommodate the policy, the women Marines were forced to travel to and from the
2 base on dangerous roads, and they were often taken out of crucial missions, sometimes for
3 a week's time.

4 34. If First Lieutenant Farrell were to deploy again, she would be subject to the
5 same or similar interruptions of operations stemming from the combat exclusion policy.

6 **Service Women's Action Network (SWAN)**

7 35. Plaintiff Service Women's Action Network (SWAN) is a nonpartisan,
8 nonprofit organization that supports, defends, and empowers service women and women
9 veterans through advocacy initiatives and community programs. Its mission includes
10 transforming military culture by securing equal opportunity and freedom to serve without
11 discrimination, harassment, or assault. SWAN also seeks to reform veterans' services to
12 ensure high quality benefits for women veterans and their families.

13 36. SWAN's mission and goals are frustrated by the combat exclusion policy,
14 which limits women's opportunities for advancement in the military, puts women serving
15 in ground combat in danger, and continues to have a detrimental effect on many women
16 once they become veterans. Because of the harm caused by this policy, SWAN has had to
17 expend and divert its resources working to abolish it. SWAN conducts public education
18 and advocacy aimed at raising awareness about the inequities and harms to the military
19 caused by the DoD's combat exclusion policy.

20 37. If the combat exclusion policy were eliminated, SWAN could reallocate its
21 resources from working to abolish the policy to advancing its overall mission of
22 promoting and empowering servicewomen, including ending discrimination, harassment,
23 and assault.

24 **Secretary of Defense Leon Panetta**

25 38. Defendant Leon Panetta is the Secretary of the Department of Defense. He
26 is responsible for the administration and enforcement of the combat exclusion policy and
27 is named in his official capacity only.
28

1 **THE EXCLUSION OF WOMEN FROM GROUND COMBAT POSITIONS**

2 39. For much of our nation’s history, women’s participation in the Armed
3 Forces has been severely limited by law, mirroring the many laws at every level of
4 government that excluded women and limited their opportunities for employment and
5 participation in civic life. Despite these legal restrictions, women have always served in
6 the military defense of this country. In the Revolutionary and Civil Wars, women served
7 as nurses, spies, and cooks, and some fought, disguising themselves as men.
8 Approximately 34,000 women served in uniform in World War I, mostly as nurses. In
9 World War II, that number increased tenfold to 400,000 women serving in uniform,
10 primarily in separate women’s auxiliary and other services.

11 40. Over time, Congress removed statutory restrictions on women’s
12 participation in the Armed Forces and, by the early 1990s, no statute categorically
13 prohibited women from serving in any military position, including combat positions.

14 41. Nevertheless, the DoD adopted a policy in 1994 that categorically excluded
15 women from most combat positions, primarily in the Army and Marine Corps. This
16 policy, with minor changes, remains in effect today. Under this policy, women are barred
17 from being assigned to units below the brigade level whose primary mission is to engage
18 in direct combat on the ground. The definition of direct combat on the ground includes a
19 number of elements, including exposure to hostile fire and engagement with an enemy on
20 the ground with individual or crew-served weapons, in a location well forward on the
21 battlefield. The policy also provides discretionary bases upon which to exclude women
22 from other combat positions and specialties.

23 42. As a direct result of this policy, which has come to be known as the combat
24 exclusion policy, women—as a class and solely because of their gender—are barred from
25 entire career fields, known as military occupational specialties (“MOS’s”), including
26 infantry, armor, and special operations. In addition, the policy bars women from
27 approximately 238,000 individual positions. Women are excluded from 20% of jobs
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1 across the active duty force, including positions in infantry units, armor units, artillery
2 units, reconnaissance units and all other units below the brigade level, that have direct
3 ground combat as a primary mission.

4 43. In 2012, the DoD announced changes to the policy that would open
5 approximately 14,000 positions previously closed to women. But the core of the policy
6 remains in place. Women still are categorically excluded from entire MOS's and the vast
7 majority of the individual combat positions. The DoD has announced that it has no
8 present intention to make any further changes to its exclusionary policy.

9 **THE COMBAT EXCLUSION POLICY HARMS SERVICEWOMEN,**
10 **INCLUDING THE PLAINTIFFS, IN SIGNIFICANT WAYS**

11 44. The DoD's official and categorical exclusion of women from assignment to
12 ground combat units harms the individual Plaintiffs, and thousands of servicewomen like
13 them, in a variety of ways, including by denying them opportunities, training, and
14 recognition during active service, and benefits after they have retired from service.

15 45. The policy excludes women, solely because they are women and regardless
16 of their individual qualifications and capacities, from thousand of positions across the
17 Armed Forces and from certain career military occupational specialties and training
18 schools. These "closed" positions and career specialties are prestigious because they are
19 viewed as encompassing the core mission of the Armed Forces.

