

1 ROSEMARIE T. RING (SBN 220769)
rose.ring@mto.com
2 MUNGER, TOLLES & OLSON LLP
560 Mission Street
3 Twenty-Seventh Floor
San Francisco, California 94105-2907
4 Telephone: (415) 512-4000
Facsimile: (415) 512-4077
5

6 CHRISTINE P. SUN (SBN 218701)
csun@aclunc.org
7 ELIZABETH O. GILL (SBN 218311)
egill@aclunc.org
8 AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN CALIFORNIA, INC.
39 Drumm Street
9 San Francisco, CA 94111
Telephone: (415) 621-2493
10 Facsimile: (415) 255-8437

11 Attorneys for Plaintiff
12

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15

16 SERVICE WOMEN’S ACTION
NETWORK,
17 Plaintiff,
18
19 v.
20 JAMES N. MATTIS, Secretary of Defense,
21 Defendant.

CASE NO. 12-CV-06005 EMC

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

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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 (hereinafter “1994 directive”).
9 Under the 1994 directive, women were barred from more than 238,000 positions across
10 the Armed Forces, including all infantry positions, and from certain military occupational
11 specialties (also known as “MOSs”) and training schools. No United States statute
12 required this categorical exclusion of women. Instead, the DoD had itself chosen to close
13 all ground 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, have risked their lives serving in combat in our nation’s active theatres of war.

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24 thousands of combat positions in the Armed Forces was rescinded.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

1 specialties, and schools, solely because of their gender and regardless of their abilities,
2 was unconstitutional.

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

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

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

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

9 7. In addition, the Marine Corps has announced that it will, despite the
10 requirement of “full integration” of women in combat units and despite the assurances
11 provided to this Court in 2015, segregate recruits who are entering into combat MOSs
12 along gender lines during their training for those positions. The Marine Corps is the only
13 service branch that separates training units along gender lines. The Marines have, for
14 example, an “all-female Fourth Recruit Training Battalion.” See Hope Hodge Seck,
15 “Marine Boot Camp Now As Integrated As It Should Get,” *Military.com* (June 6, 2017),
16 available at [https://www.military.com/daily-news/2017/06/06/marine-boot-camp-now-](https://www.military.com/daily-news/2017/06/06/marine-boot-camp-now-integrated-should-get-commander-says.html)
17 [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).

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

26 9. The U.S. Supreme Court has held that governmentally mandated
27 discrimination based on sex is unconstitutional unless it is supported by an “exceedingly
28 persuasive” justification that is “substantially related” to “important governmental

1 objectives.” *United States v. Virginia*, 518 U.S. 515, 533 (1996). Any such justification
2 must be genuine, not hypothetical, and cannot rely on “overbroad generalizations about
3 the different talents, capacities, or preferences of males and females.” *Id.* Defendant’s
4 ongoing policies and practices of categorically segregating, isolating and marginalizing
5 women, regardless of their individual qualifications and capacities, do not and cannot
6 meet this exacting standard.

7 10. Defendant’s segregation policies and practices for servicewomen represent
8 the last vestiges of federal *de jure* discrimination against women. Nearly a century after
9 women first earned the right of suffrage, the DoD’s segregation policies and practices still
10 deny women a core component of full citizenship: serving on *equal footing* in defense of
11 our nation, not as second-class citizens. Plaintiff therefore respectfully asks this Court to:
12 (1) find the “Leaders First” policy to be unconstitutional and declare that the DoD’s
13 current policy of segregating women to only those units in which women “leaders”
14 already are installed, while excluding them from applying for and serving in other units
15 and positions in the Armed Forces, solely because they are women, violates their rights to
16 equal protection under the Due Process Clause of the Fifth Amendment; (2) find the
17 current policy of sex-segregated Basic Training in the U.S. Marine Corps to violate
18 women’s rights to equal protection under the Due Process Clause of the Fifth
19 Amendment; and (3) require the DoD to allow women to apply for all combat-related
20 positions and schools that men are allowed to apply for, using the same procedures that
21 are currently used for the accession and assignment of male soldiers;.

22 JURISDICTION

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

25 INTRADISTRICT ASSIGNMENT

26 12. The challenged policies and practices are enforced, and their impact is felt,
27 throughout the Northern District of California, including in Contra Costa County and
28 Monterey County, where the DoD maintains several bases, such as Camp Parks in Dublin

1 and Fort Hunter Liggett in Monterey County, and at Camp Roberts in Monterey County,
2 one of the state's three main training bases for California National Guard troops.

