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11

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14

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

17 Plaintiffs,

18 v.

19 CHUCK HAGEL, Secretary of Defense,

20 Defendant.
21

CASE NO. C 12-06005 EMC

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

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

3 INTRODUCTION

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

15 2. The DoD has stipulated (Dkt No. 17) that, in January 2013, it announced
16 that it had “rescinded” the 1994 directive that had barred all women from applying for or
17 serving in hundreds of thousands of combat positions in the Armed Forces. Despite the
18 purported rescission of the 1994 directive, however, the DoD has continued its policy and
19 practice of excluding women from applying for or serving in hundreds of thousands of
20 combat positions solely because they are women.

21 3. Specifically, the DoD continues to bar all servicewomen from entire MOSs;
22 continues to bar all servicewomen from many all-male units, even if those units have
23 positions in specialties that are already open to women; and continues to bar all
24 servicewomen from numerous courses, schools, and training programs. The DoD’s
25 ongoing exclusion of all women from these units, specialties, and schools, solely because
26 of their gender and regardless of their abilities, is unconstitutional and has serious, adverse
27 consequences for the Plaintiffs in this case.

28

1 4. The categorical exclusion of women from combat units, occupational
2 specialties, and schools is based on outdated stereotypes of women and ignores the
3 realities of the modern military and battlefield conditions. Women make up an
4 increasingly significant percentage of the Armed Forces, with more than 280,000 having
5 served in Iraq and Afghanistan alone. The battlefields in Iraq and Afghanistan lack any
6 clear boundaries or front lines, and the demands of these wars on the ground have required
7 participation from troops across the Armed Forces. In addition, the unique circumstances
8 and demands of fighting in Iraq and Afghanistan have led to a greater need for women on
9 the ground. As a result, servicewomen across the Armed Forces, including the Plaintiffs,
10 have risked their lives and continue to risk their lives serving *in combat* on the ground in
11 our nation's active theatres of war.

12 5. Despite its decision to rescind the 1994 directive, the DoD continues to
13 ignore the experience of women who have served in combat in recent years. For example,
14 the DoD recently released implementation plans that suggest it intends to consider the so-
15 called "social science impacts" of integrating women into all-male combat arms schools,
16 MOSs, and units, including Special Forces units. The Plaintiffs themselves, and hundreds
17 of thousands of women like them, have served alongside male soldiers in Iraq and
18 Afghanistan with bravery and honor. Many of these servicewomen experienced the kind
19 of bonding with their fellow servicemen that opponents of women's full integration fear
20 their presence in combat units could compromise. These women have proven beyond a
21 shadow of constitutional doubt that women should be allowed to apply for and serve in all
22 MOSs and schools from which they are categorically barred. Nevertheless, the DoD
23 continues to bar all women from applying for and serving in many thousands of positions
24 while it conducts "research" into the purported "social science impacts" of integration.

25 6. Servicewomen across the Armed Forces, including the Plaintiffs, are
26 harmed by the DoD's ongoing combat exclusion policy in a variety of ways. Those who
27 have already served in combat are barred from formal assignment to combat arms
28 positions for which they have already proven themselves suited, and they are also denied

1 the official recognition they need to advance their careers and serve further in combat
2 arms capacities. Women are also prohibited from applying to certain combat arms
3 schools and courses, further limiting their potential for career advancement. The
4 continued exclusion of women from many combat units, and the DoD's stated intention to
5 ignore the real-world battlefield experience of women serving in combat, create and
6 perpetuate a presumption that women *are not* serving in combat, which further
7 disadvantages women compared to men within the military and society, even after they
8 leave the military. This ongoing combat exclusion policy sends a message to the world
9 and to our Armed Forces that women are not capable of serving their country to the same
10 extent as men.

11 7. The U.S. Supreme Court has ruled that governmentally-mandated
12 discrimination based on sex is unconstitutional unless it is supported by an "exceedingly
13 persuasive" justification that is "substantially related" to "important governmental
14 objectives." *U.S. v. Virginia*, 518 U.S. 515, 533 (1996). Any such justification must be
15 genuine, not hypothetical, and cannot rely on "overbroad generalizations about the
16 different talents, capacities, or preferences of males and females." *Id.* The DoD's
17 ongoing policy and practice of categorically excluding women from certain combat
18 positions, regardless of their individual qualifications and capacities, and irrespective of
19 the past decade of women's combat service in war, do not and cannot meet this exacting
20 standard.

21 8. The DoD's ongoing combat exclusion policy is one of the last vestiges of
22 federal *de jure* discrimination against women. Nearly a century after women first earned
23 the right of suffrage, the DoD's policy and practice still deny women, including the
24 Plaintiffs, a core component of full citizenship: serving on equal footing in the military
25 defense of our nation. Notwithstanding the DoD's rescission of its 1994 directive, its
26 ongoing policy and practice of categorically barring women from serving their country to
27 the best of their ability have never ceased and continue to block the Plaintiffs' efforts to
28 serve in positions for which they are qualified. Plaintiffs therefore respectfully ask this

1 Court to: (1) declare that the DoD's current policy and practice of excluding women from
2 applying for and serving in positions in the Armed Forces are unconstitutional and violate
3 Plaintiffs' rights to equal protection of the laws under the Due Process Clause of the Fifth
4 Amendment; and (2) require the DoD to allow women to apply for all combat-related
5 positions and schools and to be considered on their individual merit.

6 **JURISDICTION**

7 9. This Court has original jurisdiction under 28 U.S.C. § 1331 because
8 Plaintiffs' claims arise from and under the U.S. Constitution, as set forth herein.

9 **INTRADISTRICT ASSIGNMENT**

10 10. The challenged policy and practice are enforced, and their impact is felt,
11 throughout the Northern District of California, including in Contra Costa County and
12 Monterey County, where the DoD maintains several bases, such as Camp Parks in Dublin
13 and Fort Hunter Liggett in Monterey County.

