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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SERVICE WOMEN’S ACTION
NETWORK,
Plaintiff,
v.
JAMES N. MATTIS, Secretary of Defense,
Defendant.

CASE NO. 12-CV-06005 EMC

**THIRD AMENDED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

1 Plaintiff Service Women’s Action Network alleges as follows:

2 **INTRODUCTION**

3 1. This case challenges the ongoing segregation and unequal treatment of
4 servicewomen in the United States military. The original complaint (“Complaint”) in this
5 case was filed in November 2012. The Complaint challenged as unconstitutional the
6 policy instituted in 1994 by the Department of Defense (“DoD”) through a directive that
7 excluded the original Plaintiffs, and all servicewomen, from assignment to units whose
8 primary mission was to engage in direct ground combat (“1994 directive”). Under the
9 1994 directive, women were barred from more than 238,000 positions across the Armed
10 Forces, including all infantry positions, and from certain military occupational specialties
11 (also known as “MOSs”) and training schools. No United States statute required this
12 categorical exclusion of women. Instead, the DoD had itself chosen to close all ground
13 combat positions to servicewomen solely on the basis of their gender.

14 2. Women make up an increasingly significant percentage of the Armed
15 Forces, with more than 280,000 having served in Iraq and Afghanistan alone. The
16 ongoing military activities in Iraq and Afghanistan, among other turbulent locations, lack
17 any clear boundaries or front lines, and the demands of these engagements have required
18 participation from troops across the Armed Forces. In addition, the unique circumstances
19 and demands of fighting around the globe have led to a greater need for women on the
20 ground. As a result, servicewomen across the Armed Forces, including the original
21 Plaintiffs, two of whom were wounded in combat and are recipients of the Purple Heart
22 Award, have risked their lives serving in combat in our nation’s active theatres of war.

23 3. In January 2013, Secretary of Defense Leon Panetta announced that the
24 1994 policy that had barred all women from applying for or serving in hundreds of
25 thousands of combat positions in the Armed Forces was rescinded. Despite Secretary
26 Panetta’s statement that the rescission was “effective immediately,” however, the DoD
27 continued for several years to enforce its policy and practice of excluding women from
28 applying for or serving in hundreds of thousands of combat positions, solely because they

1 were women. The DoD's continued exclusion of all women from combat units,
2 specialties, and schools, solely because of their gender and regardless of their abilities,
3 was unconstitutional.

4 4. On December 3, 2015, the DoD finally announced its "determin[ation] that
5 no exceptions are warranted to the full implementation of the rescission of the '1994
6 Direct Combat Definition and Assignment Rule.'" *See* Dec. 3, 2015 Memorandum from
7 the Secretary of Defense to Service Secretaries, Acting Under Secretary of Defense for
8 Personnel and Readiness, Service Chiefs, and the Commander of the U.S. Special
9 Operations Command ("USSOCOM"), *available at* [http://www.defense.gov/Portals/1/
10 Documents/pubs/OSD014303-15.pdf](http://www.defense.gov/Portals/1/Documents/pubs/OSD014303-15.pdf). The DoD also announced that "[a]nyone who can
11 meet operationally relevant and gender neutral standards, *regardless of gender*, should
12 have the opportunity *to serve in any position*." *Id.* (emphasis added). The DoD also
13 announced, in a document filed with this Court, that women would be assigned to
14 formerly-closed positions using "the same procedures that are currently used" for the
15 accession and assignment of male soldiers. Joint CMC Statement, Nov. 13, 2015
16 (Dkt. 66) at 7:8-15.

17 5. A few months later, the DoD abruptly changed its announced policy and
18 stated that the implementation plans submitted by the Services and USSOCOM would in
19 fact treat women differently than men, solely because of their gender. *See* Joint Case
20 Management Statement, April 28, 2016 (Dkt. 75) at 9-15, 18-19. In particular, the DoD
21 announced that the Army and Marines had adopted a "Leaders First" policy that required
22 junior enlisted women to wait to enter combat companies until two or more "women
23 leaders" joined those companies. *Id.*

24 6. As explained in this Third Amended Complaint, "Leaders First" is an
25 unconstitutional gender-based assignment policy that: (1) deprives junior enlisted
26 servicewomen access to the full range of positions available to their male colleagues,
27 because they are only able to be assigned to combat units in which women "leaders" are
28 installed; (2) deprives women "leaders" access to the full range of positions in combat

1 units because they are assigned based on the needs of the “Leaders First” policy;
2 (3) communicates to male servicemembers and leaders in combat units that they have
3 little or no responsibility for the development and advancement of servicewomen;
4 (4) places unusual and unnecessary burdens on junior enlisted women, who are often
5 required to ignore chain of command norms in order to seek counsel from their designated
6 female “leaders”; (5) places unusual and unnecessary burdens on women “leaders,” who
7 are required to divert attention from their own professional development in their new roles
8 in combat units to mentor and supervise junior enlisted women; and (6) causes resentment
9 among male soldiers in combat units.

10 7. In addition, despite the requirement of “full integration” of women in
11 combat units—and therefore throughout the U.S. military—and despite the assurances
12 provided to this Court in 2015, the Marine Corps chose to continue to segregate recruits
13 for basic training into same-gender platoons. The Marine Corps is the only service branch
14 that separates training along gender lines.

15 8. The Marines’ policy of segregated basic training for women is an
16 unconstitutional gender-based policy because it: (1) is premised on stereotypes about
17 women’s aptitude for military service; (2) deprives women of equal opportunity for
18 training and mentorship, thus impairing their ability to successfully meet gender-neutral
19 physical standards for their contracted MOSs and thereby to continue their training in
20 those specialties; and (3) teaches male recruits and leaders to regard servicewomen as in
21 need of protection, incapable of competing on equal footing with men, and otherwise as
22 second-class members of the Marine Corps.

