

EXHIBIT 11

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11 **UNITED STATES DISTRICT COURT**
12 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
13 **EASTERN DIVISION**

14 LOG CABIN REPUBLICANS,
15 Plaintiff,
16 v.
17 UNITED STATES OF AMERICA AND
ROBERT GATES, Secretary of Defense,
18 Defendants.

No. CV04-8425 (VAP) (Ex)

DEFENDANTS' EVIDENTIARY
OBJECTIONS TO PLAINTIFF'S
APPENDIX AND STATEMENT
OF GENUINE ISSUES IN
OPPOSITION TO
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

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23 Plaintiff submitted to the Court 3,094 pages of documents in its APPENDIX
24 OF EVIDENCE IN SUPPORT OF LOG CABIN REPUBLICANS' OPPOSITION
25 TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ("Plaintiff's
26 Appendix"). Many of the documents in Plaintiff's Appendix, however, are
27 inadmissible, and the Court should not consider them in ruling on Defendants'

28 DEFENDANTS' EVIDENTIARY OBJECTIONS
TO PLAINTIFF'S APPENDIX AND STATEMENT OF
GENUINE ISSUES IN OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT

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1 Motion for summary judgment. *See Orr v. Bank of America*, 285 F.3d 764, 773
 2 (9th Cir. 2002) ("A trial court may only consider admissible evidence in ruling on a
 3 motion for summary judgment.")(cited in Judge Phillips's Stand Order).

4 The deficiencies in Plaintiff's Appendix also taint PLAINTIFF'S
 5 STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR
 6 SUMMARY JUDGMENT (Plaintiff's Statement of Issues"), as many of the
 7 purported genuine issues that Plaintiff identifies rely on inadmissible documents.
 8 For the Court's convenience, Defendants have created an appendix that identifies
 9 (1) documents from Plaintiff's Appendix that are inadmissible, (2) the reasons that
 10 the listed documents are inadmissible, and (3) the specific issues from Plaintiff's
 11 Statement of Issues that rely on each inadmissible document.

<u>Documents From Plaintiff's Appendix ("App.")</u>	<u>Reasons the Document is Inadmissible</u>	<u>Genuine Issues that Cite to this Document</u>
App. 0839-0887: PERSEREC Report Entitled: "Nonconforming Sexual Orientation and Military Suitability"	This report constitutes an out-of-court statement offered in evidence to prove the truth of the matter asserted and is, therefore, inadmissible hearsay. In addition, this document is a draft that was never adopted by the Department of Defense ("DoD") because DoD personnel found the report to be flawed and outside the scope of the approved research. See App. 1293-1294. Accordingly, this report is not an admission by a party-opponent.	8
App. 1100-1128: Homosexuality and the Israel Defense Force	This report constitutes an out-of-court statement offered in evidence to prove the truth of the matter asserted and is, therefore, inadmissible hearsay.	43, 46
App. 1129-1280: Gays in Foreign Militaries 2010: A Global Primer	This report constitutes an out-of-court statement offered in evidence to prove the truth of the matter asserted and is, therefore, inadmissible hearsay.	40

1 2 3 4	App. 1281-1292: Attitudes of Iraq and Afghanistan Veterans Toward Gay and Lesbian Service Members	This report constitutes an out-of-court statement offered in evidence to prove the truth of the matter asserted and is, therefore, inadmissible hearsay.	35
5 6 7 8	App. 1330-1359: Draft of PERSEREC report by Michael McDaniel	This report constitutes an out-of-court statement offered in evidence to prove the truth of the matter asserted and is, therefore, inadmissible hearsay. In addition, as this document is clearly marked as a draft, it is not a statement from a party-opponent.	8
9 10 11 12 13 14	App. 1360-1405: PERSEREC report entitled "Homosexuality and Personnel Security"	This document states explicitly that it does not address the military's homosexual conduct policy, and it is, therefore, not relevant to Plaintiff's claims: "This work does not deal with the Department of Defense policy that excludes homosexuals from military service. The exclusion policy is separate from those policies that apply to a civilian being investigated for a clearance." App. 1366	
15 16 17	App. 1406-1491: Successful Integration of Stigmatized Minorities Into The U.S. Army	This report constitutes an out-of-court statement offered in evidence to prove the truth of the matter asserted and is, therefore, inadmissible hearsay.	
18 19 20 21 22 23	App. 1492-1558: U.S. Army Research Institute (AIR) Research Report 1657	This report constitutes an out-of-court statement offered in evidence to prove the truth of the matter asserted and is, therefore, inadmissible hearsay. In addition, this document states on its face that it does not represent the position of the Department of the Army: "Note: The findings in this report are not to be construed as an official Department of the Army position, unless so designated by other authorized documents." App. 1493	49
24 25 26 27 28	App. 1730-1754: Comparative International Military Personnel Policies	This report constitutes an out-of-court statement offered in evidence to prove the truth of the matter asserted and is, therefore, inadmissible hearsay.	53

