

IN THE UNITED DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Celina M. Baldwin)
)
Jennifer Smith)
)
Alyssa Rodriguez)
)
Carmelita Swain)
)
v.)
)
Department of Defense)
The Pentagon)
Washington, DC 20001)

COMPLAINT

1. On March 27, 2015, Defendant Department of Defense released a redacted report to the *Army Times* that whitewashes and covers up extensive sexual harassment at the United States Military Academy / West Point. Reasonable discovery will show that this report claims that the West Point rugby players’ dissemination of sexist and violent emails expressing ill intent towards their fellow female cadets did not constitute sexual harassment, and that the rugby players were not alleged to have engaged in any sexual assaults. This is false, as then-Cadet Baldwin informed the investigating authorities that she had been assaulted (touched against her will) on several occasions by two different members of the West Point rugby team. This so-called “investigation” follows a Department of Defense pattern: claim that an “investigation” found no misconduct significant enough to terminate military members, and permit persons involved in blatant sexual harassment and creation of a sexually hostile work environment to rise

through the ranks in the military. Plaintiff Smith endured the same pattern, made worse by the fact that the Department of Defense assigned a General involved in the misconduct to act as one of the investigators. This Department of Defense pattern is unlawful and prevents Congress and the public from learning about the sexually hostile environment flourishing in multiple locations throughout the military.

2. Standing alone, the Department of Defense's failure to prevent and punish widespread sexual harassment is actionable under federal laws that prevent the creation of a sexually hostile environment. But the Department's failures are made even more significant, and rise to the level of a deprivation of the Plaintiffs' Constitutional rights, because reasonable discovery will show that the Department permits military officers involved in creating and fostering the sexually hostile environment to control the military judicial process that is supposed to ascertain the *bona fides* of rape and sexual assault allegations. This military judicial process is broken, because the Department repeatedly fails to terminate sexual harassers from the military, and instead lets those biased and hostile persons control military judicial proceedings. As a direct result of the Department's failure to operate an impartial system and instead place power in untrained and biased hands, Plaintiffs Baldwin, Rodriguez and Swain are among the thousands of service member survivors who have to endure seeing their rapists go unpunished in any way.

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. Plaintiff Celina Baldwin is a citizen of the United States and a resident of Florida. Plaintiff Baldwin graduated from West Point and was commissioned as an officer in the Army on May 25, 2013. Lt. Baldwin is on active duty and currently deployed to Kuwait, where she serves as the Strength Manager and Assistance Brigade S-1. In that role, she serves as human resources manager for 1,800 assigned Army personnel and more than 2,000 contractors. During her tenure at West Point, she was raped, sexually assaulted, and subjected to a sexist and hostile environment.

6. Plaintiff Jennifer Smith is a citizen of the United States and a resident of South Carolina. Plaintiff Smith served this nation as a member of the Air Force for 18 years, deploying on five occasions to Iraq, Kuwait, Korea and Germany. Her performance has merited constant promotions, and she reached the level of Technical Sergeant (“TSgt”). During her 18-year tenure with the Air Force, she was sexually assaulted and subjected to a sexually-hostile environment. TSgt Smith suffers from post-traumatic stress disorder resulting from combat, the sexual assaults, and the sexually-hostile environment.¹

¹ TSgt Smith’s performance reviews were stellar. On April 18, 2012, TSgt Smith “goes above and beyond.” Her superior, Capt. Joseph P. Witt, recommended that the Air Force “promote to MSgt now!” Capt Witt explained TSgt Smith “brilliantly led FS ops desk as NCOIC...” In her prior performance review issued on February 11, 2011, a different supervisor, Lt. Col. Jason L. Plourde, described TSgt Smith as follows: “gifted mentor... energetically [managed] EFS [program] to fly 1K flags in combat by F-16 pilots – JBB patriotism & morale skyrocketed.” Lt.

7. Plaintiff Alyssa Rodriguez is a citizen of the United States and resides in Illinois. During her tenure with the Air Force, Plaintiff Rodriguez sought and continues to see justice in the military judicial system to no avail. To date, her rapist remains free and an active duty member of the military because General Franklin refused to prosecute him. As a result of an ongoing and the lengthy process that continues to this day, Plaintiff Rodriguez became disabled from post-traumatic stress disorder.

8. Plaintiff Carmelita Swain is a citizen of the United States and resides in Washington. While deployed as an Army sergeant in Afghanistan, a noncommissioned officer raped her in her barracks. Plaintiff Swain sought justice in the military judicial system to no avail. After her rapist was set free with no consequences to his military career, Plaintiff Swain became disabled from post-traumatic stress disorder and separated after 15 years of military service.

9. Defendant Department of Defense (“DOD” or “the Department”) is an executive department of the United States, composed of, among other things, the Office of the Secretary of Defense, the Joint Chiefs of Staff, the Joint Staff, the Department of the Army, the Department of the Navy, the and the Department of the Air Force. *See* 10 U.S.C.A. § 111(a) and (b).

FACTUAL ALLEGATIONS

10. On or about October 24, 2012, Plaintiff Smith filed an administrative complaint detailing a sexually hostile environment in the Department. Plaintiff Smith attached to the complaint direct evidence of sexually hostile materials. For example, in addition to open and

Col. Flourde also pressed for immediate promotion: “ready now for HARM/MAJCOM ARM duty – must promote now!”

widespread display of pornography, including thousands of images which were stored on government computer servers, military officials disseminated and sang indisputably sexually hostile songs in groups. Below are the lyrics of one such song, called “The S&M Man” (Tune – The Candy Man):

Who can take two ice picks, Stick ‘em in her ears
Ride her like a Harley While you Fuck her in the rear...

Who can take a machete, Whack off all her limbs
Throw her in the ocean, and try to watch her swim

Who can take a chainsaw, Cut the bitch in two
This half is for me, And the other half’s for you...

Who can take one ice pick, Stick it in her ear
Sit back and watch her bleed to death, While you have another beer

Who can take a lady, Throw her in the road
Shove a grenade up her cunt, and watch the bitch explode...

Who can take two jumper cables, Connect ‘em to her tits
Start up the engine, And electrify the bitch

Who can take a cheese grader, strap it to his arm
Ram it up her cunt, and make pussy parmesan...

Chorus: The S&M man, The S&M man
The S&M man cause he mixes it with love
And makes the hurt feel good (The hurt feel good)

11. Plaintiff Smith provided evidence of servicemembers openly mocking those who would complain about the illegal hostile environment. In a note referencing the above-cited song, a message stated “NOTE: IF OFFENDED REFER TO BLANKET APOLOGY LETTER, AND IF YOUR [SIC] NOT A FIGHTER PILOT, THEN BEAT IT, YA FUCK!”

