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14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA
 16 OAKLAND DIVISION

17 VIETNAM VETERANS OF AMERICA, *et al.*,
 18 Plaintiffs,
 19 v.
 20 CENTRAL INTELLIGENCE AGENCY, *et al.*,
 21 Defendants.
 22
 23

Case No. CV 09-0037-CW

Noticed Motion Date and Time:
 September 29, 2011
 2:00 p.m.

**DEFENDANTS' REPLY BRIEF IN
 SUPPORT OF MOTION FOR
 PROTECTIVE ORDER LIMITING
 DISCOVERY**

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1 The overwhelming majority of Plaintiffs' opposition was devoted to their contention that
2 they somehow maintained constitutional claims for notice and health care against the Central
3 Intelligence Agency ("CIA"). The District Court, however, rejected Plaintiffs' contention in its
4 September 2, 2011 order and ruled that "Plaintiffs shall not take discovery based solely on claims
5 against the CIA for notice or health care." Dkt. 281 at 9. As discussed in Defendants' motion, as
6 well as below, the entry of a protective order is also appropriate regarding the remaining issues
7 that have been referred to this Court.

8 ARGUMENT

9 I. THIS COURT SHOULD GRANT THE CIA'S MOTION TO PRECLUDE 10 DISCOVERY DIRECTED TO IT

11 The District Court's September 2, 2011 order made clear that the only claim remaining
12 against the CIA is the so-called "secrecy oath" claim. Dkt. 281 at 9. None of the discovery
13 disputes involving the CIA that are pending before this Court pertain to this narrow claim. Thus,
14 such discovery should properly be viewed as third-party discovery, as it is only being sought for
15 claims against the Department of Defense ("DoD") and Department of Veterans Affairs ("VA")
16 to which the CIA is not a party.¹

17 Furthermore, Plaintiffs incorrectly assert that the CIA has somehow waived its objection
18 regarding discovery under the Administrative Procedures Act ("APA") by failing to raise this
19 objection to Plaintiffs' discovery requests.² Dkt. 275 at 12. Plaintiffs are mistaken both as a
20 factual and legal matter. First, as a factual matter, Judge Larson expressly ordered Plaintiffs in
21 his November 2010 order to "reevaluate what information is central to their case, recognize limits
22 on usefulness of some of the information they seek, and make a sincere effort to reduce the scope
23 of discovery sought." Dkt. 178 at 7. Plaintiffs accordingly served an amended set of requests for

24 ¹ Because the CIA is a third-party to these claims, the CIA respectfully submits that the
25 same considerations governing subpoenas to third-parties should apply. As explained by another
26 court in this District, "the Ninth Circuit has long held that nonparties subject to discovery requests
27 deserve extra protection from the courts." *High Tech Med. Instrumentation, Inc. v. New Image
28 Indus., Inc.*, 161 F.R.D. 86, 88 (N.D. Cal. 1995). Among other things, Plaintiffs have failed to
"take reasonable steps to avoid imposing undue burden or expense" on the CIA as a third-party.
Fed. R. Civ. P. 45(c)(1).

² It appears that Plaintiffs only raised waiver with respect to their claims against the CIA
and not with regard to their requests seeking information for their claims against DoD and VA.

1 production and for Rule 30(b)(6) testimony, and Defendants expressly raised the APA as a
 2 limitation upon discovery in its general objections to Plaintiffs' operative requests for production
 3 and in subsequent correspondence regarding those requests and Plaintiffs' revised Rule 30(b)(6)
 4 topics.³ Ex. A to Decl. of Kimberly L. Herb ("Herb Decl.") at 4, 10, 12-13, 21; Ex. B at 1; Ex. C
 5 at 3. As a legal matter, Plaintiffs' suggestion that Defendants could somehow effectuate a waiver
 6 that would have the effect of expanding the scope of the Court's narrow judicial review under the
 7 APA is both legally unsupported and nonsensical, as the scope of review in an APA case is
 8 expressly defined by statute. *See* 5 U.S.C. § 706 ("In making the foregoing determinations, the
 9 court shall review the whole record or those parts of it cited by a party.") Furthermore, Plaintiffs'
 10 contention that Defendants have somehow waived their long-standing objection to discovery on
 11 the basis of the APA by responding to Plaintiffs' discovery requests (over Defendants' objection),
 12 is baseless. The fact that the Defendants have, in the spirit of compromise, sought to *avoid*
 13 discovery disputes by otherwise responding to Plaintiffs' voluminous (and largely irrelevant)
 14 discovery requests can hardly be viewed as a waiver of their objections.⁴ *See, e.g., Calvert v.*
 15 *Reinisch*, 218 F.R.D. 497, 500-02 (W.D. Tex. 2003); *Schipper v. BSNF Railway Co.*, No. 2:07-
 16 cv-02249, 2008 WL 2358748, at *1-2 (D. Kan. June 6, 2008).

17 **A. Plaintiffs Fail To Establish How Third-Party Discovery Against the CIA Is**
 18 **Relevant to Plaintiffs' Claims Against DoD**

19 As explained in Defendants' motion, information that the CIA possesses, if any, regarding
 20 the health effects of over sixty test substances would not be legally relevant to Plaintiffs' claims
 21 against DoD. Dkt. 252 at 14-18. In response, Plaintiffs assert that Defendants have somehow
 22 conflated the concepts of "relevancy" and "admissibility," and that, in any event, the information
 23 Plaintiffs seek is both relevant and admissible. *Id.* at 16, 17 & n.11. To be clear, the discovery
 24 Plaintiffs seek concerning health effects is *legally* irrelevant, as there are no set of circumstances

25 _____
 26 ³ The parties agreed that the CIA did not need to formally respond to Plaintiffs' amended
 Rule 30(b)(6) notice until the Court resolved the appropriate scope of discovery against the CIA.

27 ⁴ Plaintiffs' reference to the August 4, 2011 hearing transcript is misleading. Dkt. 275 at
 28 12-13, n.1. In the section quoted, lead counsel for the government stated that summary judgment
 practice early in this APA case would have been appropriate. Tr. 4:15-5:12. Defense counsel did
 not, however, comment on the timeliness of discovery objections, as Plaintiffs seem to suggest.

1 where any of the discovery sought is reasonably calculated to lead to the discovery of admissible
2 evidence. This is true for at least three separate reasons, as explained below.

3 **1. Because Plaintiffs' Claims Against DoD Implicate a Discrete Legal**
4 **Question, Information Possessed by the CIA Would Be Irrelevant**

5 In their opposition, Plaintiffs argue that their requests to the CIA are relevant to their APA
6 and constitutional claims against DoD and the Army. Dkt. 275 at 17. They then set out the
7 purported relevance of their requests to the CIA: "Plaintiffs contend that the DoD *has a duty to*
8 *provide notice* to test subjects regarding the health effects of the testing and that DoD *has failed*
9 *to fulfill this duty.*" *Id.* at 17–18 (emphasis added). This language makes clear that, even in
10 Plaintiffs' own formulation of their purported constitutional and APA claims,⁵ the question is a
11 legal one concerning whether DoD has a discrete legal duty and whether DoD has unreasonably
12 delayed fulfilling that duty. Thus, Plaintiffs' bald unexplained assertion that "[i]nformation about
13 health effects of the toxic substances administered to service personnel is not only clearly
14 relevant, but central to these claims" is wrong. Dkt. 275 at 18. Such detailed factual matters
15 cannot be, as a matter of law, relevant to what Plaintiffs recognize are ultimately legal questions
16 before the Court. Nor do Plaintiffs even attempt to demonstrate how factual matters, such as the
17 health effects of over sixty substances, are relevant to legal questions regarding DoD's duties.

