

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

MAJOR MARGARET WITT,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
THE AIR FORCE, et al.

Defendants.

No. C06-5195 RBL

Judge Ronald B. Leighton

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

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EXHIBIT A

Deposition of Margaret Witt

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MAJOR MARGARET WITT,

Plaintiff,

v.

NO. C06-5195 RBL

UNITED STATES DEPARTMENT OF
THE AIR FORCE, et al.,

Defendants.

DEPOSITION OF MAJOR MARGARET WITT
Monday, May 24, 2010
Pages 1 to 136

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1 Q. What did it say?

2 A. **Homosexual conduct.**

3 Q. Okay. Let's go back to before the suspension,
4 the discharge. When you were in the Air Force Reserves,
5 were you subject to deployment orders?

6 A. **Yes.**

7 Q. Were you subject to potential deployment orders
8 at all times when you were in the Air Force Reserves?

9 A. **Yes.**

10 Q. Were you -- just to clarify, were you subject to
11 those potential deployment orders when you were off
12 base?

13 A. **It would have been scheduled.**

14 Q. But you could have received a potential
15 deployment order even --

16 A. **I don't know how that would work.**

17 Q. Did you schedule --

18 A. **Ours were usually voluntary.**

19 Q. Were some of them mandatory or were they all
20 voluntary?

21 A. **They weren't mandatory until the Iraq -- when the**
22 **squadron was actually activated, but I was gone at that**
23 **time.**

24 Q. But at any point in time, you could have been
25 subject to mandatory deployment orders. Is that your

1 understanding?

2 A. Yeah.

3 Q. Do you have a sense of any of the locations where
4 you were subject to being deployed? Any place in the
5 world? Any place in the country?

6 A. Is that okay for me to talk about as far as my
7 unit deployment areas?

8 Q. I mean -- Well, we can describe them in a
9 sufficient level of generality if you would prefer.
10 Were you subject to deployment only in, for instance, in
11 the Continental United States?

12 A. No.

13 Q. Were you subject to deployment in only the
14 western hemisphere?

15 A. No.

16 Q. Were you subject to deployment world-wide?

17 A. Yes.

18 Q. That's the way around that answer. When you were
19 in the Air Force, were you ever deployed?

20 A. Voluntarily, yes.

21 Q. When you were at McChord, were you deployed?

22 A. Yes.

23 Q. When you were stationed at McChord? We can get
24 that --

25 A. One in the same, yes.

1 Spokane and while you were an officer in the Air Force?

2 A. I don't recall whether I told them I was an
3 officer.

4 MR. LOBSENZ: Don't speculate if you don't
5 recall. The question is, do you recall.

6 A. I don't recall.

7 BY MR. PHIPPS:

8 Q. Okay. From your understanding of the term
9 "officership," are extramarital sexual relationships
10 consistent with that concept?

11 A. Officership?

12 Q. Yeah.

13 A. No.

14 Q. So I'm interested in looking at your non-military
15 employment background. So from high school on --

16 MS. LOBSENZ: Excuse me, Peter. I'm just
17 asking. It sounds like you're going into a different
18 subject, and we've been going for about an hour.

19 MR. PHIPPS: Oh, yeah. If you want to take
20 a break, we can take a break. We can go off the record.

21 (A break was taken.)

22 BY MR. PHIPPS:

23 Q. I think where I want to go here is just to touch
24 base on your nonmilitary employment. Probably the
25 easiest way to start on this is maybe to just have you

1 BY MR. PHIPPS:

2 Q. And the question here is how many members of the
3 military have you been attracted to. Again, it's a how
4 many question, not a who question, by name.

5 A. Four.

6 Q. Were any of those members at McChord while you
7 were at McChord?

8 A. No.

9 Q. Of those four, how many of them were male and how
10 many of them were female?

11 A. Two.

12 Q. Two each?

13 A. Yes.

14 Q. Have you ever engaged in homosexual acts with any
15 other member of the military? And I don't want names.

16 A. Yes.

17 Q. How many persons?

18 A. Two.

19 Q. And roughly when was that? Roughly when were
20 those instances when you engaged in other sexual acts
21 with other members of the military?

22 A. Between the years of '88 and '95.

23 Q. Were those persons officers or enlisted?

24 A. Yes.

25 Q. Well, okay. Were they officers?

1 A. Yes.

2 Q. They were both officers?

3 A. Yes.

4 Q. Did you ever work for either one of them?

5 A. No, I did not.

6 Q. Did either of them work for you?

7 A. No, they did not.

8 Q. What branch of service were they in?

9 A. Air Force.

10 Q. Did you ever live with either of those persons?

11 A. Yes, I did.

12 Q. Okay. Did you live with both of those persons?

13 A. No, I did not.

14 Q. You lived with one of them?

15 A. That was a statement.

16 Q. Question mark. Did you live with one of them?

17 A. Yes.

18 Q. Have you ever engaged in homosexual acts with any
19 civilian employees or contract employees of the
20 Department of Defense or any branch of military service?

21 A. No.

22 Q. Did you ever tell any member of the 446 Wing that
23 you were gay or lesbian or words to that effect?

24 MR. LOBSENZ: Well, that makes me more
25 inclined to object to the form because of "words to that

1 **A. Yes.**

2 Q. Do you recall where it was you engaged in
3 homosexual acts with Lori McChesney that day?

4 **A. Yes.**

5 Q. Where was that?

6 **A. At the McChesney property.**

7 Q. And was Lori McChesney married to Pat McChesney
8 to the best of your knowledge on October 31st, 2003?

9 **A. Yes.**

10 Q. Did Lori and Pat have any children that lived
11 with them in October or November of 2003?

12 **A. Yes.**

13 Q. How many children?

14 **A. One.**

15 Q. And who was that?

16 **A. [REDACTED]**

17 Q. And you mentioned approximately did you say -- I
18 don't want to change the time periods on you.
19 Approximately how old was he at that time?

20 **A. 13 or 14 I believe.**

21 Q. Did you -- Did you know when Lori McChesney and
22 Pat McChesney, did there come a point in time when they
23 no longer lived together?

24 **A. Yes.**

25 Q. Do you know roughly when that was?

1 **A. Roughly December or January.**

2 Q. That's '03 and then January '04?

3 **A. Yes.**

4 Q. Between October 31st, 2003, and then December and
5 January of late '03 and early '04, had you engaged in
6 other homosexual acts with Lori McChesney?

7 **A. Say that again, please.**

8 Q. In between October 31st, 2003, and December of
9 2003, did you engage in homosexual acts with Lori
10 McChesney beyond the one we already talked about in
11 October of 2003?

12 **A. Yes.**

13 Q. Do you know when Lori and Pat McChesney were
14 officially divorced approximately?

15 **A. Approximately December, the following December.**

16 Q. Were you still serving in the Reserves when you
17 were engaging in homosexual acts with Lori McChesney?

18 **A. Yes.**

19 Q. And so you, and I think this is obvious, but you
20 engaged in homosexual acts with Lori McChesney before
21 her divorce with Pat McChesney was finalized?

22 **A. It's not something I'm proud of, yes.**

23 Q. Did Lori McChesney ever travel with you during
24 weekends when you were serving in the Reserves?

25 **A. No.**

1 Q. Under twenty? Under fifteen?

2 A. Under twenty.

3 Q. In addition to those people, did you contact
4 anyone else to see if they would provide any statement
5 in support of your discharge or your litigation or your
6 case generally?

7 A. Yes.

8 Q. Roughly how many people did you contact?

9 A. Less than five. There were people that have
10 said, if you ever need anything, let me know.

11 Q. So you're taking them up on their offer
12 essentially?

13 A. Yes.

14 Q. Did you ever tell anyone who was providing a
15 sworn statement for you or any statement for you, the
16 reasons that you understood the Air Force was
17 investigating you for homosexual conduct?

18 A. I don't recall.

19 Q. Well, I will ask this more specifically. Before
20 any of these people provided a sworn statement or any
21 statement on your behalf, did you ever tell them or
22 explain to them the specific reasons that you understood
23 the Air Force was investigating you for homosexual
24 conduct?

25 A. I think someone told me.

1 Q. And what did they tell you?

2 A. They said -- I can't remember specific. I can't
3 remember specific things.

4 Q. Did they say that they --

5 A. They said I heard that, you know, I know why or I
6 heard why.

7 Q. Okay. So you can't recall the specifics of what
8 they said or that they didn't reveal specifics of what
9 they knew?

10 A. I can't recall specifics.

11 Q. Did you tell anyone who provided statements for
12 your discharge or for your litigation the instances of
13 homosexual acts that you engaged in?

14 A. No.

15 Q. Did you tell anyone who provided sworn statements
16 for you as to why you would want a sworn statement from
17 them or why it would be in your interest to receive a
18 sworn statement from them?

19 A. Yes.

20 Q. Who did you speak with about that?

21 A. I don't know exactly who.

22 Q. Well, what did you say?

23 MR. LOBSENZ: Go ahead. Go ahead.

24 A. Well, I recall generally that they would ask what
25 was needed and I would say speak to -- speak to what you

EXHIBIT B

Email from Pat McChesney to
General John Jumper
(June 14, 2004)

-----Original Message-----

From: Pat McChesney [mailto:patmcchesney@att.net]
Sent: Monday, June 14, 2004 17:08
To: Jumper John Gen AF/CC
Subject: Major Margaret Witt

General John Jumper:

On 1 December 2003 my wife, Laurie McChesney, informed me she was leaving me for Major Margaret Witt, USAF Reserve. Laurie and I had been married for nearly 22 years and had three children, ages 13, 19 and 21 together.

My wife's relationship changed dramatically on 31 October 2003 when Major Witt's then six year lesbian partner, Tiffany Jenson, informed Major Witt that she was pregnant. Tiffany and Major Witt had for some time planned to have Tiffany artificially inseminated. My wife and I were attending a family Halloween party that night. Major Witt called and asked my wife to leave the party. My wife told me her friend Major Witt was despondent, hysterical and suicidal due to the devastating news that Tiffany was pregnant.