12. Plaintiff Smith’s complaint alleged a litany of other violations under Title 10, United States Code Section 1561. The administrative complaint is attached as Exhibit A.

13. Plaintiff Smith cooperated fully with the investigation of the allegations made in her administrative complaint despite the fact that the Department actually assigned as one of the investigators a General who was a participant in the wrongdoing. The investigation corroborated the allegations made in Plaintiff Smith's administrative complaint.

14. Yet the Department failed to eliminate the hostile environment. Reasonable discovery will show that the Department did not hold accountable those found to have participated in the extensive wrongdoing. Nor did the Department take any effective steps to ensure that Plaintiff Smith did not become the subject of ongoing retaliation. Instead, the Department stood by while Plaintiff Smith received numerous retaliatory and derogatory communications chastising her for having the courage to speak out about the sexually hostile environment.

15. Reasonable discovery will show that the Department failed to ensure that active-duty officers who sang these sexually violent songs were permanently prevented from serving as "convening authorities" in the future. It is simply not credible for the Department to claim that that a person willing to sing these songs is capable and qualified to serve as a "convening authority."

16. The Uniform Code of Military Justice governs the conduct of criminal proceedings in the military. Under this Code, a single person is appointed as a "convening authority" to oversee the investigation and prosecution of criminal conduct. The "convening authority" has complete control over the adjudicatory process. Among other things, the "convening authority" has the power to do the following:

- (a) initiate an investigation of criminal misconduct;
- (b) charge an accused with a criminal offense;

- (c) send charges to an Article 32 pre-trial hearing and select the hearing officer, and approve delays for the hearing;
- (d) determine what charges (if any) will be sent to trial by courts-martial;
- (e) determine if the charges will be sent to a special (misdemeanor) or general (felony) court;
- (f) determine whether any expert witnesses will testify or expert consultants will be employed at government expense;
- (g) grant testimonial or transactional immunity for any witness;
- (h) enter into a pretrial agreement (plea bargain) with an accused;
- (i) withdraw any charges;
- (j) add any new charges;
- (k) place a suspect in pretrial confinement;
- (l) order a convicted offender into adjudged confinement;
- (m) compel a military witness to testify;
- (n) compel a military witness to cooperate with the prosecution;
- (o) decide to retry an accused in case of a mistrial;
- (p) appeal an order by a trial judge dismissing a charge or suppressing evidence; and
- (q) determine whether a case that has overturned on appeal should be retried.

17. In short, the “convening authority” engages in all the legally significant actions that are handled by prosecutors in the civilian judicial system. The terms of 10 U.S.C.A. § 822 give the Department broad discretion on whom to appoint as a convening authority.

18. Reasonable discovery will show that the Department continue to allow those officials who participated in creating the blatantly hostile environment endured by Plaintiff

Smith to exercise this broad adjudicatory power, and to do so in rape and sexual assault cases. Note, the Department is free to appoint lawyers to these positions, but instead has a pattern of selecting commanders – and usually appoints commanders in the alleged criminal’s chain of command.

19. The Department’s failure to investigate and eliminate sexually hostile environment is not limited to the environment endured by Plaintiff Smith. The Department permits sexual harassment and a hostile environment to exist at the training academies.

20. As recently as March 27, 2015, the Department released a redacted report to the *Army Times* that whitewashes and covers up extensive sexual harassment at West Point Academy. According to media reports, the Department report claims that the rugby players’ dissemination of sexist and violent emails expressing ill intent towards their fellow female cadets did not constitute sexual harassment, and that the rugby players were not alleged to have engaged in any sexual assaults.

21. This is false, as then-Cadet Baldwin informed the investigating authorities that she had been assaulted (touched against her will) on several occasions by two different members of the West Point rugby team. During Plaintiff Baldwin’s tenure at West Point, she dated a cadet who played on West Point’s rugby team. She observed on her then-boyfriend’s computer emails circulating amongst the rugby team members that were openly sexist and hostile towards her, other female classmates and other women. Plaintiff Baldwin shared the emails with other female cadets, who eventually informed West Point of the discovery of the hostile materials.

22. As a result of West Point’s investigation into the hostile emails, Plaintiff Baldwin was asked by investigators whether she had ever been sexually assaulted. Although Plaintiff

Baldwin responded truthfully and revealed being raped and sexually assaulted, West Point falsely disseminated information to the media that there was no evidence of sexual assault.

23. The Department has now announced the conclusion of the ongoing investigation. Again, nothing was done. The Department did not prevent any of the cadets involved in the sexual assaults or in creating the sexually-hostile environment for their fellow female cadets from being commissioned as officers in the Army. Nor did it take any steps to ensure that these men were not appointed as “convening authorities” and given the power to oversee adjudication of rapes and sexual assaults. Instead, the Department again permitted the creation of a sexually hostile environment to go unpunished. Female West Point cadets thus learn that reporting sexually-hostile conduct is meaningless, as wrongdoers are rarely, if ever, properly investigated or punished. Even more depressingly, they learn that nothing prevents these men from serving as the “convening authorities” with the power to adjudicate the *bona fides* of allegations of rape and sexual assault.

24. Plaintiff Baldwin has already suffered and continues to suffer from the Department’s practice of appointing biased “convening authorities” and the lack of impartial adjudication.

25. In addition to being sexually assaulted (touched without her consent) by two West Point rugby players, Plaintiff Baldwin was raped by a West Point colleague during a period of time when she lacked any capacity to consent to intercourse. This West Point colleague came from a well-regarded military family and was well liked by his male peers. Although the investigating agents found that this young man failed a polygraph test, and initially admitted to the wrongdoing (forcing his penis into Plaintiff Baldwin’s mouth and vagina without her

consent), the “convening authority” relied instead on a series of letters of support from various members of the military, including the accused’s brother.

26. Not one of these letter writers had any knowledge of the evidence adduced through investigation, but instead were confident that this nice young man from this nice military family simply could not have engaged in these acts. The “convening authority” was not an unbiased legally trained person relying on the evidence, but instead was the perpetrator’s Brigade Commander (a Colonel in the Army), who relied on the non-evidentiary submissions, and wholly accepted his claim of consent without considering the evidence adduced during the investigation. The Colonel refused to permit the matter to proceed beyond the preliminary investigative stage, claiming in essence that Plaintiff Baldwin did not act like a victim should act and therefore was not credible.

27. Plaintiff Swain is one of many who have suffered from the Department’s failure to regulate and control the qualifications of those appointed to serve as “convening authorities.” In addition to the many victims who have brought suit in the past, Plaintiff Swain also suffered and continues to suffer mental distress as a result of this miscarriage of justice directly attributable to the Department’s refusal to appoint impartial and legally trained persons to serve as convening authorities. After being raped while deployed to Afghanistan with the 432 Infantry, A Company, Plaintiff Swain had to endure an excessively slow investigation (approximately one year) as her command told her to “toughen it out” and permitted the perpetrator to continue to serve without any pre-trial incarceration. After this lengthy delay, Plaintiff Swain’s allegation of rape was adjudicated during an August 2013 proceeding that took approximately thirty minutes and focused exclusively on the perpetrator’s value to the military.