18 As Defendants argued in their motion, the scope of the court's review in a 706(1) case is
19 necessarily limited to whether a discrete legal obligation exists and whether the agency's delay in
20 performing that obligation is unreasonable. Dkt. 252 at 15-18. To the extent the Court believes
21 that DoD has failed to act, the appropriate remedy is remand to the agency for consideration, not
22 to conduct some sort of *de novo* review. As the Ninth Circuit has stated, Section "706(1)
23 generally only allows the district court to compel an agency to take action, rather than compel a
24 certain result." *Mount St. Helens Mining & Recovery Ltd. P'ship v. United States*, 384 F.3d 721,
25 728 (9th Cir. 2004) ("§ 706(1) of the APA does not empower the district court to conduct a *de*
26 *novo* review . . . and order the agency to reach a particular result."); *see also Norton v. S. Utah*

27 _____
28 ⁵ For the reasons explained in Part II below, Plaintiffs do not have any remaining
constitutional claims against DoD.

1 *Wilderness Alliance*, 542 U.S. 55, 66 (2004). In short, this is not a review on the merits.

2 In response, Plaintiffs cite to a buckshot of cases involving constitutional and APA claims
 3 against government agencies. These citations are unavailing, however, because not only do
 4 Plaintiffs misrepresent the holding of several of these cases,⁶ but the cases are inapposite. First,
 5 Plaintiffs cite to numerous cases in which a claim involved fact-finding by the agency or arose
 6 out of an individual benefits determination. For instance, while Plaintiffs argue that *Porter v.*
 7 *Califano*, 592 F.2d 770 (5th Cir. 1979), involved “a full evidentiary hearing” on a constitutional
 8 claim against an agency, Dkt. 275 at 15, they fail to mention that the *Porter* Court predicated its
 9 review expressly on APA Section 706(2)(F), which “authorizes the court to conduct a de novo
 10 review of agency findings and conclusions which are based on inadequate fact-finding by the
 11 agency.” *Porter*, 592 F.2d at 772. Here, however, Plaintiffs themselves acknowledge that the
 12 question before the Court is a legal one and have *never* claimed that this case implicates
 13 inadequate fact-finding or involves review under Section 706(2)(F).

14 Second, Plaintiffs confuse the scope of review with the standard of review. For example,
 15 to support their contention that their claims are not limited to the administrative record, Plaintiffs
 16 cite *Little Earth of United Tribes, Inc. v. U.S. Department of Housing and Urban Development*,

17 _____
 18 ⁶ Plaintiffs argue that *Walters v. National Association of Radiation Survivors*, 473 U.S.
 19 305, 314 (1985) “involv[ed] judicial review of Constitutional claims against an agency after full
 20 discovery and trial.” Dkt. 275 at 14. However, there was neither full discovery nor a trial, a fact
 made clear by the dissenters who noted that “this Court was advised at oral argument, the
 appellees *contemplate* further extensive discovery and a full trial on the underlying First and Fifth
 Amendment issues.” 473 U.S. at 340-41 (emphasis added).

21 Plaintiffs also cite to *Veterans for Common Sense v. Peake*, 563 F. Supp. 2d 1049 (N.D.
 22 Cal. 2008), as a case “permitting discovery and trial . . . and not restricting review to an
 23 administrative record.” Dkt. 275 at 14. However, the district court refused to permit discovery
 24 where the plaintiff’s claim centered on legal issues and plaintiff had not explained how factual
 25 development would relate to that issue, and the Ninth Circuit upheld that decision. *Veterans for*
Common Sense v. Shinseki, 644 F.3d 845, 889-90 (9th Cir. 2011) (“At the RO level, Veterans
 claim only that the failure to provide more formal procedures for adjudicating benefits claims and
 the VA’s use of a procedure to reduce benefits awards system violates due process. Veterans
 make no argument as to how further information on delays in processing PTSD claims at the RO
 level would support their due process claims regarding RO-level procedures.”).

26 Finally, Plaintiffs argue that in *Kaiser v. Ortiz*, No. 09-0757, 2010 WL 3419432, at *1
 27 (W.D. Tex. Aug. 27, 2010), the court “reject[ed] defendants’ argument” to limit a Fifth
 28 Amendment claim to an administrative record. Dkt. 275 at 16. However, to the contrary, that
 issue was never before the Court. *Kaiser*, 2010 WL 3419432, at *2 (“Defendants have not argued
 or provided any authorities to support an argument that the Court’s determination of the Fifth
 Amendment claim is limited to review of the administrative record.”).

1 675 F. Supp. 497, 531 (D. Minn. 1987). The cited quotation, however, only addresses the
2 standard of review and whether the agency is entitled to “judicial deference” and not whether the
3 scope of review should be limited to the administrative record.⁷ Dkt. 275 at 14.

4 Third, while Plaintiffs cite a few cases in which courts permitted limited discovery in
5 constitutional cases, those cases are also inapposite because they did not involve APA claims
6 concerning the same subject matter. As discussed in Defendants’ motion, APA Section 706
7 expressly provides that, in reviewing constitutional claims, “the court shall review the whole
8 record or those parts of it cited by a party.” 5 U.S.C. § 706. Furthermore, courts have confirmed
9 that “[t]he APA’s restriction of judicial review to the administrative record would be meaningless
10 if any party seeking review based on . . . constitutional deficiencies was entitled to broad-ranging
11 discovery.” *Harvard Pilgrim Health Care v. Thompson*, 318 F. Supp. 2d 1, 10 (D.R.I. 2004).
12 Plaintiffs do not contest Defendants’ reading of Section 706’s applicability to constitutional
13 claims or the cases cited in support of it, but instead argue that the holding is limited to “final
14 agency decisions.” Dkt. 275 at 15 n.7. Nothing in the statute or the cases cited, however, limits it
15 as such. Indeed, the only distinction made in *Alabama-Tombigbee Rivers Coal. v. Norton*, No.
16 CV-01-S-0194, 2002 WL 227032 (N.D. Ala. Jan. 29, 2002) is that discovery is particularly
17 unwarranted in cases (such as the present one) where there is a broad legal question affecting a
18 group rather than an individual determination and where the plaintiff’s alleged constitutional
19 violation did not fall “outside the ambit of the agency’s statutes or regulations.” *Id.* at *6.

20 Fourth, Plaintiffs cite to cases in which a party supplemented the record provided by the
21 agency. Dkt. 275 at 18-19. Defendants recognize that “[i]n limited circumstances, district courts
22 are permitted to admit extra-record evidence: (1) if admission is necessary to determine whether
23 the agency has considered all relevant factors and has explained its decision, (2) if the agency has
24 relied on documents not in the record, (3) when supplementing the record is necessary to explain

25 ⁷ While the *Little Earth* Court also considered evidence outside the record, there is nothing
26 in the case that indicates that those materials were obtained through discovery. 675 F. Supp. at
27 531. Indeed, the Court noted that the additional materials it considered were limited to witness
28 testimony. *Id.* at 531 n.4. Furthermore, the Court found that consideration of supplementary
materials was warranted because the defendants had met the “bad faith” exception, *id.*, which is
inapplicable here for the reasons discussed below.