1 2 3 4 5 6	App. 1791-1806: February 2, 2010 transcript of Admiral Mike Mullen's and Secretary of Defense Robert Gates's testimony before the Senate Armed Services Committee	In his testimony, Admiral Mullen prefaced his comments with the following statement: "Mr. Chairman, speaking for myself and myself only..." App. 1795. Because he was not speaking on behalf of the Government, Admiral Mullen's testimony from that point forward is not an admission by a party-opponent and constitutes inadmissible hearsay.	9, 44, 88
7 8 9 10 11	App. 1807-1876: November 2000 report by Aaron Belkin and R.L. Evans entitled "The Effects of Including Gay and Lesbian Soldiers in the British Armed Forces"	This report constitutes an out-of-court statement offered in evidence to prove the truth of the matter asserted and is, therefore, inadmissible hearsay.	41, 43, 46
12 13 14	App. 1877-1888: 2003 Report by Aaron Belkin entitled "Don't Ask, Don't Tell: Is the Gay Ban Based on Military Necessity"	This report constitutes an out-of-court statement offered in evidence to prove the truth of the matter asserted and is, therefore, inadmissible hearsay.	41
15 16 17 18 19	App. 1889-1928: September 2000 report by Aaron Belkin and R.L. Evans entitled "The Effects of Including Gay and Lesbian Soldiers in the Australian Armed Forces"	This report constitutes an out-of-court statement offered in evidence to prove the truth of the matter asserted and is, therefore, inadmissible hearsay.	43, 46
20 21 22	App. 1929-1935: 2009 article by Col. Om Prakash entitled "The Efficacy of 'Don't Ask, Don't Tell'"	This report constitutes an out-of-court statement offered in evidence to prove the truth of the matter asserted and is, therefore, inadmissible hearsay.	153
23 24 25 26	App. 1936-1973: 2010 report by Gary Gates entitled "Lesbian, Gay, and Bisexual Men and Women in the U.S. Military: Updated Estimates"	This report constitutes an out-of-court statement offered in evidence to prove the truth of the matter asserted and is, therefore, inadmissible hearsay.	115, 116, 121, 122

1 2 3 4 5	App. 1982-2013: March 24, 1995 report entitled "Conduct Unbecoming: The First Annual Report on "Don't Ask, Don't Tell, Don't Pursue, Don't Harass"	This report constitutes an out-of-court statement offered in evidence to prove the truth of the matter asserted and is, therefore, inadmissible hearsay.	20
6 7 8 9	App. 2014-2049: 1996 report entitled "Conduct Unbecoming: The Second Annual Report on "Don't Ask, Don't Tell, Don't Pursue, Don't Harass"	This report constitutes an out-of-court statement offered in evidence to prove the truth of the matter asserted and is, therefore, inadmissible hearsay.	21
10 11 12 13 14	App. 2050-2089: 1997 report entitled "Conduct Unbecoming: The Third Annual Report on "Don't Ask, Don't Tell, Don't Pursue, Don't Harass"	This report constitutes an out-of-court statement offered in evidence to prove the truth of the matter asserted and is, therefore, inadmissible hearsay.	22
15 16 17 18	App. 2090-2168: 1998 report entitled "Conduct Unbecoming: The Fourth Annual Report on "Don't Ask, Don't Tell, Don't Pursue, Don't Harass"	This report constitutes an out-of-court statement offered in evidence to prove the truth of the matter asserted and is, therefore, inadmissible hearsay.	23
19 20 21 22 23	App. 2169-2253: 1999 report entitled "Conduct Unbecoming: The Fifth Annual Report on "Don't Ask, Don't Tell, Don't Pursue, Don't Harass"	This report constitutes an out-of-court statement offered in evidence to prove the truth of the matter asserted and is, therefore, inadmissible hearsay.	24
24 25 26 27	App. 2254-2340: 2000 report entitled "Conduct Unbecoming: The Sixth Annual Report on "Don't Ask, Don't Tell, Don't Pursue, Don't Harass"	This report constitutes an out-of-court statement offered in evidence to prove the truth of the matter asserted and is, therefore, inadmissible hearsay.	25