23 9. The U.S. Supreme Court has held that governmentally mandated
24 discrimination based on sex is unconstitutional unless it is supported by an “exceedingly
25 persuasive” justification that is “substantially related” to “important governmental
26 objectives.” *United States v. Virginia*, 518 U.S. 515, 533 (1996). Any such justification
27 must be genuine, not hypothetical, and cannot rely on “overbroad generalizations about
28 the different talents, capacities, or preferences of males and females.” *Id.* Defendant’s

1 ongoing policies and practices of categorically segregating, isolating and marginalizing
2 women, regardless of their individual qualifications and capacities, do not and cannot
3 meet this exacting standard.

4 10. Defendant's segregation policies and practices for servicewomen represent
5 the last vestiges of federal *de jure* discrimination against women. Nearly a century after
6 women first earned the right of suffrage, the DoD's segregation policies and practices still
7 deny women a core component of full citizenship: serving on *equal footing* in defense of
8 our nation. Plaintiff therefore respectfully asks this Court to: (1) find the "Leaders First"
9 policy to be unconstitutional and declare that the DoD's current policy of segregating
10 women to only those combat units in which women "leaders" already are installed, while
11 excluding them from applying for and serving in other units and positions in the Armed
12 Forces, solely because they are women, violates their rights to equal protection under the
13 Due Process Clause of the Fifth Amendment; (2) find the current policy of sex-segregated
14 basic training in the U.S. Marine Corps to violate women's rights to equal protection
15 under the Due Process Clause of the Fifth Amendment; and (3) require the DoD to allow
16 women to apply for all combat-related positions and schools that men are allowed to apply
17 for, using the same procedures that are currently used for the accession and assignment of
18 male soldiers;.

19 JURISDICTION

20 11. This Court has original jurisdiction under 28 U.S.C. § 1331 because
21 Plaintiff's claims arise from and under the U.S. Constitution, as set forth herein.

22 INTRADISTRICT ASSIGNMENT

23 12. The challenged policies and practices are enforced, and their impact is felt,
24 throughout the Northern District of California, including in Contra Costa County and
25 Monterey County, where the DoD maintains several bases, such as Camp Parks in Dublin
26 and Fort Hunter Liggett in Monterey County, and at Camp Roberts in Monterey County,
27 one of the state's three main training bases for California National Guard troops.
28

PARTIES

1
2 13. Plaintiff Service Women’s Action Network (“SWAN”) is a nonpartisan,
3 nonprofit membership organization founded in 2007 to support, connect and advocate for
4 all military women, including current service members, but also veterans and future
5 enlisted women.

6 14. SWAN’s mission and goals are frustrated by the DoD’s gender segregation
7 policies and practices, which limit women’s opportunities for advancement in the military,
8 and create significant issues and obstacles for servicewomen. SWAN seeks to empower
9 and promote servicewomen, but the inequities, uncertainties, and harms to servicewomen
10 caused by the DoD’s gender segregation policies and practices have forced SWAN to
11 divert its resources from direct advocacy promoting servicewomen and their needs during
12 and after active service to engagement and advocacy regarding the gender segregation
13 policies and practices that are the subject of this suit. SWAN also has members who are
14 being harmed by “Leaders First” and the Marine Corps’ segregated training.

15 15. As the leading national organization dedicated to service women, SWAN is
16 a unique community enabling service women to connect and unite with their peers and
17 create opportunities to improve their lives together. The SWAN community offers
18 valuable programs that enable its members to get involved and work side-by-side to
19 positively influence the issues that are important to them. Currently, SWAN’s main areas
20 of focus are: (1) unifying servicewomen as a nationwide community, through in-person
21 events and online engagement; (2) connecting servicewomen with the resources they and
22 their families need, primarily through building partnerships with other organizations; and
23 (3) amplifying the voices of servicewomen by advocating for them on a wide range of
24 issues, by participating in coalitions, conducting a national survey on the needs of women
25 in the military, and educating members of Congress as to those needs.

26 16. As part of its efforts to achieve these goals, some of SWAN’s most recent
27 efforts include the following:
28

1 (a) SWAN fields on average ten calls, Facebook posts, and emails each month
2 from women in the military who are actively seeking assistance with legal services, a discharge
3 upgrade, to connect with women-friendly representatives at veteran organizations, or to reach out
4 to other women veterans in their communities. If an intern is not available, SWAN's Director of
Operations is responsible for speaking with the client or member, assessing her needs, researching
remedies and referrals, calling the referral to make the connection, or connecting the member
with another staff member with relevant expertise.

5 (b) SWAN has been working to establish partnerships and, eventually, build a
6 coalition of organizations that work with women veterans in order to better address the particular
7 difficulties these women experience in transitioning to civilian life, and connect women veterans
more effectively to resources in their local communities.

8 (c) For the last one and a half years, SWAN has been actively researching and
9 maintaining a nationwide database of organizations that provide gender-specific services to
women in the military (active duty and veteran). These data will populate an on-line Resource
Portal that SWAN started developing in mid-2017.

10 (d) SWAN facilitates informing members of Congress about issues faced by
11 women in the military by organizing educational Hill visits by its members.

12 (e) SWAN is currently nearing the end of the first year of a three-year strategic
13 plan. That plan, the first of its kind for SWAN, was adopted in mid-2017 and identifies fourteen
14 objectives to be achieved by 2020. Among the objectives in this plan are to explore the feasibility
15 of establishing a 501(c)(4) arm, increase and diversify funding sources, to create an online
Resource Portal, to develop strategic partnerships with other organizations that can provide
resources to servicewomen, and to develop a prioritized engagement plan that sets forth how
SWAN will educate and mobilize key stakeholders and members to support professional growth.