Laurie admitted to me and several others in sworn declarations filed in the subsequent divorce proceedings that her friendship with Major Witt became romantic in November 2003. She and Major Witt spent the night together on 31 October 2003, 3 November 2003, 6 November 2003, 8 November 2003 and 31 December 2003 that I am aware of.

I initiated divorce proceedings in an effort to have my wife removed from my home where I was living with my 13 year-old son, [REDACTED] where my wife continued her adulterous love affair with Major Witt by phone from the home. Laurie told me on several occasions she was going to move in with Major Witt once the divorce was final.

In Laurie's response to the divorce filing, a sworn declaration was submitted by Major Witt on her behalf. In her Declaration Major Witt attempts to paint me as a danger to my son [REDACTED] based on my reaction to 1) the devastating news of 1 December 2003 that my wife was a lesbian in love with Major Witt and going to leave me and 2) my reaction two days later on 3 December 2003 when my wife left my home to "get some space" and specifically told me she was NOT going to Major Witt's house. She in fact did go to Major Witt's house, picked her up and the two of them went to another lesbian couples house to spend the night. My wife has specifically told me on her way out of the house she was NOT going to Major Witt's house and told me to call her cell phone if I didn't believe her. Prior to the traumatic news on 1 December, my wife had repeatedly denied to me that her relationship with Major Witt more than just professional. Major Witt and my wife work together daily for the Spokane Public School District.

Major Witt never states in her sworn declaration that her adulterous love affair with my wife and the betrayal of our friendship was the cause of my extreme emotional trauma, the break up of my twenty-two year marriage and my family.

Major Witt also spends considerable time in her declaration portraying

herself as the benevolent safe harbor for my son [REDACTED] while portraying me as the dangerous unstable unpredictable ill-tempered father.

In my opinion, Major Witt's adulterous love affair with my wife and the sworn Declaration she filed which clearly contains half-truths, lies and self-serving statements attempting to separate me from my son is amoral and perjurious. I believe she is a potential predator to other heterosexual women in the armed services and her behavior and statements in her sworn declarations demonstrates her willingness to go extreme measures to get what she wants.

It was only after serious consideration over the last few months that I decided to report the conduct of Major Witt to the Air Force. All of those who have been or are currently on active or reserve duty in the armed forces who know of my circumstances encouraged me to report her conduct. I did not consult with my Godfather, Admiral Jackson D Arnold, USN, Ret. due to his age and the recent death of his wife Muriel.

I am willing to provide additional information if the Air Force decides this warrants further investigation. Tiffany Jensen is also willing to provide further information regarding Major Witt including information regarding an affair Major Witt had with a female teacher while attending junior high school.

I believe Major Witt operates out of McChord Air Force base in Tacoma Washington.

List of attachments (all declarations filed with Spokane Superior Court under penalty of perjury):

- 1) Declaration of Major Witt dated January 14, 2004 (Maj_Witt_Declaration.pdf). See paragraph for Major Witt's description of her relationship with my wife.
- 2) Declaration of Melinda McChesney (Melinda_Declaration.pdf). See page 5 line 7 for the beginning of my wife's description of her relationship with Major Witt.
- 3) Declaration of Heather McGuinness (Heather_Declaration.pdf). See paragraph 5 through 7.
- 4) Declaration of Bridgette Halverson (Halverson_Declaration.pdf). See paragraph 2 through 7.

Please contact me if you require additional information: =====
Pat D McChesney 326 W. 6th Ave. Apt 301 Spokane, WA 99204
patmcchesney@att.net 509 217 5058 (mobile home phone) 509 991 5880 (cell)
775 599 2249 (fax) =====

EXHIBIT C

Plaintiff's Response to Interrog. No. 7
(Feb. 15, 2010)

THE HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MAJOR MARGARET WITT,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF THE
AIR FORCE, et al.,

Defendant

No. C'06-5195 RBL.

**PLAINTIFF'S OBJECTIONS AND
RESPONSES TO DEFENDANT THE
UNITED STATES AIR FORCE'S FIRST
SET OF INTERROGATORIES,
REQUESTS FOR ADMISSION, AND
DOCUMENT REQUESTS TO
PLAINTIFF**

Pursuant to Rules 33, 34, and 36 of the Federal Rules of Civil Procedure, Plaintiff Margaret Witt submits the following objections and responses to Defendant The United States Air Force's First Set of Interrogatories, Requests for Admission, and Document Requests to Plaintiff.

GENERAL OBJECTIONS

1. Plaintiff objects to each and every discovery request to the extent that it seeks information and/or documents that are not relevant and not reasonably calculated to lead to discovery of admissible evidence.

PLAINTIFF'S OBJECTIONS AND RESPONSES TO
DEFENDANT THE UNITED STATES AIR FORCE'S FIRST SET
OF INTERROGATORIES, REQUESTS FOR ADMISSION, AND DOCUMENT
REQUESTS TO PLAINTIFF (Case No. C06-5195- RBL) -- Page 1

AMERICAN CIVIL LIBERTIES UNION OF
WASHINGTON FOUNDATION
705 Second Avenue, Suite 300
Seattle, Washington 98104-1799
(206) 624-2184

1 2. Plaintiff objects to each and every discovery request to the extent that it seeks
2 information and/or documents protected from disclosure by the attorney-client privilege, the
3 attorney work product doctrine, or any other privilege, doctrine, or rule of confidentiality.

4 3. Plaintiff objects to each and every discovery request to the extent that it is vague,
5 ambiguous, and/or unintelligible. Plaintiff will respond according to her good faith interpretation
6 of such requests.

7 4. Plaintiff objects to each and every discovery request to the extent that it is overly
8 broad and unduly burdensome.

9 5. Plaintiff objects to each and every discovery request to the extent that it is unduly
10 burdensome because it requires the production of electronic documents, the retrieval of which, to
11 the extent possible, would involve undue expense, time, and allocation of resources for minimal
12 return.

13 6. Plaintiff objects to each and every discovery request to the extent that it seeks
14 information contained in documents that have already been produced by any party to this action,
15 documents that Plaintiff has filed with the Court and served on any party to this action,
16 documents that are publicly available, and/or documents that are in the possession, custody, or
17 control of Defendants.

18 7. Plaintiff objects to each and every contention interrogatory on the ground that it is
19 premature. Discovery has commenced, and much of the responsive information and documents
20 that will be offered at trial are presently in the possession, custody or control of Defendants.

21 8. Plaintiff objects to each and every discovery request to the extent that it otherwise
22 seeks to impose obligations beyond those of the Federal Rules of Civil Procedures, the Court's
Local Civil Rules, and the Scheduling Order entered by the Court herein.

 9. Plaintiff reserves the right to supplement these responses to the extent required by
the Federal Rules of Civil Procedure, and to offer any evidence subsequently discovered at trial.

1 not have a negative impact on unit cohesion or morale. ("Q: Have you ever held the opinion that
2 Major Witt's presence in the 446 has a negative impact on unit cohesion or morale? A: No."
3 Transcript of Deposition of Col. Mary Walker, 1/8/2010, 145:16-19.)

4 Further, my Field Grade Officer Performance Report for the period of 13 Apr 2004 to 12
5 Apr 2005 states, "Committed to continuing squadron cohesion and morale." Statements of my
6 fellow unit members in declarations and letters submitted on my behalf in 2006 for the Board
7 discharge proceedings also support my belief that my suspension and discharge did not further
8 unit cohesion or morale.

9 **Interrogatory No. 7:** Identify all conversations that you had with any member of the 446th
10 Aeromedical Evacuation Squadron, McChord AFB, after your commission date but before your
11 discharge regarding either your status as a homosexual or any conduct defined by 10 U.S.C. §
12 654(l)(3) in which you engaged. (In asking this question, defendants are not seeking to learn
13 statements by others that they have engaged in conduct in violation of 10 U.S.C. § 654(b), and
14 you may omit any portions of any such conversations from your response).

15 **RESPONSE:** Plaintiff adopts and incorporates the General Objections set forth above. Plaintiff
16 further objects to this interrogatory because it is vague as to what Defendants mean by
17 conversation. Subject to and without waiving these objections and the above-stated General
18 Objections, assuming that the term "conversations" is intended to cover "one-way" remarks from
19 another to me, I have spoken with the following individuals acknowledging that I am a lesbian:
20 Ret. SMSgt James Schaffer and MSgt Jenaro Wirth. The following individuals have volunteered
21 supportive remarks to me that were based on their assumption that I was a lesbian but I neither
22 confirmed nor denied them: TSgt. Matt Edminster. Lt. Col. Julia Scott often made references to

1 my partner under the assumption that she was my partner, but I never affirmatively
2 acknowledged my sexual orientation to her.

3
4 **Interrogatory No. 8:** Identify every other squadron that you worked with, trained with, were
5 deployed with, flew with, or otherwise had in-person contact with during your employment in
6 the 446th Aeromedical Evacuation Squadron, McChord AFB.

7 **RESPONSE:** Plaintiff adopts and incorporates the General Objections set forth above. Plaintiff
8 further objects to the above interrogatory as unduly burdensome and because Defendants are able
9 to obtain this information through their own means and because this information is in Defendants
10 possession, custody or control.

11 Subject to and without waiving these objections and the above-stated General Objections,
12 to the best of my knowledge, I recall working with the 349th AES at Travis AFB, training on a
13 KC-135. When I was deployed EAES 320 to Seeb AFB in Oman, we worked with numerous
14 squadrons whose squadron numbers I cannot recall. For a matter of hours, I also worked with a
15 unit in Hawaii whose detachment number I cannot remember. McChord AFB also hosted the
16 world wide rodeos, where I trained with numerous other squadrons who came to our base.

17 **Interrogatory No. 9:** If you contend that your procedural due process rights have been violated,
18 identify the basis for your contention, including the facts that you intend to rely on for that
19 contention.

