

IN THE UNITED DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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 Ariana Klay)
 729 10th St. SE)
 Washington, D.C. 20003)
)
 Elle Helmer)
 127 South 29th St.)
 Wilmington, North Carolina 20843)
)
 Nicole McCoy)
 12035 B Williams Blvd.)
 Albany, Georgia 31705)
)
 Robin Kahle)
 c/o Susan L. Burke)
 1000 Potomac St, NW Ste 150)
 Washington, DC 20007)
)
 Lamanda Cummings)
 19455 Deer Hill Rd.)
 Hidden Valley Lake, California 95467)
)
 Rebecca Blumer)
 8147 Easton St.)
 Houston, Texas 77017)
)
 Erica Dorn)
 1071 NW Bayshore Blvd.)
 Port St. Lucie, Florida 34983)
)
 Mariel Marmol)
 450 Hinano Way.)
 Kailua, Hawaii 96734)
)
 v.)
)
 Secretary of Defense)
 Pentagon)
 Leon Panetta)
 Army Navy Dr & Fern St)
 Arlington, VA 22202)

CASE NUMBER

JURY DEMAND

)
 Former Secretary of Defense)
 Robert M. Gates)
 College of William and Mary)
 Office of the Chancellor)
 P.O. Box 8795)
 Williamsburg, VA 23187-8795)
)
 Former Secretary of Defense)
 Donald Rumsfeld)
 1718 M Street NW #366)
 Washington, DC 20036)
)
 Commandant of the Marine Corps)
 James F. Amos)
 Marine Barracks Washington)
 8th & I Sts SE)
 Washington, DC 20003)
)
 Former Commandant of the Marine Corps)
 James T. Conway)
 Textron World Headquarters)
 40 Westminster Street)
 Providence, RI 02903)
)
 Former Commandant of the Marine Corps)
 Michael W. Hagee)
 National Museum of the Pacific War)
 340 E. Main Street)
 Fredericksburg, TX 78624)
)
 Secretary of the Navy)
 Ray Mabus)
 Office of the Secretary of the Navy)
 Navy Pentagon)
 Washington, DC 20350-2000)
)
 Former Secretary of the Navy)
 Donald C. Winter)
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 Naval Architecture & Marine Eng)
 133 NA & ME Bldg)
 Ann Arbor, MI 48109-2110)
)

Former Secretary of the Navy)
Gordon England)
E6 Partners)
1100 N. Glebe Road, Suite 1010)
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_____)

COMPLAINT

1. Rape, sexual assault and harassment are widespread throughout the Navy and the Marine Corps. Beginning with the Tailhook scandal in 1991, military leadership has been claiming that it is taking effective steps to address the problem. That is simply not true. Although Defendants testified before Congress and elsewhere that they have “zero tolerance” for rape and sexual assault, their conduct and the facts demonstrate the opposite: they have a high tolerance for sexual predators in their ranks, and “zero tolerance” for those who report rape, sexual assault and harassment. Defendants have a long-standing pattern of ignoring Congressional mandates designed to ameliorate the Armed Services’ dismal record of rape and sexual assault. As but one example, Defendant Panetta continues to violate the law requiring the Department of Defense to establish an incident-specific Sexual Assault Database no later than January 2010. More than two years later, the database still does not exist. *See* Government Accountability Office Report GAO 10- 405T.

2. Defendants’ repeated and unexcused failures to abide by the laws designed to reduce rape, sexual assault and harassment in the Navy and Marine Corps directly and seriously harmed Plaintiffs and others who have reported rape and sexual assault and have challenged sexual harassment. Rather than being respected and appreciated for reporting crimes and unprofessional conduct, Plaintiffs and others who report are branded “troublemakers,” endure egregious and blatant retaliation, and are often forced out of military service. Plaintiffs seeks monetary damages under *Bivens v. Six Unknown Agents of Federal Bureau of Narcotics*, 403

U.S. 388, 397 (1971) and *Davis v. Passman*, 442 U.S. 228 (1979) to compensate them for being raped, assaulted, harassed, and retaliated against for reporting such conduct. Defendants' misconduct violated Plaintiffs' Constitutional rights to be free from gender discrimination that does *not* serve, and is *not* substantially related to, important government objectives. *See Davis v. Passman*, 442 U.S. 228 (1979); *Craig v. Boren*, 429 U.S. 190 (1976).

JURISDICTION AND VENUE

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

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

PARTIES

5. Plaintiffs are two former Marine Corps officers (Ariana Klay, Elle Helmer), one active duty enlisted Marine (Nicole McCoy), one former enlisted member of the Marine Corps (Robin Kahle), and four former enlisted members of the Navy (Lamanda Cummings, Rebecca Blumer, Erica Dorn and Mariel Marmol) who reported being raped, sexually assaulted or, in one instance, stalked and severely harassed. Each Plaintiff suffered retaliation as a result of reporting. Each Plaintiff suffered directly from Defendants' unlawful conduct, which created and maintained a hostile environment for servicemembers reporting rape, sexual assault and sexual harassment.

PLAINTIFF ARIANA KLAY

6. Plaintiff Ariana Klay is a citizen of the United States who resides in Washington, D.C.

7. Ariana Klay was a National Merit Scholar, Division 1 Soccer player, and first generation college student recruited to attend the U.S. Naval Academy. There, she was selected for one of the top student leadership positions.

8. After graduating with honors, she joined the Marine Corps as an officer and served a tour of duty in Iraq from August 2008 to March 2009.

9. In July 2009, the Marine Corps recruited Lt. Klay to serve in the protocol office at Marine Barracks Washington at 8th and I Street, SE, after Lt. Klay submitted a required photo and received a strong recommendation from her Command Officer.

10. Lt. Klay confronted an atmosphere of harassment and abuse at the Marine Barracks that culminated in Lt. Klay being gang-raped at her private residence one block away from the base.

11. A Lieutenant Colonel made verbal sexual advances towards Lt. Klay.

12. A Major sexually harassed Lt. Klay, groping her and fondling her during a mandatory drinking event sponsored by the Command.