20 46. In addition to explicitly prohibiting women from serving in certain positions
21 and career specialties, the policy puts servicewomen at a disadvantage in the promotion
22 process, even within career specialties that are open to women. Formal assignment to
23 combat arms units and positions is an important factor in promotion to leadership
24 positions in the officer corps and among enlisted personnel, particularly in the Army and
25 the Marine Corps. For example, over 80% of general officers in the Army came from
26 combat arms positions, from which women are excluded. Chances for promotion to
27 senior enlisted positions are likewise enhanced for those who have served in combat arms
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1 positions and career specialties. The DoD's combat exclusion policy thus serves as a
2 structural barrier to the advancement of women within the Armed Forces.

3 47. Even servicewomen who have engaged in ground combat in Iraq and
4 Afghanistan have routinely been denied combat credit for purposes of promotion. For
5 men, ground combat experience is a substantial factor in promotion to leadership
6 positions. In contrast, a woman's combat experience is not recognized as such, because
7 she is only "attached" but not "assigned" to ground combat units, or she commands teams
8 that serve "in support of" but are not "part of" ground combat units. For some
9 servicewomen, such as Staff Sergeant Jennifer Hunt, their combat service conducting
10 missions with infantry troops had no formal designation at all. For others, such as Captain
11 Alexandra Zoe Bedell and First Lieutenant Colleen Farrell, their combat service leading
12 FETs took place entirely outside of their official career specialties. Because of the combat
13 exclusion policy, the combat service of these and many other women cannot be given
14 official recognition within their career fields and therefore cannot be considered in the
15 same way it would be for men in promotion decisions.

16 48. The combat exclusion policy also deprives women of combat training
17 opportunities or the benefits of such training. Women serving in combat zones, such as
18 Staff Sergeant Hunt, are often trained separately from the units they serve with, which
19 requires them to learn the standard operating procedures of their units on their own and in
20 a much shorter time frame than men in the same unit, often only a few days. These
21 women, and others who wish to serve in combat, are also categorically barred from
22 combat leadership schools, or are put at a disadvantage in competing for limited space in
23 these schools because service members coming from combat arms units or positions are
24 preferred. Women who have managed to receive combat training are also harmed.
25 Despite the training and experience of these women, some field commanders assume,
26 because of the policy, that they do not have such training or experience and thus are not
27 qualified to conduct missions where combat scenarios are likely. For example, Major
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1 Hegar has repeatedly encountered, and had to refute, impressions that women cannot fly
2 combat aircraft.

3 49. The combat exclusion policy also makes it difficult for women to perform in
4 their assigned positions. In the case of the Marine Corps FETs, discussed above, missions
5 were sometimes delayed, interrupted, and even cancelled because commanders in the field
6 were unsure how to interpret the policy. For example, FETs were required to leave their
7 combat outposts every 45 days and return to main operating bases, resulting in a
8 disruption in operations and potentially endangering both the servicewomen and their
9 missions.

10 50. In addition to these harms, the DoD's combat exclusion policy creates the
11 false impression that women are not capable of performing in positions viewed as central
12 to the core mission of the Armed Forces. Women cannot be assigned to combat arms
13 units, such as the infantry. Instead, they are limited to positions that operate "in support
14 of" or "attached to" combat arms units, even though these women perform the same
15 functions as men in those units. The effect of the policy is to relegate women, literally
16 and figuratively, to a "supporting role" in our Armed Forces based on stereotypes about
17 women and assumptions about battlefield conditions that do not reflect the reality that
18 women, including the Plaintiffs, are already serving in combat situations, and doing so
19 with distinction.

20 51. The exclusion of women from many of the pathways to military leadership
21 not only affects women during their military careers, but after they have left service.
22 Success in the military often translates into success in business or other civilian fields,
23 especially for those recruits who lack access to higher education or well-paying jobs.
24 Indeed, the Army and the Marine Corps use this fact in advertisements targeting both men
25 and women. But the truth is that, because so many combat positions are closed to women,
26 promises of leadership experience and career advancement ring hollow.

27 52. For example, the Marine Corps has run advertising depicting a woman
28 commanding a group of men, with the tag line "There are no female Marines. Only

1 Marines.” Douglas Quenqua, *Sending in the Marines (To Recruit Women)*, N.Y. Times,
2 April 21, 2008. According to the advertising executive responsible for the ad campaign,
3 “[t]he message is that the Marine Corps offers a unique opportunity to earn that title
4 [commander] and be shoulder to shoulder with your male counterparts. . . . That’s an
5 important aspect for the young women seeking that challenge. . . .” *Id.* A more accurate
6 tagline for this ad would have been “There are no female Marines assigned to ground
7 combat positions. Only male Marines. You aren’t allowed to lead men into battle, and if
8 you do, you will not receive credit for it and your careers will suffer as a result.”

9 53. In addition, women veterans have been harmed and continue to be harmed
10 by the combat exclusion policy. As a result of the policy, women have faced challenges
11 in obtaining benefits and treatment for combat-related stress, among other benefits,
12 because those processing veterans’ claims do not believe that women can be “in combat.”

13 54. Each of the individual Plaintiffs has suffered and will continue to suffer
14 harm as a result of the DoD’s combat exclusion policy, as alleged herein.