14 **PARTIES**

15 11. The Plaintiffs are individual servicewomen, each acting in her own
16 individual capacity, and the Service Women's Action Network, a nonprofit organization
17 that supports, defends, and empowers servicewomen and veterans.

18 12. All of the individual Plaintiffs have served in Afghanistan and/or Iraq. Two
19 were assigned to units in Female Engagement Teams ("FETs") in the Marine Corps.
20 These teams were created by the Marine Corps for the express purpose of allowing female
21 Marines to serve alongside all-male infantry units, with the primary goal of engaging with
22 Afghan civilians, particularly Afghan women. Several of the Plaintiffs went on ground
23 missions with infantry footsoldiers in Afghanistan. Several of the Plaintiffs served
24 alongside, were forward-deployed with, or supervised teams of women who were
25 stationed with and serving with Special Operations forces in austere battlefield conditions.

26 13. Two of the Plaintiffs were awarded the Purple Heart after being wounded
27 while serving in combat. Two received medals in recognition of their combat service—
28 the Air Force Combat Action Medal and the Army Combat Action Badge. One earned a

1 Distinguished Flying Cross with a Valor Device for extraordinary achievement and
2 heroism while engaging in direct ground fire with the enemy after being wounded when
3 her helicopter was shot down over Afghanistan.

4 **Major Mary Jennings Hegar**

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

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

13 16. In order to qualify to fly over enemy territory in Afghanistan, Major Hegar
14 successfully completed a grueling training program called Survival, Evasion, Resistance,
15 and Escape (“SERE”) training. SERE training is widely regarded as one of the most
16 physically and mentally demanding forms of training offered to military personnel. To
17 complete this training, Major Hegar was placed in command of half of the class
18 participants and was required to hike over mountainous terrain carrying heavy gear, in
19 addition to other physically and mentally arduous tasks. Major Hegar also achieved
20 expert marksman status in both of her service weapons (handgun and rifle).

21 17. As a result of her rescue missions, Major Hegar was involved in ground
22 combat. In July 2009, when she was a Captain, her aircraft was shot down by enemy fire
23 over Afghanistan, as she and her crew were evacuating three injured soldiers. Major
24 Hegar was injured by a bullet that penetrated the helicopter and, once on the ground, she
25 returned fire and successfully completed the rescue mission under fire. As a result of this
26 incident, Major Hegar was awarded the Purple Heart and the Distinguished Flying Cross
27 with a Valor Device, two of the highest decorations possible for a pilot. The citation
28 accompanying her Distinguished Flying Cross emphasized her “outstanding heroism and

1 selfless devotion to duty.” Within a week of being shot down, Major Hegar and her crew
2 were returned to flying status to resume their medevac missions.

3 18. Major Hegar has been forward-deployed with Special Forces units,
4 including Delta Force and Special Forces Operational Detachment-A (known as
5 “SFODA”) during her deployments in the Kandahar and Helmand areas of Afghanistan,
6 while stationed on small forward operating bases. At times, she and her crew (all men)
7 were isolated in such locations for up to six weeks at a time with Special Forces groups of
8 about two dozen men, with no other women there, or occasionally one other woman.
9 Despite being stationed in such locations alongside all-male Special Forces units, Major
10 Hegar and her crew were able to function effectively and interact positively with the
11 Special Forces troops.

12 19. Despite Major Hegar’s SERE training, her success as a combat pilot in
13 largely all-male units and settings, and her recognized valor in ground combat, Major
14 Hegar is barred categorically by the DoD’s current combat exclusion policy and practice
15 from competing for certain combat positions solely because of her gender. If she were not
16 barred from these positions, Major Hegar would seek to cross-train for a ground combat
17 position, which would be advantageous for her career.

18 **Staff Sergeant Jennifer Hunt**

19 20. Plaintiff Staff Sergeant Jennifer Hunt is a noncommissioned officer in the
20 United States Army Reserves. Staff Sergeant Hunt enlisted in the United States Army
21 Reserves in 2001, in the wake of the September 11 attacks on the United States. She
22 currently serves in the Civil Affairs Military Occupational Specialty.

23 21. Staff Sergeant Hunt deployed to Afghanistan in August 2004 with a unit
24 engaged in provincial reconstruction. In addition to her regular duties as a Civil Affairs
25 Specialist, which involved coordinating civil-military operations, Staff Sergeant Hunt,
26 who then held the rank of Specialist, was called upon to accompany male combat arms
27 soldiers on “door-kicking missions,” searching villages for insurgents. During these
28 missions, Staff Sergeant Hunt served, usually as the only woman, alongside male combat

1 arms soldiers; they were dropped off together by helicopter in the mountains, and they
2 wore the same body armor and carried the same weapons. After completing this
3 deployment successfully, Staff Sergeant Hunt returned to the United States in July 2005.

4 22. In August 2007, Staff Sergeant Hunt deployed to Iraq with a unit engaged in
5 reconstruction projects. While in Iraq, Staff Sergeant Hunt's Humvee vehicle was hit by
6 an Improvised Explosive Device ("IED"), causing shrapnel injuries to her face, arms, and
7 back. Staff Sergeant Hunt was awarded a Purple Heart in connection with this attack.
8 After completing her deployment, she returned to the United States in May 2008.

9 23. The 1994 directive and the DoD's current combat exclusion policy and
10 practice have prevented and will prevent Staff Sergeant Hunt from serving our nation to
11 the best of her abilities. Although she has served in the same roles as male soldiers, Staff
12 Sergeant Hunt was not officially part of the all-male combat arms units she accompanied
13 on missions in Afghanistan. She did not have the opportunity to train with them, learn
14 their standard operating procedures, acclimate to unit leadership, and obtain mission-
15 specific training. As a result, although Staff Sergeant Hunt was able to overcome these
16 disadvantages, she and the combat arms units with which she served were endangered by
17 the operation of the combat exclusion policy.