16 17. SWAN is a small organization comprised of three full-time staff members,
17 two part-time consultants, and approximately six unpaid staff members who assist with
18 SWAN's mission in various capacities.

19 18. The DoD's decision to rescind its 1994 directive excluding women from
20 assignment to ground combat units has not reduced the work SWAN must do to combat
21 the ill effects of the DoD's ongoing exclusion and segregation of servicewomen. On the
22 contrary, SWAN must address the serious issues raised by servicewomen regarding the
23 obstacles created by the DoD's gender segregation policies and practices and must
24 continue to advocate for their elimination. If the DoD ceased its gender segregation
25 policies and practices, SWAN could reallocate its resources to advancing its overall
26 mission of empowering and promoting active and retired servicewomen, and to the
27 number of other goals and issues it has identified in its strategic plan
28

1 19. Specifically, because of the policies and practices that are the subject of this
2 suit, SWAN has had to redirect its limited resources and limited staff hours to answering
3 questions from women who seek to enter combat roles, who are entering these roles under
4 the “Leaders First” policy, or who are experiencing or who have experienced the
5 segregated Marine Corps training. These women often voice concerns about limitations
6 on their career advancement and career opportunities that are the direct result of the
7 “Leaders First” policy or the Marine Corps segregated training and the barriers they create
8 for women in the military. In addition, many of these women have concerns about or
9 have experienced harassment from their male counterparts because of the continuing
10 differential treatment. Each one of these inquiries and concerns has the potential to
11 require and has in fact required several hours of limited staff hours to fully address. Were
12 it not for the policies and practices that are the subject of this suit, those hours would be
13 spent addressing any one of the initiatives to which SWAN is committed in its efforts to
14 support women in the military.

15 20. In early 2018, in direct response to concerns raised through SWAN’s
16 Facebook page, SWAN staff held (and sponsored) a one-day “Trailblazers Workshop” in
17 Fort Hood, Texas in order to support the first class of recruits trained for Army infantry
18 roles at Fort Hood. One of the primary purposes of this workshop was to support and
19 connect these infantry women in their day-to-day struggles, and to brainstorm how to deal
20 with the ramifications of the “Leaders First” policy and the continuing barriers and
21 stigmatization it creates. SWAN is scheduled to hold a second, similar workshop at Fort
22 Bragg, North Carolina on July 14, 2018. Were it not for “Leaders First,” SWAN would
23 have spent those resources on one or more of the objectives set forth in its strategic plan.

24 21. SWAN believes that its limited staff has expended approximately 15% of
25 their total working hours addressing concerns about the policies and practices that are the
26 subject of this suit. This includes time spent responding to direct communications from
27 its members, reaching out to Congress and other policymakers to advocate against these
28 policies and practices, or connecting servicewomen to resources or networks that they

1 need as they attempt to navigate military careers under these policies and practices. Were
2 it not for the policies and practices challenged in this suit, these hours and resources
3 would be spent on the objectives set forth in SWAN's strategic plan.

4 22. SWAN is a membership organization. Its membership is comprised of the
5 servicewomen with whom it connects and communicates via Facebook activity, phone
6 calls, email, or through its monthly e-newsletter. SWAN's overall goals, efforts, and its
7 strategic plan are informed by, and the direct result of, the information it gathers from its
8 communication with its members. Since 2016, SWAN has conducted an annual nation-
9 wide survey of its members in order to understand what issues and challenges are of most
10 concern to them. In addition, in 2016 and 2017, SWAN held membership summits, where
11 it conducted focus groups to better understand the nature of these challenges. In 2016,
12 about 50 servicewomen attended the summit, and in 2017, about 60 attended the summit.
13 Following both summits, SWAN prepared "Summit Reports," which set forth the main
14 priorities and areas of need among SWAN's membership. SWAN then integrates the
15 needs of its membership as reflected in the reports into its strategic planning. For
16 example, the Resource Portal described above was created in response to a call for a
17 resource portal as identified in the 2016 Annual Summit Report.

18 23. SWAN's servicewomen members have been directly impacted by the
19 DoD's segregation policies and practices. For example, with respect to "Leaders First,"
20 SWAN has a member who is an Infantry Platoon Leader in the Army National Guard.
21 Because of the "Leaders First" policy, this member was treated differently from her male
22 counterparts by being denied the ability to take inactive guard status for six months at the
23 beginning of her service while she completed the civilian training required for her job as a
24 Denver Police Officer. This in turn led to her not being able to participate fully in the
25 training of her National Guard cohort, which caused her to be perceived as getting
26 different treatment from her male counterparts and ultimately ranked last as a Platoon
27 Leader in the cohort.

28

1 24. SWAN also has servicewomen members in the Marine Corps who continue
2 to suffer harassment and stigmatization from their male counterparts based on the
3 segregated training, which perpetuates a culture that differentiates and excludes women.
4 As one SWAN member explains: “The purpose of boot camp is to break down recruits by
5 stripping them of their individuality, to form a team, to listen to superiors and act on their
6 command without questions, and to ‘make Marines.’ The male experience is different in
7 that misogyny, sexism, gender bias and the general hate that women have infiltrated their
8 boys’ club are taught during segregated boot camp and reinforced in male-only units.”

9 25. Defendant James N. Mattis is the Secretary of the Department of Defense.
10 He is responsible for the administration and enforcement of the challenged segregation
11 policies and practices and is named in his official capacity only.