20 **RESPONSE:** Plaintiff adopts and incorporates the General Objections set forth above. Plaintiff
21 further objects on the ground that this discovery request seeks attorney work-product, since
22 Defendants seek to have Plaintiff's counsel analyze, evaluate, and interpret facts and documents

1 General Objections, Plaintiff will produce non-protected and non-privileged responsive
2 documents.

3
4 ANSWERS AND OBJECTIONS DATED this 15th day of February, 2010, in
5 conformance with Rule 26(g).

6
7 By: /s/ Sarah A. Dunne
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Attorneys for Plaintiff

EXHIBIT D

Deposition of Janette Moore-Harbert

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MAJOR MARGARET WITT,)	
)	
Plaintiff,)	
)	
v.)	No. C06 -5195 RBL
)	
UNITED STATES DEPARTMENT OF THE)	
AIR FORCE, et al,)	
)	
Defendants.)	

DEPOSITION UPON ORAL EXAMINATION OF
COLONEL JANETTE MOORE-HARBERT

TAKEN AT

Carney Badley Spellman
701 Fifth Avenue, Suite 3600
Seattle, WA 98104

FEBRUARY 25, 2010

THURSDAY, 9:00 A.M.

Reported by:

MARIE WHITE, CSR # WH-IT-EM-*29906

1 rules are set forth for us to follow. It is a
2 guideline.

3 Q. Did you think --

4 A. And in the military, in the military it is different
5 than from the civilian side of the house . In the
6 military the aspect is is that we follow the
7 guidelines.

8 Q. Has it ever happened to you in your thir ty-two years
9 that you have followed an order that you in your own
10 mind thought was a bad order?

11 A. As an Air Force Officer, you can questio n an order to
12 make sure. But the reality is is that y ou follow the
13 order.

14 Q. I am just asking for a "yes" or "no". Has that ever
15 happened to you that you followed an ord er that you
16 thought was a bad order?

17 A. I don't remember doing that.

18 Q. Ever?

19 A. I don't remember doing that.

20 Q. Okay. Did you think that the Air Force was losing a
21 highly talented flight nurse?

22 A. I believe that Major Witt is an extremel y good
23 clinician. She was a good flight nurse.

24 Q. Did you believe the Air Force was losing in Major Witt
25 an officer who was very respected within the 446th?

1 mean by that is people are deploying --

2 A. Yes.

3 Q. -- throughout this April to April period you had lots
4 of people deploying to the Mideast?

5 A. We deploy all over the place.

6 Q. Mm-hmm.

7 A. We deploy as -- the unique thing about how we do our
8 business is the fact that we don't deploy the entire
9 unit at a time, we deploy bits and pieces.

10 Q. Mm-hmm.

11 A. And we can actually deploy a crew or a ground element,
12 and in reality that crew that deploys to a place may
13 not even stay together. Because they are now
14 maintained and manned by the active duty.

15 So that period of time we had personnel that were
16 either deploying out or deploying back in. And again
17 it could have been by a crew, it could have been by one
18 or two personnel. And that is really unique about the
19 way we do our business because during this period of
20 time too a lot of it was a volunteer force structure to
21 man up against positions to go out to be able to
22 support the mission.

23 Q. And where were during this period of time most of the
24 deployments to?

25 A. I don't know exactly. Our taskings were either in the

1 A. Yes.

2 Q. What is your reason for saying that?

3 A. My reason really is not based so much on an engarrison
4 function. My reason is based more on a deployment
5 function. What I look at with our unit is there is a
6 couple of things. To give you a broad scale again, my
7 unit does not deploy out as a unit. It deploys in bits
8 and pieces. It deploys as a crew, it deploys as an
9 element, and it deploys anywhere.

10 And the feasibility of it deploying in a hard
11 billet all the time is not rendered. We don't know
12 where the members are going to go into a tent city type
13 of location, an extended barracks type of a location
14 with communal showers.

15 And the concern that really is there is concerning
16 Major Witt deploying is if there are personnel that are
17 uncomfortable with the aspect of Major Witt. And if
18 they would be uncomfortable deploying in that type of a
19 setting.

20 Again it is the aspect of not only a deployment
21 and to be able to support the mission, because what
22 happens with that it ends up being also a distraction.
23 If they're concerned about who they are billeted with,
24 then that can be a distraction. And the main mission
25 is for them to get out and be able to take care of live

1 patients.

2 And that is where a concern over the morale issue
3 would be is if that happens, it may hinder a member
4 from either volunteering to go ahead and go out because
5 of feeling distracted, that they can not focus on the
6 mission.

7 Q. You say now if that happens, it would be a problem?
8 What evidence do you have that it would happen
9 specifically with regard to Major Witt?

10 A. The only thing that I can get at is from the standpoint
11 of looking at the deployments and looking at where
12 members are deployed to different locations that are
13 put into tent cities.

14 Q. What if --

15 A. And the other side of that too is they are not only
16 deployed with members of our squadron, they are
17 deployed with joint. It can be Army, it could Navy, it
18 could be other elements that then may be put into a
19 position of are you willing to be billeted in this type
20 of facility.

21 The other thing that I get concerned about, and we
22 go back to the morale is, let's say that we do send out
23 Major Witt that is a known gay, how do we billet? Is
24 it perceived that they billet with either a male or
25 female or how do you billet that it does n't look like

1 impact on the unit morale of 446th?

2 MR. PHIPPS: Objection, completeness.

3 A. Because we have been deploying our people for a lot of
4 years, and I believe putting somebody in a situation
5 that they are uncomfortable in is going to create a
6 distraction.

7 Q. What evidence did you have that anyone in the 446th
8 would be uncomfortable with her presence?

9 A. Again, I don't remember anybody specifically coming up
10 to say that. The reality is that I would take a
11 look at how it would impact the mission.

12 If I put up volunteer sheets, and Major Witt would
13 be on that sheet, and members did not sign up because
14 they were uncomfortable with that, that could be an
15 indication that I'm not able to support my mission.

16 I mean it's -- the issue is is feasibly could it
17 impair my mission. And that is what I'm concerned
18 about.

19 Q. You just answered it could impair your mission. And
20 you have answered you have no evidence of that. And
21 yet the Air Force has given an opinion, has answered
22 that you are the opinion that likely would have a
23 negative impact.

24 So I am asking you, other than maybe some gut
25 feeling that it might cause a concern, what evidence do

EXHIBIT E

Deposition of Mary Walker

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MAJOR MARGARET WITT,)	
)	
Plaintiff,)	
)	
v.)	No. C06-5195 RBL
)	
UNITED STATES DEPARTMENT OF)	
THE AIR FORCE, et al.,)	
)	
Defendants.)	
_____)	

DEPOSITION OF COLONEL MARY L. WALKE R

* * *

January 8, 2010
1120 N.W. Couch
Portland, Oregon

Cheryl L. Vorhees, CSR, RPR
Court Reporter

1 A Yes.

2 Q And she was over in Oman, correct , for --

3 A I don't know where she was.

4 Q You don't know where she was. Ok ay. All you
5 know is that she was somewhere in Southwes t Asia
6 because that's what it says?

7 A Right.

8 Q It says when -- First of all, it says, "On
9 short notice request, she reported on New Year's Day
10 to fill a deployed position." Can you giv e me some
11 idea of what a short notice is as opposed to a normal
12 notice or something? What does this mean to you?

13 A A short notice can mean maybe abo ut two weeks
14 ready to go.

15 Q Okay. And what's a normal period of notice
16 for request?

17 A It could be as long as three mont hs or as
18 short as 30 days.

19 Q Okay. Then it says, "When asked to fill
20 three other rotations while there, she cou ld be
21 counted on." What's a rotation? I guess I need some
22 help in defining what that word means.

23 A So, apparently, based on what I'm reading
24 here, the rotation could have been that th ere were
25 other assignments in other areas in Southw est Asia

1 Q So between two and three years?

2 A Yes.

3 Q And while you were in the 446 AES as the
4 commander and beforehand, was the unit subject to
5 deployment?

6 A Yes.

7 Q And where to? Where was it subject to
8 deployment?

9 A I'm drawing a blank of all the places, but
10 Iraq, Germany, Saudi, I mean just, it was just
11 worldwide. I can't remember. Air evac was always
12 subject to deployment in that sense.

13 Q And do you know if Major Witt, while she was
14 in the 446 AES, if she was subject to deployment on
15 that worldwide basis?

16 A Yes.

17 Q And what was the purpose of these deployments
18 that the 446 went on?

19 A Air evac would go out as the group or the
20 crew to facilitate transport of patients in the plane,
21 so it would be in-flight care. And so that would
22 apply to all the members that were actually deployed.
23 So the mission always was train to then be able to
24 provided in-flight care when called upon.

25 Q And while the 446 AES was deployed, do you

1 know what the living conditions were like during
2 deployment?

3 A In thinking about Desert Shield/Desert Storm,
4 we were in tents and so it could be tents as well as
5 housing, base housing. And so the tents would be
6 separated out for designated female, designated male.

7 Q Was there any guarantee about the quality of
8 the living conditions or the bathing conditions that
9 members of the 446 AES would receive when they were on
10 deployment in terms of high quality or that you would
11 go in and get base housing or a tent or your own tent?
12 Were there any guarantees like that made?

13 A When you were deployed, whatever the housing
14 living conditions were at that point, you pretty much
15 went into that housing. So you couldn't go out and do
16 special requests.

17 Q And while deployed, do you know if members of
18 the 446 AES worked with other units?

19 A Yes. There was a lot of integrating of other
20 units.

21 Q Like what other units?

22 A There could be air evac, it could be the
23 front line people, the -- let me think of a name -- we
24 called it aeromedical staging units where the patients
25 would come out to the front line, close to the flight

1 line, and then other members would be on the plane,
2 they would then come and collect the patient, bring
3 them on the plane, and then they will take them to
4 their designated area or facility of care.

5 Q And while deployed, do you know if members of
6 the 446 either lived with or worked with people in
7 other career fields other than nursing or aeromedical
8 evacuation squadrons?