18 24. In addition, Staff Sergeant Hunt could not and cannot apply to attend
19 leadership schools that are closed to women, and she is categorically excluded from
20 positions that often enhance a soldier's chances for promotion to First Sergeant and
21 Sergeant Major. Staff Sergeant Hunt is interested in competing for opportunities to serve
22 directly with combat units in positions that are currently closed to women, as well as
23 training opportunities that are closed or restricted for women. Together, these effects of
24 the DoD's combat exclusion policies and practices put Staff Sergeant Hunt at a
25 disadvantage in her chances for career progression compared with male soldiers.

26 25. Within the next year, Staff Sergeant Hunt must decide whether to re-enlist
27 for another six years. She is currently investing in her military career by attending an
28 Advanced Leadership Course, which is a school to prepare her for increased

1 responsibility, leadership capacity, and promotion opportunities at Fort Knox. Yet the
2 DoD has not made available to Staff Sergeant Hunt or other women important information
3 about which career avenues they will be permitted to compete for, even though men can
4 readily access such information. While some male Civil Affairs Specialists go to Special
5 Forces school and transition into Special Forces – which has historically had a close
6 association with the Civil Affairs and Psychological Operations Command in which Staff
7 Sergeant Hunt has spent her career – the Plaintiffs are informed and believe that women
8 are still not permitted to attend Special Forces school or transition into the relevant
9 Special Forces units. Staff Sergeant Hunt is interested in competing in the Special Forces
10 selection process, but the DoD has not indicated whether the relevant courses and units
11 will ever be opened to women or even when it might make that decision. In the
12 meantime, Staff Sergeant Hunt is blocked, simply because she is a woman, from even
13 *applying* to the school of her choice. These ongoing exclusions harm Staff Sergeant Hunt
14 and make it difficult for her to make informed decisions about her military career.

15 **Captain Alexandra Zoe Bedell**

16 26. Plaintiff Captain Alexandra Zoe Bedell was commissioned as an officer in
17 the Marine Corps in 2007 and assigned to the MOS of Logistics Officer. While serving
18 on active duty, she deployed twice to Afghanistan out of Marine Corps Base Camp
19 Pendleton in California. She is currently a captain in the United States Marine Corps
20 Reserves.

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

25 28. Although she succeeded in Marine Corps officer training, Captain Bedell
26 was barred, solely because she is a woman, from competing for assignment to a combat
27 arms MOS, such as the infantry. Instead, she became a Logistics Officer, an occupational
28 specialty in the Marine Corps that is open to women. Had combat arms MOSs, including

1 the infantry, been open to women in the Marine Corps, Captain Bedell would have
2 pursued them, because she views those jobs as encompassing the core mission of the
3 Marine Corps.

4 29. Captain Bedell first deployed to Afghanistan in 2009 as a lieutenant, where
5 she served as her unit's Current Operations Officer, overseeing all logistical support for a
6 Marine Regimental Combat Team. As a collateral duty, she also oversaw the unit's
7 Female Engagement Teams ("FETs").

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

13 31. During both of Captain Bedell's deployments, FET members lived and
14 worked with the male infantry Marines with whom they served. They lived in the same
15 conditions and managed the lack of privacy in the combat outposts and small patrol bases
16 where they were located for extended periods of time. In providing support to the combat
17 operations of the infantrymen, including participating in daily patrols, FET members wore
18 the same body armor as the infantrymen, carried the same weapons as the infantrymen,
19 and, along with infantrymen, regularly encountered ground combat.

20 32. Captain Bedell and her FET Marines served in support of Special Forces
21 units. For example, while serving with Special Forces soldiers in Marja immediately after
22 the invasion of Marja in 2010, Captain Bedell and a handful of other FET Marines
23 patrolled, went on operations, took turns "manning" the guns, and generally worked
24 closely with the small, all-male Special Forces unit in austere conditions without working
25 toilets and regular showers. During Captain Bedell's second deployment, she supervised
26 FET Marines who were stationed with Special Forces soldiers in remote locations. In
27 these situations, the female Marines worked professionally with the all-male units and
28 proved themselves to be valuable additions to such units.

1 33. The DoD's 1994 directive excluding women from assignment to ground
2 combat units interfered with Captain Bedell's ability as Officer-in-Charge of the FET
3 program to fulfill her mission of providing support to combat and counterinsurgency
4 operations. In Captain Bedell's experience, while the combat commanders on the ground
5 were generally supportive of female Marines and fully appreciated the additional troops,
6 some FET missions were cancelled because higher-ranking officers were concerned that
7 sending women on missions in which they were likely to encounter ground combat could
8 run afoul of the DoD's policy.

9 34. Based on the same concern about violating the DOD's 1994 directive,
10 Marine commanders required all FET members to return (or, in military parlance, "reset")
11 to their main forward operating base (Leatherneck) every 45 days. This artificial and
12 unnecessary maneuver disrupted operations and put both men and women serving in and
13 supporting these units in danger. To accommodate the policy, the female Marines were
14 forced to travel to and from the base on dangerous roads, and they were often taken out of
15 crucial missions, sometimes for a week's time.

16 35. Captain Bedell left active duty in August 2011 in part because the DoD's
17 combat exclusion policy restricted her assignments based on her gender and without
18 regard for her proven ability and performance. In addition, she knew that because of the
19 DoD's policy, the combat leadership experience she gained during her deployments could
20 not be considered for promotion decisions in the same way it would be if she were a male
21 Marine, because "officially" she had never served in a ground combat unit.