1 technical terms or complex subject matter, or (4) when plaintiffs make a showing of agency bad
2 faith.” *Lands Council v. Powell*, 395 F.3d 1019, 1030 (9th Cir. 2005) (citation and internal
3 quotation marks omitted). Even if discovery were appropriate for supplementation of a record,
4 however, it would be extremely limited: “These limited exceptions [permitting supplementation
5 of the record] operate to identify and plug holes in the administrative record. Though widely
6 accepted, these exceptions are narrowly construed and applied.” *Id.*

7 The fact that these narrowly construed and rarely used exceptions do not apply is
8 demonstrated by the fact that Plaintiffs devoted all of four lines in their opposition to addressing
9 them. Dkt. 275 at 19. It is also worth noting that Plaintiffs are not seeking discovery from the
10 CIA to “identify and plug holes” in the information provided by DoD, as Plaintiffs have not
11 considered any of the materials provided to them by DoD in formulating their requests to the
12 CIA. Beyond those issues, however, none of the four exceptions apply to Plaintiffs’ requests to
13 the CIA. The first exception is only available when there is “a failure to explain administrative
14 action as to frustrate effective judicial review.” *Public Power Council v. Johnson*, 674 F.2d 791,
15 793 (9th Cir. 1982) (citing *Camp v. Pitts*, 411 U.S. 138, 143 (1973)). In such cases, “the court
16 may ‘obtain from the agency, either through affidavits or testimony, such additional explanations
17 of the reasons for the agency decision as may prove necessary,’” thus making clear that the
18 supplementation is done by the agency and not by the plaintiffs. *Id.* at 793-94 (citing *Camp*, 411
19 U.S. at 143). Furthermore, even then, “the preferred procedure is to remand to the agency for its
20 amplification.” *Id.* at 794. The second exception is equally inapplicable here, as it only permits
21 supplementation “when it appears the agency has relied on documents or materials not included
22 in the record” and there is a need “to provide a record of all documents and materials directly or
23 indirectly considered by the agency decisionmakers.” *Id.* In this case, however, there is no
24 evidence that DoD is even aware of what materials the CIA might have regarding the health
25 effects of the test programs, if any, let alone a contention that DoD somehow relied on those
26 materials in determining the scope of its purported legal duties to Plaintiffs. Nor is the third
27 exception applicable, as it permits supplemental “background information” designed to explain a
28 technical term or subject matter. *Id.* Here, however, Plaintiffs do not seek information from the

1 CIA to explain DoD's legal duty or any of the other information DoD has provided, but rather
2 seek every CIA document (and Rule 30(b)(6) testimony corresponding in scope) discussing any
3 possible health effect. Finally, the "bad faith" exception is also unavailable. As the Ninth Circuit
4 has made clear, "normally there must be a strong showing of bad faith or improper behavior
5 before the court may inquire into the thought processes of administrative decisionmakers."
6 *Animal Defense Council v. Hodel*, 840 F.2d 1432, 1437 (9th Cir. 1988). Here, Plaintiffs'
7 conclusorily assert that "DoD has acted in bad faith by failing to acknowledge and meet its duties
8 to participants in its testing programs for years and years." Dkt. 275 at 19. Such a bald assertion
9 is not the "strong showing" required, and indeed would result in per se finding of bad faith
10 anytime an agency defended itself against claims that it has failed to adhere to a legal duty.

11 Finally, even if some supplementation of the record were warranted, Plaintiffs have cited
12 no case for the proposition that *third-party* discovery is appropriate in an APA case. At most,
13 Plaintiffs would be entitled to limited discovery under one of these exceptions from the *agency-*
14 *defendant* who is a party to Plaintiffs' claims, not the wide-ranging (and burdensome) third-party
15 discovery they are presently seeking from the CIA.

16 2. Plaintiffs' Requests Are Irrelevant in a Rule 23(b)(2) Class Action

17 In its motion, the CIA also argued that discovery must reflect that Plaintiffs seek to certify
18 a class action under Rule 23(b)(2). Because the CIA and DoD have produced all non-privileged
19 information concerning the Individual Plaintiffs, and Plaintiffs have never suggested these efforts
20 were insufficient, the additional discovery they are seeking could only be necessary for the claims
21 of a potential putative class (which Plaintiffs still have not moved to certify). As discussed in the
22 CIA's motion, however, the purpose of a Rule 23(b)(2) class action is to "sett[e] the legality of
23 the behavior with respect to the class as a whole." Fed. R. Civ. P 23 advisory committee notes for
24 1966 amendment. Yet, even to date, Plaintiffs have failed to explain how the detailed "health
25 effects" information they are seeking from the CIA on over sixty test substances would be
26 relevant to a single, class-wide injury stemming from DoD's alleged duty and unreasonable delay
27 in fulfilling that duty. This information would only be relevant if the Court were going to issue
28 rulings on a substance-by-substance, exposure-by-exposure basis across the thousands of

1 individual claims, which it plainly cannot do in a Rule 23(b)(2) class action (or an APA case).

2 Plaintiffs instead present a strawman argument focused on the Supreme Court's holding in
3 *Wal-Mart Stores Inc. v. Dukes*, __ U.S. ___, 131 S. Ct. 2541 (U.S. 2011). As an initial matter, the
4 CIA's argument did not rest on the Supreme Court's holding in *Wal-Mart*. See Dkt. 252 at 19.
5 As the CIA's motion made clear, the language and purpose of Rule 23(b)(2) and the body of case
6 law interpreting it make clear that "Rule 23(b)(2) operates under the presumption that . . . the case
7 will not depend on adjudication of facts particular to any subset of the class nor require a distinct
8 remedies. *Lemon v. Int'l Union of Operating Eng'rs, Local No. 139, AFL-CIO*, 216 F.3d 577,
9 580 (7th Cir. 2000). Plaintiffs did not respond to these arguments or citations.

10 Plaintiffs also mischaracterize the Court's discussion of Rule 23(b)(2) in *Wal-Mart*. First,
11 Plaintiffs' contend that the Court "did not suggest that evidence relating to any individual class
12 member or issue is not relevant or admissible in a Rule 23(b)(2) class action." Dkt. 275 at 19. To
13 the contrary, the Court stated that one of the justifications for Rule 23(b)(2) class certification is
14 because "individual adjudications would be impossible or unworkable." *Wal-Mart Stores Inc.*,
15 131 S. Ct. at 2558. Furthermore, Plaintiffs argue that the Court actually found that "individual
16 anecdotes and accounts can be evidence of class-wide discrimination." Dkt. 275 at 19. Plaintiffs
17 also misunderstand the import of the Court's discussion of "anecdotal" evidence, as it explained
18 that "[e]ven if every single one of these [anecdotal] accounts is true, that would not demonstrate
19 that the entire company 'operate[s] under a general policy of discrimination,' which is what
20 respondents must show to certify a companywide class." *Id.* at 2556. In other words, anecdotal
21 evidence is just that – anecdotal – and what matters instead is *class-wide* evidence relevant to the
22 legal question before the court. Here, Plaintiffs have not demonstrated how any supposed
23 "anecdotal" evidence *from the CIA* would be relevant to proving a class-wide injury *by DoD*.
24 And to the extent Plaintiffs believe anecdotal evidence is necessary, they fail to explain how the
25 countless documents they have already received from DoD and the CIA are insufficient.