13. A Captain attempted to intimidate and harass Lt. Klay by falsely charging her with adultery. The Captain refused to stop spreading rumors about Lt. Klay even when the two persons (one officer and Lt. Klay's civilian boss) actually engaged in an adulterous affair came forward and directly told the Captain that Lt. Klay was not involved. Despite knowing his allegations were false, the Captain continued to circulate the rumor that Lt. Klay had participated in a "gang-bang." Command later promoted this Captain to one of the most prestigious positions in the Marines, and he travelled the world representing the Marine Corps.

14. Enlisted Marines, echoing the actions of their superiors, openly taunted and harassed Lt. Klay at the Barracks and in the surrounding community, calling her a "slut" and a

“whore.” Enlisted Marines openly disrespected Lt. Klay and other female Marines, using the slang “WM” to stand for “women Marines” and “walking mattress.”

15. To escape the hostile environment, Lt. Klay requested permission to deploy to Afghanistan. Despite the fact that Lt Klay had been requested by a Three Star Admiral in Afghanistan, the Commanding Officer denied Lt. Klay’s requests, determining that she was “too critical to the Command.”

16. When Lt. Klay reported the hostile environment to her Executive Officer, he refused to take any steps to stop the open and pervasive hostility towards Lt. Klay and other females at the Marine Barracks, and instead told Lt. Klay to “deal with it.”

17. On the morning of August 28, 2010 the hostile environment culminated with Lt. Klay being gang-raped by a senior Marine Corps Officer and his civilian friend (a former Marine) at her residence, which was approximately one block from the Barracks. The Marine Officer, whom Lt. Klay knew, and his friend entered her residence without permission early on a Saturday morning. The Marine Officer threatened to kill Lt. Klay, and claimed he was going to show his friend “what a slut she was” and “humiliate” her. The Marine Officer took her upstairs to her bedroom and raped her. He then yelled out for his civilian friend, who came into the room and also raped Lt. Klay.

18. Lt. Klay reported the rapes, and the ensuing harassment and retaliation she endured from her Command led to such severe distress that she attempted to commit suicide.

19. The Marine Corps investigated the harassment, and held that Lt. Klay must be deemed to have welcomed the severe and pervasive sexual harassment because she wore make up, regulation-length skirts (as part of her uniform) and exercised in running shorts and tank tops.

20. Nothing happened to those who harassed her. Indeed, the Marine Corps granted one of her harassers a waiver that permitted him to obtain a security clearance despite a documented history of hazing and sexual misconduct against not only Lt. Klay but many others. He was also featured in a nationally televised recruitment commercial while he was still under investigation. The Marine Corps also featured Lt. Klay's rapist and another one of her harassers in the Marine calendar.

21. The Marine Corps did court-martial one of Lt. Klay's rapists, but failed to convict him of rape. Instead, as is a repeated pattern with military rape prosecutions, the rapist was convicted only of adultery and indecent language. The Marine Corps viewed Lt. Klay as "consenting" to being gang-raped despite the uncontested evidence that the rapist threatened to kill her.

22. The Marine Corps response to the pervasive sexual harassment and rapes of Lt. Klay caused her extreme emotional harm, and she has been diagnosed with PTSD.

PLAINTIFF ELLE HELMER

23. Plaintiff Elle Helmer is a citizen of the United States and resides in North Carolina. She served as an officer in the Marine Corps.

24. In January 2005, the Marine Corps recruited Elle Helmer straight from The Basic School to serve as Public Affairs Officer at the Marine Barracks in Washington, D.C., at 8th and I Street, SE. Lt. Helmer was instructed to send photographs of herself wearing her uniform, which she did. According to statements made to Lt. Helmer, the Marine Corps selected her based on her appearance. She was told that the Marine Barracks Command wanted a good-looking female officer to serve as a "poster child."

25. After she was selected for the position in March 2005, the selecting Captain continually commented on her appearance and began to harass her. He told Lt. Helmer that he picked her for the Public Affairs Officer because she was the “prettiest.” He made sexual advances, and kept sending her social emails.

26. Lt. Helmer spurned his advances, and complained about the harassment to the Marine Barracks Equal Opportunity Officer (“EEO”). Lt. Helmer provided the EEO with copies of the emails, and details about the harassment. The Marine Corps did nothing.

27. In February 2006, the Marine Corps named Lt. Helmer to serve as the first female ceremonial parade staff flanking officer.

28. In March 2006, Lt. Helmer’s immediate superior (a Major) told Lt. Helmer that she was required to attend a “pub crawl” for St. Patrick’s Day that had been endorsed by the Colonel. When she objected to going, the Major told Lt. Helmer that it was a mandatory work event.

29. The “pub crawl” involved a group of Marine officers identified in T-shirts going from bar to bar on Capitol Hill drinking excessive amounts of alcohol, all paid for by the Marine Corps.

30. Lt. Helmer was required to drink shots at the same pace as the larger male officers. On those occasions when Lt. Helmer drank water to try to keep herself from becoming intoxicated, she was required by the Major (her boss) to drink an extra shot as a “punishment.”

31. As a result of the forced consumption of alcohol on that night, Lt. Helmer became very intoxicated, and left to find a cab to go home. Her superior, the Major, followed her out, and told her that she needed to come with him to his office to discuss a business matter.

32. When they reached his office, the Major tried to kiss her. Lt. Helmer resisted, and the Major grabbed her, knocking her over. Lt. Helmer lost consciousness at that point.

33. When she awoke, she found herself lying on the floor in the Major's office, wearing his shorts. The Major was found naked from the waist down, passed out on the floor nearby.

34. After Lt. Helmer left the office, she reported to her Command that she had been raped. Her Colonel discouraged her from asking for a rape kit examination, saying it would "be out of his hands." In spite of her Colonel's objections, Lt. Helmer sought and obtained a rape kit and medical examination.

