

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

VIETNAM VETERANS OF AMERICA,)
et al.,)
)
Plaintiffs,)
)
vs.)
)
CENTRAL INTELLIGENCE AGENCY,)
et al.,)
Defendants.)

Civil Action No. C 09-0037 CW

DECLARATION OF CAROLINE
LEWIS WOLVERTON IN SUPPORT OF
DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION FOR
SANCTIONS

I, Caroline Lewis Wolverton, declare as follows:

1. I am a Senior Counsel in the Federal Programs Branch, Civil Division of the United States Department of Justice. I am familiar with the productions that Defendants and the Department of Veterans Affairs ("VA") have made in response to Plaintiffs' discovery requests in this action as I have served as counsel for both Defendants and the VA in connection with those productions.
2. In response to Plaintiffs' first set of requests for production of documents, Defendants have produced over 14,000 pages of documents and a copy of the Department of Defense's Chem-Bio database. They also made available for Plaintiffs' inspection several videotapes and other media materials that Plaintiffs had requested.
3. Attached hereto as Ex. A are true and accurate copies of the First, Second, Third and Fourth Sets of Requests for Production of Documents that Plaintiffs have served Defendants.
4. Attached hereto as Ex. B are true and accurate copies of the Defendants' written responses to Plaintiffs' First Set of Requests for Production of Documents that Plaintiffs served Defendants.
5. Attached hereto as Ex. C is a true and accurate copy of Defendants' Amended Interrogatory Responses.
6. Attached hereto as Ex. D is a true and accurate copy of Defendants' written responses to Plaintiffs' notice of Rule 30(b)(6) depositions served November 16, 2009.

- 1 7. During the parties' June 30, 2010 meet-and-confer, it was my understanding that the
2 parties agreed that (1) Defendants would outline a proposal for additional discovery
3 searches that would focus on locating information on possible health effects of
4 substances tested, which Plaintiffs indicated was the primary goal of their discovery
5 requests and (2) Plaintiffs would provide a list of key words or search terms that might
6 enable Defendants to locate additional information or documents that Plaintiffs sought. I
7 have not received such a list from Plaintiffs.
- 8 8. Attached hereto as Ex. E is a true and accurate copy of my letter of July 12, 2010 to
9 Plaintiffs' counsel setting forth Defendants' first proposal for an agreed-upon scope of
10 discovery.
- 11 9. Attached hereto as Ex. F is a true and accurate copy of counsel for Plaintiffs' July 20,
12 2010 letter responding to my July 12, 2010 letter.
- 13 10. Attached hereto as Ex. G is a true and accurate copy of my letter of July 23, 2010 to
14 counsel for Plaintiffs.
- 15 11. Attached hereto as Ex. H is a true and accurate copy of my letter of July 30, 2010 to
16 counsel for Plaintiffs setting forth Defendants' second proposal for an agreed-upon scope
17 of discovery.
- 18 12. Counsel for Plaintiffs made no counter-proposal to either Defendants' July 12 or July 30
19 proposals for an agreed-upon scope of discovery.
- 20 13. Attached hereto as Ex. I is a true and accurate copy of my August 11, 2010 letter to
21 Plaintiffs proposing dates for Rule 30(b)(6) depositions.
- 22 14. The parties initially discussed a possible protective order concerning third-party
23 information in mid-2009. However, Defendants determined that given the extreme
24 sensitivity, including information about exposures to test substances and medical
25 information, disclosure of such information would not be appropriate, and I informed Mr.
26 Adriano Hrvatin, counsel for Plaintiffs, that Defendants would not agree to entry of a
27 protective order concerning third-party information, at least in advance of certification of
28

1 a class. I also explained to Mr. Hrvatin that including a provision for classified
2 information would be inappropriate.

3 15. During the June 30 meet and confer, counsel for the parties, including my co-counsel
4 Kimberly Herb and I on behalf of Defendants, revisited the issue of a protective order for
5 third-party information. Ms. Herb asked Messrs. Gordon Erspamer and Daniel Vecchio,
6 counsel for Plaintiffs, for information on how they proposed that the organizational
7 named Plaintiffs, if included in a protective order, would use the information. Ms. Herb
8 explained that the request was based on a concern that, if test participants were given
9 information about possible health effects, they might be predisposed to provide that
10 information in response to questions about their symptoms or health effects.

