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10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12
13 DANIELE HOFFMAN, KOLE
WELSH, AMANDA SHAW,
14 SHERRY SHOUR, THOMAS
SHOCKLEY, LOLA MILES,
15 TAMIKA LANE, ANNAROSE
16 SCHAAD, KELLY SMITH, ANNA
MOORE, KIMBERLY DAVIS,
17 SASCHA GARNER, LISA
18 ETHRIDGE, KEVIN WELSH,
MICHELLE KEMENY,
19 THEODORE SKOVRANEK,
20 TARINA ADDISON, LYNETTE
CUBANO, and RICHARD ROVET,

21
22 Plaintiffs,

23 vs.

24 LEON PANETTA, ROBERT M.
GATES, DONALD RUMSFELD,
25 JOHN MCHUGH and MICHAEL B.
DONLEY,

26 Defendants.
27
28

CASE NO.

**COMPLAINT FOR VIOLATION OF
CONSTITUTIONAL RIGHTS**

DEMAND FOR JURY TRIAL

1 DANIELE HOFFMAN, KOLE WELSH, AMANDA SHAW,
2 SHERRY SHOUR, THOMAS SHOCKLEY, LOLA MILES, TAMIKA LANE,
3 ANNAROSE SCHAAD, KELLY SMITH, ANNA MOORE, KIMBERLY
4 DAVIS, SASCHA GARNER, LISA ETHRIDGE, KEVIN WELSH, MICHELLE
5 KEMENY, THEODOR SKOYRANEK, TARINA ADDISON, LYNETTE
6 CUBANO, and RICHARD ROVET (and collectively “Plaintiffs”) allege against
7 Defendants (1) LEON PANETTA; (2) ROBERT M. GATES; (3) DONALD
8 RUMSFELD; (4) JOHN MCHUGH and (5) MICHAEL B. DONLEY (collectively
9 “Defendants”), as follows:

10 **NATURE OF THIS ACTION**

11 1. The United States Army and Air Force leadership has a pattern
12 and practice of ignoring and failing to prosecute rape and sexual assault. This
13 pattern and practice has led to a series of scandals, including the Tailhook
14 Convention scandal in 1991, the Aberdeen Proving Ground Rape, the Air Force
15 Academy scandal in 2003, and the ongoing scandal at Lackland Air Force Base, in
16 which multiple instructors sexually assaulted enlisted recruits. Defendants
17 intentionally violated, and continue to violate, laws duly passed by Congress
18 designed to remedy the many failures of the Army and Air Force. Defendants’
19 failures deprived Plaintiffs of their Constitutional rights and caused serious and
20 lasting harm. *See Bivens v. Six Unknown Agents of Federal Bureau of Narcotics*,
21 403 U.S. 388 (1971); *Davis v. Passman*, 442 U.S. 228 (1979); and *Craig v. Boren*,
22 429 U.S. 190 (1976).

23 **JURISDICTION AND VENUE**

24 2. This Court has original jurisdiction over the subject matter of
25 this action pursuant to 28 U.S.C. § 1331.

26 3. Venue is proper pursuant to 28 U.S.C. § 1391 *et seq.*

27 **THE PARTIES**

28 4. Plaintiffs are current and former members of the United States

1 Army and Air Force who suffered directly from Defendants' unlawful conduct.

2 **PLAINTIFF DANIELE HOFFMAN**

3 5. Plaintiff Daniele Hoffman resides in Indiana and is a citizen of
4 the United States.

5 6. On June 6, 2003, seventeen-year old Plaintiff Hoffman joined
6 the United States Army National Guard. She continues to serve, has reached the
7 rank of Staff Sergeant ("SSG"), and has earned a place on the Commandant's List.

8 7. In 2003, immediately after SSG Hoffman enlisted, her recruiter
9 began to sexually harass her. He made inappropriate comments to her about her
10 sex life and asked to undress in front of her. SSG Hoffman was very
11 uncomfortable with her recruiter's behavior, but she did not know what to do about
12 it. SSG Hoffman viewed her recruiter as a father figure, and had become
13 dependent on him for emotional support and approval.

14 8. The recruiter's harassment of SSG Hoffman escalated into
15 inappropriate touching and other physical advances. SSG Hoffman was afraid to
16 fight back, and the recruiter continued to make sexual advances toward SSgt
17 Hoffman for several months.

18 9. In September 2003, during an annual drill weekend, the
19 recruiter attempted to rape SSG Hoffman. As was known to the recruiter, SSG
20 Hoffman did not have access to her phone and was unable to speak with her
21 mother. The recruiter lured her into his room by offering to let her use his phone.
22 When SSG Hoffman went to the recruiter's room, he offered her alcohol although
23 she was underage, and pressed her repeatedly to have sex with him. Although she
24 told him no, the recruiter pushed her down onto his bed and climbed on top of her,
25 attempting to rape her. SSG Hoffman fought back and, when she began to yell in a
26 panic, the recruiter ceased the rape attempt.

27 10. After the attempted rape, SSG Hoffman did her best to avoid
28 her recruiter. When she did encounter him, he warned her not to report what had

1 happened, saying “I gave you everything you have, and I can take it all away.”

2 11. When the sexual assault occurred, SSG Hoffman was still in
3 training, and her recruiter was the only person she had contact with in her
4 Command. The Army had not provided her with any information or guidance on
5 how to report rape or sexual assault outside her chain of command.

6 12. In January of 2004, SSG Hoffman’s friend convinced her to
7 report the assault. SSG Hoffman reported the harassment and attempted rape to her
8 Readiness NCO. Knowledge of her report spread throughout the unit, and
9 resulted in six other women no longer on active duty to come forward. They also
10 had been recruited and subjected to sexual harassment and predation by the same
11 recruiter.

12 13. Because the other women who had filed charges against the
13 recruiter were not on active duty, the case was tried in civilian court. The recruiter
14 was charged with 31 counts of sexual misconduct, rape, sexual assault, and abuse
15 of authority. In 2008, the recruiter was sentenced by the civilian court to four
16 years in prison and was placed on the sex offender registry.

17 14. During the investigation, the recruiter remained on active duty,
18 was not demoted or given any other serious punishment, and was allowed to
19 continue serving during the trial. The military retaliated against SSG Hoffman,
20 blaming her for not “trying harder to stop his advances and for not reporting the
21 harassment sooner. The military permitted the recruiter to stay in the unit, but
22 transferred SSG Hoffman.

23 15. Throughout the investigation and ensuing trial, the military
24 failed to offer SSG Hoffman any treatment or counseling, resulting in SSG
25 Hoffman falling into a deep depression. SSG Hoffman attempted to commit
26 suicide on three separate occasions. She also volunteered for deployment to Iraq,
27 hoping she would die an honorable death overseas.

28 16. Although SSG Hoffman was transferred from her unit where

1 she made the report, her case was known in every new unit she was assigned to,
2 and she continued to face retaliation and for coming forward to report the sexual
3 assault.

4 17. After being transferred to one unit during mobilization training
5 at Camp Atterbury, her platoon sergeant advised the other soldiers to stay away
6 from her, saying that she would lodge allegations against them and “send them to
7 jail for a long time” if they talked to her.

8 18. SSG Hoffman was verbally directed to always have a platoon
9 sergeant present when talking to any of the other soldiers in her unit. On one
10 occasion, as SSG Hoffman attempted to perform her assigned duty, a platoon
11 sergeant berated SSG Hoffman in front of her colleagues, threatening her with an
12 Article 15 punishment and stating “never talk to one of my soldiers without me
13 present, do you understand me?” The platoon sergeant made SSG Hoffman stay in
14 the male barracks for over 48 hours without sleeping, while she watched the male
15 soldiers sleep.