12 **BACKGROUND**

13 26. For much of our nation’s history, women’s participation in the Armed
14 Forces has been severely limited by law, mirroring the many laws at every level of
15 government that excluded women and limited their opportunities for employment and
16 participation in civic life. Despite these legal restrictions, women have always served in
17 the military in defense of this country. In the Revolutionary and Civil Wars, women
18 served as nurses, spies, and cooks, and over 200 fought, disguising themselves as men.
19 Approximately 34,000 women served in uniform in World War I, mostly as nurses. In
20 World War II, that number increased tenfold to 400,000 women serving in uniform,
21 primarily in separate women’s auxiliaries and other services.

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

25 28. Nevertheless, the DoD adopted a policy and issued a directive in 1994 that
26 categorically excluded women from most combat positions, the majority of which were in
27 the Army and Marine Corps.

28

1 29. In January 2013, Secretary of Defense Leon Panetta announced that the
2 1994 policy that had barred all women from applying for or serving in hundreds of
3 thousands of combat units and combat positions in the Armed Forces was rescinded.
4 Secretary Panetta also announced that full implementation of his directive “must be
5 completed no later than January 1, 2016.”

6 <http://www.defense.gov/news/WISRJointMemo.pdf>.

7 30. The DoD subsequently provided several assurances to this Court regarding
8 the timing of “full implementation” of the January 2013 rescission of the 1994 policy. For
9 example, in February 2014, the DoD told the Court that Plaintiffs’ concerns that many
10 combat positions would be closed for at least several more years were “baseless.”
11 Defendant’s Reply Mem. in Support of His Motion for Protective Order, Feb. 11, 2014
12 (Dkt. 28), at 5 n.4. Later that year, the Court asked counsel for the DoD “whether the
13 Government does have a position on what the January 1st, 2016 date means. . . . [W]hat
14 does it mean?” Counsel assured the Court that “it means what the Secretary of Defense
15 says, that the integration of women into newly opened positions must be completed no
16 later than January 1, 2016.” Tr. of Proceedings, Nov. 13, 2014, at 8. The Court then
17 stated that it had stayed the matter “with the understanding that the implementation of the
18 rescission of the DCGADR” would be “completed by 1/1/16 (not simply that notice to
19 Congress be given by that date).” Order, Nov. 13, 2014 (Dkt. 39), at 1.

20 31. The DoD’s assurances were unreliable. By 2015, the DoD’s new position
21 was that the integration of women into newly opened positions need not, and would not,
22 be “completed” by January 1, 2016. The DoD’s position was that all that needed to
23 happen by January 1, 2016 was a notification to Congress of the particular positions that
24 would or would not be opened to women. Joint CMC Statement, April 14, 2015
25 (Dkt. 47), at 6, 10-13. As of the date of the filing of this Third Amended Complaint, the
26 integration of women into combat positions still has not been completed.

27 32. The DoD provided the Court and Plaintiff with additional assurances at case
28 management conferences in 2015 that also turned out to be unreliable. As described in the

1 Minute Order issued by the Court after the April 23, 2015 case management conference
2 (“CMC”), the DoD had assured the Court and Plaintiff at the CMC “that as to open
3 positions, female applicants may apply shortly after expiration of the congressional notice
4 period” and “[n]o other barriers are expected.” Civil Minutes, April 23, 2015 CMC
5 (Dkt. 50), at 1. In the fall of 2015, the DoD further assured the Court and Plaintiff that the
6 services “will follow” the same “normal” and “established” procedures for the accession
7 and assignment of women soldiers that the services used for men. Tr. of Proceedings,
8 April 23, 2015, at 5:6-16. *See also* Joint CMC Statement, Nov. 13, 2015 (Dkt 66), at 7:8-
9 15 (explaining that women would enter formerly-closed positions under “the same
10 procedures that are currently used” for accession and assignment of male soldiers).

11 33. The DoD subsequently reversed its position and announced that the Army
12 and Marines would implement *new* accession and assignment policies that would be
13 applied *only* to women and that required that junior enlisted women could only serve in
14 company-level combat units that already had two or more “women leaders” serving in
15 them. *See* Joint Case Management Statement, April 28, 2016 (Dkt. No. 75) at 9-15, 18-
16 19. The Marines also announced that servicewomen would continue to be segregated
17 from male soldiers during much of their basic training. These policies are at issue in this
18 Third Amended Complaint.

19 **THE DOD’S CURRENT SEGREGATION POLICIES AND PRACTICES**
20 **ARE NOT JUSTIFIED BY ANY IMPORTANT GOVERNMENTAL**
21 **OBJECTIVE AND CAUSE HARM TO SERVICEWOMEN AND**
22 **SWAN IN SIGNIFICANT WAYS**

23 34. The “Leaders First” policies adopted by the Army and Marine Corps
24 preclude the assignment of women soldiers and Marines to a company-level unit until two
25 or more women “leaders” are assigned to that unit. Although the Armed Services have
26 asserted (without explanation) that the “Leaders First” policy furthers the goal of gender
27 integration, the policy is, in fact, acting as a barrier to servicewomen who want to enter
28 combat positions and is also causing resentment among male soldiers.

1 35. There are many problems with the “Leaders First” policy and its
2 implementation, both practical and cultural. For instance, the “Leaders First” policy in the
3 Army has meant that, in practice, brand new junior enlisted women who graduate from
4 relevant combat training are being assigned to just a few brigades at a few bases. This by
5 definition limits the units and positions that these servicewomen have access to, as
6 opposed to their male counterparts. Women “leaders” are also being assigned solely to
7 these few brigades, with the result that they too are limited in the units and positions they
8 have access to, as opposed to their male counterparts. Indeed, according to a document
9 submitted by the Army to the quarterly Defense Advisory Committee on Women in the
10 Services (“DACOWITS”) meeting in September 2017, Army leadership referred to the
11 first two of these brigades open to women as “Amazon units” by Army leadership. The
12 Army concedes that having “Amazon units” is problematic.