26 3. AR 70-25 Cannot Be a Basis for Seeking Discovery from the CIA

27 Even if information about the specific health effects of over sixty substances were a
28 proper subject for discovery – which it is not – Plaintiffs cannot identify any basis upon which

1 they would be entitled to this information from the CIA. Plaintiffs cite to Army Regulation
 2 (“AR”) 70-25 as the basis for their notice claim against DoD. Specifically, they rely on language
 3 that a test participant be “told as much of the nature, duration, and purpose of the experiments, the
 4 method and means by which it will be conducted, and the inconveniences and hazards to be
 5 expected, as will not invalidate the results. He will be fully informed of effects upon his health or
 6 person which may possibly come from his participation in the experiment.” AR 70-25 at 1. If
 7 this document could be a basis for seeking discovery concerning the test programs, Plaintiffs
 8 would only be entitled to such information from DoD. There is nothing in the regulation that
 9 purports to require that any other government agency provide this information to Plaintiffs;
 10 indeed, AR 70-25 states on its face that its distribution was limited to “Active Army.” *Id.* at 5.
 11 Nor could AR 70-25 require the CIA to provide information to test participants, as the Army may
 12 not bind the CIA. *Clouser v. Espy*, 42 F.3d 1522 (9th Cir. 1994); *see also Reed v. Reno*, 146 F.3d
 13 392, 397 (6th Cir. 1998).

14 Thus, assuming *arguendo* that DoD has a duty to provide notice of the health effects of
 15 the test programs, there is no plausible reading of AR 70-25 that would suggest that Plaintiffs are
 16 entitled to information concerning health effects from other government agencies or third parties,
 17 and not even Plaintiffs have made such an argument to date. Furthermore, compelling the CIA to
 18 provide such information would also render the District Court’s May 31, 2011 order a nullity, as
 19 the “Court dismis[s]e[d] Plaintiffs’ claim against the CIA for its alleged . . . failure to provide all
 20 available documents and evidence concerning their exposures.” Dkt. 233 at 8.

21 **4. Plaintiffs Are Not Entitled to RFA Responses from the CIA**

22 Although not addressed in Plaintiffs’ opposition, the Court should grant the CIA’s request
 23 for a protective order related to Plaintiffs’ RFAs. As discussed in Defendants’ motion, Plaintiffs
 24 have served numerous requests for admission (“RFAs”) upon the CIA, the vast majority of which
 25 do not relate to the sole claim against the Agency relating to secrecy oaths.⁸ Dkt. 252 at 11, 14-
 26

27 ⁸ Even those few RFAs that concern secrecy oaths plainly relate to the claim against
 28 DoD. For example, RFAs 13-17 relate to the legal import of two DoD/Army documents
 concerning releases from secrecy oaths. *See, e.g.*, Dkt. 253-5 at Nos. 13-17.

1 15, 20 (discussing Plaintiffs' RFAs to the CIA concerning its participation in the test programs,
2 the health effects of the test programs, and DoD's role and legal obligations). These RFAs are
3 inappropriate for two reasons. First, the District Court has already held that Plaintiffs are not
4 entitled to discovery from the CIA concerning Plaintiffs' notice and health care claims. Dkt. 281
5 at 8. Additionally, under Rule 36, a "party may serve on any other party a written request to
6 admit, for purposes of the pending action only, the truth of any matters within the scope of Rule
7 26(b)(1)." Thus, Plaintiffs' RFAs directed at the CIA regarding its role in the test program are
8 inappropriate because they are not within the scope of Rule 26(b)(1), and the RFAs directed at
9 CIA concerning DoD are inappropriate because the CIA is not a party to those claims.
10 Furthermore, the effect of an admission is to "conclusively establish" a particular matter, Fed. R.
11 Civ. P. 36(b), thereby eliminating the need for development or trial on it. Plaintiffs' service of
12 RFAs on the CIA that relate only to claims against DoD would not serve this purpose, as such an
13 admission or denial would not bind DoD. *See In re Leonetti*, 28 B.R. 1003, 1009 (E.D. Pa. 1983)
14 (holding that admission of one party to an action is not binding upon a co-defendant). Second,
15 any RFA response by the CIA would not be admissible against DoD because it constitutes
16 hearsay. *Walsh v. McCain Foods Ltd.*, 81 F.3d 722, 726, 726-27 (7th Cir. 1996) (holding that
17 defendant's RFAs constitute inadmissible hearsay against a co-defendant) (quoting 8A Charles A.
18 Wright et al., *Federal Practice and Procedure: Civil 2d* § 2264, at 571-572 (1994)).

19 **B. The Court Should Limit Discovery Directed to the CIA for Plaintiffs' Facial**
20 **Bias Claims Against VA**

21 Plaintiffs argue that it is "outlandish" to assume that VA "can only know about its
22 involvement if it is set forth in identical documentary evidence" in VA's possession. Dkt. 275 at
23 20. Indeed, they declare that information concerning VA's alleged involvement in the test
24 programs "would be of central relevance to Plaintiffs' bias claim," regardless of whether supplied
25 by VA or the CIA. *Id.* Once again, Plaintiffs cite no authority for their bald assertion that the
26 CIA's knowledge of VA's alleged involvement in test programs would be relevant to Plaintiffs'
27 claim against VA, particularly in a case like the present one in which there is no evidence that VA
28 considered CIA information regarding the test programs in its adjudication of claims. Indeed,

1 they do not refute or counter the case law cited in Defendants' motion that discovery requests for
2 "materials not relied upon, submitted, considered, or generated" by an agency as part of its
3 decision making process are "not sufficiently related to the issue of a conflict of interest." *Geiger*
4 *v. Pfizer, Inc.*, 271 F.R.D. 577, 583 (S.D. Ohio 2010). And once again, Plaintiffs refuse to
5 acknowledge that the Court allowed Plaintiffs to proceed with only a single, narrow claim that is
6 a "facial attack on the DVA as the decision-maker." Dkt. 177 at 11. Discovery on this claim
7 must be limited to what VA knows of its involvement in testing on human subjects and whether
8 this knowledge, if it exists, inherently affects VA's ability to fairly adjudicate claims brought by
9 volunteer service members. Given that Plaintiffs have not even attempted to demonstrate how
10 broad requests directed to the CIA would be relevant to this narrow and largely legal issue, the
11 Court should grant the CIA's motion for a protective order.

12 **II. THE COURT SHOULD GRANT DOD'S MOTION TO PRECLUDE DISCOVERY** 13 **CONCERNING PRE-1953 TESTING**

14 **A. Plaintiffs Do Not Have Constitutional Claims For Notice And Health Care** 15 **Against DoD**

16 Plaintiffs' primary argument related to discovery concerning pre-1953 testing is that DoD
17 has somehow "ignore[d]" Plaintiffs' constitutional claims for notice and health care, and that
18 "[t]his same absurd argument was made by the CIA, and should be rejected." Dkt. 275 at 21. Of
19 course, the District Court recently agreed with this precise argument from the Defendants
20 regarding the CIA and rejected Plaintiffs' suggestion that they had any constitutional claims
21 related to notice and health care against that Agency. Dkt 281. In its recent opinion, the District
22 Court explained that the CIA's motion to dismiss sought dismissal of Plaintiffs' notice and health
23 care claims in their entirety, and that, if the CIA "had mischaracterized the legal theory
24 underlying [Plaintiffs'] claims, to avoid dismissal, Plaintiffs had a duty in their opposition to
25 inform the CIA and the Court." *Id.* at 7. Under the District Court's rationale, this Court should
26 reach the same conclusion concerning the notice and health care claims against DoD.