35. Despite the medical and circumstantial evidence of the rape, the Navy Criminal Investigative Service ("NCIS") initially refused to investigate, claiming that Lt. Helmer's inability to recall the rape precluded any investigation. After a delay that destroyed the crime scene, NCIS eventually conducted a very brief investigation, and concluded that nothing could be done in light of Lt. Helmer's lack of consciousness during the assault. In addition, the Marine Corps "lost" Lt. Helmer's rape kit.

36. Lt. Helmer complained to the Major's superior. Although that Marine officer admitted that the NCIS investigation was "woefully inadequate," and removed the Major from his command, he refused to press charges or take any further steps to punish the rapist. Instead, he told Lt. Helmer "You're from Colorado – you're tough. You need to pick yourself up and dust yourself off." He then remarked "I can't babysit you all of the time."

37. Instead of the perpetrator being prosecuted, Lt. Helmer became the subject of investigation and prosecution. She was forced to leave the Marine Corps, while rapist remains a Marine in good standing.

PLAINTIFF NICOLE McCOY

38. Plaintiff Nicole McCoy is a citizen of the United States and resides in Georgia.

39. Plaintiff McCoy joined the Marine Corps in January 2008. She has reached the rank of Lance Corporal (“LCpl”) and continues to serve.

40. On April 2, 2010, LCpl McCoy was sexually assaulted by her platoon leader at the Marine Corps Logistics Base in Albany, Georgia.

41. LCpl McCoy’s platoon leader, a Sergeant, asked her to come to his barracks room to discuss a trip she was taking. When she arrived, he made sexual advances, and when she resisted, he became forceful. He began to grope and kiss her, and held her down on the bed when she tried to get away. She managed to struggle free and run away, but he told her they would “pick up where they left off.”

42. In the days immediately following the assault, LCpl McCoy told several supervising Sergeants in her Command about the assault. They did nothing except to tip her perpetrator off in advance that LCpl McCoy was going to file a report. Thereafter, they participated with the perpetrator in an effort to obstruct the investigation and harass LCpl McCoy. None of the harassers was ever disciplined.

43. LCpl McCoy filed a formal report with the Marine Corps Criminal Investigative Division (“CID”). During CID’s investigation LCpl McCoy’s perpetrator attempted to change the layout of the furniture in his room to undercut LCpl McCoy’s allegations. He was assisted in this effort by his direct supervisor, the Master Sergeant of his section. This cover up was revealed to LCpl McCoy and CID by another Sergeant in the Command.

44. The Marine Corps issued a protective order to protect LCpl McCoy from her perpetrator, but then ignored the terms of the order, and required LCpl McCoy to participate in mandatory formations with him.

45. The Marine Corps failed to take away the perpetrator's master key to the rooms, which led LCpl McCoy to fear for her safety. When LCpl McCoy began suffering from panic attacks as a result, the Marine Corp Sexual Assault Counselor (known as "SARC") told her the Marine Corps was unable to provide any help.

46. During the CID investigation, LCpl McCoy's Command blamed and ridiculed her for reporting the assault. Her Staff Sergeant chastised her for "cutting him off at the knees" by reporting the assault to CID and seeking help from SARC. Her Command made it clear to LCpl McCoy that she, not the perpetrator, was viewed as undermining the unit by reporting the sexual assault.

47. During the investigation, LCpl McCoy was forced to move out of the Barracks because she was married, but was then denied her Basic Housing Allowance because her husband was stationed at another base. As a result, LCpl McCoy was forced to live in Albany without running water or heat for over two months.

48. When Command did manage to get LCpl McCoy's husband's orders transferred to Albany, they made it clear that they expected her to drop the sexual assault charges in return.

49. Despite findings by CID and constant reassurance by the SARC that her assailant was being brought to justice, the Command used its unfettered power to shut down the investigation without taking any action against the perpetrator. LCpl McCoy was told by her Command that she had no right to know the outcome of the investigation because it would violate the privacy of her perpetrator.

PLAINTIFF ROBIN KAHLE

50. Plaintiff Robin Kahle is a citizen of the United States who resides in Illinois. She served in the Marine Corps from 1997 to 2001, and rose to the level of Lance Corporal (“LCpl”).

51. On February 24, 2001 while stationed at Marine Corps base Camp Butler in Okinawa, Japan, LCpl Kahle was sexually assaulted by a Marine from another unit. While she was sleeping that night, the Marine entered LCpl Kahle’s bedroom through an adjoining bathroom. LCpl Kahle awoke to find the perpetrator above her, touching her and smothering her. LCpl Kahle was able to struggle free, and the perpetrator fled the room.

52. LCpl Kahle ran immediately to her Barracks Duty and reported the assault. The perpetrator was apprehended a short distance away from the Barracks.

53. After the perpetrator was apprehended, LCpl Kahle learned that he was a Marine from another unit who was a good friend of her Barracks Sergeant. The perpetrator was drunk and was staying overnight with the Barracks Sergeant.

54. Prior to his assault on LCpl Kahle, the perpetrator had been placed “under supervision” because he had been seen going through the Barracks checking the door locks, trying to break into the rooms of female servicemembers.

55. After arresting the perpetrator, the Military Police proceeded to interview LCpl Kahle outside, in front of many bystanders from her unit.

56. The Marine Corps ignored all the proper policies and procedures during the investigation by failing to offer LCpl Kahle any medical assistance or psychological counseling.

57. The Military Police also failed to conduct a meaningful investigation of the attempted assault. For example, no one inspected or preserved the crime scene, or collected DNA evidence from LCpl Kahle or the perpetrator.

58. The Marine Corps began to retaliate against and harass LCpl Kahle. The Barracks Sergeant began assigning her extra duty and ostracized her. Other Marines that were friends with the perpetrator would stalk her, yell at her, and trip her when she walked by them. Marines in her own unit began making nasty comments to her in the chow hall, and she was ostracized from her unit.

59. The Marine Corps prosecuted the perpetrator but were unable to convict him because the Military Police had failed to conduct a proper investigation.

60. As a result of the attempted rape and subsequent severe harassment arising from reporting the attack, LCpl Kahle suffers from severe post-traumatic stress disorder (“PTSD”).