Again, the evidence was ignored because the perpetrator's commander wanted his soldier back on duty.

28. Plaintiff Rodriguez suffered and continues to suffer mental distress as a result of this miscarriage of justice directly attributable to the Department's refusal to appoint impartial and legally trained persons to serve as convening authorities. In July 2012, while she was stationed at Avino Air Force base in Italy, a fellow Airman raped Plaintiff Rodriguez after an evening of socializing in her home. When Plaintiff Rodriguez reported the rape, the convening authority, General Franklin, refused to refer the case for trial.

29. The media discovered and reported that General Franklin unilaterally set aside the rape conviction of a pilot named Wilkinson because General Franklin could not believe a man with such a nice family could be a perpetrator. At that point, the Air Force re-examined all the rape cases that General Franklin had refused to prosecute, including Plaintiff Rodriguez' case. Although the Air Force attempted to appoint another convening authority, to date Plaintiff Rodriguez' perpetrator has not been tried for rape. Plaintiff Rodriguez suffered and continue to suffer from the Department's practice of assigning biased convening authorities.

30. Although Congress recently passed legislation (over the Department's initial strong objections premised on "good order and discipline") to prevent a "convening authority" such as General Franklin from unilaterally setting aside jury verdicts, the Department continues to assign as "convening authorities" individuals who participated in the creation of sexually hostile environments at West Point, the Naval Academy, the Air Force Academy, as well as in the Army, Navy, Air Force and Marines.

31. Indeed, the Department has a pattern of assigning law enforcement responsibilities to sexual predators. For example, during 2012 and 2013, the Department of the

Army permitted a rapist named Erik J. Burris to serve as the Chief of Justice for the 82nd Airborne Division. The rapist—eventually convicted to 20 years in prison after a six-day trial for rape, forcible sodomy and four assaults—served as the person in charge of supervising all military prosecutors working for the 82nd Airborne Division. During his tenure as Chief of Justice, former Major Burris not only resisted prosecuting rape and assault cases, he also testified as a defense witness for a captain who was convicted of abusive sexual contact, kidnapping and assault. Major Burris has gone on record stating that the military has let such misconduct go unpunished for “years.”

32. As another example, an individual named Angel Sanchez was responsible for training E Company service members to become military police. His supervisors were well aware that Sgt Sanchez repeatedly sexually harassed young trainees under his supervision, but they did nothing. Even after Sanchez was convicted of rape, military officials kept insisting that “they [E Company] have a pretty good team.” The military police hierarchy that covered up Sgt Sanchez’ repeated sexual harassment remains in place and is training the next generation of law enforcement. And the harassment continues unchecked, with one trainee succinctly describing the state of affairs: “if I report every inappropriate comment or sexual harassment by a male soldier . . . it would be a full-time job.”

33. The Department has in hand the hard data to know that the current military judicial system is not operating properly. The Department knows that convening authorities rarely, if ever, incarcerate alleged rapists prior to court-martials, and instead allow them to remain in intimidating proximity to the victim and witnesses.

34. According to the Department's own data, in the most recent year reported for convictions, the military justice system managed to court-martial, convict and incarcerate only 276 perpetrators. Yet the Department itself estimates more than 26,000 rapes occurred that year.

35. To date, reasonable discovery will show that the Department consistently reaches investigative results that impermissibly exonerate officers and limit any accountability. The reports discussed above are but two examples; many others exist and will be established with admissible evidence at trial. Reasonable discovery will show that the Department has not engaged in any systemic analysis of the qualifications of the persons who are vested with adjudicatory power to determine if they possess personal bias that makes them unable to be impartial.

36. Instead, the Department rests on the demonstrably false proposition that any high-level military official is qualified to serve as a convening officer. For example, in December 2014, an Army War College fellow with the rank of Lt. Colonel was on trial for having paid a 15-year old girl with braces with pink bands on them to have sex with him in a hotel room. Four high-ranking officers—including one who served as the sexual assault coordinator—testified in support that they did not see anything wrong with the conduct or “would have to know the context” of the conduct before they would condemn an officer for having sex with a 15-year old. Yet these officers are able to be named as “convening authorities” under the Department's present policies. The Department had not taken any steps to ensure that such biased individuals are prohibited from serving as convening authorities.

37. Nor has the Department taken any effective steps to prevent retaliation against those who report sexual harassment or sexual assault. All the Plaintiffs here experienced retaliatory conduct. The Department's 2104 Report to the President of the United States on

Sexual Assault Prevention and Response admits "... sexual assault is less likely when sexist behavior and sexist harassment are less prevalent in a unit ...". See Report at page 22. Yet despite admitting to this empirical link, the Department repeatedly fails to hold accountable those who create sexually hostile environments. The Department also permits widespread retaliation. See Department's Report to the President of the United States at page 119. Indeed, on February 4, 2015, during public confirmation hearings before the Senate, Ashton Carter, now Secretary of Defense, admitted that retaliation against those reporting sexual assault in the military "is becoming increasingly apparent."

38. The Department has been ordered by Congress to criminalize retaliation and punish those who engage in it. See also Section 1709 of the National Defense Authorization Act for Fiscal Year 2014, requiring the Department to adopt and implement regulations. Yet reasonable discovery will show that the Department has failed to prosecute anybody for retaliating, and has failed to take any effective measures to halt the widespread pattern of retaliating against those who report sexual assaults or sexual harassment.

39. The Department repeatedly has notice of blatant retaliatory conduct, yet does nothing to hold the wrongdoers accountable. For example, the Public Affairs Officer at the Naval Academy repeatedly and openly complained about the added work caused by an ongoing rape investigation at the Naval Academy. On at least two occasions and on information and belief on four occasions, the Public Affairs Officer for the Naval Academy gave briefings for approximately 1,000 Midshipmen. In these briefings, the Public Affairs Officer stated that he was "pissed" that the football players' crimes were made public and that his summer had been far too difficult as a result of the rape controversy. On or about September 5, 2013, the Department was placed on direct notice of this misconduct through a lawsuit filed in federal

court. *See Jane Doe v. Michael Miller*, C.A. 1:13-cv-02577-JFM (D. Md.). Yet to date, reasonable discovery will show that the Department has not terminated the Public Affairs Director. As a result, an openly retaliatory environment continues to prevail at the Naval Academy, with rape victims knowing that reporting likely will result in retaliation from not only their classmates but also from the Naval Academy hierarchy.