9 A Yes.

10 Q What are some examples of those if you can
11 recall?

12 A Some examples could be when they, the pilots,
13 you know, they socialize with the pilots, they
14 socialize with the techs from other squadrons. So it
15 was always a mix and match of crew members in any of
16 the deployment areas.

17 Q And when you say a mix and match, was that a
18 mix and match just among the Air Force personnel or
19 was there interfacing or working with or association
20 with members of other branches of the military?

21 A In many of the situations we -- from what I
22 recall we were limited to the Air Force, but the
23 compounds also had access to other services. But
24 primarily we worked with Air Force.

25 Q And as far as when you were deployed, were

1 you ever seeing patients of other branches of the
2 military? And by you I mean members of the 446.

3 A Yes. We could bring on other services.

4 Q Well, from your experience and observation in
5 the 446 AES, do you believe that military society, and
6 also compared with your experience now in civilian
7 society as a member of the Providence Health Care
8 System I believe you testified, do you believe that
9 military society is different than civilian society?

10 MR. LOBSENZ: Object to the form as leading.

11 Q (By Mr. Phipps) Are you aware of any
12 differences between military society and civilian
13 society based on your experience and observation?

14 A Based on my experience and observation, I
15 feel that the military is very stringent, has
16 policies, procedures in writing that really governs
17 the behavior and also actions. Whereas, like in my
18 civilian world, having just starting to work in the
19 private sector, I found that many of the policies and
20 practices that sometimes are communicated are in
21 reference to past practice and many of those policies
22 and procedures that are communicated are not in
23 writing.

24 And the military I found to have much of
25 whatever the issues related to in writing. So the

1 policies and procedures were in writing. And coming
2 from the federal side of the house, I always
3 appreciated that because you didn't have to question
4 about what the policy really was, it was in writing,
5 and that governs the behavior or practice.

6 Q And you mentioned some policies when you
7 worked in the 446 AES were in writing. Were you aware
8 if there were any differences in the policies for
9 members of the Air Force active duty between members
10 of the Air Force Reserves?

11 A I'm not aware of any distinction.

12 Q From your experience and observation in the
13 446 AES, as commander or your service beforehand, did
14 you see members of the 446 AES make extraordinary
15 sacrifices?

16 A I did. And that relates to families who
17 dealt with members putting in long hours for training,
18 long hours for deployment, long days away from home.
19 So, yes, there were many sacrifices among the members
20 in the squadron.

21 Q Okay. Thank you very much. I have no
22 further questions.

23

24

FURTHER EXAMINATION

25 Q (By Mr. Lobsenz) Colonel Walker, did you

EXHIBIT F

Declaration of Janette Moore-Harbert

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MAJOR MARGARET WITT

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
THE AIR FORCE, et al.

Defendants.

No. C06-5195 RBL

**DECLARATION OF
JANETTE MOORE-HARBERT**

1. I, Colonel Janette Moore-Harbert, am (and have been since October 2005) the Commander of the 446th Aeromedical Evacuation Squadron located at Joint Base Lewis-McChord, Washington. I have served in the Air Force for 32 years. I entered active duty in 1977. In 1986, I left active duty to move to western Washington. The day following my separation from active duty, I entered the Air Force Reserves and was assigned to McChord Air Force Base (AFB). I have been continuously assigned to McChord AFB ever since then.

The 446th Aeromedical Evacuation Squadron

2. For the majority of my time at McChord, I have been assigned to the 446th Aeromedical Evacuation Squadron (AES) and its organizational predecessor (the 40th Aeromedical Evacuation Squadron). The 446th AES is a Reserve unit and all of its military

1 members are in the Air Force Reserves. Most unit members are "traditional reservists (TRs)."
2 They convene as a unit one weekend a month, that weekend being known as a Unit Training
3 Assembly (UTA) weekend. Additionally, they are required to serve an annual two-week tour of
4 duty, and all flyers (nurses and medical technicians) are required to fly once every 90 days.
5 Most TRs have full-time civilian jobs apart from their military duties.

6 3. Several unit members, including myself, are Air Reserve Technicians (ART).
7 Unlike TRs, ARTs work at the unit full-time rather than part-time. ARTs are responsible for the
8 day-to-day management of unit affairs, equipment, and facilities. Their purpose is to keep the
9 unit running on a daily basis since TRs, as part-time workers, are typically not available to do so.

10 4. There are thirty-two AESs in the Air Force. Eighteen are Reserve units, ten are
11 National Guard units, and four are active duty units. The AESs perform "Aerovac" missions.
12 That is, they provide global transport for injured and ill patients, in the context of both combat
13 casualties (in Iraq and Afghanistan), humanitarian contingencies (such as relief operations
14 relating to Hurricane Katrina and the recent earthquake in Haiti), and "routine" peacetime
15 operations (car accident victims, patients in cardiac arrest or suffering diabetic complications).

16 5. Aerovac missions play a vital role in caring for frontline combat troops and have
17 shown increasing effectiveness with regard to combat casualties in Iraq and Afghanistan. For
18 those injured in combat who make it to a treatment site from which they can be aerovaced out of
19 the country, the survivability rate is around 91% to 95%. This is a significant increase from the
20 1991 Desert Storm survivability rates of approximately 75%.

21 6. At any given time, the 446th currently averages about 140-150 members. We are
22 authorized 157 personnel to fulfill wartime taskings. Right now, we have 150 members. Of
23 those, approximately 50 are flight nurses and 70 are technicians (paramedics, firemen).

24 Deployments for the 446th AES

25 7. The mission of the 446th AES is to deploy. Every position in the unit is a
26 deployable except for one. The one exception is an enlisted position: the unit training manager.
27
28

1 8. While we normally fill deployment taskers on a volunteer basis, members of the 446th
2 AES were subject to involuntary mobilization in 2003 and 2005. During these periods of unit
3 activation, people also volunteered for deployment – but with the knowledge that if they didn't,
4 they would be ordered to deploy – perhaps with crewmates, a locale, or timeframe not to their
5 liking. Consequently, almost everyone in the unit (with the exception of those who were
6 students or suffering medical ailments) was “voluntarily” deployed at some time in 2003 and
7 2005.

8 9. Deployments are typically for a period of 120 days. Taking into account training
9 requirements that must be completed immediately prior to being deployed, a two-week
10 reconstitution period following a deployment, and accumulated leave, the usual deployment-
11 related tour is about 150 days.

12 10. In the past five years, members of the 446th AES have deployed to AES crew
13 staging areas in Afghanistan (Khandahar, Bagram, and Bastion), Iraq (Balad), Qatar (Al Udeid),
14 Germany (Ramstein) and various locations within the United States. When deployed in theatres
15 of war, combat operations protocols are followed: members wear flak vests and carry weapons.
16 Many deployed unit personnel have served under fire.

17 11. Members of the 446th AES are deployed with members from other U.S. Air Force
18 units as well as members from other DoD services such as the U.S. Navy, Army, and Marine
19 Corps. They are also deployed with members from foreign armed forces when serving with joint
20 coalition forces.

21 12. The living conditions for deployed members varies with the location to which
22 they find themselves posted. Bastion, for example, is a new operating locale to accommodate
23 “surge” troops in Afghanistan. As a development-in-progress, it presents “field conditions”
24 where personnel are housed in tents sheltering multiple persons, usually of the same sex.

25 13. In addition to deploying members for operational purposes, we also participate in
26 large-scale exercises. As one example, every summer we participate in “Global Medics.” This
27 is a Tri-Service exercise in which the Air Force, Army, Navy, and international services train
28 together. While most participants are staged in one place such as Georgia, others are staged at

1 various locations such as California, Wisconsin, and South Carolina. We always have some
2 people embedded with Army. They are quartered in an Army "tent city," with possibly up to 30
3 people or more per tent. Bathing is by "field showers" set up for men and women respectively.
4 Sometimes the same showers are used by both sexes, but at specifically designated times for the
5 men and women respectively.

6 14. Functionally, deployed members of the 446th AES perform the same types of
7 medical procedures that are performed in civilian medical settings. The casualty population is
8 different: mostly young adults with amputations and other war injuries. More importantly, the
9 treatment environment is different: the sometimes high numbers of casualties, serious injuries,
10 and limited resources produces a different triage practice. Patients who would ordinarily be
11 "salvageable" in a civilian environment may not be so in the military environment. In the
12 military environment, maximizing successful treatment outcomes necessitates a tighter working
13 relationship among health care providers to overcome extremely difficult environments,
14 especially those beset with resource shortages.

15 The Current Climate in the 446th

16 15. High unit morale translates into solid mission focus – it's defined by an absence
17 of distractions. Accordingly, as the 446th AES commander, it's important that I get a pulse on
18 the heartbeat of the unit; that I know what people are concerned about so that I can work to
19 eliminate any concerns that are distracting.

20 16. Right now, more than a third of my unit will be deploying from the end of July
21 through September. While I would describe unit morale as very good, frustration levels are
22 going up as people work to complete pre-deployment training requirements. For example, I just
23 received notification of an additional eight-hour training requirement some will have to
24 complete. Timely completion of all such requirements is particularly challenging in an
25 environment where the unit only comes together for two days each month and most members
26 have full-time civilian jobs and family commitments to juggle.

1 17. Among the eighteen Aerovac Squadrons within Air Force Reserve Command, it's
2 no exaggeration to say that the 446th is among the best. This is a widely held view within the
3 Reserve AES community.

4 a. Every year, each of the eighteen AES units within AFRC is able to nominate
5 unit personnel for approximately five annual awards, such as best noncommissioned officer, best
6 Medical Service Corps officer, best administrator, etc. In 2006, the 446th AES swept all the
7 awards, winning in every category. To the best of my knowledge, our single-AES award sweep
8 was a first in AFRC history.