27 Tellingly, Plaintiffs do not address, let alone refute, the fact that, as explained in
28 Defendants' motion, any constitutional claims regarding notice and health care that Plaintiffs may
have had did not survive the Court's January 19, 2010 order granting in part and denying in part

1 Defendants' motion to dismiss Plaintiffs' Second Amended Complaint ("SAC"). Dkt. 252 at 5-6
2 (citing Dkt. 59). As the District Court recognized in that order (and as Plaintiffs do not dispute),
3 "Defendants move[d] to dismiss Plaintiffs' [SAC] *in its entirety* for lack of subject matter
4 jurisdiction and for failure to state claim." Dkt. 59 at 1. With respect to Plaintiffs' notice claim,
5 Defendants expressly argued that Plaintiffs have no constitutional right to government
6 information. Dkt. 57 at 21. At the time, Plaintiffs agreed with Defendants' position and
7 represented to the Court that they "*do not seek relief based on . . . a constitutional right to*
8 *information.*" Dkt. 43 at 24 (emphasis added). Rather, Plaintiffs argued that their notice claim
9 and health care claims were based only upon Defendants' "own duties and regulations." *Id.*
10 Accordingly, the District Court only sustained Plaintiffs' notice and health care claims against
11 DoD to the extent they rested on DoD's "own duties and regulations" in the form of AR 70-25.

12 In addition, in Defendants' partial motion to dismiss Plaintiffs' Third Amended
13 Complaint, DoD unequivocally moved for dismissal of Plaintiffs' claim for health care in its
14 entirety. Dkt. 187 at 19 ("PLAINTIFFS' CLAIMS FOR MEDICAL CARE AGAINST THE
15 DEPARTMENT OF DEFENSE MUST BE DISMISSED"). In that motion, DoD explained that
16 "Plaintiffs' claims of entitlement to medical care from DoD are predicated on DoD policy and
17 regulations, namely a 1953 memorandum from the Army Chief of Staff and AR 70-25." *Id.* In
18 opposing Defendants' motion, and consistent with their prior representations to the Court and the
19 parties, Plaintiffs did *not* allege that they were asserting a constitutional claim for health care.
20 Dkt. 217. And, in considering Defendants' motion, the Court expressly stated that Plaintiffs'
21 health care claim was based upon the June 1953 memorandum and AR 70-25. Dkt. 233 at 3-4.

22 Plaintiffs' representations to the Court that they are not pursuing constitutional claims for
23 notice and health care against any of the Defendants are entirely consistent with the
24 representations they made in discovery. In Plaintiffs' January 10, 2010 responses to Defendants'
25 interrogatories, they did not identify the Constitution as a legal basis for DoD's alleged "duty to
26 locate and warn all test participants." Ex. D to Herb Decl. at No. 8. Rather, the *only* bases
27 Plaintiffs identified for this purported duty was the APA, AR 70-25, the common law, the 1953
28

1 Wilson Memorandum, and CS 385 (June 30, 1953). *Id.*⁹

2 Plaintiffs fail to explain how they can maintain alleged constitutional claims for notice and
3 health care in light of their previous representations and Court orders. Nor do Plaintiffs explain
4 why they are not judicially estopped from taking contrary positions at this late stage in the
5 litigation. Plaintiffs' suggestion that they somehow may maintain claims under the Constitution
6 for notice and health care should be rejected.

7 **B. Plaintiffs Fail to Identify a Jurisdictional Basis For Claims Concerning Pre-**
8 **1953 Testing**

9 There being no constitutional notice and health care claims against DoD, the only possible
10 basis for seeking pre-1953 discovery must be Plaintiffs' § 706(1) claims. And as to those claims,
11 relevant discovery must be circumscribed by the purported bases of the claims, which go back no
12 further than 1953. Plaintiffs claim that Defendants "confuse" matters by characterizing the 1953
13 Memorandum and AR 70-25 as "the jurisdictional basis for Plaintiffs' claims," and that the
14 Court's "jurisdiction in this action is based on 28 U.S.C. § 1331." Dkt. 275 at 22. First,
15 Plaintiffs' argument is squarely contradicted by their Third Amended Complaint ("TAC"), which
16 states that "[t]he Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C.
17 § 1331 and 5 U.S.C. § 702." Dkt. 180 ¶ 22. Second, it is Plaintiffs who are attempting to confuse
18 matters. Section 702 provides a right of judicial review of certain agency actions. Plaintiffs
19 assert that their APA claim is based upon 5 U.S.C. § 706(1), which provides federal courts with
20 the authority to "compel agency action unlawfully withheld or unreasonably delayed." As
21 discussed above, to compel agency action under section 706(1), Plaintiffs must identify a *discrete*
22 obligation that is *legally required to take*. *Norton*, 542 U.S. at 64; *Hein v. Capitan Grande Band*
23 *of Diegueno Mission Indians*, 201 F.3d 1256, 1261 (9th Cir. 2000) (recognizing that the district

24 ⁹ On March 11, 2011, less than two weeks before they filed their substantive opposition
25 to Defendants' partial motion to dismiss, Plaintiffs served amended interrogatory responses upon
26 Defendants. Dkt. 245-2. In those responses, Plaintiffs *did not* assert the Constitution as a basis
27 for their notice claim. *Id.* at No. 8. On August 3, 2011, months after the Court's order on
28 Defendant's partial motion to dismiss and on the eve of the August 4, 2011 discovery hearing,
Plaintiffs amended their discovery responses to identify the Constitution as a basis for their notice
claim. Dkt. 253-4 at 2. Of course, this untimely supplementation simply highlights the fact that
Plaintiffs did not assert a constitutional claim at the outset and further demonstrates the prejudice
to Defendants if Plaintiffs were allowed to raise constitutional claims at this late juncture.

1 court had jurisdiction under Section 706(1)). Here, Plaintiffs contend that the 1953 Memorandum
 2 and AR 70-25 constitute discrete legal obligations that require DoD action. Dkt. 43 at 6.
 3 Accordingly, contrary to Plaintiffs' legally unsupported assertion, in the absence of the
 4 identification of the 1953 Memorandum and AR 70-25, there is no legal basis to consider
 5 Plaintiffs' notice and health care claims against DoD.¹⁰

6 Finally, Plaintiffs argue that their claims involving testing that pre-dates 1953 "is
 7 evidenced on the face of the Complaint." Dkt. 275 at 22 (citing Dkt. 180 ¶¶ 100-105).¹¹ This
 8 argument lacks merit for at least two reasons. First, in the absence of a jurisdictional basis (which
 9 Plaintiffs have failed to identify) to pursue such claims, this argument is irrelevant. Second, a fair
 10 reading of Plaintiffs' TAC contradicts this assertion. For example, in the first paragraph of the
 11 TAC, Plaintiffs allege that "[t]he Supreme Court's decision [in *Feres v. United States*, 340 U.S.
 12 135 (1950)] to absolve DEFENDANTS of legal responsibility for damages caused by the tortuous
 13 acts committed by the government upon our nation's military personnel quickly led
 14 DEFENDANTS to undertake an expansive, multi-faceted program of secret experimentation on

15 ¹⁰ Plaintiffs' suggestion, in a footnote, that the 1990 version of AR 70-25 somehow has
 16 retroactive application and may cover pre-1953 test subjects is without merit. Dkt. 275 at 22,
 17 n.15. The 1990 version of AR 70-25 expressly states that its effective date is February 24, 1990.
 18 *United States v. Gomez-Rodriguez*, 77 F.3d 1150, 1153-54 (9th Cir. 1996) (affirming district
 19 court's conclusion that plain language of effective date precluded retroactive application of
 20 statute). Beyond that, it is clear from the context of the 1990 version of AR 70-25 that it was
 21 intended to have prospective application. For example, section 3-2.a.(1)(d) of AR 70-25 provides
 22 procedural guidance as to the affirmative steps necessary to establish procedures for
 implementing a "duty to warn." In addition, section 3-2.h. provides that, to accomplish this
 notification effort, the agency must "establish a system which will permit the identification of
 volunteers who have participated in research conducted or sponsored by that command or agency,
 and take actions to notify volunteers of newly acquired information." Nothing in the plain
 language of the 1990 version of AR 70-25 indicates that the establishment of such a system
 applies to testing that occurred before the effective date of the regulation.