PLAINTIFF LAMANDA CUMMINGS

61. Plaintiff Lamanda Cummings (nee’ Johnson) is a citizen of the United States and resides in California.

62. Plaintiff Cummings served in the United States Navy from 2002 to 2003 with the rank of Seaman Apprentice (“SN”).

63. In 2002, SN Cummings attended A-School training. One evening just before the Thanksgiving Holiday, she went with several classmates to a party at a hotel. SN Cummings did not consume any alcohol at the party. While she was talking to a male classmate in one of the rooms, her friends left the party without coming to find her. The male classmate began to try to kiss and touch her in a sexual manner. SN Cummings resisted both verbally and physically, but the male classmate forced himself on her and raped her.

64. During the rape, SN Cummings experienced flashbacks of when she was molested as a child, and she blacked out from the trauma. When she regained consciousness, her perpetrator was leaving the room. SN Cummings contacted a friend who picked her up. She

shut herself in her barracks and kept to herself for several days, confiding in only a few close friends about the rape.

65. After this absence, SN Cummings returned to class. Noticing a change in her behavior and fearing that she was suicidal, the Class Leader questioned SN Cummings about her change in behavior. At this point, SN Cummings reported the rape to the Class Leader. The matter was referred to the NCIS for investigation.

66. As soon as it became known that SN Cummings had reported the rape, the perpetrator and his friends in the unit began to harass SN Cummings. They did not obscure their harassment, but rather openly called her names including “slut,” “whore,” “skank,” and “liar.” Her Command was well aware of the harassment, as it was not subtle or secretive, yet Command did nothing to stop the severe harassment.

67. Instead, Command permitted the perpetrator to graduate and move on to a duty station and retaliated against SN Cummings for reporting the rape.

68. Command prevented SN Cummings from completing her coursework, and barred her from graduating A-School. Her Command informed her that she had been put on “legal hold” for “falsifying legal documents and statements.” SN Cummings was not permitted to graduate with her class.

69. SN Cummings contacted the Judge Advocate General (“JAG”) seeking help against Command’s retaliation. The JAG officer told SN Cummings that if she continued to try to seek justice against the perpetrator, the prosecutor would be permitted to introduce during the Court Martial information that SN Cummings had shared with her psychiatrist about being sexually active. In short, the JAG officer conveyed quite clearly that SN Cummings herself would be put on trial.

70. The JAG officer advised SN Cummings that she had no real option but to plead guilty to the charges of falsifying legal documents. He advised her that otherwise, she would continue to be subject to the “hold” and would not be able to progress to graduation, or be permitted to leave the Navy. He advised her to plead guilty so she could leave the Navy. SN Cummings was unable to endure any longer her captive state, and agreed to plead – falsely – that she was guilty.

71. During this period when the Navy was trying to coerce SN Cummings into falsely pleading guilty, her parents sought out information. A Navy officer bluntly told SN Cummings’ mother, “The Navy needs the men more than they need your daughter.”

72. At the close of the adjudicatory hearing during which SN Cummings succumbed to the coercion to make a false admission in order to be able to leave the Navy, the military judge turned off his microphone and apologized to SN Cummings for what the Navy had done to her.

73. As a result of the rape and the retaliation, SN Cummings’ career choices have been limited, and she suffers from PTSD and Major Depressive Disorder.

PLAINTIFF REBECCA BLUMER

74. Plaintiff Rebecca Blumer is a citizen of the United States who resides in Texas.

75. Plaintiff Blumer served in the Navy from July 7, 2004 to April 30, 2011. In 2011, she was a 2nd Class Petty-Officer working as a Cryptologic Technician (“CTR2”) with a pay grade of E5. She was stationed at Navy Information Operations Command Georgia, located on Fort Gordon Army Base in Augusta, Georgia.

76. On February 12, 2010, CTR2 Blumer was drugged and raped by a servicemember from the Army. CTR2 Blumer filed an unrestricted report of sexual assault.

77. After CTR2 Blumer filed the unrestricted report, members of her unit became aware of its contents. Members of CTR2 Blumer's Navy unit began to harass her, claiming she had gotten drunk, voluntarily participated in an orgy and now was "crying rape."

78. NCIS launched an investigation into the rape. The initial NCIS investigator appeared to be acting in good faith, but he was replaced for reasons unknown to CTR2 Blumer. The second NCIS investigator who was assigned to CTR2 Blumer's case accused her of "imagining" or "dreaming up" the assault, and closed the investigation.

79. After the NCIS investigation was closed by the newly assigned investigator, CTR2 Blumer's Command began harassing her and branded her as a "bad influence." Command levied DUI charges against her, but prevented her from going to a Court Martial hearing on those charges. Instead, when CTR2 Blumer requested a Court Martial to fight the charges, Command issued an Administrative Discharge with Misconduct—Serious Offense under Honorable Conditions, which prevented adjudication.

80. NCIS and Command treated CTR2 Blumer as a criminal suspect rather than a victim of sexual assault. CTR2 Blumer was also prohibited by Command from creating a sexual assault support group, which interfered with her efforts to recover from the assault.

PLAINTIFF ERICA DORN

81. Plaintiff Erica Marie Dorn is a citizen of the United States who resides in Florida.

82. Plaintiff Erica Dorn joined the Navy in 1996 at the age of 20, and became a Hospital Corpsman ("HM3") with a specialty as a psychiatric technician.

83. Hospital Corpsmen are frequently the only medical caregivers available for units on extended deployment, and serve in the battlefield with the Marine Corps to help with initial treatment in the field.

84. HM3 Dorn served as a member of Joint Task Force 160 from August 13, 2002 to November 13 2002 in Guantanamo Bay, Cuba, where she earned the prestigious Joint Service Achievement Medal for Meritorious Service.

85. HM3 Dorn was deployed to Iraq as part of Operation Iraqi Freedom from February 12, 2003 to June 30, 2003. She was deployed to the front lines of combat, traveling with a Marine unit. For much of the four months that she was deployed, HM3 Dorn was the only female servicemember traveling with the unit.