9 b. Every two years, Air Mobility Command (AMC) sponsors "Rodeo," a sort of
10 AMC Olympics. Aircrews from all over the world are invited to participate in competitive
11 events designed to test the combat capabilities relating to an array of AMC missions. For
12 example, there's an airdrop competition where aircrews compete to see which crew can drop
13 cargo or personnel closest to a drop target. Air refuelers compete to determine which crews can
14 refuel with the greatest accuracy or in the shortest time period. For AES units, there is both a
15 ground and flight event in which multiple tasks are scored. Additionally, there is a best overall
16 award for the most points accrued throughout both events. In 2007, the 446th AES won both the
17 ground and flight events as well as the best overall award. In 2009, the AES placed second
18 (overall) to a Turkish team – that was trained by the 446th AES! (In recognition of our
19 outstanding abilities, several foreign countries have requested our assistance with Rodeo
20 training.)

21 Margaret Witt's Discharge

22 18. Major (Maj) Margaret Witt is a former member of the 446th AES. She was
23 suspended from duty in November 2004 (when the 446th AES was under the command of Col
24 Mary Walker). She was discharged during my tenure as the 446th AES commander. In
25 contesting her discharge for homosexual conduct, she has sometimes been the subject of local
26 and national media reports. I acknowledge that some members of the 446th AES may be
27 comfortable with Major Witt's homosexual conduct, but I equally expect that others may not be.
28

1 19. Accordingly, I believe that Major Witt's return to the 446th AES would present
2 an unacceptable risk to unit cohesion and morale. This is true particularly in terms of the risk of
3 distraction from the mission for both members of 446th AES and other U.S. Armed Forces units
4 with which Maj Witt would deploy. For example, when she deploys, some may be distracted by
5 concerns over being billeted with someone who is openly homosexual. As a result, she might
6 receive jealousy-engendering special treatment (for example, in the form of private billeting
7 accommodations not usually available in "tent city" and other group housing environments).
8 Unit members may be discouraged from volunteering to deploy as part of a crew Maj Witt has
9 signed on for. The unit may become more widely known as the "Don't Ask, Don't Tell unit"
10 than the best AES squadron in the Reserves. Unit performance, respect, and recruitment might
11 suffer from this latter distraction.

12 20. Potential deployment issues cannot be resolved by simply not deploying Maj
13 Witt: with the exception of the one enlisted position previously mentioned (united training
14 manager), every position in the unit is a deployable position.

15
16 I declare under penalty of perjury under the laws of the United States of America that the
17 foregoing is true and correct.

18
19
20 Executed on 13 July 2010.

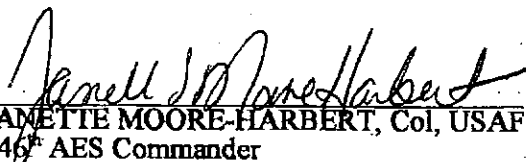
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22 
23 JANETTE MOORE-HARBERT, Col, USAF
24 446th AES Commander

EXHIBIT G

Deposition of Nathaniel Frank

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MAJOR MARGARET WITT,)	
)	
Plaintiff,)	No. C06-5195 RBL
)	
-against-)	
)	
UNITED STATES DEPARTMENT OF)	
THE AIR FORCE, et al.,)	
)	
Defendants.)	

DEPOSITION of NATHANIEL FRANK, Ph.D., an Expert Witness, taken by Defendants at the offices of The ACLU, 125 Broad Street, 18th Floor, New York, New York, on Friday, May 14, 2010, commencing at 10 a.m., before Charleane M. Heading, a Registered Merit Reporter and Notary Public within and for the State of New York.

1 Frank
2 consistently regardless if I was abroad, deployed,
3 at this unit or at that unit.

4 A I see. That's not how I intended to
5 use this phrase.

6 My intention when I say "consistent
7 rules" is to describe rules that are applied
8 consistently and uniformly to everyone, not just
9 to gay people. That's what's important in my
10 view.

11 Q All right. Well let me ask a
12 hypothetical question then.

13 If Congress were to all of the
14 sudden repeal the "Don't Ask, Don't Tell" policy
15 only with respect to military members in the state
16 of Texas, do you think that would have a, do you
17 think, can you foresee any effect that would have
18 on unit cohesion and morale on members of the
19 military?

20 A My interpretation of the research is
21 that having a clear set of rules that are applied
22 uniformly and consistently to everyone in the
23 institution works better than having rules that
24 are applied to different people who are similarly
25 situated. So it would, it might depend on whether

1 Frank

2 area alone was seen to not need the policy.

3 Q So it would -- so under that
4 hypothetical, exempting Texas would have an
5 adverse effect on unit cohesion?

6 A It could.

7 Q Would you expect it? I mean, a gain,
8 it's predictive, right? But when you say it
9 could, I guess it "could" is probably the best we
10 can do, right?

11 A Well, research shows that respect
12 for the law and policy at an institution including
13 the military is highest when the rules appear
14 consistent and that would be an inconsistency and
15 if you undercut respect for the law and the
16 policy, that makes it harder to enforce discipline
17 and order.

18 Could I take a bathroom break?

19 Q Yes.

20 (Recess: 2:43 to 2:51 p. m.)

21 BY MR. PHIPPS:

22 Q I'm looking on page ten. The second
23 bullet down talks about an important lesson from
24 foreign militaries being the centrality of
25 leadership, particularly support from those at the

1 Frank

2 reason, they're outside the competence
3 of this witness because he's not a
4 lawyer but go ahead.

5 A Yes.

6 Q And in your -- and although you may
7 not be a lawyer, you've studied the "Don't Ask,
8 Don't Tell" policy and statute.

9 Do you feel comfortable within the
10 realm of your expertise saying that 1, 2 and 3 are
11 statements of the law even if you aren't trained
12 in the law?

13 A Yes.

14 Q Okay. Now, what about -- how about
15 on 4, do you agree with the statement in 4, the
16 Congressional finding number 4?

17 A Partly.

18 Q And what's the nature of your
19 agreement and --

20 A I agree that a main purpose of the
21 military is to prepare for and prevail in combat.
22 That may be the primary purpose. Another purpose
23 is to ward off the need for war through a show of
24 force so that's what I would add.

25 Q What about 5, do you have an opinion

1 Frank

2 as far as agreement or disagreement on 5?

3 A I agree.

4 Q What about 6, agree or disagree ?

5 A I agree with the caveat that un it
6 cohesion is used here in its most general form and
7 doesn't distinguish between task cohesion which is
8 something we defined previously.

9 Q So is that a general expression of
10 agreement?

11 A General expression of agreement .

12 Q And what about 7 -- oh, have I --

13 A Yes, that's right.

14 Q Yes.

15 A Yes. I agree with 7.

16 I need another quick break.

17 Q Yes.

18 MR. PHIPPS: Off the record.

19 (Recess: 3:39 to 3:44 p. m.)

20 BY MR. PHIPPS:

21 Q Looking at finding 8 on Exhibit 3,
22 do you agree or disagree with that finding?

23 A I agree.

24 Q Okay. And then on to finding IX.
25 Do you agree or disagree with that finding?

1 Frank

2 A I agree.

3 Q And then finding 10, do you agree or
4 disagree with that finding?

5 A I agree.

6 Q Okay. And then finding 11, do you
7 agree or disagree with that finding?

8 A Agree.

9 Q And then finding 12, do you agree or
10 disagree with that finding?

11 A Agree.

12 Q Okay. Well, let's go to 13. Do you
13 agree or disagree with 13, finding 13?

14 A Disagree.

15 Q Fourteen, do you agree or disagree?

16 A Disagree -- sorry, hold on. I
17 thought maybe I was going too fast and maybe I
18 was.

19 Okay. I'm -- I agree.

20 Q You agree with 14?

21 A Yes.

22 Q And then do you agree or disagree
23 with 15?

24 A Disagree.

25 Q Okay. If you want, I can provide

EXHIBIT H

Plaintiff's Response to Request
for Admin. No. 1
(Feb. 15, 2007)

1 THE HONORABLE RONALD B. LEIGHTON

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6
7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 MAJOR MARGARET WITT,

11 Plaintiff,

12 v.

13 UNITED STATES DEPARTMENT OF THE
14 AIR FORCE, et al.,

15 Defendant

No. C06-5195 RBL

**PLAINTIFF'S OBJECTIONS AND
RESPONSES TO DEFENDANT THE
UNITED STATES AIR FORCE'S FIRST
SET OF INTERROGATORIES,
REQUESTS FOR ADMISSION, AND
DOCUMENT REQUESTS TO
PLAINTIFF**

16 Pursuant to Rules 33, 34, and 36 of the Federal Rules of Civil Procedure, Plaintiff
17 Margaret Witt submits the following objections and responses to Defendant The United States
18 Air Force's First Set of Interrogatories, Requests for Admission, and Document Requests to
19 Plaintiff.

20 GENERAL OBJECTIONS

21 1. Plaintiff objects to each and every discovery request to the extent that it seeks
22 information and/or documents that are not relevant and not reasonably calculated to lead to
discovery of admissible evidence.

1 2. Plaintiff objects to each and every discovery request to the extent that it seeks
2 information and/or documents protected from disclosure by the attorney-client privilege, the
3 attorney work product-doctrine, or any other privilege, doctrine, or rule of confidentiality.

4 3. Plaintiff objects to each and every discovery request to the extent that it is vague,
5 ambiguous, and/or unintelligible. Plaintiff will respond according to her good faith interpretation
6 of such requests.

7 4. Plaintiff objects to each and every discovery request to the extent that it is overly
8 broad and unduly burdensome.

9 5. Plaintiff objects to each and every discovery request to the extent that it is unduly
10 burdensome because it requires the production of electronic documents, the retrieval of which, to
11 the extent possible, would involve undue expense, time, and allocation of resources for minimal
12 return.

13 6. Plaintiff objects to each and every discovery request to the extent that it seeks
14 information contained in documents that have already been produced by any party to this action,
15 documents that Plaintiff has filed with the Court and served on any party to this action,
16 documents that are publicly available, and/or documents that are in the possession, custody, or
17 control of Defendants.

18 7. Plaintiff objects to each and every contention interrogatory on the ground that it is
19 premature. Discovery has commenced, and much of the responsive information and documents
20 that will be offered at trial are presently in the possession, custody or control of Defendants.