22 36. Captain Bedell continues to be harmed by the DoD's combat exclusion
23 policy and practice. As a Marine Corps Reservist, Captain Bedell does not drill with a
24 unit, in part because many Marine Corps Reserve units, including those closest to where
25 she lives, remain closed to female Marines. Captain Bedell would consider returning to a
26 more active status if she were not subject to ongoing systematic discrimination, which
27 ignores the combat leadership experience she gained as a FET leader during her
28 deployments.

1 First Lieutenant Colleen Farrell

2 37. At the time the Complaint was filed, Plaintiff Captain Colleen Farrell was
3 an active duty First Lieutenant in the United States Marine Corps, stationed at Marine
4 Base Camp Pendleton in California. She was commissioned in 2008 and was assigned the
5 position of Air Support Control Officer, which is akin to an air traffic controller. Captain
6 Farrell deployed to Afghanistan in 2010, where she served as team leader of her unit's
7 FETs.

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

18 39. Captain Farrell and the FETs she supervised also worked closely with
19 Marine Corps Special Operations Command ("MARSOC") units. One team of two
20 female Marines that Captain Farrell supervised worked with a Marine battalion landing
21 team and with a Marine Special Operations task force for about three or four months of
22 the deployment. It was not a very large command. They were on a small patrol base and
23 patrolled in austere environments. Captain Farrell and her female Marines got positive
24 feedback and had a good relationship with that unit. The FET played an important role in
25 identifying where IEDs and weapons caches were hidden, thanks to their success in
26 establishing relationships with the local population. Another FET team frequently worked
27 out of an operational post, which is the smallest territory that Marines hold, with no tents,
28 just sleeping on the ground in mud and rain, with a ten- or twelve-man Marine patrol.

1 40. The 1994 directive made it difficult for Captain Farrell and the women in
2 her charge to perform in their assigned positions. Out of concern about violating DoD
3 policy, Marine commanders required all FET members to return (or, in military parlance,
4 “reset”) to their main forward operating base (Leatherneck) every 45 days. This artificial
5 and unnecessary maneuver disrupted operations and put both men and women serving in
6 and supporting these units in danger. To accommodate the policy, the women Marines
7 were forced to travel to and from the base on dangerous roads, and they were often taken
8 out of crucial missions, sometimes for a week’s time.

9 41. In December 2012, Captain Farrell entered the Marine Corps Reserves, and
10 in January 2013, she was promoted to the rank of Captain. If Captain Farrell were to
11 deploy again, she would be subject to the same or similar interruptions of operations
12 stemming from the current combat exclusion policy and practice.

13 42. Despite Captain Farrell’s training and experience leading teams of Marines
14 who patrolled with infantry and Special Forces units, if she were called back to active
15 duty, there is no way for her to resume this work. The Marine Corps no longer has a FET
16 program and, as a woman, Captain Farrell is categorically excluded from the units that she
17 and her FET Marines were supporting. There is thus no clear way for her to utilize her
18 real-world ground combat leadership experience within her official career specialty of Air
19 Support Control Officer.

20 **Service Women’s Action Network (SWAN)**

21 43. Plaintiff Service Women’s Action Network (SWAN) is a nonpartisan,
22 nonprofit organization that supports, defends, and empowers servicewomen and women
23 veterans through advocacy initiatives and community programs. Its mission includes
24 transforming military culture by securing equal opportunity and freedom to serve without
25 discrimination, harassment, or assault. SWAN also seeks to reform veterans’ services to
26 ensure high quality benefits for women veterans and their families.

27 44. SWAN’s mission and goals are frustrated by the DoD’s combat exclusion
28 policy and practice, which limit women’s opportunities for advancement in the military,

1 put women serving in ground combat in danger, and continue to have a detrimental effect
2 on many women once they become veterans. Because of the harms caused by both the
3 1994 policy and the current exclusionary policy and practice, SWAN has had to expend
4 and divert its resources to work to ensure that all parts of the military are open to
5 servicewomen and that servicewomen are recognized for their ground combat experience.
6 SWAN conducts public education and advocacy aimed at raising awareness about the
7 inequities and harms to the military caused by the DoD's combat past and current
8 exclusion policy and practice.

9 45. If the DoD ceased categorically to exclude women from combat positions,
10 SWAN could reallocate its resources from working to open all positions in the military to
11 women to advancing its overall mission of promoting and empowering servicewomen,
12 including ending discrimination, harassment, and assault.

13 46. The DoD's decision to rescind its 1994 directive excluding women from
14 assignment to ground combat units has not reduced the work SWAN must do to combat
15 the ill effects of the ongoing exclusion of women from combat positions. On the contrary,
16 SWAN must continue to advocate for the elimination of the actual remaining categorical
17 exclusions and must engage in public education aimed at dispelling the misconception that
18 all combat arms units, schools, and career fields are now open to women.

19 **Secretary of Defense Chuck Hagel**

20 47. Defendant Chuck Hagel is the Secretary of the Department of Defense. He
21 is responsible for the administration and enforcement of the combat exclusion policy and
22 practice and is named in his official capacity only.

23 48. The Secretary of Defense is responsible for the categorical exclusion of
24 women from ground combat positions. The 1994 directive excluding women from
25 assignment to ground combat units was promulgated and signed by the Secretary of
26 Defense, and the Secretary of Defense recently announced its supposed rescission. The
27 Secretary of Defense controls whether, and which, combat positions remain closed to
28 women.