40. Instead, the Department itself retaliates against those who have the courage to speak out against the ongoing injustices. On or about December 2, 2014, a female military captain, Captain Maribel Jarzabek, posted a Facebook post identifying herself as an Air Force Special Victims' Counsel on terminal leave status, and explained how the Air Force had mistreated her victim-clients. She also advocated for the elimination of bias in the adjudicatory process. High-level military officials immediately retaliated against Captain Jarzabek and attempted to silence her by commencing a criminal investigation into her conduct, claiming that she was engaged in partisan political activity. Yet the very same conduct is encouraged and supported among those military personnel who seek to stop any reform. For example, Major General Rockwell sent an email out to subordinates encouraging them to speak out publicly against Congressional efforts to reform the military. The Department promoted General Rockwell, yet opened a criminal investigation against Captain Jarzabek.

41. The Department is clearly on notice of the retaliatory wrongdoing. As Captain Jarzabek explained to the *Washington Post*, "I do believe they are trying to silence me and also send a message to other special-victims counsels who agree with me but are afraid to speak up." Defendants, fully knowledgeable that the Departments were silencing significant criticism coming from those serving as Special Victims' Counsel, misled the President of the United States by claiming in its 2014 report that the program was highly regarded. *See* Page 17,

claiming the program empowers victims to “successfully navigate the military judicial system.” Yet many of those serving as Special Victims Counsel have stated exactly the opposite: victims with counsel are being mistreated because the military judicial system permits biased commanders to impact the method and manner of adjudication.

42. The Department also continues to allow the Air Force, Army and Navy to promote persons known to have committed sexual assaults. As but one example, the Air Force repeatedly promoted Eric Soluri, a man who had been convicted and imprisoned for assaulting his intimate partner and, on or about January 30, 2015, allowed Soluri to retire honorably with full retirement benefits. As will be shown with admissible evidence at trial, this is not an isolated instance, but commonplace.

43. The Department also continues to enables military sex offenders to evade required sex offender registry. *See* August 2014 OIG Report. Given that a 2010 lawsuit filed against the Secretary of Defense placed Defendant on notice of this practice, and identified with specificity a failure to register (*See* paragraph 290 of the First Amended Complaint, filed in *Cioca et al v. Rumsfeld et al*, C.A. 1:11 cv 00151 (E.D.Va)), the Department lacks any reasonable justification for five years of continued failures.

44. The Constitution requires that every American citizen—including service members victimized by their colleagues—receive due process in the form of a fair trial free from biased decision makers. *See Caperton v. A.T. Massey Coal*, 556 U.S. 868, 129 S.Ct. 2252, 173 L.Ed.2d 1208 (2009), in which the Supreme Court held “it is axiomatic that a fair trial in a fair tribunal is a basic requirement of due process.”

45. The Department knowingly deprived Plaintiffs of this Constitutional right. The Department’s own letter to the President implicitly admits that bias exists, as the Department

tries to suggest impartiality by claiming without empirical backup that “the senior commanders who do have such authority will *often have no personal knowledge of either the accused or the victim.*” See Department 2014 Letter to President at 83 (italics added). The Department, however, failed to tell the President why it would ignore its statutory power to appoint legally trained officers who are not, and never have been, in the chain of command of either the accused or the victim, and instead cling stubbornly to assigning those with a known bias to serve as “convening authorities.”

46. The Department has failed to prohibit those involved in sexual harassment and creating sexually hostile environments from becoming “convening authorities.” Further, the Department actually has created new performance incentives for commanders designed to bias them towards discrediting any allegations of rape and sexual assault. The Department has put all commanders on notice that their own career prospects will be harmed if they cannot eradicate or reduce rape and sexual assault among the service members under their command. Yet the Department then places these very same commanders in the position of overseeing the adjudication of the *bona fides* of allegations of rape and sexual assault. This Departmental structure clearly and intentionally creates a perverse incentive that aligns the incentives of the commanders with the incentives of the perpetrators. In short, this structure encourages commanders to characterize service members alleging rape and sexual assault as “not credible” or “lying” or otherwise not worthy of belief. By so characterizing the victims, the commanders protect their own career interests in being promoted.

47. Reasonable discovery will show that the Department is on clear notice that a significant number of its officers are not qualified to play a role in adjudicating the *bona fides* of

sexual assault allegations because they openly condone sexual assaults committed by their fellow officers.

48. Reasonable discovery will also show that the Department is thwarting or ignoring the Congressional mandate that requires the Department to adopt a policy of advising military rape and sexual assault victims about their ability to seek justice in the more impartial civilian courts, where the judges will not have workplace knowledge of the performance of either the victim or the perpetrator.

49. Plaintiffs each have standing to seek injunctive relief from this Court. Each Plaintiff has been harmed by the sexual harassment and sexually hostile environment and been deprived of their Constitutional due process and equal protection rights. Each Plaintiff has been injured by the Department's ongoing and repeated violations of the federal statutes prohibiting sexual harassment and prohibiting a sexually- hostile work environment. Each Plaintiff has been injured by the Department's repeated placement of wrongdoers into positions of adjudicatory power in the military judicial system. Each Plaintiff's injury is fairly traceable to the Defendant's unlawful conduct and likely to be redressed by the requested injunctive relief. The injunctive relief sought by Plaintiffs will be sufficient to remove the harm.

50. Plaintiffs Smith, Baldwin, Rodriguez and Swain suffered direct harm as a direct result of the Department's failures to prevent sexually hostile environments, and failure to ensure that qualified persons serve as "convening authorities." These Plaintiffs each spent hours of their time, and suffered professional losses, trying to cooperate with a biased and broken judicial system. The Department's practice continues to harm Plaintiffs and hundreds of other victims because the adjudications do not turn on the evidence, but rather turn on pre-existing relationships between the convening authority and the predator or the predator's sponsors.

51. The Department knows that the current military judicial system is not impartially and fairly adjudicating the *bona fides* of rape and sexual assault allegations. The Department knowingly creates professional and financial incentives that are at odds with the impartial administration of justice. The Department's ongoing conduct violates the Constitution and its promises of due process and equal protection, and harms Plaintiffs. See *Caperton v. A.T. Massey Coal*, 556 U.S. 868, 129 S.Ct. 2252, 173 L.Ed.2d 1208 (2009); *Mayberry v. Pennsylvania*, 400 U.S. 455 (1971); and *In re Murchinson*, 349 U.S. 133 (1955).

52. This Court should order the Department to use its power under the Uniform Code of Military Justice to appoint legally-trained officers with no pre-existing command relationships to the accused or the victim to serve as the "convening authority" overseeing the adjudication of rape and sexual assault allegations. Without court intervention, the Department will continue its past illegal practice of appointing military officials without any legal training but with known bias to adjudicate the *bona fides* of their allegations of rape and sexual assault.