13 36. Because the policy is having the effect of forcing women “leaders” and
14 junior enlisted women into a limited number of units and positions, the policy and its
15 implementation also limits the mobility of these women across units and positions. And
16 the policy and its implementation has resulted in resentment among servicemen to these
17 servicewomen on a number of levels, as women are perceived, correctly, as being treated
18 differently from their male counterparts.

19 37. In the National Guard, the problem is even more severe. Since the combat
20 exclusion policy was eliminated in 2013, National Guard units in only *two* states
21 (Colorado and New Hampshire) have met the “Leaders First” requirement. That means
22 that in the other 48 states, women *still* cannot enlist in infantry or armor occupations or be
23 assigned to ground combat units at the entry level in the National Guard, purely because
24 of their gender, more than five years after the so-called “immediate” rescission of the
25 1994 combat exclusion policy. The impact on women living in California who are
26 blocked by the Leaders First policy from joining a combat unit through the Army National
27 Guard is severe. Lt. Col. Forest Horan, the Commander of the Recruiting and Retention
28 Battalion of the California Army National Guard, stated in May 2017 that “[w]e have

1 applications from hundreds of [lower enlisted] females that I believe would want to join
2 the infantry, but currently can't" because of the Leaders First policy since May 2017.
3 Roudebush, "California Army National Guard Soldier 'Queen of Battle' Paves The Way,"
4 May 19, 2017, available at https://www.army.mil/article/188040/california_army_national_guard_soldier_queen_of_battle_paves_the_way. Because women have
5 continued since May 2017 to be blocked in California by the Leaders First policy, the
6 number that Lt. Col. Horan used in May 2017 has likely grown much larger.
7

8 38. SWAN is informed and believes and on that basis alleges that the Army
9 National Guard has requested that it be exempted from the Leaders First policy, but the
10 Department of Defense rejected that request.

11 39. SWAN is informed and believes and on that basis alleges that there are at
12 least eight National Guard recruiting stations located in the Northern District: San
13 Francisco (San Francisco County); Concord (Contra Costa County); Hayward (Alameda
14 County); Mountain View (Santa Clara County); Richmond (Contra Costa County); San
15 Jose (Santa Clara County); Santa Rosa (Sonoma County); and Seaside (Monterey
16 County).

17 40. The DoD's Leaders First policy is also harmful because it creates the false
18 impression that women are not capable of performing in positions viewed as central to the
19 core mission of the Armed Forces. The effect is to relegate women, literally and
20 figuratively, to a "supporting role" in our Armed Forces based on stereotypes about
21 women and assumptions about battlefield conditions that do not reflect the reality that
22 women are already serving in combat situations, and doing so with distinction. Moreover,
23 the policy creates separate classes of military personnel, which fosters an environment in
24 which sexual harassment and sexual assault are more likely to occur.

25 41. The "Leaders First" policy is also likely to result in hardening anti-women
26 feelings among male soldiers in those combat brigades that have no women in them. In
27 the first years of women's integration at the military service academies, some academies
28 pursued a segregation approach and assigned women cadets to just a handful of

1 companies. The policy was quickly abandoned because men from companies that had no
2 women were found to be far less accepting of their female classmates than those where
3 women were assigned. Judith Hicks Stiehm, *Bring Me Men & Women: Mandated*
4 *Change at the U.S. Air Force Academy* (Berkeley: University of California Press, 1981).

5 42. In addition, the “Leaders First” policy rests on the notion that women cannot
6 become successful soldiers without having women coaches or servicemembers at their
7 side. This flies in the face of the experience of many servicewomen who successfully
8 served in Iraq or Afghanistan without women mentors or supervisors. It is, moreover,
9 absurd to assume that male “leaders” need women by their sides to coach them and advise
10 them on how to lead women soldiers and Marines. This policy has never been applied to
11 any other occupational specialty including Field Artillery, a ground combat MOS.

12 43. The “Leaders First” policy also harms women soldiers because they have a
13 lessened opportunity (as compared to men) to develop a strong mentoring relationship
14 with senior men who are both influential in the advancement process and a source of
15 cultural guidance and battlefield wisdom.

16 44. Finally, the “Leaders First” policy that the Army and Marine Corps utilize
17 places the burden of successful integration on women. It is unreasonable to expect that
18 women “leaders” should—at the same time that they are themselves being integrated into
19 a combat unit—be responsible for the coaching and development of women soldiers or for
20 advising their own male leaders. In fact, SWAN has been contacted by a number of
21 women infantry and armor officers and enlisted women seeking advice and assistance on
22 how to navigate this transition.

23 45. The Marines’ policy of segregating women from men during basic training
24 also causes harm to servicewomen and to SWAN. The Marines’ policy is premised on the
25 twin beliefs that women are unable to compete with male recruits and that training
26 separately ultimately helps the “weaker sex” succeed. As Brig. Gen. Austin Renforth,
27 commanding officer at Parris Island, told a reporter, at Marine boot camp, “There’s a lot
28 of tears, there’s a lot of struggling. . . . I don’t necessarily want the men to see those

1 women; it can have a reverse effect if you see them too early.” Seck, “Marine Boot Camp
2 Now As Integrated As It Should Get,” [https://www.military.com/daily-](https://www.military.com/daily-news/2017/06/06/marine-boot-camp-now-integrated-should-get-commander-says.html)
3 [news/2017/06/06/marine-boot-camp-now-integrated-should-get-commander-says.html](https://www.military.com/daily-news/2017/06/06/marine-boot-camp-now-integrated-should-get-commander-says.html).