16 19. In 2008, SSG Hoffman deployed to Iraq. There, she continued
17 to confront retaliation for having reported the recruiter. SSG Hoffman’s first
18 sergeant tried to remove her from the unit by claiming that she was not
19 “emotionally fit” to go on patrols or witness death—although she was an EMT and
20 had regularly witnessed injury and death—and that she was not “strong enough” to
21 be a gunner and therefore had “no use” for her. SSG Hoffman was not removed
22 from the unit but was instead stationed to guard a tower for up to 12 hours at a
23 time, despite the fact that the typical guard rotation was four hours.

24 20. During her deployment, SSG Hoffman again endured sexual
25 harassment and assaults. Her first sergeant began to making sexual comments and
26 advances toward her. He would often approach her in her office and rub her
27 shoulders, and would ask her sexually explicit questions. He threatened to come to
28 her room at night when her roommate was on leave. SSG Hoffman was scared to

1 answer the door at night for fear that it would be the first sergeant.

2 21. SSG Hoffman’s unit condoned this behavior and other openly
3 hostile and sexist behavior. Men in her unit openly referred to SSG Hoffman and
4 other women in the unit as “whores,” and constantly whistled and called at SSG
5 Hoffman. SSG Hoffman was forced to endure having obscene comments written
6 on bathroom stalls such as, “Hoffman fucked X,” or, “Hoffman sucked X’s dick.”
7 SSG Hoffman’s Command was informed of the misconduct but did nothing – not
8 even removing the comments from the bathroom stalls.

9 22. For a period of time during deployment, SSG Hoffman was
10 assigned to missions with a male squad leader. False rumors quickly spread
11 throughout her company that she was sexually involved with him. As a result, SSG
12 Hoffman was forbid from going on further missions with that squad leader. The
13 squad leader’s response to her when confronted was “I wouldn’t want any of these
14 rumors getting back to my wife and ruining my marriage.”

15 23. Although SSG Hoffman was publicly harassed, her Command
16 did not take meaningful action to prevent the harassment or to reprimand the
17 harassers.

18 24. SSG Hoffman felt she could not lodge complaints because of
19 the treatment she faced after she reported her recruiter, and because she personally
20 observed serious retaliation against other women who had come forward to report
21 harassment and sexual assault. The unit’s Commanders demonstrated on several
22 occasions that they did not take harassment seriously or even actively participated
23 in it.

24 25. SSG Hoffman endured harassment even from those to whom
25 she went for assistance. For example, when SSG Hoffman sought assistance from
26 a Judge Advocate General (“JAG”) officer, and told him about the ongoing and
27 widespread harassment she suffered at the hands of her superiors, he did not
28 respond professionally but instead engaged in offensive conduct. He commented

1 she was approached by a military van. The driver of the van ordered her to get in,
2 telling her something was wrong with her blood work and she was needed right
3 away. After getting in the van and realizing something was wrong, she tried to
4 escape, at which point a rag was placed over her face and she lost consciousness.

5 39. When Private Shaw regained consciousness, she was in a hotel
6 on base and was being raped by a man she did not know. During the rape, he
7 threatened her, saying if she ever told anyone about the rape, he would kill her
8 entire family. She was in and out of consciousness for several hours as he
9 continued to rape her, and was found the next morning by a hotel maid who called
10 the Military Police.

11 40. The Military Police took a report from Private Shaw, and
12 arranged for a rape kit to be administered. At that time, Private Shaw was assured
13 by the Military Police that they had plenty of evidence to catch her perpetrator.

14 41. After making the report about the rape, Private Shaw became
15 very depressed and afraid for her life. She started being treated differently by the
16 Command and was punished for not keeping up with the rest of her unit. She had
17 her cell phone confiscated, even though it was the only way she felt she could keep
18 herself safe.

19 42. During this time Private Shaw suffered from medical
20 complications as a result of the assault, including a sexually-transmitted disease
21 contracted during the rape, as well as several staph infections which kept her in and
22 out of the hospital and made it difficult to perform her duties. She was repeatedly
23 reprimanded for falling behind, including having her pay docked and being
24 assigned extra duty.

25 43. One day while running errands, Private Shaw ran into her rapist
26 on the base. She recognized his voice and identified him as a Command Sergeant
27 Major from Charlie Company by his uniform. She immediately went to the
28 Military Police station for assistance.

1 59. MSgt Shockley learned that his perpetrator had been observed
2 on prior occasions to have become intoxicated and violently assaulted a college
3 student in the presence of two enlisted members.

4 60. MSgt Shockley reported the sexual assault to the military, but
5 the military refused to investigate the rape, claiming the rape kit was inconclusive.
6 Yet MSgt Shockley's injuries from the assault corroborate the fact that it was
7 sexual in nature. MSgt Shockly suffered bruises and lacerations on his thighs,
8 knees, and groin area, but the jeans he was wearing at the time of the assault were
9 not torn or damaged.

10 61. Immediately after reporting the assault, MSgt Shockley
11 suffered severe retaliation and was ostracized from his unit. Instead of punishing
12 his attacker, MSgt Shockley was criminally charged for Driving Under the
13 Influence and for Assaulting a Commissioned Officer. Those charges were
14 dropped several months later.

15 62. Incensed at the unjust treatment he had received from his
16 superiors, MSgt Shockley filed a complaint with the Inspector General. In
17 retaliation, MSgt Shockley's superiors invoked a number of different
18 administrative punishments against him, including an official Letter of Reprimand,
19 an Unfavorable Information File, and a Referral Enlisted Performance Report.

20 63. MSgt Shockley was also given low ratings on his Enlisted
21 Performance Report (EPR). MSgt Shockley's supervisor advised MSgt Shockley
22 that he originally intended to give him the highest possible rating on the EPR, but
23 after pressure from superiors, he adjusted the score downward. MSgt Shockley
24 was never given a reason or explanation for the downward shift. This low rating
25 represents a permanent blemish on an otherwise stellar record for MSgt Shockley,
26 and could keep him from receiving prestigious assignments or advancing to a
27 higher rank.

28 64. Following further investigation, all administrative penalties

1 71. The harassment began in 2004, when one of SrA Miles' male
2 colleagues began making sexual and degrading comments toward her while they
3 were working together. For instance, the perpetrator told SrA Miles that if she was
4 not engaged, he would "fuck the hell" out of her. As the harassment escalated, the
5 perpetrator began intentionally brushing up against SrA Miles while they were
6 working, grabbing her genitals and buttocks and claiming it was "accidental," and
7 ignoring her complaints and demands for him to stop. The harassment eventually
8 transitioned into assaults, where the perpetrator would violently slap and grab SrA
9 Miles' buttocks and private area.

10 72. SrA Miles reported the assaults to her immediate supervisor,
11 whose response was to sit the perpetrator down together with SrA Miles and tell
12 him ""to keep his hands to himself." No punishment or adverse actions were taken
13 against the perpetrator, and the assaults and harassment continued. The perpetrator
14 was given the nickname "Ass Man" by his colleagues in reference to his treatment
15 of SrA Miles. The perpetrator would get drunk and the assaults would become
16 more violent and blatant.

17 73. On one occasion, SrA Miles agreed to serve as the designated
18 driver for the rest of her colleagues who had gone out drinking. When she arrived
19 at the house to drop everyone off for the night, her perpetrator refused to get out of
20 the car and instead began making sexual advances towards her. When she resisted,
21 the perpetrator grabbed her from behind and pinned her to the seat, kissing and
22 groping her. SrA Miles was able to struggle free.

23 74. After this incident, SrA Miles again reported the ongoing abuse
24 to her Flight Chief. Instead of initiating an investigation, the Flight Chief
25 threatened SrA Miles not to go above him in the chain of command and seek help
26 from the First Sergeant, threatening that she would "receive paperwork" if she tried
27 to report it higher up the chain of command. A few weeks after reporting the
28 incidents, her Flight Chief called her back into his office and told her that the

1 sexual harassment and assaults were her fault because she “hung out with guys”
2 and that she had invited the abuse by the way she “walked” and “acted.” The Flight
3 Chief told her she had a “reputation that needed to be rebuilt,” and moved her to
4 the night shift. No action was taken against the perpetrator.