53. There is no rational reason to vest adjudicatory power into the hands of commanders whose own past conduct evidences sexual harassment, sexual assault, or a willingness to condone such conduct in their peers. There is no rational reason to appoint commanders who are willing to rely on antiquated notions of how a rape victim "should" act instead of the evidence adduced during investigation.

COUNT ONE: CONSTITUTIONAL CLAIMS

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

55. Plaintiffs' substantive and procedural due process, equal protection and First Amendment rights have been violated by the Department's practice of permitting persons known to be involved in creating sexually hostile environments to be appointed as "convening

authorities” in rape and sexual assault cases. Plaintiffs seek an injunction sufficient to halt the Department’s ongoing wrongdoing.

COUNT TWO : STATUTORY AND REGULATORY CLAIMS

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

58. Plaintiffs seek to exercise their rights under all federal statutes and regulations, including but not limited to the Administrative Procedure Act, Title VII, Title X and implementing regulations, that penalize the creation of a sexually hostile environment, require a full and impartial investigation of such environments, and prevent vesting adjudicatory “convening authority” power in the hands of participating.

PRAYER FOR RELIEF

Defendants are violating Plaintiffs’ Constitutional and statutory rights. Plaintiffs seek an injunction to halt the ongoing violations.

/s/Susan L. Burke
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Date: March 31, 2015

AIR FORCE TECHNICAL SERGEANT (“TSgt”))
JENNIFER SMITH)
on behalf of herself and others similarly situated,)
Plaintiff and Class Representative)
)
v.)
UNITED STATES AIR FORCE,)
Defendant)
)

COMPLAINT

1. This administrative complaint seeks a remedy for systemic and intentional sexual discrimination against Jennifer Smith and other similarly-situated active duty women in the Air Force.
2. This action is brought by military member Jennifer Smith, a patriot who has served this nation with honor for seventeen years, on her own behalf and on behalf of the class of women in the Air Force.
3. This complaint is being submitted pursuant to Title 10, United States Code Section 1561.
4. The sexual discrimination remains ongoing to date.
5. In 1995, Jennifer Smith, an 18-year old high school graduate, enlisted as an Airman Basic (E1). Her years of service have been exemplary. She deployed overseas on five occasions to Iraq, Kuwait, Korea and Germany. Her performance has merited constant promotions, most recently to Technical Sergeant (“TSgt”).

6. Her last three performance reviews and most recent Air Force fitness evaluation are attached as Exhibit A. In every instance, she has received the highest marks possible. As stated in her most recent performance review issued on April 18, 2012, TSgt Smith “goes above and beyond.” Her superior, Capt Joseph P. Witt, recommended that the Air Force “promote to MSgt now!” Capt Witt explained TSgt Smith “brilliantly led FS ops desk as NCOIC...”
7. In her prior performance review issued on February 11, 2011, a different supervisor, Lt. Col. Jason L. Plourde, described TSgt Smith as follows: “gifted mentor... energetically [managed] EFS [program] to fly 1K flags in combat by F-16 pilots – JBB patriotism & morale skyrocketed.” Lt. Col. Plourde also pressed for immediate promotion: “ready now for HARM/MAJCOM ARM duty – must promote now!”
8. During her years of dedicated service to this nation, TSgt Smith has earned three Air Force achievement medals, and four Air Force commendation medals. The certificates evidencing the awarding of the medals, and the Air Force’s description of the significance of the various medals, are attached as Exhibit B.
9. TSgt Smith’s patriotism and dedicated service to this nation have occurred in an environment intentionally made hostile to women by the Air Force

leadership. The following sets forth a summary of the type of discrimination that TSgt Smith has endured. This summary is not intended to be, and is not, exhaustive of what TSgt Smith has endured. TSgt Smith is available to be interviewed by investigators assigned by the Air Force. TSgt Smith requests that her counsel Susan L. Burke be present during these interviews.

10. TSgt Smith encountered an environment hostile to women immediately upon joining the Air Force in 1995 at age 18. TSgt Smith initially was stationed at Pope Air Force Base in North Carolina, but shortly thereafter was deployed to Sembach Air Base in Germany. When she arrived in Germany, her Master Sergeant met her, took her out, and required her to participate in a drinking game called “coining.” He bought her 10 shots of alcohol, and observed as she became completely intoxicated. Smith, knowing she was intoxicated in a foreign land, asked the Master Sergeant to bring her back to her living quarters. When they arrived at the barracks, Smith thanked him for walking her back, and said goodnight. He responded, “you’re not going anywhere, bitch.” He then pushed into the room, dropped his pants, and told her to “come over here and touch it, cunt.” At that point, as TSgt Smith verbally and physically resisted the

sexual assault, several other Airmen were able to get into the room and took TSgt Smith physically away from the attacking Master Sergeant.

11. TSgt Smith subsequently learned that the Air Force was well aware that the Master Sergeant routinely assaulted young servicewomen. Despite this knowledge, the Air Force did nothing other than warn TSgt Smith to try to avoid being alone with the Master Sergeant, who outranked her in the chain-of-command. Rather than disciplining men who harass and assault their female peers, the Air Force turns a blind eye to misconduct and instead retaliates against female Air Force personnel whenever they seek to defend themselves or otherwise mitigate the severe hostility of the Air Force environment.
12. That is precisely what occurred here. Several weeks after the incident, TSgt Smith was standing by a desk when the Master Sergeant saw her and stated “they never should have let these bitches in the Air Force.” TSgt Smith responded, “the only bitch here is you.” The Air Force verbally reprimanded TSgt Smith for her comment, yet did absolutely nothing to prevent the Master Sergeant from continuing to create a hostile and dangerous environment for TSgt Smith and other female servicemembers.
13. From 2001 to 2002, the Air Force assigned TSgt Smith to the 80th Fighter Squadron located in Kunsan Air Base in Korea. During this tour, TSgt

Smith was subjected to and immersed in the hostile environment that the Air Force intentionally and knowingly permits to flourish, particularly in fighter pilot squadrons. High-ranking Air Force officers routinely participate in creating a hostile environment to women.

14. As but one example, TSgt Smith reported to the Vice Commander of the Wing, who is second in charge at Kunsan Air Base, for a routine records review. During the meeting, the Vice Commander told her to “relax” and offered her alcohol. He also instructed her to take off the top portion of her uniform. She refused and left his office.
15. As yet another example, TSgt Smith was walking outside of a club when the fighter pilots walking by were doing a “sweep.” This entailed a fighter pilot throwing TSgt Smith over his shoulder, and carrying her to a bar where he placed her on top of a table. The fighter pilots engaged in what is known as a “naming” ceremony, which involves loudly and drunkenly singing songs that included lyrics hostile and offensive to women.
16. TSgt Smith adapted herself to this hostile environment, recognizing the reality that complaining or objecting to the Air Force’s creation of a hostile environment would end her military career. TSgt Smith’s willingness to keep quiet about sexual assaults and harassment and instead work docilely

in an environment openly hostile to women was rewarded. TSgt Smith rose through the ranks, earning commendations and awards.