21 8. Plaintiff objects to each and every discovery request to the extent that it otherwise
22 seeks to impose obligations beyond those of the Federal Rules of Civil Procedures, the Court's
Local Civil Rules, and the Scheduling Order entered by the Court herein.

 9. Plaintiff reserves the right to supplement these responses to the extent required by
the Federal Rules of Civil Procedure, and to offer any evidence subsequently discovered at trial.

1 in the legal context of this case, while those facts and documents are equally available to
2 Defendants and while Defendants and their counsel are equally able to analyze, evaluate,
3 interpret and apply those facts to the law. Plaintiff's answer shall not be construed to amend or
4 limit in any fashion the substantive allegations of the Complaint. To the extent that Plaintiff is
5 able to answer this interrogatory, Plaintiff's contentions are based on the facts set forth in the
6 Complaint, all records exchanged by all parties to date (i.e., as of the date of these Answers), all
7 documents produced in discovery to date, and Defendants' answers to Plaintiff's discovery
8 requests. Further, Plaintiff will likely rely on testimony of witnesses not yet deposed, and on
9 records and discovery responses not yet produced and/or obtained.

10 Subject to and without waiving these objections and the above-stated General Objections,
11 Plaintiff contends that her suspension and discharge were illegally initiated in violation of AFI
12 36-3209, ¶¶ 1.22, 2.33, and Attachment 11. The initiation of the fact-finding inquiry by General
13 Duignan, and originating from higher up in the chain of command, is inconsistent with the
14 requirements under AFI 36-3209.

15 REQUESTS FOR ADMISSION

16 **Request for Admission No. 1:** Admit that the United States Air Force has an important
17 governmental interest in the unit cohesion and morale of its service members.

18 **RESPONSE:** Admitted.

19 **Request for Admission No. 2:** Admit that unit cohesion and morale are furthered by
20 minimizing potential distractions, disturbances, or risks to unit cohesion and morale.

21 **RESPONSE:** Admitted.

22 **Request for Admission No. 3:** Admit that sexual tension within a unit could distract, disturb, or
otherwise present a risk to unit cohesion and morale.

1 General Objections, Plaintiff will produce non-protected and non-privileged responsive
2 documents.

3
4 ANSWERS AND OBJECTIONS DATED this 15th day of February, 2010, in
5 conformance with Rule 26(g).

6
7 By: /s/ Sarah A. Dunne
8 Sarah A. Dunne, WSBA #34869
9 Sher Kung, WSBA #42077
10 ACLU OF WASHINGTON FOUNDATION
11 705 Second Ave., Suite 300
12 Seattle, WA 98104
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16
17 James E. Lobsenz, WSBA #8787
18 CARNEY BADLEY SPELLMAN, P.S.
19 701 Fifth Avenue, Suite 3600
20 Seattle, WA 98104
21 (206) 622-8020
22 Lobsenz@carneylaw.com

Attorneys for Plaintiff

1 CERTIFICATE OF SERVICE

2 I hereby certify that on February 16, 2010, I sent via overnight delivery the foregoing
3 Plaintiff's Objections and Responses to Defendant The United States Air Force's First Set of
4 Interrogatories, Requests for Admission, and Document Requests to Plaintiff Margaret Witt to
5 the following:

6 Peter J. Phipps
7 United States Department of Justice
8 Civil Division, Federal Programs Branch
9 20 Massachusetts Ave, N.W.
10 Washington D.C. 20001

11 By: S: Sarah A. Dunne
12 Sarah A. Dunne, WSBA #34869
13 ACLU OF WASHINGTON FOUNDATION
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EXHIBIT I

Deposition of Dennis Laich

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

- - -

MAJOR MARGARET WITT, :
 :
 Plaintiff, :
 :
 vs. : Case No. CO6-5195RBL
 :
 UNITED STATES DEPARTMENT :
 OF THE AIR FORCE, et al., :
 Defendants. :

- - -

Deposition of
MAJOR GENERAL (RETIRED) DENNIS LAICH

a witness herein, called by the Defendant for cross-examination under the applicable Rules of Ohio Civil Court Procedure, taken before me, Heidi L. Funderburk, a Professional Reporter and Notary Public in and for the State of Ohio, pursuant to Notice, at the offices of Jones, Day, on Thursday, June 2, 2010, commencing at approximately 10:07 a.m.

- - -

DEPOSITION SPECIALISTS, INC.
35 East Gay Street, Suite 300
Columbus, Ohio 43215
(614) 221-4034

1 A. Uhm, vaguely --

2 Q. Okay.

3 A. -- familiar with it.

4 Q. Do you want to explain, to the extent that
5 you can, what that concept means to you?

6 A. Unprofessional relationships, one aspect of
7 it with which I'm somewhat familiar is with military
8 officers who are in positions of responsibility and can
9 influence final decisions within the military having
10 relationships with either vendors or lobbyists
11 advocating for advantage to some civilian company.

12 Q. Again, you probably can forecast what I'm
13 going to ask.

14 But do you think that unprofessional -- an
15 unprofessional relationship is consistent with being a
16 good officer or the concepts of officership?

17 A. By definition I would answer no, with a
18 caveat that I identified that I am not familiar
19 intimately with that term as it applies to the
20 military, and absent a full understanding I qualify my
21 answer.

22 Q. And that's how just to clarify my questions
23 I wanted to only use your understanding of the term
24 that you previously defined to answer that question.

25 What about extra-marital sexual relations?

1 Are those to your understanding consistent with
2 the concept of officership or being a good officer?

3 A. No.

4 Q. Why not?

5 A. Uhm, I think first of all that those, uhm --
6 uhm, types of relationships are not only discouraged or
7 looked upon negatively in the military, but in our
8 society as a whole and they can create some problems or
9 distractions in an organization.

10 And if the leader of the organization, assuming
11 that you're asking the question around the command, it
12 compromises integrity, candor in the organization.

13 Q. We can maybe go on to change gears a bit
14 here.

15 Do you need a break?

16 A. No.

17 Q. Okay. If you need a break, just let me
18 know.

19 A. Do you need one?

20 Q. No.

21 A. Okay.

22 Q. Okay. We'll get into some more basic facts.

23 When did you first have contact with either the
24 plaintiff in this case, Margaret Witt, or Plaintiff's
25 counsel in this case?

EXHIBIT J

Defendants' Supp. Response to Plaintiff's
Interrogatory 12(d)

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MAJOR MARGARET WITT,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
THE AIR FORCE, et al.,

Defendants.

No. C06-5195 RBL

**DEFENDANTS' SUPPLEMENTAL
OBJECTIONS AND RESPONSES TO
PLAINTIFF'S INTERROGATORY
NO. 12**

Pursuant to Rules 26(e) and 33 of the Federal Rules of Civil Procedure, defendants the Department of the Air Force; Robert M. Gates, the Secretary of Defense; Michael B. Donley, the Secretary of the Air Force; and Colonel Janette Moore-Harbert, the commander of the 446th Aeromedical Evacuation Squadron, McChord Air Force Base, hereby supplement their objections and responses to Interrogatory No. 12.

INTERROGATORY NO. 12

With respect to each person whom you expect to call as an expert witness:

- a. The expert's name and address;
- b. The subject matter on which the expert will testify;
- c. The substance of the facts upon which the expert will testify;

1 d. The opinions to which the expert will testify;

2 e. Summarize the grounds for each opinion the expert will give.

3 **RESPONSE:** Defendants hereby incorporate their previous objections to this request. In
4 addition, defendants object to this interrogatory because it asks five discrete questions and, for
5 that reason, constitutes five separate interrogatories under Rule 33(a).

6 Subject to and without waiving these objections, defendants respond as follows:

7 a. Lieutenant General Charles E. Stenner Jr., 155 Richard Ray Blvd, Robins AFB,
8 GA 31098-1635.

9 b. General Stenner will testify to the need for a uniform personnel policy in the Air
10 Force, as opposed to one that would apply to a specific geographical region. He will also offer
11 testimony on the need for similar rules of conduct for the Reserves as to the regular active duty
12 military.

13 c. The basis for General Stenner's testimony is his military training and experience,
14 particularly his experience in command and senior leadership positions, which include the
15 following:

- 16 • Commander, AFRC, Robins AFB, Ga., and Chief of Air Force Reserve,
17 Headquarters U.S. Air Force, Washington, D.C. (June 2008 - present);
- 18 • Assistant Deputy Chief of Staff, Strategic Plans and Programs, Headquarters U. S.
19 Air Force, Washington, D.C. (July 2006 - June 2008);
- 20 • Director, Plans and Programs, Headquarters AFRC, Robins AFB, Ga. (July 2003 -
21 July 2006);
- 22 • Director, Operations, Headquarters Air Force Reserve Command, Robins AFB,
23 Ga. (July 2003 - September 2003);
- 24 • Director, Transformation, USSOUTHCOM, Miami, Fla. (January 2003 - July
25 2003);
- 26 • Director, Strategy, Policy and Plans, USSOUTHCOM, Miami, Fla. (September
27 2002 - January 2003);
- Deputy Director, Strategy, Policy and Plans, U.S. Southern Command, Miami,

1 Fla. (May 2001 - September 2002);

- 2 • Commander, 482nd Fighter Wing, Homestead Air Reserve Base, Fla. (December
3 1998 - May 2001);
- 4 • Commander, 442nd Fighter Wing, Whiteman AFB, Mo. (August 1997 -
5 December 1998);
- 6 • Commander, 944th Operations Group, Luke AFB, Ariz. (March 1996 - August
7 1997);
- 8 • Special Assistant to the Commander, 944th Fighter Wing, Luke AFB, Ariz.
9 (December 1995 - March 1996);
- 10 • Commander, 419th Operations Group, Hill AFB, Utah (July 1994 - December
11 1995);
- 12 • Commander, 930th Operations Group, Grissom AFB, Ind. (November 1992 - July
13 1994);
- 14 • Commander, 442nd Operations Group, Richards-Gebaur AFB, Mo. (April 1992 -
15 November 1992); and
- 16 • Deputy Commander, Operations, 442nd Tactical Fighter Wing, Richards-Gebaur
17 AFB, Mo. (February 1991 - April 1992);

18 d. General Stenner will offer the following opinions:

- 19 (1) To further unit cohesion, morale, good order, and discipline, the
20 Air Force, an institution globally organized and globally assigned,
21 needs a uniform personnel policy, not different personnel policies
22 for separate geographical regions. This need for uniformity
23 extends to the homosexual conduct policy; it cannot be applied
24 differently in various geographical regions without disruptions to
25 unit cohesion, morale, good order, and discipline.
- 26 (2) Because there must be a seamless integration between the Air
27 Force Reserve and the Regular component, there is a need for
3 parity in their personnel policies, including the homosexual

1 conduct policy. It is essential for unit cohesion, morale, good
2 order, and discipline that similar rules of conduct apply to Air
3 Force Reservists and to Regular active duty members.