5 75. SrA Miles believed she was facing retaliation for coming
6 forward with the complaint, and decided to go up the chain of command and report
7 the incidents. SrA Mile reported the sexual assaults and retaliation to the Vice
8 Commander and the Command Chief. They did nothing to stop the misconduct,
9 but instead told SrA Miles that she had a “reputation.” They also accused her of
10 receiving special attention because she had occasionally been allowed leave to sing
11 the National Anthem at official events. As a result of reporting, SrA Miles was no
12 longer allowed to sing, with the explanation that it was “for her own protection.”
13 During the meeting SrA Miles, the two men laughed and winked at her while they
14 told her they “would not tolerate anyone putting their hands on her.”

15 76. When SrA Miles expressed her unhappiness with the
16 Commanders’ response, she was told she could submit a formal complaint to the
17 First Sergeant. She submitted a typed, formal complaint to his office and was told
18 that she would receive a response within one week. After a week had passed, SrA
19 Miles checked on the status of the complaint, and was told that it had been ”lost.”
20 She was directed to submit a new complaint, which she did. A few weeks later, she
21 as informed that the First Sergeant’s office he had once again “lost” the complaint
22 and that she would have to submit yet another complaint. SrA Miles submitted the
23 complaint a third time, yet never received a response.

24 77. During this time, SrA Miles was selected for a special duty
25 assignment in another unit. When she went to the First Sergeant to request
26 permission to leave, he accused her of using the report to “manipulate” her way
27 into the position.

28 78. After facing ongoing retaliation and a lack of concern from her

1 Command, SrA Miles filed a complaint with the Equal Opportunity Office. She
2 submitted two complaints: one for sexual discrimination, and one against her
3 perpetrator for the ongoing harassment and assaults. While the investigation into
4 her complaints found that her accusations were founded, her Command informed
5 her that nothing was going to be done besides giving her perpetrator a negative job
6 performance review and a Letter of Reprimand. He was able to keep his rank, and
7 was allowed to continue serving in a position where he supervised young female
8 Airmen, including personally evaluating their performance and controlling their
9 ability to be promoted.

10 79. After she filed the EOO complaint, SrA Miles was ostracized
11 from her unit. No one from her old squadron spoke to her. These events caused
12 SrA Miles to suffer severe depression, and she was forced to end her military
13 career. She received an honorable discharge.

14 **PLAINTIFF TAMIKA LANE**

15 80. Plaintiff Tamika Lane resides in North Carolina. She is a
16 citizen of the United States.

17 81. Plaintiff Lane enlisted in the Army in 2001 at the age of
18 seventeen, after graduating from high school early. Plaintiff Lane is still an active
19 duty member of the Army and has reached the rank of Sergeant First Class (SFC).

20 82. In December 2001, soon after she finished basic training, SFC
21 Lane was raped by a soldier in her unit at Fort Lewis, Washington. SFC Lane
22 reported the rape to her Command and completed a rape kit. Shortly following
23 SFC Lane's report of the rape, five other female soldiers came forward with
24 allegations of sexual misconduct against the same soldier.

25 83. Despite the numerous allegations and the evidence against him,
26 the military did not adjudicate the matter or even discharge the soldier. Instead,
27 the military gave SFC Lane's perpetrator a non-judicial punishment under Article
28 15 without any serious consequence.

1 84. In addition to failing to adjudicate the matter, the military
2 permitted repeated and open retaliation against SFC Lane. Throughout the
3 investigation of the rape, SFC Lane was humiliated and repeatedly had her
4 personal privacy violated.

5 85. In March 2007, SFC Lane was selected to serve in one of the
6 Army's most prestigious commands, the Joint Special Operations Command
7 (JSOC) at Fort Bragg in North Carolina.

8 86. In May 2009, SFC Lane was raped by a Marine who was a
9 member of her unit.

10 87. Three days later, SFC Lane made a restricted report of rape to a
11 chaplain in her unit. Because of the utter lack of accountability and blatant
12 retaliation SFC Lane had experienced when she reported her first rape in 2001, she
13 hesitated to report this second rape to her superiors for adjudication.

14 88. Due to the emotional trauma of the rape, SFC Lane's job
15 performance began to suffer. When her superiors berated her for this, SFC Lane
16 finally reported the rape to a Sergeant Major. Instead of assisting SFC Lane and
17 having the rape allegation adjudicated, the Sergeant Major informed SFC Lane that
18 she was "not JSOC material" and initiated her removal from Command.

19 89. In retaliation for coming forward on the second rape, SFC
20 Lane's superiors attempted to have her Bronze Star revoked, and attempted to
21 downgrade her Non-Commissioned Officer "NCO" Evaluation Report. In addition,
22 she received orders to report to another Command.

23 90. In May 2010, SFC Lane became aware that one or more of her
24 superiors was talking about her in a derogatory manner to the rest of her unit. One
25 Sergeant Major in particular would make comments that SFC Lane could not pass
26 a physical fitness test because of her weight. When another NCO explained to the
27 Sergeant Major that SFC Lane's weight gain was due to the ongoing emotional
28 trauma of the rape, the Sergeant Major said that she needed to "get the fuck over

1 it...it happened a year ago.”

2 91. Although there was evidence that SFC Lane’s 2009 perpetrator
3 had committed the rape, the prosecution offered a plea bargain which would have
4 allowed him to be charged only with Adultery, Conduct Unbecoming, and
5 Falsifying Statements. He would have faced confinement for up to thirty days, and
6 then would have been honorably discharged from the military. SFC Lane refused
7 to sign off on the deal, and the case went to a court martial.

8 92. During the court martial, the chaplain in whom SFC Lane had
9 first confided in, as well as the doctor who had been treating her, testified on her
10 behalf. In addition, a text message that SFC Lane received from the attacker in
11 which he apologized for raping her was admitted as evidence.

12 93. SFC Lane’s Command authorized the Sergeant Major who had
13 made derogatory comments about SFC Lane to serve as a witness for the defense.
14 Although he was testifying as a witness and had no investigatory role, the Sergeant
15 Major had been given details about the case by Command before the court martial
16 proceedings began. Using the details to create a false impression of credibility, the
17 Sergeant Major testified to the effect that SFC Lane had not actually been raped,
18 but that she had made up the rape so she would not have to work as hard.

19 94. SFC Lane’s Command decided the composition of the jury
20 hearing the court martial should consist of all male colleagues drawn from the
21 perpetrator’s unit.

22 95. The Command’s actions had the desired effect: SFC Lane’s
23 perpetrator was acquitted of rape and found guilty only of the lesser offense of
24 adultery. The only punishment he received was a local Letter of Reprimand—a
25 slap on the wrist.

26 96. SFC Lane continues to suffer the serious consequences of the
27 rapes, and faces pervasive harassment as a result of reporting them. Rumors about
28 SFC Lane have continued to spread throughout her unit. For example, recently a

1 picture of SFC Lane was jokingly posted in a public briefing with the captions
2 “NCO JSOC failure” and “You can’t make me work!” (the latter in reference to the
3 Sergeant Major’s lies about SFC Lane fabricating the rape so she would not have
4 to work). This picture was also posted in the section’s break room for everyone to
5 see.

6 97. SFC Lane has been diagnosed with PTSD, depression, and
7 severe anxiety, and she suffers from an inability to adjust and function in social
8 situations.

9 **PLAINTIFF ANNAROSE SCHAAD**

10 98. Plaintiff Annarose Schaad is a citizen of the United States. She
11 resides in Washington.

12 99. Plaintiff Annarose Schaad served in the United States Air Force
13 from February 2001 until her retirement in February 2012 for medical reasons. Ms.
14 Schaad reached the rank of E-5 as a Security Forces Weapons Instructor.

15 100. Prior to April 30, 2011, Ms. Schaad experienced multiple
16 sexual assaults while serving in the Air Force, but opted not to report them because
17 she had observed the retaliation that accompanied reporting.