3 **PARTIES**

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

10 14. SWAN's mission and goals are frustrated by the DoD's combat segregation
11 policies and practices, which limit women's opportunities for advancement in the military,
12 and create significant issues and obstacles for servicewomen that they then raise with, and
13 seek assistance from, SWAN. Because of the current segregation policy and practice,
14 SWAN has had to divert its resources to address the inequities, uncertainties and harms to
15 the military caused by the DoD's segregation policies and practices. SWAN regularly
16 fields complaints from junior enlisted women and from women "leaders" in the Army and
17 Army National Guard concerning the effect of "Leaders First" on their accession and
18 advancement opportunities, and on their relationships with their male colleagues and
19 superior officers. SWAN also expends resources responding to reports of disadvantages
20 faced by female Marines entering combat MOSs and the rates of sexual harassment and
21 assault that they experience, stemming in part from the stigma imparted by their
22 segregation from male colleagues at basic training.

23 15. The DoD's decision to rescind its 1994 directive excluding women from
24 assignment to ground combat units has not reduced the work SWAN must do to combat
25 the ill effects of the DoD's ongoing exclusion and segregation of servicewomen. On the
26 contrary, SWAN must address the serious issues raised by servicewomen regarding the
27 obstacles created by the DoD's segregation policies and practices and must continue to
28 advocate for their elimination. If the DoD ceased its segregation policies and practices,

1 SWAN could reallocate its resources to advancing its overall mission of promoting and
2 empowering active and retired servicewomen.

3 16. Defendant James N. Mattis is the Secretary of the Department of Defense.
4 He is responsible for the administration and enforcement of the challenged segregation
5 policies and practices and is named in his official capacity only.

6 **BACKGROUND**

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

16 18. Over time, Congress removed statutory restrictions on women's
17 participation in the Armed Forces and, by the early 1990s, no statute categorically
18 prohibited women from serving in any military position, including combat positions.

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

22 20. In January 2013, Secretary of Defense Leon Panetta announced that the
23 1994 policy that had barred all women from applying for or serving in hundreds of
24 thousands of combat positions in the Armed Forces was rescinded. Secretary Panetta also
25 announced that full implementation of his directive "must be completed no later than
26 January 1, 2016." <http://www.defense.gov/news/WISRJointMemo.pdf>.

27 21. The DoD subsequently provided several assurances to this Court regarding
28 the timing of "full implementation" of the January 2013 rescission of the 1994 policy. For

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

12 22. The DoD's assurances were unreliable. By 2015, the DoD's new position
13 was that the integration of women into newly opened positions need not, and would not,
14 be "completed" by January 1, 2016. The DoD's position was that all that needed to
15 happen by January 1, 2016 was a notification to Congress of the particular positions that
16 would or would not be opened to women. Joint CMC Statement, April 14, 2015
17 (Dkt. 47), at 6, 10-13. As of the date of the filing of this Second Amended Complaint, the
18 integration of women into combat positions still has not been completed.

19 23. The DoD provided the Court and Plaintiff with additional assurances at case
20 management conferences in 2015 that also turned out to be unreliable. As described in the
21 Minute Order issued by the Court after the April 23, 2015 case management conference
22 ("CMC"), the DoD had assured the Court and Plaintiff at the CMC "that as to open
23 positions, female applicants may apply shortly after expiration of the congressional notice
24 period" and "[n]o other barriers are expected." Civil Minutes, April 23, 2015 CMC
25 (Dkt. 50), at 1. In the fall of 2015, the DoD further assured the Court and Plaintiff that the
26 services "will follow" the same "normal" and "established" procedures for the accession
27 and assignment of women soldiers that the services used for men. Tr. of Proceedings,
28 April 23, 2015, at 5:6-16. *See also* Joint CMC Statement, Nov. 13, 2015 (Dkt 66), at 7:8-

1 15 (explaining that women would enter formerly-closed positions under “the same
2 procedures that are currently used” for accession and assignment of male soldiers).

3 24. The DoD subsequently reversed its position and announced that the Army
4 and Marines would implement *new* accession and assignment policies that would be
5 applied *only* to women and that required that junior enlisted women could only serve in
6 combat battalions that already had two or more “women leaders” serving in them. *See*
7 Joint Case Management Statement, April 28, 2016 (Dkt. No. 75) at 9-15, 18-19. The
8 Marines also announced that servicewomen entering combat positions would be
9 segregated from male soldiers during much of their basic training. These new policies are
10 at issue in this Second Amended Complaint.