4 (3) Major Witt's discharge from the Air Force Reserves furthers basic
5 military functionality as well as unit cohesion, morale, good order,
6 and discipline because if she were not discharged, that would mean
7 that Air Force personnel policies were not uniformly applied across
8 geographical boundaries, which would disrupt unit cohesion,
9 morale, good order, and discipline.

10 e. General Stenner's opinions are based on thirty-five plus years military service and
11 training, including multiple tours as a commander at the group, wing, and major command levels
12 (as detailed further in response to subsection b).

13
14 Dated: April 2, 2010

Respectfully submitted,

15 TONY WEST
16 Assistant Attorney General

17 VINCENT M. GARVEY
18 Deputy Branch Director

19 

20 PETER J. PHIPPS
21 BRYAN R. DIEDERICH
22 STEPHEN J. BUCKINGHAM
23 United States Department of Justice
24 Civil Division, Federal Programs Branch
25 Tel: (202) 616-8482
26 Fax: (202) 616-8470
27 E-mail: peter.phipps@usdoj.gov

28
29 Of Counsel:
30 LT. COL. TODI S. CARNES
31 1777 N. Kent Street, Suite 11400
32 Rosslyn, VA 22209-2133
33 (703) 588-8428

34 Mailing Address:
35 Post Office Box 883, Ben Franklin Station
36 Washington, D.C. 20044

37 Courier Address:
38 20 Massachusetts Ave., N.W.
39 Washington, D.C. 20001

Attorneys for Defendants

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VERIFICATION

I, Sharon A. Shaffer, declare under penalty of perjury that the foregoing responses are true and correct to the best of my knowledge, information, belief, and recollection.

Dated: 2 April 2010

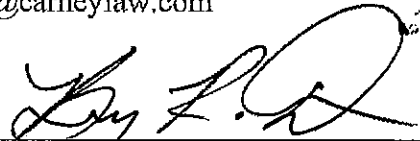

Sharon A. Shaffer

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CERTIFICATE OF SERVICE

I hereby certify that on April 2, 2010, I sent *via* first-class U.S. Mail the foregoing Defendants' Supplemental Objections and Responses to Plaintiff's Interrogatory No. 12 to the following person:

James E. Lobsenz
Carney Badley Spellman, P.S.
701 Fifth Avenue, Suite 3600
Seattle, WA 98104
Tel: (206) 622-8020
Fax: (206) 622-8983
E-mail: lobsenz@carneylaw.com



BRYAN R. DIEDERICH
United States Department of Justice
Civil Division, Federal Programs Branch
P.O. Box 883, Ben Franklin Station
Washington, DC 20044
Tel: (202) 305-0198
Fax: (202) 616-8470

Attorney for Defendants

EXHIBIT K

Deposition of Charles E. Stenner, Jr.

U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MAJOR MARGARET WITT,
Plaintiff,

vs

FILE N O.
C06-51 95 RBL

UNITED STATES DEPARTMENT OF THE
AIR FORCE; DONALD H. RUMSFELD,
Secretary of Defense; MICHAEL W.
WYNNE, Secretary of the Department
of Air Force; and COLONEL MARY L.
WALKER, Commander, 446th
Aeromedical Evacuation Squadron,
McChord AFB,

Defendants.

DEPOSITION OF
LIEUTENANT GENERAL CHARLES EDWIN STENNER, JR.

Monday, May 17, 2010
8:50 a.m.

Taken by counsel for the Plaintiff at:

Robins Air Force Base
Warner Robins, Georgia

Stenographically Reported By:

Gaye D. Traynor
Certified Court Reporter-B2209
State of Georgia

1 necessarily result in no gay or lesbian members serving
2 openly?

3 MR. PHIPPS: Objection: Vague, calls for
4 legal conclusion, calls for speculation.

5 THE WITNESS: A policy that's not applied
6 uniformly degrades. A policy that is applied uniformly
7 sustains unit cohesion, good order and discipline and
8 ultimately readiness for the war fighter.

9 BY MS. DUNNE:

10 Q Do you understand what I mean when I say the
11 term "serve openly." So gay or lesbian service members
12 serving openly. Do you understand when I use that term?

13 MR. PHIPPS: Objection: Vague.

14 A (No response.)

15 BY MS. DUNNE:

16 Q What -- how would you define a service member
17 who is gay or lesbian, i.e., engages in acts with a member
18 of the same sex but they are serving in their unit and
19 everyone knows of their sexual orientation? What's the
20 phrase you would use because I'm using...

21 A The other option is for you to define what you
22 mean by openly gay. So I'm -- because...

23 Q So, sir, when I say openly gay and lesbian,
24 that means somebody who's serving within their unit that
25 other unit members and the Commander know they're gay or

EXHIBIT L

Action of the Secretary of the Air Force
(July 10, 2007)



Office of the Assistant Secretary

DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

JUL 10 2007

ACTION
of the
SECRETARY OF THE AIR FORCE

The Secretary of the Air Force directs that Major Margaret H. Witt, [REDACTED], be discharged from the United States Air Force with an Honorable discharge. This action is taken pursuant to AFI 36-3209.

This action is taken under the authority delegated by Secretary of the Air Force Order 240.8.


JOE G. LINBERGER
Director
Air Force Review Boards Agency

EXHIBIT M

Reserve Order
(July 12, 2007)

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE RESERVE COMMAND
155 RICHARD RAY BLVE
ROBINS AIR FORCE BASE, GEORGIA 31098-1635

RESERVE ORDER
A-412

12 July 2007

By direction of the President, the Air Force relieves MAJOR MARGARET H. WITT, SSN: [REDACTED] (AFSC X46F3; functional account code: 564000; position control number: 0070632) from assignment 446th Aeromedical Evacuation Squadron, McChord AFB WA and discharges her with an Honorable Conditions Discharge from all appointments in the United States Air Force Reserve effective 1 October 2007. Mailing address: 1022 W. 19th Ave, Spokane WA 99203. Authority: AFI 36-3209, Homosexual Conduct.

FOR THE COMMANDER



TERESA A. HAMS, Colonel, USAF
Chief, Military Personnel Division
Directorate of Personnel

DISTRIBUTION:

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1-ARPC/DSMM
1-AFRC/JAM
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1-AFRC/A1BR
1-446 AES/CC
1-446 MSS/DPMSA (Relocation)
1-Servicing Reserve Pay Office

RO A-412

EXHIBIT N

Form 256

Honorable Discharge



from the Armed Forces of the United States of America

This is to certify that

MARGARET H. WITT, [REDACTED] MAJOR, USAFR

was Honorably Discharged from the

United States Air Force

on the 1ST day of OCTOBER 2007 *This certificate is awarded*

as a testimonial of Honest and Faithful Service

William T. Pelster

WILLIAM T PELSTER, LT COL, USAFR
446 AW (AFRC) MCCORD AFB WA 98438-1320

EXHIBIT O

Plaintiff's Objections & Response to
Defendants' Second Set of Interrogatories

1 THE HONORABLE RONALD B. LEIGHTON

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7
8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 MAJOR MARGARET WITT,

No. C06-5195 RBL

12 Plaintiff,

13 v.

14 UNITED STATES DEPARTMENT OF THE
15 AIR FORCE, et al.,

16 Defendant

**PLAINTIFF'S OBJECTIONS AND
RESPONSES TO DEFENDANT THE
UNITED STATES AIR FORCE'S
SECOND SET OF
INTERROGATORIES, REQUESTS
FOR ADMISSION, AND DOCUMENT
REQUESTS TO PLAINTIFF**

17
18 Pursuant to Rules 33, 34, and 36 of the Federal Rules of Civil Procedure, Plaintiff
19 Margaret Witt submits the following objections and responses to Defendant The United States
20 Air Force's First Set of Interrogatories, Requests for Admission, and Document Requests to
21 Plaintiff.

22 **GENERAL OBJECTIONS**

23 1. Plaintiff objects to each and every discovery request to the extent that it seeks
24 information and/or documents that are not relevant and not reasonably calculated to lead to
25 discovery of admissible evidence.

26
PLAINTIFF'S OBJECTIONS AND RESPONSES TO
DEFENDANT THE UNITED STATES AIR FORCE'S SECOND
SET OF INTERROGATORIES, REQUESTS FOR ADMISSION,
AND DOCUMENT REQUESTS TO PLAINTIFF
(Case No. C06-5195- RBL) -- Page 1

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WASHINGTON FOUNDATION
705 Second Avenue, Suite 300
Seattle, Washington 98104-1799
(206) 624-2184

1 in which you were employed or worked voluntarily in a position that required the position-
2 occupant to be a registered nurse.

3 **RESPONSE:** Plaintiff estimates 90 hours in 2009, and 40 hours in 2010.

4
5 **Interrogatory No. 11:** State the reason or reasons that you were suspended from flying status at
6 any time from 2003 to the present.