1 **THE ONGOING EXCLUSION OF WOMEN FROM GROUND COMBAT**
2 **POSITIONS, UNITS, CAREER FIELDS, AND SCHOOLS**

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

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

15 51. Nevertheless, the DoD adopted a policy and issued a directive in 1994 that
16 categorically excluded women from most combat positions, primarily in the Army and
17 Marine Corps. Despite the DoD's January 2013 decision to rescind the 1994 directive, the
18 exclusionary aspects of that policy remain in effect today. Plaintiffs are informed and
19 believe that under the DoD's current policy and practice, women are barred from being
20 assigned to more than 200,000 positions in units below the brigade level whose primary
21 mission is to engage in direct combat on the ground.

22 52. As a result of DoD policy, women – as a class and solely because of their
23 gender – are currently barred from nearly 20 percent of jobs across the active duty force,
24 including all or nearly all positions in infantry units, armor units, artillery units,
25 reconnaissance units, Special Forces units, and all other units below the battalion level
26 that have direct ground combat as a primary mission. Women are also categorically
27 excluded from combat arms schools, courses, and training programs, such as Ranger
28 School and Special Forces courses.

1 53. Despite the DoD’s decision to rescind the 1994 combat exclusion directive,
2 it has not opened the vast majority of the MOSs, units, fields and schools that were closed
3 to women under the combat exclusion policy. Moreover, the Plaintiffs are informed and
4 believe that some of these units, positions, fields and schools may remain closed to
5 women indefinitely.

6 54. During the summer of 2013, the DoD released implementation plans
7 purporting to explain how the various service branches planned to remove categorical
8 exclusions of women. These plans confirm that such categorical exclusions remain in
9 place and, in some cases, may never be lifted. For example, the Marine Corps plan
10 includes a lengthy list of MOSs and units, totaling many thousands of billets, that are
11 currently closed. The Marine Corps plan also states that while it has opened infantry
12 training schools to women on a trial basis, women Marines who successfully complete the
13 training will *not* be assigned the infantry MOS or allowed to join most infantry units. By
14 contrast, male Marines who complete the same training programs are *automatically*
15 granted the infantry MOS and allowed to join an infantry unit. Put differently, the Marine
16 Corps currently allows women to prove that they are just as qualified as men to serve in
17 an infantry MOS, but it still bars those women from such service because of their gender.

18 55. The Special Operations Command plan similarly demonstrates that the DoD
19 continues to block women from positions for which they are qualified. The plan states
20 that it will “research and analyze the social science impacts” of having women in “small,
21 elite teams that operate in remote, austere environments.” In the meantime, many if not
22 all Special Operations units are closed to all servicewomen. The continued exclusion of
23 women from Special Operations affects women throughout the Armed Forces. For
24 example, the Air Force, where women including Plaintiff Major Hegar have long served
25 as combat pilots and where more than 99 percent of positions are open to women,
26 indicated in its implementation plan that it could close Air Force positions and units after
27 considering the “career development implications” of allowing women to enter a job
28 sector where they will not be able to do career-broadening assignments, many of which

1 are in the Special Operations Forces. The Air Force, and perhaps other branches, plan to
2 “avoid assigning women to career fields where career progression/upward mobility is
3 restricted” by ongoing Special Operations exclusion policies.

4 56. Neither the implementation plans nor any other actions of the DoD
5 acknowledge that the DoD already has a great deal of information about how women
6 work with small ground combat and Special Operations teams, based on the experiences
7 of the Plaintiffs and many other servicewomen who deployed to Iraq and Afghanistan
8 over the past twelve years in capacities that include but are not limited to Female
9 Engagement Teams and other programs in which women worked with all-male combat
10 units and Special Operations units, such as Cultural Support Teams, the Lioness program,
11 and the attachment of women to ground combat units.

12 **THE DOD’S EXCLUSIONARY POLICY AND PRACTICE HARM**
13 **SERVICEWOMEN, INCLUDING THE PLAINTIFFS, IN SIGNIFICANT WAYS**

14 57. The DoD’s continued policy and practice of excluding women categorically
15 from combat positions, career specialties, and schools harm the individual Plaintiffs,
16 SWAN, and thousands of servicewomen in a variety of ways, including by denying them
17 opportunities, training, and recognition during active service, and benefits and recognition
18 after they have retired from service.

19 58. The DoD excludes women, solely because they are women and regardless of
20 their individual qualifications and capacities, from many thousands of positions across the
21 Armed Forces and from various MOSs and training schools. These “closed” positions and
22 career specialties are prestigious because they are viewed by many in both the military
23 and the community at large as encompassing the core mission of the Armed Forces. The
24 ongoing exclusion of women from some units and positions also has ripple effects, which
25 the DoD has acknowledged in the recent implementation plans, that harm women’s career
26 progression, because they are deprived of access to the same range of career-broadening
27 assignments and schools that their male counterparts have.
28

1 59. In addition to explicitly prohibiting women from serving in certain positions
2 and career specialties, the DoD's current exclusionary policies put servicewomen at a
3 disadvantage in the promotion process, even within career specialties that are open to
4 women. Formal assignment to combat arms units and positions is an important factor in
5 promotion to leadership positions in the officer corps and among enlisted personnel,
6 particularly in the Army and the Marine Corps. For example, more than 80 percent of
7 general officers in the Army came from the combat arms, from which women are largely
8 excluded. Chances for promotion to senior enlisted positions are likewise enhanced for
9 those who have served in combat arms positions and career specialties. Further, even in
10 open specialties, servicewomen are prevented from being assigned to as many units as
11 their male counterparts, and these restrictions can limit their ability to gain career-
12 broadening assignments and attend leadership and other schools. The DoD's combat
13 exclusion policy and practice thus serve as a structural barrier to the advancement of
14 women within the Armed Forces.