23 ¹¹ Plaintiffs' contention that paragraphs 100-105 of their TAC somehow support their
 24 claim that pre-1953 testing is a proper basis for discovery is misplaced. Paragraph 100 relates to
 25 the origin of Edgewood in 1917, and there is no serious contention that Plaintiffs' claims reach
 26 back to World War I. Paragraph 101 relates to alleged activities in the 1930s, and also alleges
 27 that during WWII, workers at Edgewood Arsenal tested flamethrowers and smoke screens.
 28 Paragraph 102, simply indicates that mustard agents and Lewisite had been produced at
 Edgewood Arsenal by the end of World War II. While it also says Edgewood was the first
 military installation to test chemical agents, it does reference a point in time for that allegation.
 Paragraphs 104 and 105 on their face do not relate to pre-1953 testing. Accordingly, the only
 paragraph in Plaintiffs' 234 paragraph, 74 page TAC that arguable relates pre-1953 testing is
 Paragraph 103, and this fleeting reference hardly constitutes a basis for Plaintiffs' claimed need
 for broad based discovery on this issue.

1 human subjects . . .” Dkt. 180 ¶ 1. Similarly, paragraph two of Plaintiffs’ TAC alleges that
 2 “[b]eginning in the early 1950s, the human experiment program was greatly expanded, as the CIA
 3 and US Army planned, organized and executed an extensive series of experiments involving
 4 potential chemical and biological weapons.” *Id.* ¶ 2. Other paragraphs of Plaintiffs’ TAC,
 5 including the alleged participation by the CIA and the claimed relief, reflect this notion that
 6 Plaintiffs’ challenge to the test program begins in the 1950s. *See id.* ¶ 92 (“Nonetheless, CIA
 7 engaged in a surreptitious, illegal program of domestic human experimentation from the 1950s at
 8 least well into the 1970s.”); ¶ 95 (“In 1964, the DoD took primary responsibility for the human
 9 experimentation ‘volunteers.’”); ¶ 184 (Claim for Relief: “Defendants have failed to comply with
 10 the 1953 Wilson Directive and the Official Directives.”).

11 The District Court, based on the allegations in Plaintiffs’ complaint, also interpreted the
 12 complaint to be directed at post-1950 testing: “Beginning in the early 1950s, the CIA and the
 13 Army engaged in experiments involving human tests.” Dkt. 59 at 2. The Court further noted that
 14 “[v]arious memoranda and regulations were intended to govern these experiments,” and identified
 15 the 1953 Wilson Directive as the earliest such document. *Id.* The Court also explained that
 16 “[a]pproximately 7,800 armed services personnel, including the six named individual Plaintiffs in
 17 this action, volunteered to participate in the experiments,” *id.* at 3, which corresponds with the
 18 testing that occurred between 1953 and 1975.¹² Accordingly, DoD’s motion for a protective
 19 order precluding discovery into pre-1953 testing should be granted.¹³

20 CONCLUSION

21 For the reasons stated above and in Defendants’ motion, Defendants request that the Court
 22 grant Defendants’ Motion for a Protective Order Limiting Discovery.

23 _____
 24 ¹² Notably, in Plaintiffs’ motion to compel third-party discovery against Battelle
 25 Memorial Institute, filed in the U.S. District Court for the Southern District of Ohio, Plaintiffs
 26 characterized their claims in this case as one seeking declaratory and injunctive relief “for
 disabled military veterans who were unwitting test subjects in a series of chemical and biological
 experiments conducted by the U.S. Government during the 1950s, 1960s, and 1970s.” Mot. to
 Compel at 2, *Vietnam Veterans of Am. v. CIA*, No. 11-mc-00016 (S.D. Ohio April 12, 2011).

27 ¹³ For numerous reasons articulated in Defendants’ opposition to Plaintiffs’ Motion to
 28 Compel, Dkt. 278, even were there grounds to deem pre-1953 testing relevant — and there are
 none — the discovery sought by Plaintiffs is unduly burdensome, unwarranted, and cumulative of
 voluminous discovery Plaintiffs already have received.

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Dated: September 9, 2011

Respectfully submitted,

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14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA
 16 OAKLAND DIVISION

17 VIETNAM VETERANS OF AMERICA, *et al.*,
 18
 Plaintiffs,
 19
 v.
 20 CENTRAL INTELLIGENCE AGENCY, *et al.*,
 21
 Defendants.
 22

Case No. CV 09-0037-CW

**DECLARATION OF KIMBERLY L.
 HERB IN SUPPORT OF
 DEFENDANTS' REPLY BRIEF IN
 SUPPORT OF MOTION FOR
 PROTECTIVE ORDER LIMITING
 DISCOVERY**

1 I, Kimberly L. Herb, declare as follows:

- 2 1. I am a Trial Attorney in the Federal Programs Branch, Civil Division of the United States
3 Department of Justice. I am assigned to represent Defendants in this case. I submit this
4 declaration in support of Defendants' Reply Brief in Support of Motion for Protective
5 Order Limiting Discovery. This declaration is based on my personal knowledge and
6 based upon my review of documents provided to me in my official capacity as counsel in
7 this litigation.
8
- 9 2. Attached hereto as Exhibit A is a true and accurate copy of Defendants' Responses to
10 Plaintiffs' Amended Requests for Production, dated January 6, 2011.
11
- 12 3. Attached hereto as Exhibit B is a true and accurate copy of a letter sent by me to Gordon
13 Erspamer, counsel for Plaintiffs, on March 25, 2011 wherein I state "Without prejudice to
14 Defendants' right to make objections to discovery, including the appropriate scope of
15 discovery in an action under the Administrative Procedure Act . . ."
16
- 17 4. Attached hereto as Exhibit C is a true and accurate copy of a letter sent by Joshua
18 Gardner, counsel for Defendants, to Gordon Erspamer, counsel for Plaintiffs, on April 26,
19 2011 wherein Mr. Gardner states that "In Plaintiffs' action against DoD under Section
20 706(1) of the Administrative Procedures Act ("APA"), the relevant questions are whether
21 DoD has a legal obligation to provide notice to volunteer service members and, if so,
22 whether DoD has timely discharged that legal obligation.
23
- 24 5. Attached hereto as Exhibit D is a true and accurate copy of Plaintiffs' Responses to
25 Defendants' Interrogatories, dated January 10, 2011.

26 I declare under penalty of perjury that the foregoing is true and correct. Executed in
27 Washington, D.C. on September 9, 2011.

28 /s/ Kimberly L. Herb
Kimberly L. Herb



U.S. Department of Justice

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January 6, 2011

Via Email and Federal Express

Mr. Gordon Erspamer, Esq.
Morrison & Foerster, LLP
425 Market Street
San Francisco, CA 94105-2482

RE: *Vietnam Veterans of America, et al. v. CIA, et al.*, No. CV 09 0037-CW (N.D. Cal.)