86. During her deployment, two Lieutenants and a fellow HM2 Corpsman sexually harassed HM3 Dorn. These three would regularly watch pornographic videos and read pornographic magazines in the workplace. While they were doing this, they would make comments to and about HM3 Dorn, such as “You would look good in this, Dorn,” or “Dorn, you should try doing this.” They would ask her about orgasms and talked about sex in front of her frequently. They would also discuss HM3 Dorn in front of her, saying things like “Question: Who is more likely to become a prostitute or a lesbian? Answer: Dorn!”

87. The perpetrators would walk around naked in the tent while HM3 Dorn was present. They called her names including “Bitch,” “Beauty Queen,” and “Princess.”

88. On one occasion, HM3 Dorn’s Lieutenant drew a picture of her engaging in a sexual act with her other Lieutenant, which he deemed “art therapy” and circulated the drawing to other men in her unit.

89. When HM3 Dorn protested the harassment directly to the perpetrators, they escalated their abuse.

90. The HM2 began making open threats of sexual violence towards HM3 Dorn. For example, while helping lift her pack onto her back, the HM2 stated “if I’m going to help you

with this pack, you have to give me some.” He threatened HM3 Dorn, saying things like “Be careful when you are sleeping or I might jump in your bed,” and, finally, “Be careful when you go to sleep because you might wake up with a knife to your throat... I don’t know how much longer I can stand it.” HM3 Dorn was so frightened of being raped by the HM2 that she began sleeping in the Chaplain’s tent.

91. HM3 Dorn reported the harassment as soon as she was safely back in Kuwait, outside the reach of violence by the HM2. When HM3 Dorn reported the harassment to her Master Chief, he told her “this happens all the time” and she should go home and think about the consequences of reporting the sexual harassment.

92. After she was sent back to the United States at the end of her deployment, HM3 Dorn was given a one-month leave. At the end of the leave, HM3 Dorn filed a formal complaint of sexual harassment with the Navy Equal Opportunity Office.

93. The Navy began to retaliate against HM3 Dorn. After making the report, HM3 Dorn was re-assigned to a less-prestigious position. By contrast, the three perpetrators were not removed from their assignments and continued to work in the hospital.

94. As a result of the retaliation and complete lack of accountability for the perpetrators, HM3 Dorn decided to leave the Navy despite having invested seven years in her military career. HM3 Dorn suffers from PTSD.

PLAINTIFF MARIEL MARMOL

95. Plaintiff Mariel Marmol is a United States citizen who currently resides in Hawaii.

96. Plaintiff Mariel Marmol served in the Navy from 2004 to 2011, reaching the rank of Aviation Machinist Mate, Rank 3 (“AD3”).

97. In February 2007, AD3 Marmol was raped by her direct supervisor (an E5) at the Naval Air Station in Jacksonville, Florida. On the night of the rape, AD3 Marmol was in her assigned barracks room. The perpetrator approached her room and stated that he wanted to “hang out.” Under the belief that she could trust her supervisor, AD3 Marmol allowed him inside her room. The perpetrator raped AD3 Marmol. AD3 Marmol contracted a sexually transmitted disease from the perpetrator.

98. AD3 Marmol initially did not file a complaint because she was afraid of the professional repercussions and worried that people would not believe her. The perpetrator was her direct supervisor in her chain-of-command and was viewed by others as a “golden boy” of the unit. AD3 Marmol did not trust the Navy’s system of justice in rape and sexual assault cases because she knew retaliation was commonplace for women who reported rape and sexual assaults.

99. Upon learning that another servicemember filed a complaint against the same perpetrator for a similar instance of sexual assault, however, AD3 Marmol realized her failure to report had been problematic, as she was not the only victim of the perpetrator. AD3 Marmol then filed a complaint with NCIS.

100. NCIS proposed that AD3 Marmol communicate with the perpetrator as means to obtain a recording in which the perpetrator incriminated himself. In the meantime, however, Command took it upon themselves to issue mutual restraining orders against AD3 Marmol and the perpetrator, which thwarted the NCIS investigation. With mutual restraining orders in place, AD3 Marmol was unable to help the NCIS collect evidence for its investigation. Additionally, the Command’s restraining order blocked AD3 Marmol from testifying as a corroborating witness at the court martial on the other rape.

101. NCIS advised AD3 Marmol that her case had been turned over to the Navy's Legal Department. The Navy Legal Department told AD3 Marmol that it was going to close her case for lack of evidence, but would re-open her case and contact her if the Navy's prosecution of the perpetrator for raping the second servicemember was successful.

102. Although the perpetrator was convicted and sentenced to eight years of confinement with respect to his rape of the other servicemember, the Navy Legal Department never prosecuted him for the rape of AD3 Marmol.

103. Instead, AD3 Marmol was subjected to retaliation and hostility. Her Navy co-workers ostracized her, accused her of lying, and blamed her for having an "attitude." AD3 Marmol was also subjected to unwanted touching.

104. AD3 Marmol suffered negative professional repercussions as a result of the rape and her subsequent complaint. During the NCIS investigation, AD3 Marmol's Command claimed that AD3 Marmol would not be able to perform her duties properly while the NCIS investigation was underway, and downgraded her from an aviation mechanics position to a command services position, where she worked as a store clerk.

105. In July 2011, AD3 Marmol resigned from the military, as it was clear that reporting the rape had led to permanent career repercussions. AD3 Marmol suffers from PTSD and anxiety as a result of the rape and the retaliation.

DEFENDANTS

106. Defendant Leon E. Panetta is the current Secretary of the United States Department of Defense. He has served as Secretary since July 1, 2011. His business address is Pentagon, Arlington VA. Secretary Panetta's acts and omissions that led to this lawsuit occurred in this district.