7 **RESPONSE:** I injured my right knee while on deployment to Seeb, Oman in January 2003. I
8 was suspended from flying status from March 7, 2003 to July 24, 2003 while my right knee
9 recovered from surgery. I had surgery on my left knee in November 2003, and was subsequently
10 suspended from flying status from December 14, 2003 to March 20, 2004.

11
12 **Interrogatory No. 12:** Describe in detail all medical procedures you have had (including
13 medical procedures on your knee) from 2003 to the present, including, but not limited to, the
14 nature of the procedures and the reason(s) for the procedures.

15 **RESPONSE:** Plaintiff objects to Interrogatory No. 12 because Defendants' use of the term
16 "medical procedures" is vague. A medical procedure may be propedeutic, diagnostic, surgical,
17 rehabilitative, or therapeutic. For purposes of responding to Interrogatory No. 12, Plaintiff
18 assumes that "medical procedures" means surgical procedures. Plaintiff further objects to the
19 above Interrogatory to the extent that medical procedures are irrelevant to the claims at issue in
20 this case (i.e. excision of tissue masses). Subject to and without waiving the specific objections
21 identified above and the above-stated General Objections, Plaintiff responds with the following:

22 I sustained an injury to my right knee on January 12, 2003 while deployed to Oman. On
23 March 21, 2003, I was treated at Madigan Army Medical Center, where I received right knee
24 arthroscopy with debridement to clean out the area. On August 29, 2006, I received arthroscopy
25 and debridement to remove non-viable tissue in my right knee. On September 25, 2007, I
26 received another right knee arthroscopy with debridement.

1 On November 4, 2003, I underwent surgery to have cartilage implanted in my left knee in
2 order to replace and repair damaged cartilage. On December 20, 2005, I received arthroscopy
3 and debridement to remove non-viable tissue in my left knee.

4 In January 2004, I injured my left thumb when I fell while using crutches for my left
5 knee. I underwent surgery for repair of the ulnar collateral ligament of my left thumb.

6 On December 9, 2009, I had a soft tissue mass removed from my left forearm.
7

8 REQUESTS FOR ADMISSION

9 **Request for Admission No. 19:** Admit that on November 5, 2004, you could not achieve a
10 composite score of greater than 75 in a Fitness Assessment conducted pursuant to Air Force
11 Instruction 10-248.

12 **RESPONSE:** Plaintiff objects to Request for Admission No. 19 based on vagueness. It is
13 unclear whether Defendants are referring to the AFI 10-248 regulations that are currently in
14 effect, or to AFI 10-248 as of November 5, 2004. Plaintiff further objects to this request because
15 it calls for an interpretation of the Air Force Instruction and retrospective speculation of her
16 physical fitness at a date more than five years ago. Subject to and without waiving the specific
17 objections identified above and the above-stated General Objections, Plaintiff denies this request.
18

19 **Request for Admission No. 20:** Admit that on July 10, 2007, you could not achieve a
20 composite score of greater than 75 in a Fitness Assessment conducted pursuant to Air Force
21 Instruction 10-248.

22 **RESPONSE:** Plaintiff objects to Request for Admission No. 20 based on vagueness. It is
23 unclear whether Defendants are referring to the AFI 10-248 regulations that are currently in
24 effect, or to AFI 10-248 as of July 10, 2007. Plaintiff further objects to this request because it
25 calls for an interpretation of the Air Force Instruction and retrospective speculation of her
26 physical fitness at a date three years in the past. Subject to and

1 without waiving the specific objections identified above and the above-stated General
2 Objections, Plaintiff denies this request.

3
4 **Request for Admission No. 21:** Admit that you cannot currently achieve a score of greater than
5 75 in a Fitness Assessment conducted pursuant to Air Force Instruction 10-248.

6 **RESPONSE:** Plaintiff objects to Request for Admission No. 21 because it calls for an
7 interpretation of Air Force Instruction 10-248, and Plaintiff is unclear which Air Force
8 Instruction 10-248 Defendants are referring to because there is no date given above to
9 specifically identify the Air Force Instruction; Plaintiff also objects because it would require
10 speculation. Subject to and without waiving the specific objections identified above and the
11 above-stated General Objections, Plaintiff denies this request.

12
13 **Request for Admission No. 22:** Admit that on November 5, 2004, you had been suspended
14 from flying status for more than twelve months.

15 **RESPONSE:** Deny.

16
17 **Request for Admission No. 23:** Admit that on November 5, 2004, you could not meet the
18 Medical Standards for Flying Duty described in Air Force Instruction 48-123, Section 6G.

19 **RESPONSE:** Plaintiff objects to Request for Admission No. 23 based on vagueness. It is
20 unclear whether Defendants are referring to the AFI 48-123 regulations that are currently in
21 effect, or to AFI 48-123 as of November 5, 2004. Plaintiff further objects to this request because
22 it calls for retrospective speculation of her medical qualifications at a date more than five years
23 ago. Subject to and without waiving the specific objections identified above and the above-
24 stated General Objections, Plaintiff denies this request.

1 **Request for Admission No. 24:** Admit that on July 10, 2007, you could not meet the Medical
2 Standards for Flying Duty described in Air Force Instruction 48-123, Section 6G.

3 **RESPONSE:** Plaintiff objects to Request for Admission No. 24 based on vagueness. It is
4 unclear whether Defendants are referring to the AFI 48-123 regulations that are currently in
5 effect, or to AFI 48-123 as of July 10, 2007. Plaintiff further objects to this request because it
6 calls for retrospective speculation of her medical qualifications at a date three years in the past.
7 Subject to and without waiving the specific objections identified above and the above-stated
8 General Objections, Plaintiff denies this request.

9
10 **Request for Admission No. 25:** Admit that you cannot currently meet the Medical Standards
11 for Flying Duty described in Air Force Instruction 48-123, Section 6G.

12 **RESPONSE:** Plaintiff objects to Request for Admission No. 25 because it calls for an
13 interpretation of Air Force Instruction 48-123, and Plaintiff is unclear which Air Force
14 Instruction 48-123 Defendants are referring to because there is no date given above to
15 specifically identify the Air Force Instruction; Plaintiff also objects because it would require
16 speculation. Subject to and without waiving the specific objections identified above and the
17 above-stated General Objections, Plaintiff denies this request.

18
19 **Request for Admission No. 26:** Admit that you are not employed or serving voluntarily in a
20 position that requires the position-occupant to be a registered nurse.

21 **RESPONSE:** Subject to and without waiving the above-stated General Objections, Plaintiff
22 denies this request.

23
24 **Request for Admission No. 27:** Admit that you do not currently practice nursing, as that term is
25 defined in Air Force Instruction 36-2115, 1.11.5.1.

1 **RESPONSE:** Plaintiff objects to Request for Admission No. 27 because it calls for an
2 interpretation of Air Force Instruction 36-2115, and Plaintiff is unclear which Air Force
3 Instruction 36-2115 Defendants are referring to because there is no date given above to
4 specifically identify the Air Force Instruction. Subject to and without waiving the specific
5 objections identified above and the above-stated General Objections, Plaintiff admits this
6 request.

7
8 **REQUESTS FOR DOCUMENT PRODUCTION**

9 **Request for Documents No. 7:** Produce all documents indicating or evidencing any hours that
10 you have been employed in or served voluntarily in a position that requires the position-occupant
11 to be a registered nurse (RN) since 2006.

12 **RESPONSE:** Plaintiff adopts and incorporates the General Objections set forth above. Subject
13 to and without waiving the specific objections identified above for each and every Interrogatory
14 and Request for Admission, Plaintiff will produce non-protected and non-privileged responsive
15 documents.

16
17 **Request for Documents No. 8:** If you have denied any of Request for Admission Nos. 19-27,
18 produce any document that supports your denial.

19 **RESPONSE:** Plaintiff adopts and incorporates the General Objections set forth above. Plaintiff
20 also objects to the production of confidential medical records without a protective order in place
21 governing improper disclosure to the general public and designating the records be used for
22 purposes of this litigation only. Subject to and without waiving the specific objections identified
23 above for each and every Interrogatory and Request for Admission, Plaintiff will produce non-
24 protected and non-privileged responsive documents.

1 **Request for Documents No. 9:** Produce all documents concerning any medical procedure you
2 have had from 2003 to the present including any procedures related to your knee.

3 **RESPONSE:** Plaintiff adopts and incorporates the General Objections set forth above. Plaintiff
4 further objects to Request for Documents No. 9 because Defendants' use of the term "medical
5 procedures" is vague. A medical procedure may be propedeutic, diagnostic, surgical,
6 rehabilitative, or therapeutic. For purposes of responding to this request, Plaintiff assumes that
7 "medical procedures" means surgical processes. Plaintiff further objects to the above request to
8 the extent that medical procedures are irrelevant to the claims at issue in this case (i.e. excision
9 of tissue masses). Plaintiff also objects to the production of confidential medical records without
10 a protective order in place governing improper disclosure to the general public and designating
11 the records be used for purposes of this litigation only. Subject to and without waiving the
12 specific objections identified above for each and every Interrogatory and Request for Admission,
13 Plaintiff will produce non-protected and non-privileged responsive documents.

14
15 **Request for Documents No. 10:** Produce all documents identified, reference, relied upon or
16 used in responding to these Interrogatories and Requests for Admission.

17 **RESPONSE:** Plaintiff adopts and incorporates the General Objections set forth above. Plaintiff
18 also objects to the production of confidential medical records without a protective order in place
19 governing improper disclosure to the general public and designating the records be used for
20 purposes of this litigation only. Subject to and without waiving the specific objections identified
21 above for each and every Interrogatory and Request for Admission, Plaintiff will produce non-
22 protected and non-privileged responsive documents.

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CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2010, I sent via U.S. regular mail the foregoing Plaintiff's Objections and Responses to Defendant The United States Air Force's Second Set of Interrogatories, Requests for Admission, and Document Requests to Plaintiff Margaret Witt to the following:

Bryan R. Diederich
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave, N.W.
Washington D.C. 20001

By: /S/ Sher S. Kung
Sher S. Kung, WSBA #42077
ACLU OF WASHINGTON FOUNDATION