4 46. Segregated training has not, however, been shown to prepare women for
5 success in combat MOSs. According to one recent press report, in both FY16 and FY17,
6 at the completion of boot camp, only 25 percent of women contracted for combat arms
7 classifications passed the tests necessary to advance to the next MOS-specific training
8 program, resulting in their being reassigned to non-combat MOSs; in contrast, male
9 Marines’ overall pass rate was 96 percent. Jeff Schogol, “At Boot Camp, 3 Out of 4
10 Women Fail to Meet Combat Standards,” *Marine Corps Times* (Aug. 11, 2017), available
11 at [https://www.marinecorpstimes.com/news/your-marine-corps/2017/08/11/at-boot-camp-](https://www.marinecorpstimes.com/news/your-marine-corps/2017/08/11/at-boot-camp-3-out-of-4-women-fail-to-meet-combat-standards/)
12 [3-out-of-4-women-fail-to-meet-combat-standards/](https://www.marinecorpstimes.com/news/your-marine-corps/2017/08/11/at-boot-camp-3-out-of-4-women-fail-to-meet-combat-standards/). In contrast, 56 percent of female
13 recruits graduated in May 2017 from the Army’s first integrated infantry basic training.
14 See Meghann Myers, “18 Women Graduate from the Army’s First Gender-Integrated
15 Infantry Basic Training,” *Army Times* (May 19, 2017), available at
16 [https://www.armytimes.com/news/your-army/2017/05/19/18-women-graduate-from-the-](https://www.armytimes.com/news/your-army/2017/05/19/18-women-graduate-from-the-army-s-first-gender-integrated-infantry-basic-training/)
17 [army-s-first-gender-integrated-infantry-basic-training/](https://www.armytimes.com/news/your-army/2017/05/19/18-women-graduate-from-the-army-s-first-gender-integrated-infantry-basic-training/). Moreover, female Marines who,
18 after completing boot camp, train alongside their male peers at their MOS-specific combat
19 arms school, graduated in FY17 at a rate of 90 percent (as compared with 99 percent of
20 men), and in FY16 at a rate of 86 percent (as compared with 99 percent of men). See
21 Schogol, “At Boot Camp, 3 Out of 4 Women Fail to Meet Combat Standards,”
22 [https://www.marinecorpstimes.com/news/your-marine-corps/2017/08/11/at-boot-camp-3-](https://www.marinecorpstimes.com/news/your-marine-corps/2017/08/11/at-boot-camp-3-out-of-4-women-fail-to-meet-combat-standards/)
23 [out-of-4-women-fail-to-meet-combat-standards/](https://www.marinecorpstimes.com/news/your-marine-corps/2017/08/11/at-boot-camp-3-out-of-4-women-fail-to-meet-combat-standards/).

24 47. Plaintiff is informed and believes and on that basis alleges that the DoD’s
25 segregation policies are at least in part the result of animus towards servicewomen on the
26 part of the DoD and the Administration. Defendant Mattis, President Trump, and the
27 President’s close advisors have expressed extreme hostility towards Secretary Panetta’s
28 January 2013 announcement that women would be allowed to serve in some or all combat

1 units. For example, a few months after Secretary Panetta’s announcement, Mr. Trump
2 responded on Twitter to a Pentagon report on sexual assault in the military by stating that
3 “[t]he Generals and top military brass never wanted a mixer but were forced to do it by
4 very dumb politicians who wanted to be politically C?” The Huffington Post, “Donald
5 Trump’s Awful Tweet About Sexual Assault in the Military,” available at
6 [http://www.huffingtonpost.com/2013/05/08/donald-trump-tweet-sexual-assault-](http://www.huffingtonpost.com/2013/05/08/donald-trump-tweet-sexual-assault-military_n_32397891.html)
7 [military_n_32397891.html](http://www.huffingtonpost.com/2013/05/08/donald-trump-tweet-sexual-assault-military_n_32397891.html).

8 48. More recently, in October 2016, Mr. Trump proclaimed that “[w]e have a
9 politically correct military, and it’s getting more and more politically correct every day.”
10 Paul Szoldra, “Trump Could Kick Women Out of Military Combat Jobs, Reversing a
11 Historic 2013 Policy Change,” *Business Insider* (Nov. 15, 2016), available at
12 <http://www.businessinsider.com/trump-women-combat-jobs-2016-11>.

13 49. In 2015, Defendant Mattis similarly demonstrated his animus towards
14 women soldiers when he proclaimed that women should not be allowed to serve in combat
15 units because if they did serve, America’s enemies would no longer fear “America’s
16 awesome determination to defend herself.” *PBS News Hour* (Dec. 9, 2016), available at
17 [http://www.pbs.org/newshour/updates/trumps-defense-secretary-push-women-back-](http://www.pbs.org/newshour/updates/trumps-defense-secretary-push-women-back-combat/)
18 [combat/](http://www.pbs.org/newshour/updates/trumps-defense-secretary-push-women-back-combat/).