107. Defendant Robert M. Gates is the former Secretary of the United States Department of Defense. Defendant Gates served as Secretary from December 18, 2006 to June 30, 2011. His business address is College of William and Mary, Office of the Chancellor, P.O. Box 8795, Williamsburg, VA 23187-8795. Defendant Gates' acts and omissions that led to this lawsuit occurred in this district.

108. Defendant Donald Rumsfeld is the former Secretary of the United States Department of Defense. His business address is 1718 M Street NW #366, Washington, D.C. 20036. Defendant Rumsfeld served as Secretary from 1975 to 1977, and again from 2001 until December 18, 2006. Defendant Rumsfeld's acts and omissions that led to this lawsuit occurred in this district.

109. Defendant James F. Amos is the current Commandant of the Marine Corps. He began serving as Commandant on October 22, 2010. His business address is Marine Barracks Washington, 8th & I Sts NE, Washington, DC 20003. Defendant Amos' acts and omissions that led to this lawsuit occurred in this district.

110. Defendant James T. Conway served as Commandant of the Marine Corps from November 14, 2006 to October 22, 2010. His business address is Textron World Headquarters, 40 Westminster Street, Providence, RI 02903. Defendant Conway's acts and omissions that led to this lawsuit occurred in this district.

111. Defendant Michael W. Hagee served as Commandant of the Marine Corps from January 13, 2006 to November 13, 2006. His business address is National Museum of the Pacific War, 340 E. Main Street, Fredericksburg, TX 78624. Defendant Hagee's acts and omissions that led to this lawsuit occurred in this district.

112. Defendant Ray Mabus is the current Secretary of the Navy. He began his service on June 18, 2009. His business address is Office of the Secretary of the Navy, Navy Pentagon, Washington, DC 20350-2000. Defendant Mabus' acts and omissions that led to this lawsuit occurred in this district.

113. Defendant Donald Winter served as Secretary of the Navy from January 3, 2005 to March 13, 2009. His business address is University of Michigan, Naval Architecture & Marine Eng, 133 NA & ME Bldg, Ann Arbor, MI 48109-2110. Defendant Winter's acts and omissions that led to this lawsuit occurred in this district.

114. Defendant Gordan R. England served as Secretary of the Navy from October 1, 2003 until December 28, 2005. His business address is E6 Partners, 1100 N. Glebe Road, Suite 1010, Arlington, VA 22201. Defendant Gordon's acts and omissions that led to this lawsuit occurred in this district.

DESPITE THE REALITY OF WIDESPREAD RAPE, SEXUAL ASSAULT, AND HARASSMENT, THE NAVY AND MARINE CORPS SYSTEMICALLY RETALIATE AGAINST THOSE WHO REPORT

115. Rape and sexual assault are commonplace in the Navy and Marine Corps. A staggering 13 percent of men enlisting in the Navy admitted that they had raped someone. Of those men, 71 percent admitted to serial rapes. These Navy recruits also admitted that on most occasions, they used substances (such as drugs and alcohol) rather than brute force to incapacitate their victims. Most of the rapists also admitted to targeting someone known to them rather than strangers. *See McWhorter et al*, "Reports of Rape Reperpetration by Newly Enlisted Male Navy Personnel," *Violence and Victims*, Vol. 24, No. 2 (2009).

116. Rape and sexual assault is widespread in the military. The chart below portrays the number of rapes and other sexual assaults:

2006	2,947
2007*	2,688
2008	2,908
2009	3,230
2010	3,158

*Change from calendar year to fiscal year reporting methods

117. Yet despite the reality that rape, sexual assault and sexual harassment are widespread, those who report the crimes are viewed with suspicion and subjected to severe retaliation. As a result of the hostile environment, the Department of Defense estimates that only 20 percent of servicemembers who experience “unwanted sexual contact” report the matter to a military authority. *See 2009 Annual Report on Sexual Assaults in the Military*. Thus, the true numbers of rapes and sexual assaults are likely to be as follows:

2006	14,735
2007	13,440
2008	14,540
2009	16,150
2010	15,790

118. The retaliatory culture has been measured and quantified by the Department of Defense: 40 percent of active duty women and 20 percent of active duty men who had been victims of sexual assaults or rapes did not report the assaults because “they thought their performance evaluation or chance for promotion would suffer.” Even more declined to report because they “thought they would be labeled a troublemaker...” See DOD 2010 Annual Report at 20. These fears are well founded, as evidenced by the retaliation and career harm suffered by Plaintiffs in this case, as well as Plaintiffs in a case pending before the Court of Appeal for the Fourth Circuit, *Cioca et al. v. Rumsfeld et al.*

119. Defendants are personally responsible for this culture of retaliation that pervades the Navy and Marine Corps. Defendants’ lack of leadership has caused failure to make progress on reducing rape and sexual assault. As reported by the Government Accountability Office (“GAO”), efforts to reduce rape and sexual assault are ineffective because they receive “limited support from commanders.” See GAO February 24, 2010, Testimony, GAO-10-405-T at page 2.¹

120. The Navy permits a culture of sexual harassment and misogyny to flourish. As but one example of the type of conduct that is commonplace, Defendants promoted Captain Owen Honors to a leadership position on the USS Enterprise in May 2011, *after* Honors created and widely disseminated a sexist and harassing videotape. As Honors admitted, many had alerted Navy leadership to Honors’ misconduct well before his promotion: “Over the years I’ve gotten

¹ This situation is not new. Defendants have been on notice for many years that sexual harassment was commonplace in the Navy and Marine Corps. In 1991, the Navy conducted a service-wide survey that revealed 44% of female enlisted and 33% of female officers reported having been sexually harassed during the preceding year. See *Sexual Harassment in the Active-Duty Navy; Findings from the 1991 Navy-wide Survey*, NPRDC-TR-94-2 (December 1993). That same year, 83 women and 7 men were sexually assaulted, despite the long-standing “zero tolerance” policy, by Navy personnel at the Tailhook convention. See April 23, 1993 DOD Inspector General Report.

several complaints about inappropriate material during these videos, never to me personally but, *gutlessly, through other channels.*” See Jaffe, Greg, *Capt. Owen Honors Relieved of Navy Command Because of Raunchy Videos*, WASHINGTON POST, February 25, 2011. Honors’ words evince a complete disregard and disrespect for the rights of his subordinates to report his sexual harassment to someone other than himself. Such open mockery of the Constitutional right to be free from gender discrimination is widespread in the Navy.