18 101. On April 30, 2011, a servicemember sexually assaulted Ms.
19 Schaad. On that day, Ms. Schaad attended a party at the home of a fellow
20 servicemember in her neighborhood. During the party, the husband of a friend of
21 Ms. Schaad appeared. This friend had previously confided in Ms. Schaad that her
22 husband, who was in the Army, was being treated for PTSD, and that she was
23 afraid to live with him. Ms. Schaad had offered to let the friend live with her until
24 the marital problems were resolved.

25 102. At the party, her friend’s husband became belligerent and began
26 to argue animatedly with several other party guests. Because Ms. Schaad had
27 previously served as a military police officer before becoming a weapons
28 instructor, she approached the arguing partygoers and told them to act civilly.

1 reached the rank of Private First Class (PFC).¹

2 108. In February 2003, PFC Smith was transferred from her unit in
3 Monterrey, California, to a medical holding company in Fort Lewis, Washington.

4 109. On the evening of February 4, 2003, PFC Smith's first day with
5 her new company, she and some fellow soldiers played pool and watched
6 television in a common room. PFC Smith went to bed around midnight. At or
7 around 2am on February 5, PFC Smith was awoken by a man on top of her. PFC
8 Smith's pants had been pulled down, and the man was raping her. PFC Smith
9 began to fight the man off and screamed loudly. Startled, the rapist ran away.

10 110. At 7am that morning, PFC Smith was awoken by a summons
11 from her First Sergeant. When PFC Smith reported to the First Sergeant, he told
12 her that he was aware that "something happened" over the course of the night, and
13 he forced her to report to a Colonel in a psychiatric unit for evaluation.

14 111. PFC Smith felt uncomfortable with the Colonel, and told him
15 that she did not want to discuss what had happened the previous night. Even
16 though PFC Smith had not brought the situation to her superiors' attention and had
17 instead been called out of bed and forced to talk about it against her will, the
18 Colonel threatened her with a dishonorable discharge if she did not disclose what
19 had happened. Faced with this threat, PFC Smith described the details of the
20 attack to the Colonel.

21 112. PFC Smith was ordered to report to the Army's Criminal
22 Investigative Division and cooperate with their investigation. CID officials
23 interrogated PFC Smith for eight continuous hours. On multiple occasions, the
24 interrogators accused PFC Smith of lying. The interrogators also asked the same

25
26 ¹ Under a delayed enrollment agreement, Plaintiff Smith was able to finish her senior year of
27 high school while attending mandatory monthly drill sessions. During her senior year, Plaintiff
28 Smith changed her status from reservist to active duty, and upon her graduation from high school
she reported for active duty.

1 questions repeatedly, even after PFC Smith had clearly answered them each time.

2 113. At some point during this abusive eight-hour interrogation, a
3 witness approached CID and stated that the witness had heard screams coming
4 from PFC Smith's bedroom that night and had seen a man running away from the
5 room.

6 114. After this witness stepped forward, CID apprehended PFC
7 Smith's rapist and questioned him. The rapist denied raping PFC Smith.
8 However, when threatened with a polygraph test, the rapist admitted to the attack
9 and signed a confession.

10 115. PFC Smith's First Sergeant advised PFC Smith that her rapist
11 could not be punished unless PFC Smith herself was also punished. The First
12 Sergeant did not explain to PFC Smith why the victim of a rape would have to be
13 punished in order to bring justice against her attacker. The First Sergeant did not
14 advise PFC Smith what specific charges or disciplinary actions would be brought
15 against her. Feeling betrayed and helpless, PFC Smith did not take any further
16 action to pursue accountability for the rape.

17 116. Although the military had a signed confession of rape in its
18 possession, the military never court-martialed PFC Smith's rapist or even punished
19 him in any other way. Instead, the military permitted a known rapist to retire from
20 the Army with full benefits, pension, and honors.

21 117. PFC Smith began to display signs of depression and other
22 psychological effects of trauma, and she was sent to a psychiatric hospital. She
23 was placed on the temporary disability retirement list, where she remained for a
24 year until she was honorably discharged for medical reasons.

25 118. To this day, PFC Smith continues to live with the severe
26 consequences of the rape and of the Army's refusal to hold accountable a man who
27 had confessed to attempted rape. PFC Smith suffers from PTSD, as well as
28 severe insomnia and sleep deprivation. In addition, PFC Smith is now homeless

1 and has held thirty-eight different jobs since her discharge in 2004 due to her
2 significantly impaired ability to build relationships and place trust in others.

3 **PLAINTIFF ANNA MOORE**

4 119. Plaintiff Anna Moore is a citizen of the United States. She
5 resides in Colorado.

6 120. Ms. Moore joined the Army in November 2001 and left for
7 basic training in February 2002. In August 2002, she was sent to her first duty
8 station in Hanau, Germany.

9 121. In the summer of 2002, Ms. Moor and a partner set a record for
10 setting up a Patriot missile launcher in the fastest time. Ms. Moore enjoyed being a
11 part of the Army and excelled in her new position.

12 122. In October 2002, Ms. Moore was hospitalized for kidney
13 stones. On or around November 3, 2002, Ms. Moore was assigned light duty
14 because she still was weak and recovering from the kidney stones. As part of light
15 duty, Ms. Moore was assigned to work in the hallway of the barracks performing
16 work on the floors. Ms. Moore was on duty, working in the hallway just outside of
17 her room on the third level of the barracks, scraping wax from the floor, when a
18 soldier whom Ms. Moore had met briefly on one prior occasion appeared. He
19 began talking and then grabbed Ms. Moore between her legs.

20 123. Ms. Moore immediately jumped up and was extremely shaken.
21 She told the soldier that she was going to have a cigarette in her room, but he
22 followed her saying, "I'll have one with you." When Ms. Moore got to her room,
23 she tried to close the door behind her, but the sexual predator pushed his way in.
24 He began grabbing at her body and tried to force her onto the bed. He continued
25 grabbing at her clothes and groping her body.

26 124. Ms. Moore started screaming. There were soldiers in the
27 hallway who heard her yelling. One soldier yelled back, "What's wrong?" At this
28 point, the sexual predator ran out of Ms. Moore's room. The soldier in the hallway

1 came to Ms. Moore's door and asked what happened. Ms. Moore told him she
2 needed to talk to her chain of command.

3 125. Ms. Moore reported the assault to her chain of command, who
4 told her she needed to report to the employment office for the battalion. Ms.
5 Moore gave a sworn statement about the assault. Ms. Moore was not given a copy
6 of her statement.

7 126. Three days later, Ms. Moore's First Sergeant called her into his
8 office and told her that he had looked over her report and that she should simply
9 "forget about it." The First Sergeant told her that the incident "never happened,"
10 and the soldier who assaulted her had been instructed not to go near her and was
11 going to be moved to another duty station soon. Then the First Sergeant shredded
12 Ms. Moore's report in front of her and told her get out of his office.

13 127. After the assault, Ms. Moore developed serious medical
14 problems. She was treated for major depression in December 2002. She also
15 began experiencing problems with superiors and fellow soldiers. For the first time
16 since joining the Army, Ms. Moore received a negative counseling statement from
17 her chain of command. While deployed in Israel, fellow soldiers targeted her for
18 retaliation.

19 128. As a result of the military's refusal to hold Ms. Moore's sexual
20 predator accountable, Ms. Moore suffered serious health effects, including
21 insomnia, nightmares, depression, panic attacks, and agoraphobia. In 2008, she
22 was diagnosed through the Veterans Administration with severe PTSD and is
23 wholly disabled and unable to work. Prior to the assault, Ms. Moore had no
24 history of mental illness.

25 **PLAINTIFF KIMBERLEY DAVIS**

26 129. Plaintiff Kimberly Davis is a citizen of the United States. She
27 resides in New York.