15 60. Even servicewomen who have engaged in ground combat in Iraq and
16 Afghanistan have routinely been denied combat credit for purposes of promotion. For
17 men, ground combat experience is a substantial factor in promotion to leadership
18 positions. By contrast, a woman's combat experience is not recognized as such, because
19 she is only "attached" but not "assigned" to ground combat units, or she commands teams
20 that serve "in support of" but are not "part of" ground combat units, or her service was a
21 "temporary duty" not within her primary MOS. For some servicewomen, such as Staff
22 Sergeant Jennifer Hunt, their combat service conducting missions with infantry troops had
23 no formal designation at all. For others, such as Captain Alexandra Zoe Bedell and
24 Captain Colleen Farrell, their combat service leading FETs took place entirely outside of
25 their official career specialties. Because of the DoD's combat exclusion policy and
26 practice, the combat service of these and many other women cannot be given official
27 recognition within their career fields and therefore cannot be considered for promotion
28 decisions in the same way it would be for the men in the all-male units they worked with.

1 61. The DoD's combat exclusion policies also deprive women of combat
2 training opportunities and the benefits of such training. Women serving in combat zones,
3 such as Staff Sergeant Hunt, are often trained separately from the units they serve with,
4 which requires them to learn the standard operating procedures of their units on their own
5 and in a much shorter time frame than men in the same unit, often only a few days. These
6 women, and others who wish to serve in combat, are also categorically barred from
7 combat leadership schools, or are put at a disadvantage in competing for limited space in
8 these schools, because servicemembers coming from combat arms units or positions are
9 preferred. Women who have managed to receive combat training are also often harmed
10 because despite the training and experience of these women, the exclusionary policy and
11 practice lead some field commanders to assume that women cannot have such training or
12 experience and thus cannot be qualified to conduct missions where combat scenarios are
13 likely. For example, Major Hegar has repeatedly encountered, and had to refute,
14 impressions that women cannot fly combat aircraft.

15 62. The DoD's exclusionary policy and practice also make it difficult for
16 women to perform in their assigned positions. In the case of the Marine Corps FETs,
17 discussed above, missions were sometimes delayed, interrupted, and even cancelled
18 because commanders in the field were unsure how to interpret the 1994 directive. For
19 example, FETs were required to leave their combat outposts every 45 days and return to
20 main operating bases, resulting in a disruption in operations and potentially endangering
21 both the servicewomen and their missions.

22 63. In addition to these harms, the DoD's exclusionary policy and practice
23 create the false impression that women are not capable of performing in positions viewed
24 as central to the core mission of the Armed Forces. Women still cannot be assigned to
25 many combat arms units and cannot enter certain combat arms MOSs. Instead, they are
26 limited to positions that operate "in support of" or "attached to" combat arms units, even
27 though these women perform the same functions as men in those units. The effect of the
28 policy and practice is to relegate women, literally and figuratively, to a "supporting role"

1 in our Armed Forces based on stereotypes about women and assumptions about battlefield
2 conditions that do not reflect the reality that women, including the individual Plaintiffs,
3 are already serving in combat situations, and doing so with distinction. Moreover, as the
4 DoD has itself admitted, its exclusionary policy and practice create separate classes of
5 military personnel, which fosters an environment in which sexual harassment and sexual
6 assault are more likely to occur.

7 64. The exclusion of women from many of the pathways to military leadership
8 affects women both during and after their military careers. Success in the military often
9 translates into success in business or other civilian fields, especially for those recruits who
10 lack access to higher education or well-paying jobs. Indeed, the Army and the Marine
11 Corps use this fact in advertisements targeting both men and women. But the truth is that,
12 because so many combat positions are closed to women, promises of leadership
13 experience and career advancement ring hollow.

14 65. For example, the Marine Corps has run advertising depicting a woman
15 commanding a group of men, with the tag line “There are no female Marines. Only
16 Marines.” Douglas Quenqua, *Sending in the Marines (To Recruit Women)*, N.Y. Times,
17 April 21, 2008. According to the advertising executive responsible for the ad campaign,
18 “[t]he message is that the Marine Corps offers a unique opportunity to earn that title
19 [commander] and be shoulder to shoulder with your male counterparts. . . . That’s an
20 important aspect for the young women seeking that challenge. . . .” *Id.* A more accurate
21 tagline for this ad would have been “There are no female Marines assigned to certain
22 ground combat positions and MOSs. Only male Marines. You aren’t allowed to lead men
23 into battle, and if you do, you will not receive credit for it and your careers will suffer as a
24 result.”

25 66. In addition, women veterans have been harmed and continue to be harmed
26 by the DoD’s exclusionary policy and practice. As a result of this policy and practice,
27 women have faced challenges in obtaining benefits and treatment for combat-related
28

1 stress, among other benefits, because those processing veterans' claims do not believe that
2 women can be "in combat."

3 67. Each of the individual Plaintiffs has suffered and will continue to suffer
4 harm as a result of the DoD's exclusionary policy and practice, as alleged herein.

5 68. The DoD's exclusionary policy and practice will also continue to deprive
6 servicewomen of full and equal recognition of their combat leadership and experiences.
7 For example, the Special Operations Command plan states that it will study the effects of
8 having women serve in austere environments with small teams. The Marine Corps plan
9 describes a series of trials and experiments to study whether and how women can work
10 within all-male combat units without affecting the ability of male soldiers to bond with
11 one another. Neither plan mentions the fact that the Plaintiffs and many other
12 servicewomen served alongside Special Forces, Marine infantry units, and other small
13 combat teams in actual battlefield conditions, as previously described in ¶¶ 15-42. By
14 claiming that the integration of women into small ground combat teams and missions is a
15 brand-new experiment, rather than the culmination of two wars' worth of hard-fought
16 experience, the DoD's current policy and practice diminish, and in many instances negate,
17 the actual experiences of the individual Plaintiffs and other battle-tested servicewomen in
18 that they communicate both to the military and to the rest of the world that it is an open
19 question as to whether women can serve in the very conditions that the individual
20 Plaintiffs and other servicewomen have served. This again perpetuates a culture in the
21 military in which women are viewed as second class to the men they have served
22 alongside.