121. The same culture of sexism and harassment thrives in the Marine Corps. As an example, in 2007, Marine LCpl. Lauterbach was raped by a fellow Marine. When she reported the rape, “she was met with skepticism, if not outright disbelief, by her superiors and met with harassment and ostracism by her male fellow Marines. . . . That six-month nightmare ended when she was murdered and buried in a shallow fire pit in the backyard of fellow Marine Cpl. Cesar Laurean.” See *Written Statement of Merle F. Wilberding, February 24, 2010, House Committee on Oversight and Government Reform.*

122. Indeed, the Marine Barracks itself, held up by the Marine Corps as the centerpiece of its culture, is rampant with rape, sexual assault and sexual harassment. Plaintiffs Klay and Helmer are only two of the many women who have been raped and harassed at the Marine Barracks. As evidenced by Exhibit A, many others – including civilian employees – have been subjected to rape, sexual assault and sexual harassment. Further, Exhibit A understates the severity of the problem at the Marine Barracks, as it fails to include other instances of sexual assault and harassment known to the Command.

123. This culture of retaliation is further demonstrated by Exhibit B, a document recently circulated by the Marine Corps director of the protocol office. In Exhibit B, the Marine

Corps portray as weak those who report rape and sexual assault, and portray as “real men” those who commit such crimes.

124. Despite voluminous evidence of widespread retaliation, none of the Defendants took *any* steps, let alone systemic and effective steps, to identify and punish the personnel who retaliated against those courageous enough to report rape and sexual assault.

125. Nor have Defendants taken effective steps to ensure that that Navy and Marine Corps exclude sexual predators from their ranks. Instead, certain Defendants granted a significant number of “moral waivers” to recruit those with criminal convictions – including felonies – into the Navy and Marine Corps. The following chart shows the number of persons with criminal convictions, including felony convictions, recruited into the Marine Corps and Navy service between 2003 and 2006 (shown both in absolute numbers and percentage of enlistments):

**MARINE
CORPS**

2003 2004 2005 2006

TOTAL	19,195	18,669	20,426	20,750
PERCENTAGE OF TOTAL FORCE	49.6	50.7	52.5	54.3

NAVY

2003 2004 2005 2006

TOTAL	4,207	3,846	3,467	3,502
PERCENTAGE OF TOTAL FORCE	10.4	9.8	9.2	9.7

See Boucai, Michael, *Balancing Your Strengths Against Your Felonies: Considerations for Military Recruitment of Ex-offenders*, 61 U. MIAMI L. REV. 997, 1000-01 (2007), Table 3 (based on data obtained via the Freedom of Information Act).

126. During their tenure, each Defendant knew that his service was violating the Constitutional rights of women who reported rape and sexual assault. Each Defendant knew that there were obvious dysfunctions in the military system of responding to reports of rape and sexual assault.

127. Each Defendant presided over a dysfunctional system that permits all but a small handful of rapists to evade any form of incarceration. The statistics are staggering. The most recent annual report reveals that less than eight percent of identified perpetrators are court-martialed and convicted.

128. Each Defendant knew that he had the power to change the culture of retaliation. Each Defendant knew that his leadership made a difference to the priorities and focus of his service. As stated in the Government Accountability Office's report on February 24, 2010, the Department of Defense and the Coast Guard's "successful program implementation will require the personal involvement of top DOD and Coast Guard leadership in order to maintain the long-term focus on and accountability for program objectives. Without such support, DOD's and the Coast Guard's programs will not be able to maximize the benefits of their respective prevent and respond initiatives, and they may not be able to effect the change in military culture to ensure that their programs are institutionalized." See GAO Report No. 10-405-T, entitled "DOD's and the Coast Guard's Sexual Assault Prevention and Response Programs Need To Be Further Strengthened."

129. Each Defendant knew that Plaintiffs and other servicemembers (a) were being forced to work daily side-by-side with their rapists, (b) could not move to another apartment or another city, but can be and are forced to live in the same quarters as their rapists, and (c) could not take any personal action that civilians might take to protect themselves from an ongoing threat – *e.g.*, call the police, go to a shelter, change housing or jobs, or even get out of town.

130. Each Defendant knew that Plaintiffs and other servicemembers were being ordered to keep quiet, and discouraged from reporting rape and sexual assault. Thus, each Defendant was well aware that his personal failure to take action was resulting in Constitutional deprivations of life, liberty, due process, equal protection and the right to free speech. For example, during his testimony prior to confirmation, General Amos admitted that “preventing sexual assault is a leadership responsibility.”

131. Despite having the knowledge of ongoing Constitutional violations, and despite having the personal power to stop those Constitutional deprivations, each Defendant failed to take any effective action. Instead, each Defendant permitted or continues to permit a Marine Corps or Navy culture in which victims of rape and sexual assault are penalized and retaliated against when they seek justice.

132. Each Defendant repeatedly permitted or permits military Command to interfere with the impartiality of criminal investigations. The annual report published on August 24, 2010, admitted that military personnel refrain from reporting rape and sexual assault because doing so is perceived as having “lasting career and security clearance repercussions.”

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

134. Each Defendant repeatedly permitted or permits the military Command to charge those alleged to have raped or sexually assaulted a co-worker under UCMJ Article 134 (Adultery) rather than under Article 120 (Rape).

135. Each Defendant repeatedly ensured or ensures that the military, not the civilian authorities, investigated and prosecuted charges of rape and sexual assault. Each Defendant knows that the military judicial system prosecutes less than eight percent of those alleged to have engaged in rape or sexual assault, as compared to the civilian system, which prosecutes forty percent of those alleged to be such perpetrators.

136. Each Defendant permitted or permits the vast majority of those military personnel found to have raped or assaulted someone to be honorably discharged from the military and receive their full retirement benefits.