11 **THE DOD’S CURRENT SEGREGATION POLICIES AND PRACTICES**
12 **ARE NOT JUSTIFIED BY ANY IMPORTANT GOVERNMENTAL**
13 **OBJECTIVE AND CAUSE HARM TO SERVICEWOMEN AND**
14 **SWAN IN SIGNIFICANT WAYS**

15 25. The “Leaders First” policies adopted by the Army and Marine Corps
16 preclude the assignment of women soldiers and Marines to a battalion until two or more
17 women “leaders” are assigned to that battalion. Although the Armed Services have
18 asserted that the “Leaders First” policy furthers the goal of gender integration, the policy
19 is, in fact, acting as a barrier to servicewomen who want to enter combat positions and is
20 causing resentment among male soldiers.

21 26. There are many problems with the Leaders First policy, both practical and
22 cultural. For example, the Army decided that “Leaders First” meant that two or more
23 women officers or NCOs, of any rank (not midgrade or senior women), needed to be
24 assigned at the battalion level *before* junior enlisted women could be assigned to that
25 battalion. Plaintiff is informed and believes that newly commissioned second lieutenants
26 and any reclassified E5 meet the “midgrade/senior” leader requirement outlined by the
27 DoD, even though neither a second lieutenant nor an E5 is considered a midgrade or
28 senior leader in the Army or the Marine Corps. Second lieutenants are entry level
officers, and an E5, sergeant, is the lowest level non-commissioned officer in the Army

1 and Marine Corps. As a consequence, DoD has failed to meet even the requirements of its
2 own policy, which was predicated on the notion that mid-grade/senior women leaders
3 would look out for entry-level women and would coach and advise male leaders while
4 integration is taking place.

5 27. The “Leaders First” policy, as designed and implemented, sets up
6 servicewomen to fail. For instance, the “Leaders First” policy in the Army has meant that,
7 in practice, brand new women infantry and armor second lieutenants are being assigned to
8 just two brigades, one at Fort Bragg and one at Fort Hood. No other infantry or armor
9 brigade has been opened to women. Furthermore, the Army ended up with more women
10 infantry and armor officers than anticipated, so that today, there is a *surplus* of these new
11 officers at the designated brigades, also effectively segregating them from the rest of the
12 Army. Indeed, according to a document submitted by the Army to the quarterly Defense
13 Advisory Committee on Women in the Services (“DACOWITS”) meeting in September
14 2017, those two brigades are called “Amazon units” by Army leadership. The Army
15 concedes that having “Amazon units” is problematic.

16 28. Because of this surplus, the new lieutenants in these two brigades at Fort
17 Bragg and Fort Hood – male and female alike – are all competing for platoon leader
18 positions. The result is that some lieutenants are only getting six months in the critical
19 developmental leadership position of platoon leader, instead of the usual twelve to twenty-
20 four months. The policy has resulted in resentment among male officers towards women
21 officers, who are viewed as receiving preferential treatment and forcing everyone, men
22 and women, to have limited platoon leader time. Plaintiff is informed and believes that at
23 least one battalion commander has asked for the policy to be modified so that other units
24 can be opened up for assignment of these new officers, to no avail.

25 29. In the National Guard, the problem is even more severe. Since the combat
26 exclusion policy was eliminated in 2013, only *two* states have met the “Leaders First”
27 requirement, Colorado and New Hampshire. That means that in the other 48 states,
28 women *still* cannot enlist in infantry or armor occupations or be assigned to ground

1 combat units at the entry level in the National Guard, purely because of their gender, five
2 years after the “immediate” rescission of the 1994 combat exclusion policy.

3 30. The DoD’s segregation policies and practices are also harmful because they
4 create the false impression that women are not capable of performing in positions viewed
5 as central to the core mission of the Armed Forces. The effect of these policies and
6 practices is to relegate women, literally and figuratively, to a “supporting role” in our
7 Armed Forces based on stereotypes about women and assumptions about battlefield
8 conditions that do not reflect the reality that women are already serving in combat
9 situations, and doing so with distinction. Moreover, the DoD’s segregation policies and
10 practices create separate classes of military personnel, which fosters an environment in
11 which sexual harassment and sexual assault are more likely to occur.