Dear Mr. Erspamer:

In accordance with the Court's December 6, 2010 Order (Dkt. No. 185), enclosed please find Defendants' Responses to Plaintiffs' Amended Requests for Production.

Best regards,

A handwritten signature in blue ink, appearing to read "J. Gardner".

JOSHUA E. GARDNER
Trial Attorney
Federal Programs Branch
United States Department of Justice

Enclosure

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14 Attorneys for Defendants

15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17 OAKLAND DIVISION

18 VIETNAM VETERANS OF AMERICA, *et al.*,
 19 Plaintiffs,
 20
 21 v.
 22 CENTRAL INTELLIGENCE AGENCY, *et al.*,
 23 Defendants.

Case No. CV 09-0037-CW

**DEFENDANTS' RESPONSE TO
 PLAINTIFFS' AMENDED SET OF
 REQUESTS FOR PRODUCTION OF
 DOCUMENTS TO ALL
 DEFENDANTS**

24
 25
 26 Pursuant to Federal Rule of Civil Procedure 34, Defendants Central Intelligence Agency
 27 and its Director Leon Panetta (collectively, "CIA"); United States Department of Defense and its
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1 Secretary, Robert M. Gates, and the United States Army and its Secretary, Pete Geren
2 (collectively, “DoD”); the Attorney General of the United States, and the United States
3 Department of Veterans and its Secretary, Eric K. Shinseki, in this civil action (hereinafter
4 “Defendants”), by and through undersigned counsel, hereby submit the following objections and
5 responses to Plaintiffs’ ”Amended Set of Requests For Production of Documents to All
6 Defendants”:

7
8 **GENERAL RESPONSE**

9 1. The information submitted herewith is being provided in accordance with the
10 Federal Rules of Civil Procedure, which permit the discovery of any matter not privileged that is
11 relevant to the claims in this civil action. Fed. R. Civ. P. 26(b)(1). Accordingly, Defendants do
12 not, by providing such information, waive any objection to its admissibility on the grounds of
13 relevance, materiality, or any other appropriate ground.
14

15
16 **GENERAL OBJECTIONS**

17 1. Defendants object to Plaintiffs’ definitions of “COMMUNICATION,”
18 “COMMUNICATIONS,” “DOCUMENT,” “DOCUMENTS,” “MEETING” and “MEETINGS”
19 to the extent that they seek identification of electronic mail or other electronic records that are
20 not in word-searchable format, including, but not limited to, any computer backup tapes.
21 Defendants further object to Plaintiffs’ definition of “COMMUNICATION,”
22 “COMMUNICATIONS,” “MEETING” and “MEETINGS” to the extent that they seek
23 information that had been solely vested in personnel who are unavailable due to retirement,
24 death, or other causes. Defendants further object to the definition of “MEETING” and
25 “MEETINGS” as nonsensical to the extent it includes “any coincidence of, or presence of . . .
26 television [or] radio . . . communications between or among persons . . .” Absent a showing of
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1 relevance, Defendants have not searched for “television [or] radio . . . communications between
2 or among persons . . .” Defendants further object to the definition of these terms as overly broad
3 as they literally cover any conceivable conversation over an approximately 70 year period of
4 time, which render any corresponding requests unduly burdensome and not reasonably calculated
5 to lead to the discovery of admissible evidence, particularly in light of the narrow remaining
6 legal claims at issue in this lawsuit. The substantial burden of any such proposed discovery
7 greatly outweighs its marginal likely benefit.
8

9 2. Defendants object to the definition of “IDENTIFY” and “IDENTITY” as
10 imposing obligations beyond those contained in Federal Rules of Civil Procedure 26 and 34.
11 Pursuant to Rule 34, the Defendants may either produce documents or make documents available
12 for the Plaintiffs to inspect and copy. Plaintiffs’ definition of “IDENTITY” and “IDENTIFY”
13 purports to require the Defendants to go beyond these requirements and, indeed, appear directed
14 towards the requirements of responding to interrogatories under Federal Rule 33.
15

16 3. Defendants object to Plaintiffs’ definition of “TEST SUBSTANCES” as overly
17 broad, as it purports to seek discovery beyond the substances contained in the Chemical and
18 Biological Database (“Chem-Bio Database”). In addition, because the “Chem-Bio Database”
19 contains approximately 400 substances, including such substances as caffeine, Plaintiffs’
20 definition of “TEST SUBSTANCES,” which would cover such substances, is overly broad.
21 Defendants further object to the definition of “TEST SUBSTANCES” as overbroad and unduly
22 burdensome as applied to each of the federal agency Defendants. By way of example, Plaintiffs’
23 have defined “TEST SUBSTANCES” to includes chemical and biological substance that were
24 not – and which Plaintiffs have not alleged to have been – tested on volunteer service members
25 by the CIA. Defendants are willing to meet and confer with Plaintiffs to narrow those substances
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1 contained in the “Chem-Bio Database” that are relevant to this case, and that properly are the
2 subject of discovery.

3 4. Defendants object to the Plaintiffs’ definition of “DOCUMENT
4 REPOSITORIES” as overly broad and unduly burdensome. Although Plaintiffs do not actually
5 use this term in any of their requests for production, to the extent Plaintiffs seek to have
6 Defendants search each of the numerous locations identified in Plaintiffs’ definition of
7 “DOCUMENT REPOSITORIES” for responsive documents, such a request is inappropriate for
8 several reasons. First, as discussed below, the remaining narrow APA claims in this case are
9 largely legal claims, and broad-based discovery in connection with such claims is inappropriate.
10 Second, as discussed below, DoD has retained at substantial expense a contractor, Battelle
11 Memorial Institute (“Battelle”), to search a number of locations and collect information
12 concerning the chemical and biological testing programs. DoD will produce to Plaintiffs the
13 results of those search efforts by Battelle. Requiring DoD, in the context of this litigation, to
14 replicate the searches that Battelle has already completed or is in the process of completing,
15 creates a substantial burden on DoD in terms of both time and expense, and would be both
16 cumulative and duplicative of the efforts Battelle has already undertaken.
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20 5. Defendants object to the definition of “TEST LOCATIONS” as overly broad, as a
21 number of the locations identified in the definition do not appear in Plaintiffs’ Third Amended
22 Complaint and/or they have no nexus to the testing of volunteer service members. Defendants
23 further object to the definition as unduly burdensome to the extent Plaintiffs seek to obligate
24 Defendants to search each of these over 20 identified locations for responsive documents. As
25 discussed below, such a search effort would be largely duplicative of the substantial efforts
26 undertaken by DoD’s contractor, Battelle, to locate and collect documents concerning the
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1 volunteer service member biological and chemical testing program. The burden to DoD in terms
2 of the cost and time of duplicating Battelle's search efforts in connection with these discovery
3 requests greatly outweighs the potential relevance, if any, of such a search. This is particularly
4 true where, as discussed below, DoD agrees to produce the results of Battelle's search efforts on
5 a rolling basis.

6
7 6. Defendants object to the definition of "TEST PROGRAMS" which is defined to
8 include the definitions "TEST LOCATIONS" and "TEST SUBSTANCES," terms that are
9 objectionable for the reasons identified above.