17. Enduring the Air Force's openly sexist and hostile environment became more difficult for TSgt Smith as she grew older, and was forced to observe young female servicemembers being subjected to the same humiliating and demeaning sexism that she had been enduring.
18. In 2008, when TSgt Smith was stationed at Shaw Air Base in South Carolina awaiting her deployment to Iraq with the 55th Fighter Squadron, she found pornographic materials in her squadron. Specifically, TSgt Smith found in her office two pornographic self-made books known as "Doofer" books, as well as several commercially-available pornographic magazines.
19. TSgt Smith brought the pornographic materials to her Director of Operations, Lt. Col. Phillip T. Hamilton, and expressed her anger about the hostile environment. TSgt Smith advised Lt. Col. Hamilton that the young female servicemembers should not have to endure this type of sexism and hostile environment in their professional workplace. Lt. Col. Hamilton admitted that the materials created an environment hostile to women, and promised TSgt Smith that he would take her complaint seriously and remove the materials.

20. TSgt Smith advised Lt. Col. Hamilton that she was concerned about retaliation if it became known that she had objected to the hostile environment. Lt. Col. Hamilton promised TSgt Smith confidentiality.
21. Lt. Col. Hamilton failed to remedy the hostile environment and breached his promise of confidentiality. Instead, he merely told Capt Joshua Arki to place the “Doofer” books in the vault intended to be used to safeguard intelligence. Capt Joshua Arki clearly knew that TSgt Smith’s complaint precipitated the incident, as he changed his conduct towards her and began to act in retaliatory manner.
22. In 2010, the Air Force ordered TSgt Smith to deploy to Iraq with the 55th Fighter Squadron, the same fighter squadron about which she had complained to no avail in 2008. TSgt Smith was concerned that the openly hostile environment towards woman was negatively impacting her ability to perform as an effective non-commissioned officer (“NCO”), and expressed those concerns to Master Sergeant Adaly Lightsey. Nothing was done. Instead, in May 2010, the Air Force deployed TSgt Smith to Iraq with the 55th Fighter Squadron as part of an advanced deployment (called ADVON). Upon arrival in Iraq, she learned that she had cysts on her cervix and needed medical care. Her superior officer, Commander Lt. Col. Douglas Demaio, advised her of the diagnosis but failed to keep it

confidential, instead sharing it with others in the unit. The squadron unit included only six female enlisted and 35 officers (all pilots).

23. The flight surgeon and the unit as a whole harassed TSgt Smith about the cysts. Amidst a group of co-workers, TSgt Smith was subjected to extreme harassment when the flight surgeon lewdly suggested in front of a group of four male pilots that “we can just throw [TSgt Smith] on the table and I can do it right here if someone can find me a speculum.”
24. The Air Force continued to subject TSgt Smith to severe sexual harassment throughout her deployment. This sexual harassment included violent sexual assault. Approximately two months after TSgt Smith deployed to Iraq, at approximately 8pm in the evening, TSgt Smith was working out in the gym, which was located on the portion of the Forward Operating Base that housed Air Force personnel. TSgt Smith encountered hostility from a male, who cursed at her when she used the leg press machine. TSgt Smith left the gym without finishing her workout, disturbed by the hostility. As she was leaving the gym, and turning left towards her quarters, the man from the gym grabbed her from behind and physically dragged her behind the gym where it was dark. The man was tall – approximately 6’3” – and he pushed her up against the wall and groped her. He had his arm under her neck, lifting her feet off the ground. He said “I could kill you right now,

bitch, and no one is going to miss you.” He also called her a “cunt.” He was pressing her up against the wall and assaulting her and she briefly blacked out from the shock. When she came to her senses, he shifted and lost his balance. TSgt Smith was able to break free, and ran away as fast as she could. She went to work the next day and did not say anything about it.

25. TSgt Smith did not report the attack because she was knowledgeable about the reality of what occurred to those who reported rape and sexual assault in the Air Force. She knew that the Air Force would blame her, the victim, and reprimand her for not having a “battle buddy” with her at all times. TSgt Smith knew that reporting rape and sexual assault in the military led to destruction of the victim’s career, and often subjected the victim to isolation and retaliatory violence and harassment.
26. The Air Force had taken no or ineffective steps to ensure that victims (whether male or female) were kept safe if they reported being raped or sexually assaulted while being deployed in Iraq.
27. The Air Force failed to take even rudimentary measures to prevent sexual assaults, such as ensuring that the locks on the showers for female personnel worked. Female Air Force personnel were forced to shower with the shower curtain partly open to prevent anyone from sneaking up on them.

28. The Air Force failed to provide operational locks on the female living quarters, putting them at constant risk. TSgt Smith woke up one morning and found a contractor standing over her, staring at her. TSgt Smith engaged in various measures of self-help, such as leaning mops against the door so that she would be alerted if someone entered.
29. The Air Force failed to provide a safe recreational environment for deployed female personnel. For example, TSgt Smith used the swimming pool provided for military personnel on her day off. She would swim laps and then relax in the sun. One day, she was at the pool with another swimmer, a man she did not know but saw regularly when she swam laps. (He was likely a TACP or Combat Controller.) Suddenly, approximately 16 male Army personnel came into the pool and surrounded her on all sides. They began harassing her, saying “we’ve been out in the field for quite a while and it’s been a long time since we’ve seen a woman.” TSgt Smith was terrified but unable to get free as she was surrounded. The other swimmer saw the situation, and intervened to save her from the harassment. He pretended they knew each other, saying “hey mamma, it’s time to go, we are gonna be late.” He quickly walked her to her car and told her never to come to the pool alone again.