28 130. Technical Sergeant (TSgt) Davis has served in the Air National

1 Guard since 1990, and will retire in the next year.

2 131. In 2001, TSgt Davis was raped by her Chief after attending his
3 wife's birthday party and falling asleep at their house. TSgt Davis considered the
4 family to be close family friends, and did not hesitate when they offered to let her
5 stay at their house overnight. After the assault, TSgt Davis was ashamed and afraid
6 to report the incident for fear of jeopardizing her career.

7 132. In 2005, her rapist became her direct supervisor in the
8 Communications Flight. As her supervisor, her rapist would go out of his way to
9 make things difficult for TSgt Davis. He would single her out and treat her
10 noticeably differently from her co-workers. For example, he would penalize TSgt
11 Davis for days where she was sick by charging her leave, and would interfere with
12 her requests for time off. He would also make disparaging comments to her
13 regarding her personal life and did not reward her after receiving positive work
14 evaluations as he did for others.

15 133. During sexual assault briefings, her perpetrator would allow
16 TSgt Davis's male coworkers to refer to women in the unit as "cunts" and
17 "bitches," and to make other threatening and misogynistic comments.

18 134. In 2009, after being harassed by her perpetrator regarding a
19 temporary duty trip with her unit, TSgt Davis broke down and reported the assault
20 and negative treatment to her Commander, who expressed extreme irritation and a
21 complete lack of concern for TSgt Davis. Her Commander advised TSgt. Davis not
22 to speak to anyone about the assault. Shortly thereafter, TSgt Davis witnessed the
23 Commander talking with her rapist about the allegations.

24 135. TSgt Davis's Commander ordered her to meet with her rapist to
25 "discuss" the allegations. During the meeting, she was told that they needed to
26 "figure out a way to work together," and both her Commander and her Chief
27 remarked that it would "be bad if it [the report] got out." At the end of the meeting,
28 her Commander tried to make her sign a statement saying she would not report the

1 assault outside of her unit. Her Commander and her perpetrator made it clear that
2 by reporting the assault, she was losing any chance of promotion, saying they had
3 “just been working on trying to promote her to Master Sergeant.”

4 136. After reporting the assault, TSgt Davis was treated as though
5 she was the problem, and was ostracized from her unit. Her Commander repeatedly
6 expressed skepticism and annoyance with her, and offered her no support. The
7 Commander refused to let TSgt Davis see a counselor until TSgt Davis made
8 repeated requests.

9 137. TSgt Davis had to make several appeals to Command before
10 she was transferred to another unit, during which time she continued to suffer
11 harassment from her perpetrator and her Command. Even after she was transferred,
12 TSgt Davis continued to face harassment and overt retaliation by her Commander.
13 For example, the Commander began requiring TSgt Davis to submit weekly
14 reports on her work progress—something she had not been required to do in the
15 past.

16 138. Several months after making the report, TSgt Davis learned
17 from the Sexual Assault Response Coordination (SARC) office in New York State
18 that her base Command had never contacted them about an investigation, even
19 though her Command had assured her numerous times that SARC had been
20 contacted.

21 139. The military failed to investigate or take any action taken
22 against her rapist, who was allowed to retire with full honors and retirement
23 benefits. In contrast, TSgt Davis faced retaliation, hostility and abuse from her
24 Command, and her career and health have suffered as a result.

25 140. As a result of the military’s refusal to prosecute a rapist, TSgt
26 Davis has been diagnosed with PTSD, anxiety and depression.

27 **PLAINTIFF SASCHA GARNER**

28 141. Plaintiff Sascha Garner is a citizen of the United States. She

1 resides in Utah.

2 142. Private First Class (“PFC”) Garner served in the U.S. Army
3 Reserves from January of 2002 until July of 2010, and was stationed out of Ogden,
4 Utah. PFC Garner was deployed to Kandahar, Afghanistan on June 3, 2009 and
5 worked as a truck driver in a gun truck company.

6 143. In November of 2009, while she was deployed in Afghanistan,
7 PFC Garner was raped in her tent by a Specialist from another platoon while she
8 was unconscious. PFC Garner had become intoxicated, and had passed out in her
9 bed. Later that same night, PFC Garner woke to find herself outside her bed, and
10 witnessed a man leaving through the doorway.

11 144. The next morning, PFC Garner reported to her squad leader that
12 she believed she had been raped while she was unconscious. The Squad Leader
13 took PFC Garner for a rape kit exam, which established evidence of intercourse
14 (including semen) in her body.

15 145. After PFC Garner reported the rape, PFC Garner began facing
16 harassment and retaliation, both from her peers and Commanders. PFC Garner
17 was stripped of the ability to be promoted in pay grade to an E4, and threatened
18 with an Article 15 for drinking—even though no one else in her unit was charged.
19 PFC Garner was also banned from the common areas in her company because the
20 “guys didn’t want her there.”

21 146. During the CID investigation, PFC Garner was forced to live in
22 a tent with only one other tent separating her from her rapist.

23 147. When PFC Garner’s contract was up in January of 2010, she
24 was forced to stay deployed with her rapist because the investigatory paperwork
25 had not been processed.

26 148. During the investigation, a “no contact” order was issued, but
27 PFC Garner’s Command continued to issue orders that forced PFC Garner to
28 attend events and training exercises with her rapist.

1 156. SPC Ethridge reported the rape to her NCO who took her to the
2 Military Police. She was then taken to the hospital for a medical exam and a rape
3 kit. Despite bruises and documentation of previous instances of abuse, Command
4 told her, “you don’t want to open this can of worms.”

5 157. SPC Ethridge’s rapist continued to stalk her on base. He
6 repeatedly showed up when she was on duty and would pace for hours outside her
7 duty station. He also had access to her workplace, and could see where she parked
8 her car from his barracks. Command ignored complaints from SPC Ethridge that
9 she was being stalked and threatened, and told her to “suck it up.” When she
10 pushed for an investigation, SPC Ethridge was told by her Command not to “open
11 up a can of worms.”

12 158. SPC Ethridge became depressed and scared for her life and the
13 lives of her two children. When the harassment began to interfere with her ability
14 to do her work, Command issued an Article 15 against her, demoted her, and
15 assigned her extra duties.

16 159. SPC Ethridge became pregnant as a result of the rape, but
17 because her rapist was not charged with a crime, he retained parental rights and her
18 Command notified him of the pregnancy.

19 160. SPC Ethridge later learned that she was the fifth female to
20 report a sexual or physical assault by her rapist. In each instance, the military did
21 nothing – leaving a known sexual predator free to commit future assaults.

22 161. Command transferred SPC Ethridge after the investigation was
23 closed, but her rapist was allowed to continue serving as a Sergeant E6. The
24 military finally discharged the sexual predator after yet another charge of physical
25 assault was filed against him by another woman – the sixth to report him to the
26 military. The military never prosecuted or otherwise punished SPC Ethridge’s
27 rapist.

28 162. SPC Ethridge has been hospitalized for suicidal ideation and

1 suffers from nightmares. She is currently raising the child from the rape.

2 **PLAINTIFF KEVIN WELSH**

3 163. Plaintiff Kevin Welsh is a citizen of the United States. He
4 resides in Washington. PFC Welsh served in the Army from 2005 until 2008

5 164. In 2007, while stationed at Ft. Louis, PFC Kevin Welsh was
6 sexually assaulted by his superior officer during a visit to his home. The superior
7 officer gave Welsh alcohol and thereafter sexually assaulted him.

8 165. Subsequently, PFC Welsh learned that he was HIV positive and
9 tests traced the source of transmission to the superior officer who had assaulted
10 him. He also learned that the military knew that the sexual predator had
11 intentionally infected a number of other service members. Yet the military had
12 transferred the predator from base to base rather than prosecuting him.

13 166. When PFC Welsh reported the assault to a military attorney on
14 post and asked for mental health counseling, he was told there was nothing that
15 could be done because the military “couldn’t sue itself.” The military did not
16 investigate, and did nothing in response to PFC Welsh’s report of rape.