23 **THE DOD'S CURRENT EXCLUSIONARY POLICY AND PRACTICE ARE NOT**
24 **JUSTIFIED BY ANY IMPORTANT GOVERNMENTAL OBJECTIVE**

25 69. The DoD's exclusionary policy and practice are not supported by an
26 "exceedingly persuasive" justification that is substantially related to "important
27 governmental objectives." *U.S. v. Virginia*, 518 U.S. at 533. Historically, the exclusion
28 of women from combat positions, careers, and schools was based on the presumption that

1 no woman had the necessary physical strength and mental toughness required to serve in
2 combat. Yet each of the individual Plaintiffs in this action has demonstrated these
3 qualities while serving in combat. Currently, the DoD appears to base its ongoing
4 exclusionary policy and practice in part on a purported lack of information about how the
5 presence of women would affect combat units conducting missions in rigorous conditions.
6 Yet each of the individual Plaintiffs in this action has a wealth of wartime experience
7 either conducting missions with such teams, leading other women serving in close
8 quarters with combat and Special Operations teams, or both. As a result of the DoD's
9 current exclusionary policy and practice, however, the service and sacrifice of these
10 women have not been and will not be fully recognized because of, and only because of,
11 their gender.

12 70. The Plaintiffs are not alone in suffering these harms. Hundreds of
13 thousands of women have served in the Armed Forces, including more than 280,000 in the
14 Iraq and Afghanistan conflicts. Women currently constitute 14.5 percent of the 1.4
15 million active military personnel, and 20 percent of new recruits. Of the women who
16 have been deployed since September 11, 2001, 85 percent reported serving in a combat
17 zone or in an area where they drew imminent danger pay or hostile fire pay, and nearly
18 half reported being involved in combat operations. Many of those women have served in
19 combat with distinction. Many have gone on missions or been stationed in austere,
20 battlefield environments with small groups of combat arms and Special Operations
21 soldiers and Marines. But they have been deprived of the training, opportunities,
22 assignments, and recognition they deserve because, under the 1994 directive, they cannot
23 "officially" be assigned or admitted to many ground combat units, occupational
24 specialties, courses, and schools.

25 71. The DoD appears to take the position that while the elimination of
26 categorical, gender-based exclusionary assignment policy and practice may be a
27 worthwhile goal, further research is required before actually mandating that its
28 subdivisions open all schools, MOSs, and units to qualified women. Such an argument

1 can no longer justify the wholesale exclusion of women, if it ever could. The DoD has
2 been on notice for decades that it must have an exceedingly persuasive justification for
3 any categorical exclusion based on sex and that the justification must be substantially
4 related to an important governmental objective. Even if there existed, in the past, such a
5 justification, the realities of the modern military and battlefield, and particularly the
6 experience of women serving in combat in two long wars in Iraq and Afghanistan, have
7 eliminated it.

8 72. The DoD's purported concerns about the possible effects of integrating
9 women on "unit cohesion" certainly cannot warrant the continued exclusion of women
10 from units and career fields. For example, the Marine Corps implementation plan states
11 explicitly that the Marines intend to consider whether allowing women into closed MOSs
12 will impact "unit cohesion." That hoary phrase has long been employed in attempts to
13 justify discrimination against African-American servicemembers, openly gay and lesbian
14 servicemembers, and women. For example, Army Chief of Staff Omar Bradley
15 contended in 1949 (in a formal written statement to a Presidential Commission) that the
16 integration of African-American soldiers into military units "might seriously affect morale
17 and thus affect battle efficiency," with "big problems" likely to arise "in living quarters
18 and social gatherings." Maj. Laura R. Kesler, *Serving with Integrity: The Rationale for
19 the Repeal of "Don't Ask, Don't Tell" and Its Ban on Acknowledged Homosexuals in the
20 Armed Forces*, 203 Mil. L. Rev. 284, 346 (2010). Congress embraced the same reasoning
21 with respect to openly gay and lesbian soldiers in the National Defense Authorization Act
22 of 1994, which asserted that allowing gay servicemembers "would create an unacceptable
23 risk to the high standards of morale, good order and discipline, and unit cohesion that are
24 the essence of military capability." National Defense Authorization Act for Fiscal Year
25 1994, Pub. L. No. 103-160, § 571, 107 Stat. 1547, 1670 (1993) (*codified at* 10 U.S.C. §
26 654 (2000)). That year, the Army made the same argument in reaffirming its longstanding
27 opposition to the full integration of servicewomen in combat units. The Army explained
28 that the presence of women would inhibit "bonding and unit cohesion," which are "best

1 developed in a single gender all male environment.” Carla Crandall, *The Effects of*
2 *Repealing Don’t Ask, Don’t Tell: Is the Combat Exclusion the Next Casualty in the March*
3 *Toward Integration?*, 10 Geo. J. L. & Pub. Pol’y 15, 30 (2012). These arguments have
4 been made for more than 150 years to prevent women from obtaining educational and
5 employment opportunities. *See, e.g., Virginia*, 518 U.S. at 542-44 (pointing out that
6 “women seeking careers in policing encountered resistance based on fears that their
7 presence would ‘undermine male solidarity.’”) The DoD’s purported concerns about
8 “unit cohesion” are based on fixed notions concerning the roles and preferences of males
9 and females that cannot and do not justify categorical gender-based exclusions from
10 military service.

11 73. The DoD’s exclusionary policy and practice are also not justified by broad
12 generalizations about “military effectiveness” or “force readiness.” On the contrary, far
13 from advancing these objectives, current policy and practice undermine them, placing
14 additional strain on already overburdened men and women serving in our Armed Forces.