30. TSgt Smith also had to endure being exposed repeatedly to pornographic videos. Prior to the pilots departing to their jets, they would play a pornographic video on the classified briefing monitor called “Sweet Lemonade...The Horse Dance Song.” On one occasion, a pilot let the song loop over 50 times in one night on the classified monitor “to see how long it would play.” Numerous female Airmen were subjected to such misconduct.
31. In short, the Air Force subjected female Air Force personnel to a hostile and unsafe environment in Iraq. This hostility and lack of safety was not attributable to the ongoing war itself, but instead attributable to the Air Force’s permissive and encouraging attitude towards blatant sexual harassment and retaliation against those who reported harassment. TSgt Smith stoically served this nation and endured the Air Force’s hostile environment, keeping quiet and avoiding retaliation.
32. Upon her return to the United States, TSgt Smith was suffering from the emotional after-effects of being sexually assaulted in an environment where reporting the sexual assault was too dangerous, both for her physical safety and for her career aspirations.
33. On January 19, 2012, TSgt Smith was back at Shaw Air Base, engaged in her job responsibilities, which involved managing pilot training for the 20th

Fighter Wing. As TSgt Smith used the Operations Group computer server for professional purposes, she was bombarded with sexually hostile documents and videos. TSgt Smith spoke with MSgt Disree Moore about the offensive material. MSgt Moore responded to the effect that “this is nothing new and even if you or I complained to MEO or the IG, nothing would happen.” MSgt Moore suggested that she and TSgt Smith report the matter on to the lowest level possible, namely by reporting to a pilot at the 55th Squadron. TSgt Smith complied and sent an email to Capt Michael Richard, and asked to speak with him regarding the material she found on the servers. See Exhibit C. During her discussion with Capt Richard, TSgt Smith asked that he ensure that all the sexually hostile imagery was removed from the official government Air Force Operations Group computer server.

34. TSgt Smith reported to Capt Richard that she had been sexually assaulted in Iraq, and that she had not reported the assault because she feared for her physical safety. TSgt Smith explained that she was no longer willing to tolerate the hostile environment to women, and that she wanted Capt Richard to remove the documents from the government computers and brief all pilots that this type of offensive material can be detrimental to a cohesive fighter unit.

35. Capt Richard promised TSgt Smith that he would eliminate the sexually offensive documents and ensure that TSgt Smith did not continue to be subjected to such hostility. TSgt Smith trusted in Capt Richard's professionalism, as he had achieved the competitive standing of weapons officer, and had always acted in a professional manner during TSgt Smith's deployment to Iraq. TSgt Smith assumed that her reporting had led to the documents being removed from the servers.
36. Months later, on July 19, 2012, TSgt Smith encountered pornographic magazines in an area frequented by the 77th Fighter Squadron pilots. See Exhibit D for a sample. She then went to the 55th squadron and found one of the original "Doofer" books found in 2008. Upon being subjected yet again with offensive material, TSgt Smith became concerned that Capt Richard had not fulfilled his promise to her, and his clear duty under the law. TSgt Smith checked the Operations Group Server, and found that none of the documents had been removed.
37. TSgt Smith reported these facts to Master Sergeant Tinita Harris, her superintendent. Together, the two Air Force women made an appointment with Chief Master Sergeant Darell Ford to talk about the hostile environment. TSgt Smith gave Chief Master Sergeant Ford the original Doofer book and identified the server addresses so that this offensive

material would be provided to Colonel Shaun McGrath, Operations Group Commander for the Fighter Squadron.

38. Chief Master Sergeant Ford did not contest the existence of the hostile environment. Instead, he characterized the sexism and hostility as “part of the mentality” in the Air Force, and admitted that he would be “surprised” if anything were done about it.
39. Thereafter, Chief Master Sergeant Ford advised TSgt Smith and Master Sergeant Harris that he had shown the materials to Colonel Shaun McGrath. According to Chief Master Sergeant Ford, Colonel McGrath was “shocked” and committed to removing the hostile material from the official government servers.
40. Rather than responding as required by law, the Air Force has done absolutely nothing. As of October 23, 2012, TSgt Smith checked the Operations Group server for the 55th, 77th and 79th Fighter Squadrons, and the materials are all there. Nothing has been removed.
41. The materials are voluminous and indisputably hostile to women. The written materials are attached as Exhibits E-S. The materials also make clear that the Air Force views these materials as part of a “tradition” and mocks those who object to this “tradition.” For example, Exhibit E and

Exhibit M include variations of a song entitled “The S&M Man” (Tune – The Candy Man) with the following lyrics:

Who can take two ice picks, Stick ‘em in her ears
Ride her like a Harley While you Fuck her in the rear...

Who can take a machete, Whack off all her limbs
Throw her in the ocean, and try to watch her swim

Who can take a chainsaw, Cut the bitch in two
This half is for me, And the other half’s for you...

Who can take one ice pick, Stick it in her ear
Sit back and watch her bleed to death, While you have another beer

Who can take a lady, Throw her in the road
Shove a grenade up her cunt, and watch the bitch explode...
Who can take two jumper cables, Connect ‘em to her tits
Start up the engine, And electrify the bitch

Who can take a cheese grader, strap it to his arm
Ram it up her cunt, and make pussy parmesan...

Chorus: The S&M man, The S&M man
The S&M man cause he mixes it with love
And makes the hurt feel good (The hurt feel good)

At the end of the lyrics, the Air Force openly mocks those who would complain about the illegal hostile environment, stating “NOTE: IF OFFENDED REFER TO BLANKET APOLOGY LETTER, AND IF YOUR NOT A FIGHTER PILOT, THEN BEAT IT, YA FUCK!”

See Exhibit M at page 80.

42. TSgt Smith and other female Air Force personnel should not be forced to endure such a hostile environment as a price to be paid for volunteering to defend this nation.
43. The Air Force has been on notice for years regarding this hostile environment, yet has taken no effective steps to stop the constant and blatant illegalities. Instead, as admitted by the Air Force here, sexual assault and harassment are “part of the mentality” of the Air Force.
44. High-level Air Force officials participate openly in this illegal conduct. Attached as Exhibit F is a videotape that shows 20th Operations Group Vice Commander, Lt Col Benjamin Bradley, 79th Fighter Squadron Commander, Lt Col Jason Plourde and Capt Chris Clark, 20th MX Group Officer who manages the 79th Fighter Squadron MX with over 300 subordinates enlisted, singing an offensive song. The other men participating include Capt Oliver Lause, Maj Paul Perry, Capt Howard Turner and Maj Andrew B. Congdon.
45. TSgt Smith and other female Air Force personnel endure this illegal and harmful environment every day they put on their uniform. This illegal and harmful environment pervades the entirety of the Air Force.
46. Among other things, the Air Force actually used taxpayer dollars to maintain squadron bars that are fully stocked with alcohol, which the pilots

begin to drink as early as 1300 (1:00pm) during duty days, which typically end at 1630 (4:30pm). TSgt Smith and others were repeatedly exposed for hours to pilots singing drinking songs from Dos Gringos (a group of F16 pilots who sell music/CDs on the side), and pilots consuming alcoholic beverages.

47. The drinking has caused substantial problems. For example, one enlisted NCO briefer from the Survival Evasion Resistance and Escape unit complained that the pilots were drinking heavily during these briefings, which are conducted in classified briefing rooms (essentially vaults). This NCO briefer noted that all of the drinking sets a poor professional example for his airmen, one of whom was underage.
48. Among other things, the Air Force actually used taxpayer dollars to buy official Air Force “coins” that degrade and demean women. A copy of this official Air Force coin is attached as Exhibit G.
49. Further evidence of the pervasiveness of the Air Force’s hostile attitude towards women can be seen in a patch designed for the 55th Fighter Squadron, titled “Chicks Dig Weasels,” and depicting the F16 airframe’s Weasel mascot poised to penetrate a partially naked woman with a rocket. The image is attached as Exhibit H.