12 31. The “Leaders First” policy is also likely to result in hardening anti-women
13 feelings among male soldiers in those combat brigades that have no women in them. In
14 the first years of women’s integration at the military service academies, some academies
15 pursued a segregation approach and assigned women cadets to just a handful of
16 companies. The policy was quickly abandoned because men from companies that had no
17 women were found to be far less accepting of their female classmates than those where
18 women were assigned. Judith Hicks Stiehm, *Bring Me Men & Women: Mandated*
19 *Change at the U.S. Air Force Academy* (Berkeley: University of California Press, 1981).

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

27 33. The “Leaders First” policy also harms women soldiers because they have a
28 lessened opportunity (as compared to men) to develop a strong mentoring relationship

1 with senior men who are both influential in the advancement process and a source of
2 cultural guidance and battlefield wisdom.

3 34. Finally, the “Leaders First” policy that the Army and Marine Corps utilize
4 places the burden of successful integration on women. It is unreasonable to expect that
5 women “leaders” should – at the same time that they are themselves being integrated into
6 a combat unit – be responsible for the coaching and development of women soldiers or for
7 advising their own male leaders. In fact, SWAN has been contacted by a number of
8 women infantry and armor officers and enlisted women seeking advice and assistance on
9 how to navigate this transition.

10 35. The Marines’ policy of segregating women from men during basic training
11 also causes harm to servicewomen and to SWAN. The Marines’ policy is premised on the
12 twin beliefs that women are unable to compete with male recruits and that training
13 separately ultimately helps the “weaker sex” succeed. As Brig. Gen. Austin Renforth,
14 commanding officer at Parris Island, SC, recently told a reporter, at Marine boot camp,
15 “There’s a lot of tears, there’s a lot of struggling. . . . I don’t necessarily want the men to
16 see those women; it can have a reverse effect if you see them too early.” Seck, “Marine
17 Boot Camp 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)
18 [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).

19 36. Segregated training has not, however, been shown to prepare women for
20 success in combat MOSs. According to one recent press report, in both FY16 and FY17,
21 at the completion of boot camp, only 25 percent of women contracted for combat arms
22 classifications passed the tests necessary to advance to the next MOS-specific training
23 program, resulting in their being reassigned to non-combat MOSs; in contrast, male
24 Marines’ overall pass rate was 96 percent. Jeff Schogol, “At Boot Camp, 3 Out of 4
25 Women Fail to Meet Combat Standards,” *Marine Corps Times* (Aug. 11, 2017), available
26 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/)
27 [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
28 recruits graduated in May 2017 from the Army’s first integrated infantry basic training.

1 See Meghann Myers, “18 Women Graduate from the Army’s First Gender-Integrated
2 Infantry Basic Training,” *Army Times* (May 19, 2017), available at
3 [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/)
4 [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,
5 after completing boot camp, train alongside their male peers at their MOS-specific combat
6 arms school, graduated in FY17 at a rate of 90 percent (as compared with 99 percent of
7 men), and in FY16 at a rate of 86 percent (as compared with 99 percent of men). See
8 Schogol, “At Boot Camp, 3 Out of 4 Women Fail to Meet Combat Standards,”
9 [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/)
10 [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/).

11 37. Plaintiff is informed and believes and on that basis alleges that the DoD’s
12 segregation policies are at least in part the result of animus towards servicewomen on the
13 part of the DoD and the Administration. Defendant Mattis, President Trump, and the
14 President’s close advisors have expressed extreme hostility towards Secretary Panetta’s
15 January 2013 announcement that women would be allowed to serve in some or all combat
16 units. For example, a few months after Secretary Panetta’s announcement, Mr. Trump
17 responded on Twitter to a Pentagon report on sexual assault in the military by stating that
18 “[t]he Generals and top military brass never wanted a mixer but were forced to do it by
19 very dumb politicians who wanted to be politically C?” The Huffington Post, “Donald
20 Trump’s Awful Tweet About Sexual Assault in the Military,” available at
21 [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)
22 [military_n_32397891.html](http://www.huffingtonpost.com/2013/05/08/donald-trump-tweet-sexual-assault-military_n_32397891.html).

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

28

1 39. In 2015, Defendant Mattis similarly demonstrated his animus towards
2 women soldiers when he proclaimed that women should not be allowed to serve in combat
3 units because if they did serve, America’s enemies would no longer fear “America’s
4 awesome determination to defend herself.” *PBS News Hour* (Dec. 9, 2016), available at
5 [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/)
6 [combat/](http://www.pbs.org/newshour/updates/trumps-defense-secretary-push-women-back-combat/).