1 2 3 4 5	App. 2341-2443: 2001 report entitled "Conduct Unbecoming: The Seventh Annual Report on "Don't Ask, Don't Tell, Don't Pursue, Don't Harass"	This report constitutes an out-of-court statement offered in evidence to prove the truth of the matter asserted and is, therefore, inadmissible hearsay.	26
6 7 8 9	App. 2444-2500: 2002 report entitled "Conduct Unbecoming: The Eighth Annual Report on "Don't Ask, Don't Tell, Don't Pursue, Don't Harass"	This report constitutes an out-of-court statement offered in evidence to prove the truth of the matter asserted and is, therefore, inadmissible hearsay.	27
10 11 12 13 14	App. 2501-2561: 2003 report entitled "Conduct Unbecoming: The Ninth Annual Report on "Don't Ask, Don't Tell, Don't Pursue, Don't Harass"	This report constitutes an out-of-court statement offered in evidence to prove the truth of the matter asserted and is, therefore, inadmissible hearsay.	28
15 16 17 18	App. 2562-2617: 2004 report entitled "Conduct Unbecoming: The Tenth Annual Report on "Don't Ask, Don't Tell, Don't Pursue, Don't Harass"	This report constitutes an out-of-court statement offered in evidence to prove the truth of the matter asserted and is, therefore, inadmissible hearsay.	29
19 20 21 22 23 24 25 26	App. 2618-2621: February 24, 2010 Los Angeles Times article entitled "Navy Moves to Allow Women on Submarines"	This article constitutes inadmissible double hearsay. <i>See e.g., Green v. Baca</i> , 226 F.R.D. 624, 637 (C.D. Cal 2005) ("Generally, newspaper articles and television programs are considered hearsay under Rule 801(c) when offered for the truth of the matter asserted. Even when the actual statements quoted in a newspaper article constitute nonhearsay, or fall within a hearsay exception, their repetition in the newspaper creates a hearsay problem. Thus, statements in newspapers often constitute double hearsay.").	11

1 2 3 4	App. 2773-2775: August 28, 2000 New York Times article entitled "Military Reserves are Falling Short in Finding Recruits"	This article constitutes inadmissible double hearsay.	72
5 6 7 8 9	App. 2776-2777: March 31, 2010 Washington Post article entitled "A 'Don't Ask, Don't Tell' Rules Complicate Survey of Troops on Policy Change"	This article constitutes inadmissible double hearsay.	92
10 11 12 13	App. 2778-2820: Balancing Your Strengths Against Your Felonies: Consideration for Military Recruitment of Ex-Offenders	This report constitutes an out-of-court statement offered in evidence to prove the truth of the matter asserted and is, therefore, inadmissible hearsay.	114, 117, 119, 120
14 15 16	App. 2821-2836: Report entitled "A Review of the Armed Forces Policy on Homosexuality"	This report constitutes an out-of-court statement offered in evidence to prove the truth of the matter asserted and is, therefore, inadmissible hearsay.	42
17 18 19 20	App. 2837-2878: "Effects of the 1992 Lifting of Restrictions on Gay and Lesbian Service in the Canadian Forces: Appraising the Evidence"	This report constitutes an out-of-court statement offered in evidence to prove the truth of the matter asserted and is, therefore, inadmissible hearsay.	47
21 22 23	App. 2879-2881: March 14, 2007 Washington Post article "Bigotry That Hurts Our Military"	This article constitutes inadmissible double hearsay.	156
24 25 26	App. 2937-2945: January 30, 2010 transcript of CNN Interview with William Cohen	This transcript of a CNN interview constitutes inadmissible double hearsay.	157

1 2 3 4 5	App. 2946-2993: September 15, 2004 report by Nathaniel Frank, Ph. D. "Gays and Lesbians at War: Military Service in Iraq and Afghanistan under "Don't Ask, Don't Tell"	This article constitutes inadmissible double hearsay.	113
6 7 8 9	App. 2994: March 29, 2010 article in Roll Call entitled "Wesley Clark Backs Cunningham in North Carolina	This article constitutes inadmissible double hearsay.	158
10 11 12 13	App. 2995-3093: August 1992, Update of the U.S. Army Research Institute's Longitudinal Research Data Base of Enlisted Personnel	This report constitutes an out-of-court statement offered in evidence to prove the truth of the matter asserted and is, therefore, inadmissible hearsay.	137
14 15 16	App. 3094: February 3, 1020 New York Times article entitled "Powell Favors Repeal of 'Don't Ask, Don't Tell"	This article constitutes inadmissible double hearsay.	152

**Inadmissible Documents Cited in Plaintiff's Genuine Issues But Not Included
in Its Appendix**

17 18 19 20 21 22 23 24 25 26 27 28	Log Cabin Military Survey of Membership, produced by Plaintiff as bates Nos. LCR 001-017 and included as Exhibit B to the Declaration of Terry Hamilton	This "survey" is a compilation of out- of-court statements introduced as evidence to prove the truth of the matters asserted and is, therefore, inadmissible hearsay.	137
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