15 74. The DoD’s exclusionary policy and practice limit recruitment of the best
16 talent because women considering a military career know they will be barred from
17 positions viewed as necessary to the core mission of the Armed Forces and career
18 advancement. They are shut out of prestigious schools and courses, critical MOSs, and
19 career-broadening assignments. Given that recruitment is an issue faced by the Armed
20 Forces today, this limitation clearly impedes military effectiveness.

21 75. For women already serving in the Armed Forces whose career goals and
22 advancement have been and will be limited by the DoD’s exclusionary policy and
23 practice, the policy and practice prevent retention of the best talent and of experienced
24 leaders, as evidenced by the choice of individual Plaintiffs in this action to leave active
25 duty for the reserves. These Plaintiffs, like many of their fellow servicewomen who are
26 being pushed out of the Armed Forces by the effects of the DoD’s exclusionary policy and
27 practice, are decorated servicewomen with proven track records in combat and combat
28 leadership. Other servicewomen, like Plaintiff Staff Sergeant Jennifer Hunt, are deprived

1 by the DoD's policy and practice of the information they need to make re-enlistment and
2 other military career decisions, because they still do not know whether or when certain
3 schools and units will be opened to qualified women.

4 76. The DoD's exclusionary policy and practice also prevent the full
5 development and utilization of the skills and talents of servicemembers, because women
6 are barred from certain training programs and courses and because commanders cannot
7 "officially" assign women to closed positions for which they are otherwise qualified. This
8 ties commanders' hands on the ground by limiting the pool of talent from which they can
9 draw when assembling teams for missions.

10 77. The DoD's exclusionary policy and practice cannot be justified on the
11 ground that combat takes place well forward on the battlefield, for the asymmetric nature
12 of modern warfare has rendered such notions obsolete. Some women have reported being
13 told that they cannot go on night-time missions because those constitute "combat." Others
14 have been prevented by commanders from sitting in the front cars of a convoy, on the
15 theory that those are most likely to hit IEDs. Still others are told they cannot be gunners
16 on vehicles, or that they should wait until after the beginning of a raid to go in. Similar
17 irrational exclusions occur in the training arena; women have been shut out of all-male
18 courses even when those courses are relevant to the jobs they are being deployed to
19 accomplish. This arbitrary and inconsistent application of the DoD's policy and practice
20 has led to confusion and disruptions in operations.

21 78. The practice of "attaching" women to combat arms units, or creating
22 temporary teams that work "in support of" combat arms units, rather than assigning
23 women to the units directly, also disrupts operations and comes with its own dangers. The
24 women who are sent to patrol with combat arms units frequently do not train with these
25 units or deploy with them, and therefore must quickly learn that individual unit's mode of
26 operating and communicating once in the field.

27 79. The Plaintiffs who were in charge of or participated in FETs report that
28 members of the infantry and other combat battalions they supported frequently were as

1 concerned as they were by the disruptions in operations caused by the combat exclusion
2 policy. The FETs, for example, were integral to the combat arms units they patrolled
3 with, and the policy's mandate of pulling the women out of missions and requiring them
4 to "reset," or return to, the forward operating base every 45 days interrupted and interfered
5 with combat operations.

6 80. The DoD's exclusionary policy and practice have also resulted in women's
7 combat service being hidden from official consideration, ignored by DoD decisionmakers,
8 and conducted under unofficial auspices and temporary programs like FET, Cultural
9 Support Teams, and other temporary duty assignments. This denial of women's combat
10 service not only harms our military's effectiveness, but also allows the DoD now to assert
11 that it must take time to study the possible effects on "unit cohesion" from the presence of
12 women alongside male soldiers. Embarking upon research as though the slate were blank
13 will further contribute to the loss of an entire generation of women, like the Plaintiffs,
14 who have actual on-the-ground experience in combat. Our Armed Forces will lose not
15 only talented leaders, soldiers, and Marines, but the experience and lessons they and their
16 peers learned from years of warfighting.

17 81. For all of the foregoing reasons, the DoD's categorical exclusion of the
18 individual Plaintiffs and all women from many thousands of ground combat positions,
19 units, MOSs, and training opportunities, regardless of their abilities, is not and cannot be
20 justified by generalized concerns about "military effectiveness."

21 **FIRST CLAIM FOR RELIEF**

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

23 82. Under the DoD's existing policy and practice, women are categorically
24 excluded from assignment to many units whose primary mission is to engage in direct
25 combat on the ground in the Armed Forces. They are also excluded from entire Military
26 Occupational Specialties, schools, courses, and thousands of positions across the Armed
27 Forces.

28

1 83. The challenged exclusion is based solely on sex and is not justified by any
2 important governmental objective.

3 84. As set forth in this Complaint, the Plaintiffs are each harmed by the DoD's
4 policy and practice challenged in this case.

5 85. The challenged policy and practice therefore violate the Plaintiffs' rights to
6 the equal protection of the law, as secured by the Fifth Amendment of the Constitution.

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PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray for judgment as follows:

1. Plaintiffs respectfully request that this Court, pursuant to 28 U.S.C. § 2201, enter a declaratory judgment stating that the DoD's exclusionary policy and practice violate the Plaintiffs' rights to the equal protection of the laws under the Fifth Amendment;

2. Plaintiffs respectfully request that this Court enter an order: (1) enjoining Defendant from enforcing or applying its gender-based exclusionary policy and practice; and (2) requiring the DoD to allow women to apply for all combat-related positions and schools and to be considered on their individual merit;

3. Plaintiffs respectfully request costs of suit, including reasonable attorneys' fees; and

4. Plaintiffs respectfully request all further relief to which they may be justly entitled.

DATED: October 31, 2013

MUNGER, TOLLES & OLSON LLP

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