17 167. Command continued to turn a blind eye to the sexual predator’s
18 behavior until he was convicted in a civilian criminal case almost two years later.
19 PFC Welsh’s perpetrator is now in prison for sexually assaulting and intentionally
20 infecting several individuals with HIV.

21 168. PFC Welsh was initially denied medical treatment by the Army
22 Medical Center, and was told it was because his T-cells were not low enough and
23 he did not have “actual AIDs.” Ultimately, he was able to receive outside help and
24 treatment.

25 169. At no point in time was PFC Welsh directed to the Sexual
26 Assault Response Coordination office or assigned a victim advocate.

27 170. Instead, PFC Welsh experienced severe discrimination at the
28 Army Medical Center, who would not allow his domestic partner to visit him while

1 he was receiving treatment.

2 171. PFC Welsh was discharged under Secretarial Authority in order
3 to leave and receive medical treatment.

4 **PLAINTIFF MICHELLE KEMENY**

5 172. Plaintiff Michelle Kemeny is a citizen of the United States. She
6 resides in Arizona. She served in the Air Force as an Airman (“Amn”) from 2006
7 until 2009.

8 173. In the fall of 2007, Amn Kemeny was sexually assaulted by a
9 fellow Airman while home from deployment in Kurdistan. Amn Kemeny and a
10 group of her military colleagues went to a club, and then all stayed over at the
11 apartment of their supervisor (an NCO) to avoid driving while intoxicated.

12 174. During the night, as Amn Kemeny was sleeping, one of her
13 military colleagues climbed on top of her, sexually assaulting her. Amn Kemeny
14 screamed and was able to fight him off, waking her NCO in the process. The
15 perpetrator immediately left the apartment.

16 175. The following morning, Amn Kemeny spoke with her
17 Supervising NCO about the assault. Instead of advising her to report the assault or
18 seek counseling, he told her she should “think about her career.” He expressed
19 concern for his own career in case anyone found out the assault had taken place in
20 his apartment and discouraged her from reporting.

21 176. Amn Kemeny chose not to file a report because she was afraid
22 of facing retaliation and jeopardizing her career and standing in the military. She
23 had seen other women in her unit suffer harassment and isolation after reporting
24 sexual assault.

25 177. After the assault, Amn Kemeny began suffering from severe
26 depression, which led to a series of self-medicating incidents that jeopardized and
27 ultimately ended her military career. Throughout this process, the military
28 personnel – including two JAG lawyers -- repeatedly advised Amn Kemeny not to

1 report the sexual assault. One JAG “highly advised” her not to report the assault to
2 Command.

3 178. During this time, Amn Kemeny attempted suicide and was
4 hospitalized. She desperately wanted to leave the military, but was not permitted to
5 do so. After being hospitalized, Amn Kemeny spoke with another JAG, who also
6 advised her not to report the assault.

7 179. Although Amn Kemeny’s Medical Board review recommended
8 a medical discharge for severe depression and PTSD, her Command did not want
9 the fact of the sexual assault to be on the record and instead discharged Amn
10 Kemeny with a general honorable discharge. By so doing, the military deprived
11 Amn Kemeny of the benefits to which she should have been entitled as a result of
12 the after-effects of the sexual predation.

13 180. Amn Kemeny has been diagnosed with severe depression and
14 PTSD.

15 **PLAINTIFF THEODORE SKOVRANEK**

16 181. Plaintiff Theodore James Skovranek is a citizen of the United
17 States. He resides in Florida

18 182. PFC Skovranek served in the Army from 2003 until 2005.

19 183. In July 2003, PFC Skovranek was sexually assaulted by his
20 roommate. The next morning, his coworkers started harassing him and trying to
21 start a fight, saying things like “someone put a dick in your face.”

22 184. When PFC Skovranek confronted the man who assaulted him,
23 his perpetrator confirmed that he had done it, and ridiculed him.

24 185. PFC Skovranek reported the assault to his Drill Sergeant while
25 on duty that night and requested to be moved to another room. He was moved to
26 the room across the hall from his perpetrator.

27 186. PFC Skovranek reported the assault to Command. Command
28 informed PFC Skovranek that since the assault occurred off base, they did not

1 know how to handle the case. His Command said they would look into it but no
2 further action was taken.

3 187. After reporting the assault, PFC Skovranek's Drill Sergeant
4 made sexual jokes about him and suggested that he was gay.

5 188. Several months later during a sexual harassment course, PFC
6 Skovranek reported the assault again, this time to the NCO in charge of the course.
7 Again his NCO took no actions to investigate the assault and offered no advice for
8 where he could seek mental health support.

9 189. Shortly thereafter, PFC Skovranek reported the assault to his
10 Platoon Sergeant. His Platoon Sergeant told him he would look into it and help, but
11 no further action was taken to investigate or prosecute his perpetrator.

12 190. During this time, PFC Skovranek was hospitalized for suicidal
13 ideations, and was thereafter discharged.

14 191. PFC Skovranek's Command repeatedly failed to take any
15 subsequent action to investigate his assault, and offered him no means of support
16 to assist with recovery. PFC Skovranek has been diagnosed with anxiety and
17 PTSD.

18 **PLAINTIFF TARINA ADDISON**

19 192. Plaintiff Tarina Addison is a citizen of the United States. She
20 resides in Virginia

21 193. Plaintiff Addison was an outstanding high school student,
22 earning a place on the National Honor Roll and on the list of Who's Who Among
23 High School Students. She was also a gifted athlete, anchoring a championship
24 track team and eventually being heavily recruited by college basketball teams.
25 However, instead of attending college, Plaintiff Addison decided to enlist in the
26 Army.

27 194. Plaintiff Addison served in the United States Army Reserves
28 from March 2002 until her honorable discharge in August 2005. She entered as a

1 Private First Class (PFC) and was promoted to rank of Specialist (“SPC”).

2 195. In early June 2004, SPC Addison participated in a two-week
3 training program in Oklahoma. One night during that program, a male soldier
4 from SPC Addison’s unit knocked on her door between the hours of approximately
5 midnight and 2am. When SPC Addison opened the door, the soldier asked her,
6 “Want company?” SPC Addison refused this advance.

7 196. In the days following this encounter, the soldier approached
8 SPC Addison while she was with her friends and colleagues and made disparaging
9 comments toward her, such as “You think you’re all that?” and “You’re ugly.”

10 197. On the night of June 11, 2004, after a death in her family, SPC
11 Addison was drinking alcohol with friends from her unit, including the soldier who
12 had been insulting her. At the end of the night, the soldier apologized for the
13 comments he had made and offered to walk SPC Addison back to her room.

14 198. When they entered her room, SPC Addison lay down on the
15 bed and asked the soldier to turn off the light as he left. The soldier turned off the
16 light, but did not leave the room. Instead, he got onto the bed, climbed on top of
17 SPC Addison, and told her, “You know this is what you want.” SPC Addison told
18 the soldier, truthfully, that she was currently having her period in the hopes that
19 this would dissuade him, but the soldier proceeded to rape her.

20 199. The next morning, SPC Addison’s Sergeant knocked on her
21 door to ask why she was not on duty. She refused to go, and a friend from her unit
22 came to see her. When SPC Addison told her friend about the rape, the friend
23 convinced her to report the rape to her superiors and to her family. Following the
24 report, a rape kit was conducted and SPC Addison’s rapist was taken into custody.
25 SPC Addison was ordered to continue reporting for drills.

26 200. Soon after SPC Addison reported back to duty, she learned that
27 her rapist would be released into her unit and she would be forced to participate in
28 drills alongside him. His only punishment was an increase in drilling and a delay in

1 January 2006 until her honorable discharge in October 2007. Plaintiff Cubano
2 reached the rank of Private E-2.

3 208. Private Cubano was deployed to Iraq in 2006. While serving in
4 Iraq, Private Cubano began suffering from severe and chronic abdominal pains. In
5 December 2006, she was transferred to a hospital in Landstuhl, Germany, for
6 medical leave. During most of her time in Germany, Private Cubano shared a room
7 with a higher-ranking female soldier.