15 **THE COMBAT EXCLUSION POLICY IS NOT JUSTIFIED**
16 **BY ANY IMPORTANT GOVERNMENTAL OBJECTIVE**

17 55. The combat exclusion policy is not supported by an “exceedingly
18 persuasive” justification that is substantially related to “important governmental
19 objectives.” *U.S. v. Virginia*, 518 U.S. at 533. Historically, the policy was based on the
20 presumption that no woman has the necessary physical strength and mental toughness
21 required to serve in combat. Yet each of the individual Plaintiffs in this action has
22 demonstrated these qualities while serving in combat. As a result of the combat exclusion
23 policy, however, the service and sacrifice of these women has not been fully recognized
24 because, and only because, they are women.

25 56. The Plaintiffs are not alone in suffering these harms. Hundreds of
26 thousands of women have served in the Armed Forces, including more than 280,000 in the
27 Iraq and Afghanistan conflicts. Women currently constitute 14.5 percent of the 1.4
28 million active military personnel, and 20 percent of new recruits. Of the women who

1 have been deployed since September 11, 2001, 85 percent reported serving in a combat
2 zone or in an area where they drew imminent danger pay or hostile fire pay, and nearly
3 half reported being involved in combat operations. Many of those women have served in
4 combat with distinction. But they have been deprived of the training, opportunities, and
5 recognition they deserve because, under the combat exclusion policy, they cannot
6 “officially” be assigned to ground combat units.

7 57. The DoD may contend that while the elimination of categorical, gender-
8 based exclusionary assignment policies may be a worthwhile goal, further consideration is
9 required. Any questions of timing go only to *remedy*, not *constitutionality*. The DoD has
10 been on notice for decades that it must have an exceedingly persuasive justification for
11 any categorical exclusion based on sex and that the justification must be substantially
12 related to an important governmental objective. Even if there existed, in the past, such a
13 justification, the realities of the modern military and battlefield have eliminated it.

14 58. The combat exclusion policy is not justified by broad generalizations about
15 “military effectiveness” or “force readiness.” Indeed, far from advancing these objectives,
16 the policy undermines them, placing additional strain on already overburdened men and
17 women serving in our Armed Forces.

18 59. The combat exclusion policy also limits recruitment of the best talent
19 because women considering a military career know they will be barred from positions
20 viewed as necessary to the core mission of the Armed Forces and career advancement.
21 Given that recruitment is an issue faced by the Armed Forces today, this limitation
22 necessarily impedes military effectiveness.

23 60. For women already serving in the Armed Forces whose career goals and
24 advancement are limited due to the policy, the policy prevents retention of the best talent,
25 as evidenced by the choice of several of the individual Plaintiffs to leave active duty for
26 the reserves. Like the individual Plaintiffs who are leaving active duty, many of the
27 women being pushed out of the Armed Forces by the policy are decorated servicewomen.
28

1 61. The combat exclusion policy also prevents the full development and
2 utilization of the skills and talents of service members because women are barred from
3 certain training and because commanders cannot “officially” assign women to positions
4 for which they are otherwise qualified. This ties commanders’ hands on the ground by
5 limiting the pool of talent from which they can draw when assembling teams for
6 missions.

7 62. In addition, the policy’s definition of direct ground combat as taking place
8 well forward on the battlefield has been rendered so obsolete by the nature of modern
9 warfare that commanders cannot and do not apply it consistently. Some women have
10 reported being told that they cannot go on night-time missions because those constitute
11 “combat.” Others have been prevented by commanders from sitting in the front cars of a
12 convoy, on the theory that those are most likely to hit IEDs. Still others are told they
13 cannot be gunners on vehicles, or that they should wait until after the beginning of a raid
14 to go in. This inconsistent application of the policy has led to confusion and disruptions
15 in operations.

16 63. The practice of “attaching” women to combat arms units, or creating
17 temporary teams that work “in support of” combat arms units, rather than assigning
18 women to the units directly, also disrupts operations and comes with its own dangers. The
19 women who are sent to patrol with combat arms units frequently do not train with these
20 units or deploy with them, and therefore must quickly learn that individual unit’s mode of
21 operating and communicating once in the field.

22 64. The Plaintiffs who were in charge of or participated in FETs report that
23 members of the infantry and other combat battalions they supported frequently were as
24 concerned as they were by the disruptions in operations caused by the combat exclusion
25 policy. The FETs, for example, were integral to the combat arms units they patrolled
26 with, and the policy’s mandate of pulling the women out of missions and requiring them
27 to “reset,” or return to, the forward operating base every 45 days interrupted and interfered
28 with combat operations.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, the Plaintiffs pray for judgment as follows:

- 3 1. Plaintiffs respectfully request that this Court, pursuant to 28 U.S.C. § 2201,
4 enter a declaratory judgment stating that the combat exclusion policy violates the
5 Plaintiffs' rights to the equal protection of the laws under the Fifth Amendment;
- 6 2. Plaintiffs respectfully request that this Court enter an order enjoining
7 Defendant from enforcing or applying the combat exclusion policy;
- 8 3. Plaintiffs respectfully request costs of suit, including reasonable attorneys'
9 fees, and
- 10 4. Plaintiffs respectfully request all further relief to which they may be justly
11 entitled.

12 DATED: November 27, 2012

MUNGER, TOLLES & OLSON LLP

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15 By 

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