11 16. Following the June 30 meet-and-confer session, my co-counsel Lily Farel and I revisited
12 the issue of a possible protective order covering third-party information with our clients
13 as well as with other governmental agencies that had been served with Fed. R. Civ. P. 45
14 subpoenas whose third-party information also would be implicated, as well as with others
15 in the Department of Justice. Following those discussions, on July 30, 2010 we informed
16 counsel for Plaintiffs of our belief that Defendants would be able to agree to a stipulated
17 proposed protective order and that we were in the process of working with our clients to
18 craft language that both protects the interests of third parties and facilitates discovery.
19 The letter reiterated our request for information about how Plaintiffs proposed
20 representatives of the named organizational Plaintiffs would use the third-party
21 information if included among those with access. Attached hereto as Ex. J is a true and
22 accurate copy of the Letter of July 30, 2010 that Ms. Farel sent to Plaintiffs.

23 17. Defendants agreed to produce and did produce a substantial number of documents in
24 2009 while their motion to dismiss or for summary judgment was pending.

25 18. I have not received a single document in response to Defendants' first set of document
26 requests, which we served on May 6, 2010. Attached as Ex. K is a true and accurate
27 copy of Defendants' First Set of Requests for Production of Documents.

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I declare under penalty of perjury that the foregoing is true and correct. Executed in Washington, D.C. on September 15, 2010.

/s/ Caroline Lewis Wolverton
Caroline Lewis Wolverton

Beaudoin, Kathy E.

From: ECF-CAND@cand.uscourts.gov
Sent: Thursday, September 16, 2010 12:15 AM
To: efiling@cand.uscourts.gov
Subject: Activity in Case 4:09-cv-00037-CW Vietnam Veterans of America et al v. Central Intelligence Agency et al Affidavit in Opposition to Motion

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Case Name: Vietnam Veterans of America et al v. Central Intelligence Agency et al
Case Number: [4:09-cv-00037-CW](#)
Filer: United States of America
 Central Intelligence Agency
 United States Department of the Army
 Leon Panetta
 United States Department of Defense
 Michael V. Hayden
 Robert M. Gates
 Michael B. Mukasey
 Pete Geren

9/16/2010

Eric H. Holder, Jr

Document Number: [148](#)

Docket Text:

AFFIDAVIT in Opposition re [131] MOTION for Sanctions *Declaration of Caroline Lewis Wolverton* filed by Central Intelligence Agency, Robert M. Gates, Pete Geren, Michael V. Hayden, Eric H. Holder, Jr, Michael B. Mukasey, Leon Panetta, United States Department of Defense, United States Department of the Army, United States of America. (Attachments: # (1) Exhibit Exhibits part 1, # (2) Exhibit Exhibits part 2, # (3) Exhibit Exhibits part 3, # (4) Exhibit Exhibits part 4)(Wolverton, Caroline) (Filed on 9/16/2010)

4:09-cv-00037-CW Notice has been electronically mailed to:

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The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:K:\My Documents\Vietnam Veterans of Am\Oppns to mt compel and mot for sanctions\Oppn to Sanctions\CLW decl.sanctions.pdf

Electronic document Stamp:

[STAMP CANDStamp_ID=977336130 [Date=9/16/2010] [FileNumber=6723451-0] [aea1204df3252d874c9dd178eab9937db704aba86327de1e7c04735ad93fa40f7d15d6a46ac629fc62fe5d37268af8511e6c6c9cba987fea8223d5fcda44e9fe]]

Document description:Exhibit Exhibits part 1

Original filename:K:\My Documents\Vietnam Veterans of Am\Oppns to mt compel and mot for sanctions\Exhibits to CLW Decl.Sanctions_Part1.pdf

Electronic document Stamp:

[STAMP CANDStamp_ID=977336130 [Date=9/16/2010] [FileNumber=6723451-1] [59d3b34bf81b58d8c79df078d99471e240d59adc5d0c46d7b76045d985aa1d4050722]

9/16/2010

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Document description:Exhibit Exhibits part 2

Original filename:K:\My Documents\Vietnam Veterans of Am\Oppns to mt compel and mot for sanctions\Exhibits to CLW Decl.Sanctions_Part2.pdf

Electronic document Stamp:

[STAMP CANDStamp_ID=977336130 [Date=9/16/2010] [FileNumber=6723451-2]
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Document description:Exhibit Exhibits part 3

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Electronic document Stamp:

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