8 209. In January 2007, while still stationed in Germany, Private
9 Cubano went to a pub with her roommate and two male soldiers. After about
10 twenty minutes at the pub, Private Cubano began suffering from severe abdominal
11 pains and she informed her companions that she was going to go back to her room.
12 One of the male soldiers offered to accompany her so she would not have to walk
13 back alone. Although Private Cubano told him that she would did not need
14 assistance, he walked with her back to the room anyway.

15 210. The soldier went into Private Cubano's room with her, and the
16 two watched TV. Private Cubano's female roommate and the other male soldier
17 returned to the room soon thereafter, but they went into a different room to eat
18 pizza. The soldier accompanying Private Cubano began to touch her
19 inappropriately. When Private Cubano verbally refused his advances, the soldier
20 got up to leave, but then changed his mind, pinned her to the bed by both of her
21 hands and raped her. When Private Cubano fought back and screamed loudly, the
22 soldier became frightened and left.

23 211. Private Cubano went into surgery the very next day after having
24 told her roommate about the rape. The day after her surgery, Private Cubano's
25 perpetrator came into her room, which caused Private Cubano to have a panic
26 attack when she saw him.

27 212. The military sent Private Cubano back to the United States after
28 the surgery. She began to suffer from paranoia, anxiety, and suicidal thoughts. In

1 go to Sheppard Air Force Base Sexual Assault Response Office (SARC) where he
2 filed a restricted report of the sexual assault. He was then transported to a local
3 emergency room for a medical exam. He was assigned a victim advocate and also
4 spoke with the head coordinator of the SARC office who began pressuring him to
5 change his report to unrestricted.

6 219. In the following days, Capt Rovet began experiencing severe
7 anxiety and panic attacks. He was contacted several times by the head SARC who
8 continued to pressure him to change the report to unrestricted although he had
9 already made it clear he did not want to.

10 220. The following week, Capt Rovet contacted his victim advocate
11 and said he would not be in class for personal reasons. He also decided to file an
12 unrestricted report.

13 221. During this time, Rovet learned that the OSI investigator
14 handling his case had told his Command that there had been an “alcohol related
15 incident” the past week involving Capt Rovet. He then received a call from the
16 Command ordering him to report back to the Command office despite the fact it
17 interfered with an appointment with OSI investigators, threatening to bring him up
18 on charges if he did not return.

19 222. SARC did not help or intervene and instead allowed Capt Rovet
20 to return to the base where he was forced to attend class with his perpetrators.

21 223. When Capt Rovet met with his Command, he was berated and
22 accused of having a drinking problem and was ordered to attend an intensive
23 alcohol abuse evaluation. He do so, and the evaluation showed no evidence of
24 abuse. His perpetrators were not subjected to an evaluation. His Command
25 reported up the chain-of-command that Cpt Rovet was involved in an “alcohol
26 related incident,” without mentioning the charges of assault.

27 224. Capt Rovet repeatedly requested to be let off the base because
28 he was suffering from severe anxiety and panic attacks, but he was forced by

1 Command to remain on the base in a hotel for an additional week without seeing
2 his family. During this time, his mental state continued to deteriorate and he was
3 offered no mental health support.

4 225. When Captian Rovet arrived back at his home station, he was
5 subjected to continued slander, libel and harassment by Command. Rumors began
6 to circulate that he had been raped and some people suggested pictures had been
7 taken.

8 226. When Capt Rovet tried to push for further investigation, his
9 Command threatened him, saying they had investigated him on charges of
10 adultery, and were keeping the files in their desk drawer “just in case.”

11 227. During the investigation, Capt Rovet was told by OSI that his
12 perpetrators had filed counter charges against him.

13 228. The military retaliated against Capt Rovet by passing him over
14 for promotion to major on two occasions, which forced him to retire. The military
15 did nothing to the perpetrators, instead promoting one to major.

16 229. Capt Rovet has been diagnosed with severe PTSD and acute
17 stress reaction. Capt Rovet is unable to work due to physical and mental health
18 concerns.

19 **DEFENDANTS**

20 230. Defendant Leon E. Panetta is the current Secretary of the
21 United States Department of Defense. He has served as Secretary since July 1,
22 2011. His business address is Pentagon, Army Navy Drive and Fern Street,
23 Arlington, Virginia 22202.

24 231. Defendant Robert M. Gates is the former Secretary of the
25 United States Department of Defense. Defendant Gates served as Secretary from
26 December 18, 2006 to June 30, 2011. His business address is College of William
27 and Mary, Office of the Chancellor, P.O. Box 8795, Williamsburg, Virginia
28 23187-8795.

1 238. This dynamic is evidenced by the ongoing scandal at Lackland
2 Air Force Base, which involves at least 42 enlisted, low-level and young recruits
3 being raped, sexually assaulted, or sexually harassed by at least 17 instructors.

4 239. Yet Defendants authorized and oversaw a multi-million dollar
5 advertising campaign designed to lull young recruits into believing that the Army
6 and the Air Force are organizations operating with integrity and professionalism.
7 Recruits are led to believe that they will be respected by their peers and superiors,
8 and that their superiors will act in a professional manner. In fiscal year 2012, the
9 Army and its affiliated Reserve and Guard services spent an estimated \$950.5
10 million on such advertising and recruiting. In fiscal year 2012, the Air Force and
11 its affiliated Reserve and Guard services spent an estimated \$186.7 million on such
12 advertising and recruiting. That funding was spent on television, internet, and print
13 advertisements, as well as on individual recruiting efforts, all of which deceptively
14 portrayed the Army and Air Force as institutions that act with integrity.

15 240. Defendant authorized such advertising despite knowing that the
16 services were woefully deficient in prosecuting and incarcerating rapists, and that
17 these failures were subjecting servicemembers to rape and sexual assault at far
18 greater rates than found in the civilian world.

19 241. As explained by Russell Strand, retired Army Chief
20 Investigation Division special agent and current Chief of the U.S. Army Military
21 Police School, Family Advocacy Law Enforcement Training Division, the
22 Defendants' advertising efforts victimized servicemembers by making them more
23 likely to be victimized: "From their first talk with a military recruiter, service
24 members are told they are joining a values-based family that adheres to a warrior
25 ethos of never leaving your battle buddy behind, and that necessarily creates a high
26 degree of trust...It also encourages people to let their guard down and potentially
27 sets them up for victimization." *See* Kitfield, James, *The Enemy Within*, National
28 Journal, September 15, 2012 at 14.

1 242. Defendants permit open and blatant sexual harassment to occur
2 on a daily basis. As evidenced by what happened to Plaintiffs and many others
3 who have come forward, Defendants permitted a culture of sexual harassment and
4 blatant retaliation against those who reported rape and sexual assault. Plaintiffs
5 and others who report the crimes were subjected to severe retaliation, including
6 being forced from service and being mislabeled as mentally suspect. Defendants’
7 willingness to permit a sexist culture to flourish and prevail is one of the factors
8 that causes the number of rapes to triple. *See* Anne G. Sadler et al., Factors
9 Associated With Women’s Risk of Rape in the Military Environment, 43 Am J Ind
10 Med 262-73 (2003).

11 243. Defendants’ misconduct has caused such a hostile environment
12 that only 20 percent of servicemembers who experience “unwanted sexual contact”
13 report the matter to a military authority. *See 2009 Annual Report on Sexual*
14 *Assaults in the Military*. Defendants cannot credibly claim that these facts were
15 unknown to them. These facts have been on record for years, and are annually
16 reported to Congress. Nor can Defendants credibly claim that they believed the
17 Army and Air Force’s various efforts effectively addressed the problem.