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

13 41. In the same speech, Defendant Mattis stated that “it would only be someone
14 who never crossed the line of departure into close encounters fighting that would ever
15 even promote such an idea.” Richard Sisk, “Mattis Pick Could See Senate Clash On
16 Women In Combat, PTSD,” *Military.com* (Dec. 1, 2016), available at
17 [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)
18 [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).

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

26 43. This hostility to women serving in combat positions may also result in a
27 decision by President Trump, or by Defendant Mattis, to reverse and rescind Secretary
28 Panetta’s January 2013 directive. Indeed, Defendant told this Court in November 2017

1 that he could not commit that the January 2013 Panetta directive would not be reversed.
2 *See* Defendant’s Statement In Response To The Court’s Order of September 22, 2017,
3 Dkt No. 106, filed Nov. 20, 2017, at 2.

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

14 45. A “Leaders First” or segregated basic training policy for black soldiers,
15 Latino soldiers, or gay soldiers could never pass Constitutional muster. Defendant has
16 never explained why women should be treated differently.

17 46. Defendant cannot justify his segregation policies and practices by arguing
18 that the Court must defer to Defendant’s judgment with respect to managing and assigning
19 servicewomen. *See Chappell v. Wallace*, 462 U.S. 296, 304 (1983) (“This Court has
20 never held, nor do we now hold, that military personnel are barred from all redress in
21 civilian courts for constitutional wrongs suffered in the course of military service.”);
22 *Emory v. Sec’y of Navy*, 819 F.2d 291, 294 (D.C. Cir. 1987) (“Where it is alleged, as it is
23 here, that the armed forces have trenched upon constitutionally guaranteed rights through
24 the promotion and selection process, the courts are not powerless to act”). *Accord, Doe v.*
25 *Trump*, No. 1:17-cv-01597-CKK, slip. op. at 63-64 (D.D.C. Oct. 30, 2017) (granting
26 preliminary injunction with respect to Presidential Memorandum barring transgender
27 individuals from serving in the Armed Forces).

28

1 47. Defendant also cannot justify his segregation policies and practices by
2 claiming that they reduce the likelihood that male soldiers will assault women soldiers.
3 *See Palmore v. Sidoti*, 466 U.S. 429, 433 (1984) (“Private biases may be outside the reach
4 of the law, but the law cannot, directly or indirectly, give them effect”); *Doe*, slip. op. at
5 64, quoting *Virginia*, 518 U.S. at 533 (government justification for gender-based
6 classification “must not rely on overbroad generalizations about the different talents,
7 capacities, and preferences of males and females”).

8 48. Historically, the exclusion of women from combat positions, careers, and
9 schools was based on the presumption that no woman had the necessary physical strength
10 and mental toughness required to serve in combat. Defendant has not relied, and could
11 not rely, on such a presumption to justify the segregation policies and practices that the
12 DoD has put in place.

13 49. Moreover, any purported concerns about the possible effects of integrating
14 women on “unit cohesion” cannot justify the challenged policies and practices. That
15 hoary phrase has long been employed in attempts to justify discrimination against
16 African-American servicemembers, openly gay and lesbian servicemembers, female
17 servicemembers, and – most recently – transgender servicemembers. For example, Army
18 Chief of Staff Omar Bradley contended in 1949 (in a formal written statement to a
19 Presidential Commission) that the integration of African-American soldiers into military
20 units “might seriously affect morale and thus affect battle efficiency,” with “big
21 problems” likely to arise “in living quarters and social gatherings.” Maj. Laura R. Kesler,
22 *Serving with Integrity: The Rationale for the Repeal of “Don’t Ask, Don’t Tell” and Its*
23 *Ban on Acknowledged Homosexuals in the Armed Forces*, 203 Mil. L. Rev. 284, 346
24 (2010). Congress embraced the same reasoning with respect to openly gay and lesbian
25 soldiers in the National Defense Authorization Act of 1994, which asserted that allowing
26 gay servicemembers “would create an unacceptable risk to the high standards of morale,
27 good order and discipline, and unit cohesion that are the essence of military capability.”
28 National Defense Authorization Act for Fiscal Year 1994, Pub. L. No. 103-160, § 571,