137. Each Defendant, up to and including Defendant Panetta, has ignored statutory mandates. As explained in the February 24, 2010 Statement by Co-Chairs Brigadier General Dunbar and Dr. Iasiello, Defense Task Force on Sexual Assault in the Military Services before the House Committee on Oversight and Government Reform, Subcommittee on National Security and Foreign Affairs, the Task Force found “DOD’s procedures for collecting and documenting data about military sexual assault incidents to be lacking in accuracy, reliability, and validity. As one example, the most recent DOD report to Congress combined offender and victim data.” The Task Force also found that “SAPR training was generally perceived as yet another mandatory training requirement to fulfill as opposed to a problem to understand and address.”

138. Each Defendant, up to and including Defendant Panetta, failed to report conviction rates of rape, which is critical data needed by Congress to assess whether reforms are

being implemented. *See* February 24, 2010, Statement for the Record by the Honorable Louise M. Slaughter (D-N.Y.), submitted to the Committee on Oversight and Government Reform, Subcommittee on National Security and Foreign Affairs, for Hearing: *Sexual Assault in the Military Part IV: Are We Making Progress?* Instead, the annual report muddies the data by including all convictions, such as those for adultery. This hides from public scrutiny the fact that rape convictions almost never occur in the military judicial system.

139. Each Defendant permitted the destruction of evidence gathered during forensic examinations. *2009 Annual Report on Sexual Assaults in the Military* at 5.

140. Each Defendant repeatedly cites a policy of “zero tolerance” for rape and sexual assault. Yet this is the very same “zero tolerance” policy in effect during the 1991 Tailhook scandal and the ensuing years in which the rates of sexual harassment and assault climbed, not fell. Defendants each know with certainty that the “zero tolerance” policy is a sham, a public relations charade.

141. Each Defendant repeatedly ignored Congressional mandates and deadlines. In 2009, Congress expressly directed that the Department of Defense establish a centralized case-level Defense Sexual Assault Incident Database by January 2010. *See* National Defense Authorization Act for fiscal year 2009. When the Government Accountability Office conducted a review after the January 2010 deadline had passed, Defendants would not even commit to when the system would be implemented because “it does not have a reliable acquisition and implementation schedule.” *See* GAO testimony released on February 24, 2010, GAO-10-405 T.

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

143. Each Defendant failed to implement DOD instruction No. 1030.2 (June 4, 2004), which requires crime victims and witnesses to be provided with basic information on points of contact, available medical and social services and access to restitution relief. As an example of the ongoing blatant violations during the court martial of Lt Klay's rapist, her husband (also a Marine Corps Officer) was placed in a waiting room with one of the two men who had gang-raped his wife.

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

145. Defendant Gates further violated Plaintiffs' Constitutional rights by interfering and impeding Congressional oversight. In July 2008, the Congressional House Oversight Committee on National Security and Foreign Affairs subpoenaed Dr. Kaye Whitley to testify on July 31, 2008, about her office's efforts to eradicate sexual assault. Defendant Gates and his

subordinates directed Dr. Whitley to ignore the subpoena, which she did. As stated by the Chair of the Committee at the subsequent hearing, “But what kind of a message does her and the Department’s unwillingness until now to allow testimony send to our men and women in uniform? Do they take Dr. Whitley’s office seriously? Is she being muzzled, or is the Department hiding something?” *See Hearing on Sexual Assault in the Military – Part II, Subcommittee on National Security and Foreign Affairs, Serial No. 110-188* (September 10, 2008).

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

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

COUNT ONE: SUBSTANTIVE DUE PROCESS

148. The preceding paragraphs are hereby incorporated in full by reference.

149. Plaintiffs possess a right to bodily integrity under the Fifth Amendment.

150. Defendants condoned a culture which allowed sexual harassment, sexual assault and rape.

151. Defendants' actions and failures to act violated Plaintiffs' substantive due process rights.

COUNT TWO: PROCEDURAL DUE PROCESS

152. The preceding paragraphs are hereby incorporated in full by reference.

153. Defendants failed to implement military and federal regulations regarding sexual harassment, rape and sexual assault. Instead, Plaintiffs were denied justice, unfairly terminated and otherwise mistreated merely because they were victims of sexual assault, rape or sexual harassment.

154. Plaintiffs were deprived of a procedural due process right that is encompassed within the Fifth Amendment's protection of life, liberty and property.

155. Defendants' failure to implement military and federal regulations regarding sexual harassment, rape and sexual assault violated Plaintiffs' procedural due process rights.

COUNT THREE: EQUAL PROTECTION

156. The preceding paragraphs are hereby incorporated in full by reference.

157. Plaintiffs have a right to be free from rape, sexual assault and sexual harassment under the Fifth Amendment.

158. Defendants subjected Plaintiffs to a pattern of sexual harassment, rape and sexual assault, failed to protect servicewomen and servicemen from rape, sexual assault, and sexual harassment; failed to conduct proper investigations and prosecute offenders; retaliated against servicemembers who reported being raped, harassed or sexually assaulted; discriminated on the basis of gender; and encouraged a culture of sexism and misogyny.

159. Defendants violated Plaintiffs' right to equal protection under the Fifth Amendment.

COUNT FOUR: FREEDOM OF SPEECH

160. The preceding paragraphs are hereby incorporated in full by reference.

161. Plaintiffs possess a right under the First Amendment to report sexual assault, sexual harassment and rapes without suffering retaliation, including adverse employment actions

162. Defendants harmed Plaintiffs by retaliating against them when they exercised their First Amendment rights to speak about being raped, sexually assaulted or sexually harassed.

COUNT FIVE: RIGHT TO JURY

163. The preceding paragraphs are hereby incorporated in full by reference.

164. Plaintiffs possess a right under the Seventh Amendment to have a jury decide the fate of their perpetrators.

165. Defendants impermissibly interfered with and extinguished this right.

JURY DEMAND

166. Plaintiffs request a Jury Trial.