18 244. Defendants have not addressed the key problem: permitting the
19 “chain-of-command” (i.e. a single individual) to control which sexual assault
20 allegations are fully investigated and prosecuted. They have not eliminated the
21 ability of a single officer to prevent a victim from accessing the military’s judicial
22 system. The reality is that this officer may well be a sexual predator himself. *See*
23 for example, the Washington Post, September 27, 2012, reporting that Army
24 Brigadier General Jeffrey A. Sinclair has been charged with rape. Brigadier
25 General Sinclair has been in the Army for 27 years, and as will be able to be
26 established with reasonable discovery, had the power to single-handedly shut down
27 countless rape investigations and adjudications.

28 245. Defendants have not taken any steps to assure an impartial

1 adjudicatory process, instead permitting friends and colleagues of the alleged
2 perpetrators to make decisions on investigation and prosecution. Even in those
3 instances when the decisionmaker is not personally familiar with the alleged
4 perpetrators, he or she is nonetheless biased and not impartial because of personal
5 career concerns that arise whenever a rape or sexual assault occurs in a unit under
6 their command. Defendants have not – and cannot – articulate any compelling
7 reason why persons wholly unskilled in law enforcement should be given this
8 unfettered power, particularly given overwhelming evidence of constant abuse of
9 this power.

10 246. Defendants have not eliminated or even reduced the ongoing
11 and official retaliation that occurs whenever a victim of rape reports the crime.
12 Instead, Defendants focus energy and resources on training despite demonstrable
13 inefficacy. For example, the Army’s Sexual Harassment/Assault Response and
14 Prevention (SHARP) program “focuses on peer-to-peer influence, active
15 intervention, and creating a climate in which Soldiers are intolerant of sexual
16 assault.” See George W. Casey, Jr., John M. McHugh, *2011 U.S. Army Posture*
17 *Statement*, Department of the Army. Training messages that are contradicted by a
18 reality obvious to all servicemembers does nothing to reduce and eliminate the
19 official retaliation that accompanies reports of rape and sexual assault.

20 247. Despite voluminous evidence of widespread violence and
21 retaliation against those who report sexual violence, none of the Defendants took
22 steps to halt retaliation against those crime victims brave enough to report rape and
23 sexual assaults. Each Defendant knew that Plaintiffs and other servicemembers
24 were being forced to work daily side-by-side with their rapists, and could not take
25 any personal action that civilians might take to protect themselves from an ongoing
26 threat – e.g., call the police, go to a shelter, change housing or jobs, or even get out
27 of town.

28 248. Each Defendant knew that Plaintiffs and other servicemembers

1 were being ordered to keep quiet, and discouraged from reporting rape and sexual
2 assault. Thus, each Defendant was well aware that his personal failure to take
3 action resulted in Constitutional deprivations of life, liberty, due process, equal
4 protection and the right to free speech.

5 249. During their tenure, each Defendant knew that the Army and
6 Air Force were violating the Constitutional rights of women and men who reported
7 rape and sexual assault. Each Defendant knew that there were obvious
8 dysfunctions in the military system with respect to responding to reports of rape
9 and sexual assault.

10 250. Each Defendant presided over a dysfunctional system that
11 permits all but a small handful of rapists to evade any form of incarceration. The
12 statistics are staggering. In the Army in 2011, servicemembers made a total of
13 1108 unrestricted and 301 restricted reports of rape; only 176 court martial
14 proceedings were initiated in response. In the Air Force in 2011, servicemembers
15 made 275 unrestricted and 259 restricted reports of rape; only 34 court martial
16 proceedings were initiated in response. In other words, a prosecutorial process was
17 initiated in only twelve percent of reported cases in the Army, and only six percent
18 in the Air Force, compared to forty percent of cases that are prosecuted in the
19 civilian justice system.

20 251. Each Defendant repeatedly cites a policy of “zero tolerance”
21 and systematic reform regarding rape and sexual assault. Yet this rhetoric has
22 failed to change the misogynistic culture of the Army and has not resulted in any
23 meaningful reform or reduction in sexual assaults.

24 252. Each Defendant repeatedly ignored Congressional mandates
25 and deadlines. In 2009, Congress expressly directed that the Department of
26 Defense establish a centralized case-level Defense Sexual Assault Incident
27 Database by January 2010. *See* National Defense Authorization Act for fiscal year
28 2009. When the Government Accountability Office conducted a review after the

1 January 2010 deadline had passed, Defendants would not even commit to when the
2 system would be implemented because “it does not have a reliable acquisition and
3 implementation schedule.” See GAO testimony released on February 24, 2010,
4 GAO-10-405 T.

5 253. As of the date of the filing of this complaint, Defendant Panetta
6 remains in flagrant violation of the law because he has not established the
7 centralized database that should have been created no later than January 2010.

8 254. Each Defendant failed to implement DOD instruction No.
9 1030.2 (June 4, 2004), which requires crime victims and witnesses to be provided
10 with basic information on points of contact, available medical and social services
11 and access to restitution relief.

12 255. Defendant Rumsfeld violated Plaintiffs’ rights by, among other
13 things, ignoring Public Law 105-85, which required the Secretary of Defense to
14 establish a commission to investigate policies and procedures with respect to the
15 military investigation of reports of sexual misconduct. Defendant Rumsfeld
16 ignored this Congressional directive and failed to appoint any members of the
17 commission. Defendant Rumsfeld resigned without having appointed any members
18 of the task force, and without directing the task force to begin its work. On March
19 31, 2004, Members of Congress wrote to Defendant Rumsfeld expressing concern
20 that then-Secretary of Defense Rumsfeld had ignored the recommendations made
21 in 18 reports issued over the previous 16 years. The Members stated, “*[w]e are*
22 *concerned that the problem of sexual misconduct in the military is repeatedly*
23 *investigated, but recommendations for substantive change in the reports are*
24 *often ignored.*” Defendant Rumsfeld’s inaction sent a message that the military
25 was resisting Congressional oversight efforts designed to change a military culture
26 where rape, sexual assault and sexual harassment were not prosecuted or otherwise
27 deterred.

28 256. Defendant Gates further violated Plaintiffs’ Constitutional

1 rights by interfering and impeding Congressional oversight. In July 2008, the
2 Congressional House Oversight Committee on National Security and Foreign
3 Affairs subpoenaed Dr. Kaye Whitley to testify on July 31, 2008, about her
4 office's efforts to eradicate sexual assault. Defendant Gates and his subordinates
5 directed Dr. Whitley to ignore the subpoena, which she did. As stated by the Chair
6 of the Committee at the subsequent hearing, "But what kind of a message does her
7 and the Department's unwillingness until now to allow testimony send to our men
8 and women in uniform? Do they take Dr. Whitley's office seriously? Is she being
9 muzzled, or is the Department hiding something?" *See Hearing on Sexual Assault*
10 *in the Military – Part II, Subcommittee on National Security and Foreign Affairs,*
11 *Serial No. 110-188* (September 10, 2008).

12 257. Further, as reported on by the Washington Post on November
13 26, 2010, Defendant Gates ignored the competitive procurement process for
14 contracting, and instead selected an inexperienced and tiny firm known as US2 to
15 receive the \$250 million contract designed to implement the Army's obligations to
16 prevent sexual assault and harassment. Prior to being selected without any
17 competition for the sexual assault work, US2 had only three employees and several
18 small contracts for janitorial work.

19 258. Both Defendant Gates and Defendant Panetta further impeded
20 Congressional oversight by failing to meet the statutorily-mandated deadline of
21 January 2010 for implementing the database prescribed by the National Defense
22 Authorization Act for Fiscal Year 2009. The Department was required to develop a
23 database that would centralize all reports of rapes and sexual assaults. To date, the
24 database still does not exist. There is no legal justification for Defendants Gates'
25 and Panetta's failure to abide by the law.

26 259. Each Defendant repeatedly permitted or permits military
27 Command to rely on the Article 15 (nonjudicial punishment) process for
28 allegations involving rapes, sexual assaults, and sexual harassment. This process