19 50. Defendant Mattis also suggested in his 2015 speech that if women were
20 allowed to serve in combat units, those units’ effectiveness would be compromised by
21 “eros.” *Id.* For support, Mattis cited a story from the Bible about King David: “If you go
22 back to the Bible, King David sends one of his officers off to fight so he could go to bed
23 with his wife. I mean, it’s right in the Bible. We’ve had numerous cases that we put
24 healthy young men and women together, and we expect them to act like little saints.” *Id.*

25 51. In the same speech, Defendant Mattis stated that “it would only be someone
26 who never crossed the line of departure into close encounters fighting that would ever
27 even promote such an idea.” Richard Sisk, “Mattis Pick Could See Senate Clash On
28 Women In Combat, PTSD,” *Military.com* (Dec. 1, 2016), available at

1 [http://www.military.com/daily-news/2016/12/01/mattis-pick-could-see-senate-clash-on-](http://www.military.com/daily-news/2016/12/01/mattis-pick-could-see-senate-clash-on-women-in-combat-ptsd.html)
2 [women-in-combat-ptsd.html](http://www.military.com/daily-news/2016/12/01/mattis-pick-could-see-senate-clash-on-women-in-combat-ptsd.html).

3 52. In July 2017, Mr. Trump appointed Marine General John Kelly as his Chief
4 of Staff. Gen. Kelly, at a Pentagon press briefing in 2016, had stated that “his greatest
5 fear” was that having women in combat units would result in “great pressure” to “lower
6 standards” because “that’s the only way it’ll work. . . .” “General Warns: Military Will
7 Face ‘Great Pressure’ to Lower Standards for Women in Combat to Please ‘Agenda-
8 Driven’ in D.C.” *CNSNews.com* (Jan. 9, 2016), available at
9 <https://www.cnsnews.com/print/434264>.

10 53. This hostility to women serving in combat positions may also result in a
11 decision by President Trump, or by Defendant Mattis, to reverse and rescind Secretary
12 Panetta’s January 2013 directive. Indeed, Defendant told this Court in November 2017
13 that he could not commit that the January 2013 Panetta directive would not be reversed.
14 *See* Defendant’s Statement In Response To The Court’s Order of September 22, 2017,
15 Dkt No. 106, filed Nov. 20, 2017, at 2.

16 54. Even if the DoD does not reverse the Panetta directive, its segregation
17 policies and practices are clearly unconstitutional because they are not supported by an
18 “exceedingly persuasive” justification that is substantially related to “important
19 governmental objectives.” *Virginia*, 518 U.S. at 533. Indeed, Defendant has not provided
20 *any* justification for the Leaders First policy. For example, Defendant has never explained
21 why men who are already leading soldiers in a combat unit should not be given the
22 responsibility to mentor and guide women soldiers just as they would the male soldiers in
23 the chain of command. Defendant also has not provided any justification for a policy that
24 deliberately leads to the isolation and segregation of women, either during training or
25 upon accession to a combat arms unit.

26 55. A “Leaders First” or segregated basic training policy for black soldiers,
27 Latino soldiers, or gay soldiers could never pass Constitutional muster. Defendant has
28 never explained why women should be treated differently.

1 56. Defendant cannot justify his gender segregation policies and practices by
2 arguing that the Court must defer to Defendant’s judgment with respect to managing and
3 assigning servicewomen. *See Chappell v. Wallace*, 462 U.S. 296, 304 (1983) (“This
4 Court has never held, nor do we now hold, that military personnel are barred from all
5 redress in civilian courts for constitutional wrongs suffered in the course of military
6 service.”); *Emory v. Sec’y of Navy*, 819 F.2d 291, 294 (D.C. Cir. 1987) (“Where it is
7 alleged, as it is here, that the armed forces have trenched upon constitutionally guaranteed
8 rights through the promotion and selection process, the courts are not powerless to act”).
9 *Accord, Doe 1 v. Trump*, 275 F. Supp. 3d 167, 210-12 (D.D.C. 2017) (granting
10 preliminary injunction with respect to Presidential Memorandum barring transgender
11 individuals from serving in the Armed Forces); *Service Women’s Action Network v.*
12 *Mattis*, No. 12-CV-06005 EMC, 2018 WL 2021220 (N.D. Cal. May 1, 2018).

13 57. Defendant also cannot justify his gender segregation policies and practices
14 by claiming that they reduce the likelihood that male soldiers will assault women soldiers.
15 *See Palmore v. Sidoti*, 466 U.S. 429, 433 (1984) (“Private biases may be outside the reach
16 of the law, but the law cannot, directly or indirectly, give them effect”); *Doe 1*, 275
17 F. Supp. 3d at 212, *quoting Virginia*, 518 U.S. at 533 (government justification for
18 gender-based classification “must not rely on overbroad generalizations about the
19 different talents, capacities, and preferences of males and females”).

20 58. Historically, the exclusion of women from combat units, positions, careers,
21 and schools was based on the presumption that no woman had the necessary physical
22 strength and mental toughness required to serve in combat. Defendant has not relied, and
23 could not rely, on such a presumption to justify the segregation policies and practices that
24 the DoD has put in place.

25 59. Moreover, any purported concerns about the possible effects of integrating
26 women on “unit cohesion” cannot justify the challenged policies and practices. That
27 hoary phrase has long been employed in attempts to justify discrimination against
28 African-American servicemembers, openly gay and lesbian servicemembers, female