1 107 Stat. 1547, 1670 (1993) (*codified at* 10 U.S.C. § 654 (2000)). That year, the Army
 2 made the same argument with respect to servicewomen, explaining that the presence of
 3 women in combat positions would inhibit “bonding and unit cohesion,” which are “best
 4 developed in a single gender all male environment.” Carla Crandall, *The Effects of*
 5 *Repealing Don’t Ask, Don’t Tell: Is the Combat Exclusion the Next Casualty in the March*
 6 *Toward Integration?*, 10 Geo. J. L. & Pub. Pol’y 15, 30 (2012). *See also Virginia*, 518
 7 U.S. at 542-44 (pointing out that “women seeking careers in policing encountered
 8 resistance based on fears that their presence would ‘undermine male solidarity.’”) And
 9 the current Administration recently made such an argument in support of Mr. Trump’s
 10 directive reversing a policy, scheduled to go into effect on January 1, 2018, permitting
 11 enlistment of transgender individuals and prohibiting the discharge of such
 12 servicemembers on the basis of their gender identity. *See Doe*, slip op. at 65. In sum, any
 13 purported concerns about “unit cohesion” would necessarily be based on fixed notions
 14 concerning the roles and preferences of males and females that cannot and do not justify
 15 gender-based segregation policies and practices.

16 50. The DoD’s segregation policies and practices also cannot be justified by
 17 broad generalizations about “military effectiveness” or “force readiness.” On the
 18 contrary, far from advancing these objectives, the challenged policies and practices
 19 undermine them, placing additional strain on already overburdened men and women
 20 serving in our Armed Forces.

21 **FIRST CLAIM FOR RELIEF**

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

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

25 52. As explained in this Second Amended Complaint, “Leaders First” is an
 26 unconstitutional gender-based assignment policy that: (1) deprives junior enlisted
 27 servicewomen access to the full range of combat positions available to their male
 28 colleagues, because they are assigned to only those brigades in which women “leaders”

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

11 53. The challenged policies and practices are based solely on sex and are not
12 justified by any important governmental objective.

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

15 55. As set forth in this Complaint, Plaintiff and servicewomen are harmed by
16 the policies and practices challenged in this case.

17 **SECOND CLAIM FOR RELIEF**

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

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

21 57. As explained in this Second Amended Complaint, the U.S. Marine Corps’
22 current policy of sex-segregated Basic Training is an unconstitutional gender-based policy
23 because it (1) is premised on stereotypes about women’s aptitude for military service;
24 (2) deprives women of equal opportunity for training and mentorship, thus impairing their
25 ability to successfully meet gender-neutral physical standards for their contracted combat
26 MOSs and thereby to continue their training in those specialties; and (3) instructs male
27 recruits and leaders to regard female servicemembers as in need of protection, incapable
28

1 of competing on equal footing with men, and otherwise as second-class members of the
2 Marine Corps.

3 58. The challenged policies and practices are based solely on sex and are not
4 justified by any important governmental objective.

5 59. The challenged policies and practices violate servicewomen's rights to equal
6 protection of the law, as secured by the Fifth Amendment of the Constitution.

7 60. As set forth in this Complaint, Plaintiff and servicewomen are harmed by
8 the policies and practices challenged in this case.

9
10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for judgment as follows:

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

16 2. Plaintiff respectfully requests that this Court enter an order: (1) enjoining
17 Defendant from enforcing or applying his gender-based segregation policies and practices;
18 and (2) requiring Defendant to allow women to apply for and serve in all combat-related
19 positions and schools in all brigades that are open to male soldiers, utilizing the same
20 procedures and rules for the accession and assignment of women soldiers that are utilized
21 for men.

22 3. Plaintiff respectfully requests costs of suit, including reasonable attorneys'
23 fees.

24 4. Plaintiff respectfully requests all further relief to which it may be justly
25 entitled.

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1 DATED: December 18, 2017

MUNGER, TOLLES & OLSON LLP

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

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Attorneys for Plaintiff
SERVICE WOMEN'S ACTION NETWORK

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Additional Counsel:

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STEVEN M. PERRY (SBN 106154)
MUNGER, TOLLES & OLSON LLP
350 South Grand Avenue, 50th Floor
Los Angeles, CA 90071-1560
Telephone: (213) 683-9100
Facsimile: (213) 687-3702
Email: *steven.perry@mto.com*

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11

LENORA M. LAPIDUS [pro hac vice]
GILLIAN THOMAS [pro hac vice]
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
WOMEN'S RIGHTS PROJECT
125 Broad Street, 18th Floor
New York, NY 10004
Telephone: (212) 549-2668
Facsimile: (212) 549-2580
Email: *llapidus@aclu.org*
Email: *amigdal@aclu.org*

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