50. Some of the most disturbing content has been stored in collections of Songbooks from the 55th, 77th, and 79th Fighter Squadrons, which have been used to record traditions and songs, most of which contain obscene, violent and misogynistic language and pornographic images. See Exhibit I, “Fighter Pilot Songs – Combat Songbook; Fuck Songs and Trash Tunes,” which includes the song “Bye Bye Cherry” containing the following lyrics:

Back your ass against the wall, here I come balls and all, bye bye
cherry.
I know I ain’t got a lot, but what I got will fill your twat, bye bye
cherry.
I took her to my cottage in the wild woods,
And there I took advantage of her childhood.
Oh my God, it was nice, cherry bye bye.

Won’t your mother be disgusted when she finds your cherry has been
busted, Bye bye cherry,
Wrap your legs a little tighter, I can feel my load is getting’ lighter.
Shake your ass and wiggle your tits ‘til my little pecker spits,
Cherry bye bye.

See also Exhibit J, “Unofficial Fighter Pilots Songbook,” which contains a song titled “SIT ON MY FACE” containing the following lyrics:

OH, WOULD YOU LIKE TO SIT ON MY FACE
SPREAD YOUR ASS ALL OVER THE PLACE
PUT MY NOSE IN A FRAGRANT PLACE
OR WOULD YOU RATHER SUCK MY HOG!

See also Exhibit K, “Wild Weasel Songbook,” and Exhibit L, “The Tiger Songbook,” which introduces one section of “Classic Songs (Songs Every Fighter Pilot Should Know)” with the following line:

“How do all fighter pilot songs start? Da, da... da, da.....Tits!!!”

And see Exhibit M, “The Fighter Pilot’s Handbook,” which includes the song “A QUICK SONG” with these lyrics:

Oh, the nipples on her tits are as big as plums
And the wiggle in her walk will make a dead man cum.
She’s a mean motherfucker, and a great cocksucker,
She’s my girl, she FUCKS!!!!

51. One document, a so-called “hook-up manual” titled “The Wingman’s Handbook,” describes the role of a “Wingman” as someone who is “willing to throw himself upon the cruel mercies of a brazen man-hater, just so his buddy can hook up with a sorority girl with big gazongas.” The document goes on to explain the various ways a man can distract a woman’s friend—referred to as the “CB” (Cock Blocker)—long enough for his buddy to “complete his bombing run” and “bomb his target back to the bedroom.” See Exhibit N.
52. Another example of Air Force leadership contributing to a hostile work environment for women can be seen in a flyer for a “Superpower drink off” “naming” event held on base at the 55th Fighter Squadron Bar on base, attached as Exhibit O. The flyer includes references to TSgt Smith’s colleagues and superiors, including Lt. Col. Peter Fry (previous 20 FW Alert Commander), Lt. Col. Hamilton (who she reported the documents to), and Capt Arki (who was charged with destroying the “Doofer” books).

The first page includes a picture of a young woman with a cartoon text bubble next to her mouth which says “Super Power Drink OFF!!!!!!!!!!!!!! Winner gets me!!!”

53. New Fighter Pilots fill out “Naming Bios” as part of their tradition or heritage. One such “bio” form, attached as Exhibit P, includes a series of questions, including one that reads “MULTIPLE CHOICE (Circle one): Tits or Ass.”
54. The Air Force condones the use of sexist and degrading language such as “bitch” to insinuate weakness and degrade its female members. The Air Force personnel prepared a false Leave/TDY Coordination Form for a 77th Fighter Squadron Instructor Pilot, Maj Jared Hand. This false Form repeatedly denigrates women. For example, one question and answer states: “Q: Is this leave use or lose leave? A: Yes, but only because I am a little bitch who likes to talk too much.” See Exhibit Q.
55. Exhibit R contains pictures of an Air Force sanctioned event in which TSgt Smith’s colleagues are dressed in sexually explicit costumes. For example, TSgt Smith’s former Flight Commander, Maj McAfee, is dressed in a prisoner costume that includes a fake erection.
56. Exhibit S includes a sample of the array of perverse and offensive images stored on the server that TSgt Smith must access on a daily basis while

performing her work duties, including two images that glorify sex with underage girls. The entire Operations Group located at Shaw (more than 400 persons) have access to these servers.

57. The Air Force has harmed TSgt Smith and all of these women, causing them emotional pain and suffering, mental anguish, loss of enjoyment in life, injury to professional standing, and injury to character and reputation.
58. TSgt Smith and other similarly-situated women have been subjected to every form of sexual harassment contemplated by AFI36-2706 (October 5, 2010), including but not limited to, verbal slurs and inferences, nonverbal gestures, pictures and notes, unwanted physical contact, unwanted touching, and physical advances. See AFI36-2706 (October 5, 2010).
59. TSgt Smith is bringing this complaint on her own behalf and on behalf of all similarly-situated women in the Air Force. She and the class have been persistently subjected to a hostile environment in which women are denigrated and mocked.
60. TSgt Smith and the class have been deprived of their Constitutional rights, including but not limited to their rights of equal protection, due process and free speech.
61. TSgt Smith and the class have been consistently subjected to Air Force misconduct that violates Title 10 of the United States Code.

62. TSgt Smith and the class have been consistently subjected to Air Force misconduct that violates the Air Force's own internal rules and regulations.
63. TSgt Smith and the class have been seriously harmed by the hostile environment and its impact on their health and well-being, as well as on their military careers. The Air Force's environment is so exceedingly hostile to women that many suffer from post-traumatic stress disorder as a result.
64. TSgt Smith has retained Susan L. Burke as counsel qualified to represent the class of women harmed by the Air Force's hostile environment. TSgt Smith is prepared to pursue remedies available in the federal judicial system in the event that the Air Force does not respond adequately and promptly to the grave and ongoing injustices.
65. TSgt Smith and the class seek the fullest extent of remedies available to them, including but not limited to injunctive relief, equitable relief, damages, attorneys fees and costs, and such other relief as may be fashioned to redress the grave harms inflicted upon them.
66. This administrative complaint is being transmitted via FedEx on October 24, 2012 for overnight delivery. The Air Force should respond to TSgt Smith's counsel, Susan L. Burke, Burke PLLC, 1000 Potomac Street, NW,

Suite 150, Washington DC 20007. Ms. Burke is reachable via telephone at 202.386.9622 or via email at sburke@burkepllc.com.