1 servicemembers, and—most recently—transgender servicemembers. For example, Army
2 Chief of Staff Omar Bradley contended in 1949 (in a formal written statement to a
3 Presidential Commission) that the integration of African-American soldiers into military
4 units “might seriously affect morale and thus affect battle efficiency,” with “big
5 problems” likely to arise “in living quarters and social gatherings.” Maj. Laura R. Kesler,
6 *Serving with Integrity: The Rationale for the Repeal of “Don’t Ask, Don’t Tell” and Its*
7 *Ban on Acknowledged Homosexuals in the Armed Forces*, 203 Mil. L. Rev. 284, 346
8 (2010). Congress embraced the same reasoning with respect to openly gay and lesbian
9 soldiers in the National Defense Authorization Act of 1994, which asserted that allowing
10 gay servicemembers “would create an unacceptable risk to the high standards of morale,
11 good order and discipline, and unit cohesion that are the essence of military capability.”
12 National Defense Authorization Act for Fiscal Year 1994, Pub. L. No. 103-160, § 571,
13 107 Stat. 1547, 1670 (1993) (*codified at* 10 U.S.C. § 654 (2000)). That year, the Army
14 made the same argument with respect to servicewomen, explaining that the presence of
15 women in combat positions would inhibit “bonding and unit cohesion,” which are “best
16 developed in a single gender all male environment.” Carla Crandall, *The Effects of*
17 *Repealing Don’t Ask, Don’t Tell: Is the Combat Exclusion the Next Casualty in the March*
18 *Toward Integration?*, 10 Geo. J. L. & Pub. Pol’y 15, 30 (2012). *See also Virginia*, 518
19 U.S. at 542-44 (pointing out that “women seeking careers in policing encountered
20 resistance based on fears that their presence would ‘undermine male solidarity.’”) And
21 the current Administration recently made such an argument in support of Mr. Trump’s
22 directive reversing a policy, scheduled to go into effect on January 1, 2018, permitting
23 enlistment of transgender individuals and prohibiting the discharge of such
24 servicemembers on the basis of their gender identity. *See Doe I*, 275 F. Supp. 3d at 210-
25 12. In sum, any purported concerns about “unit cohesion” would necessarily be based on
26 fixed notions concerning the roles and preferences of males and females that cannot and
27 do not justify gender-based segregation policies and practices.

28 60. The DoD’s gender segregation policies and practices also cannot be justified

1 by broad generalizations about “military effectiveness” or “force readiness.” On the
2 contrary, far from advancing these objectives, the challenged policies and practices
3 undermine them, placing additional strain on already overburdened men and women
4 serving in our Armed Forces.

5 **FIRST CLAIM FOR RELIEF**

6 **DENIAL OF EQUAL PROTECTION UNDER THE FIFTH AMENDMENT**

7 61. Plaintiff repeats and realleges the allegations contained in all of the above
8 paragraphs as if fully set forth herein.

9 62. As explained in this Third Amended Complaint, “Leaders First” is an
10 unconstitutional gender-based assignment policy that: (1) deprives junior enlisted
11 servicewomen access to the full range of positions available to their male colleagues,
12 because they are assigned to only those units in which women “leaders” are installed ;
13 (2) deprives women “leaders” access to the full range of positions because they are
14 assigned based on the needs of the “Leaders First” policy; (3) communicates to male
15 servicemembers and leaders in combat units that they have little or no responsibility for
16 the development and advancement of servicewomen; (4) places unusual and unnecessary
17 burdens on junior enlisted women, who are often required to ignore chain of command
18 norms in order to seek counsel from their designated female “leaders”; (5) places unusual
19 and unnecessary burdens on women “leaders,” who are required to divert attention from
20 their own professional development in their new roles in combat units to mentor and
21 supervise junior enlisted women; and (6) causes resentment among male soldiers in
22 combat units.

23 63. The challenged policies and practices are based solely on gender and are not
24 justified by any important governmental objective.

25 64. The challenged policies and practices violate servicewomen’s rights to equal
26 protection of the law, as secured by the Fifth Amendment of the Constitution.

27 65. As set forth in this Complaint, Plaintiff and servicewomen are harmed by
28 the policies and practices challenged in this case.

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SECOND CLAIM FOR RELIEF

DENIAL OF EQUAL PROTECTION UNDER THE FIFTH AMENDMENT

66. Plaintiff repeats and realleges the allegations contained in all of the above paragraphs as if fully set forth herein.

67. As explained in this Third Amended Complaint, the U.S. Marine Corps’ current policy of gender-segregated basic training is an unconstitutional gender-based policy because it (1) is premised on stereotypes about women’s aptitude for military service; (2) deprives women of equal opportunity for training and mentorship, thus impairing their ability to successfully meet gender-neutral physical standards for their contracted combat MOSs and thereby to continue their training in those specialties; and (3) instructs male recruits and leaders to regard female servicemembers as in need of protection, incapable of competing on equal footing with men, and otherwise as second-class members of the Marine Corps.

68. The challenged policies and practices are based solely on gender and are not justified by any important governmental objective.

69. The challenged policies and practices violate servicewomen’s rights to equal protection of the law, as secured by the Fifth Amendment of the Constitution.

70. As set forth in this Third Amended Complaint, Plaintiff and servicewomen are harmed by the policies and practices challenged in this case.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. Plaintiff respectfully requests that this Court, pursuant to 28 U.S.C. § 2201, enter a declaratory judgment stating that Defendant’s gender segregation policies and practices violate servicewomen’s rights to the equal protection of the laws under the Fifth Amendment.

2. Plaintiff respectfully requests that this Court enter an order: (1) enjoining Defendant from enforcing or applying his gender segregation policies and practices; and

1 (2) requiring Defendant to allow women to apply for and serve in all combat-related
2 positions and schools in all brigades that are open to male soldiers, utilizing the same
3 procedures and rules for the accession and assignment of women soldiers that are utilized
4 for men.

5 3. Plaintiff respectfully requests costs of suit, including reasonable attorneys'
6 fees.

7 4. Plaintiff respectfully requests all further relief to which it may be justly
8 entitled.

9 DATED: June 28, 2018

MUNGER, TOLLES & OLSON LLP

10 By /s/ Rosemarie T. Ring
11 ROSEMARIE T. RING

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