10 7. Defendants object to the definition of "YOU and "YOUR," which includes
11 "attorneys," and therefore implicates the attorney-client privilege and work product immunity.
12 Defendants further object to the definition of "YOU" and "YOUR" to the extent that those terms
13 refer to the Defendants collectively and not individually. Plaintiffs' definition imposes
14 substantial burdens on the Defendants and would require them to search for and produce
15 information that is not necessarily relevant to the narrow and distinct legal claims against each
16 individual Defendant. Defendants therefore will interpret "YOU" and "YOUR" in these requests
17 to refer to the individual Defendant that is responding to the request.
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20 8. Defendants object to Plaintiffs' instruction number 10, which purports to seek
21 documents "created, received, or dated between January 1, 1940" and the present day, as being
22 unduly burdensome and wholly unrelated to the narrow claims remaining in this litigation. The
23 DoD chemical and biological test program concerning volunteer service members ran from 1953
24 through 1975. Accordingly, Defendants' responses will be limited to the time period 1953 to
25 1976, unless specified otherwise in a particular response.
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1 9. Because most potentially responsive documents are wholly unrelated to the
2 remaining narrow legal claims in this litigation, DoD has limited both its search for information
3 responsive to Plaintiffs' discovery requests and its corresponding responses to relevant
4 information pertaining to the specified test programs involving service members conducted in
5 conjunction with the Edgewood Arsenal area of Aberdeen Proving Ground, Maryland, and Fort
6 Detrick, Maryland. DoD will produce on a rolling basis five categories of potentially responsive
7 documents, subject to the protective order in this case and all applicable privileges and/or work
8 product protection, that will serve as the foundation of DoD's discovery responses in this case.
9 Combined, these categories of documents consist of potentially several hundred thousand pages,
10 span the length of the test programs, and comprise the complete production of documents
11 concerning chemical and biological test programs available to DoD based on a reasonable search
12 and production effort. These categories include the following:
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15 a. Test Participant Personnel Files:

- 16 i. Servicemember personnel files maintained at the US Army Research
17 Institute of Chemical Defense ("USAMRICD"). DoD asserts that a
18 personnel file exists at USAMRICD for each servicemember who
19 served as a test volunteer in the chemical testing programs. Each
20 personnel file should contain all information related to the named
21 veteran's participation in the tests including the veteran's consent form
22 and a description of the substances the veteran was exposed to as part
23 of the test program. DoD is not aware of test files related to any
24 chemical test program involving human volunteers other than those
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1 maintained by USAMRICD at the Edgewood Area of Aberdeen
2 Proving Ground, Maryland.

3 ii. Servicemember personnel files maintained at the US Army Research
4 Institute of Infectious Diseases (“USAMRIID”). DoD asserts that a
5 personnel file exists at USAMRIID for each servicemember who
6 served as a test volunteer in the biological testing programs. Each
7 personnel file should contain all information related to the named
8 veteran’s participation in the tests including the veteran’s consent form
9 and a description of the substances the veteran was exposed to as part
10 of the test program. DoD is not aware of test files related to any
11 biological test program involving human volunteers other than those
12 maintained by USAMRIID at Fort Detrick, Maryland.
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15 b. Office of the Deputy Assistant Secretary of Defense for Force Health
16 Protection and Readiness (“FHP&R”) Activities. DoD has worked in
17 coordination with the Department of Veterans Affairs (“VA”) to identify
18 veterans who participated in chemical or biological tests. DoD’s role in this
19 effort encompasses several activities, all managed by FHP&R:
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21 i. Battelle Search Results: In 2004, DoD engaged Battelle to conduct a
22 search to locate all information that could lead to the identification of
23 test volunteers, an effort that continues today. As part of its effort,
24 Battelle provides monthly reports to DoD concerning the results of its
25 searches, including any information related to test veterans and the
26 source documents for that information. This search effort has
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1 encompassed multiple locations, spanned years, and cost millions of
2 dollars. DoD will produce to Plaintiffs Battelle's monthly reports, as
3 well as Battelle's collection of source documents, under the protective
4 order.

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6 ii. The Chem-Bio Tests Repository: The Chemical-Biological Tests
7 Repository identifies each service member chemical or biological test
8 participant, the substances(s) tested, and provides additional
9 information about the individual tests, including the dose administered
10 and route of administration (e.g., oral or percutaneous), the date of the
11 testing, and any antidote administered as part of the test, where
12 available. DoD previously produced to Plaintiffs a redacted copy of
13 the databases and, pursuant to the court's entry of the protective order,
14 will produce an unredacted copy that includes all available personally
15 indentifying information of test participants.
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18 c. The Test Plans:

19 i. In 1999 USAMRICD transferred three boxes of test plans and
20 associated interim progress reports to the National Archives for
21 permanent accession. The test plans and reports describe the purpose
22 of the individual chemical tests, the methodology employed, and in
23 some cases may contain information about test participants. While
24 DoD is no longer the records custodian for these records, it
25 nonetheless intends, at great effort and expense, to copy these three
26 boxes of files and produce them to plaintiffs on a rolling basis under
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1 the protective order. DoD is unaware of any repository of test plans
2 concerning chemical testing involving service member volunteers
3 other than the plans transferred to the National Archives.

4 ii. USAMRIID has maintained electronic copies of its test plans (called
5 “test protocols”) which have been previously produced. The protocols
6 describe the purpose of the individual tests and the test methodology
7 employed. DoD is unaware of any repository of biological test
8 protocols concerning biological testing involving service member
9 volunteers other than the protocols maintained at USAMRIID and
10 previously produced.
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13 d. The Test Results:

14 i. Technical Reports – Chemical Tests: Researchers involved in the
15 chemical testing programs drafted technical reports describing the
16 results of their research. Those reports are maintained at the Defense
17 Technical Information Center (“DTIC”) at Fort Belvoir, Virginia.
18 There is no bibliography of technical reports generated as a result of
19 the chemical testing programs; however, DTIC maintains a database of
20 bibliographic information concerning the technical reports that is key-
21 word searchable. DoD will search the DTIC database using relevant
22 key words and produce relevant, unclassified technical reports
23 concerning chemical testing involving service member volunteers.
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1 ii. Biological Tests Results: The results of the biological tests involving
2 service member volunteers were published publicly and DoD will
3 produce a bibliography of the relevant articles to Plaintiffs.

4 e. The Unit Reports: In 1999, USAMRICD permanently accessioned two boxes
5 of historical records concerning the chemical test programs and service
6 member volunteers to the National Archives. These files may include daily
7 administrative correspondence, test volunteer schedules, and other
8 information related to the test programs or volunteers. While DoD is no
9 longer the records custodian for these records, it nonetheless intends to copy
10 these two boxes of files and produce them to plaintiffs on a rolling basis.

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13 10. Because most potentially responsive documents are wholly unrelated to the
14 remaining narrow legal claims in this Administrative Procedure Act (“APA”) case, the CIA has
15 conducted searches of documents, and is providing corresponding responses to Plaintiffs’
16 discovery requests, limited to relevant, non-privileged information as follows. The CIA has
17 conducted searches for documents concerning any project that involved testing on volunteer
18 service members from 1947 to 1980. These searches have focused on, but have not been limited
19 to, documents concerning: (a) testing on volunteer service members at Edgewood Arsenal or Fort
20 Detrick and (b) Project OFTEN, the only CIA program known to CIA to have contemplated
21 testing on volunteer service members. The CIA has conducted additional searches concerning:
22 (c) any documents concerning the previous two subjects that post-date 1980; (d) substances
23 known as EA 3167 and the Boomer, the only substances mentioned as potentially being tested on
24 volunteer service member as part of Project OFTEN; and (e) the named individual Plaintiffs.
25 Based on the information learned from these searches and other considerations described below,
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1 the CIA will produce on a rolling basis the following categories of potentially responsive, non-
2 privileged documents that will serve as the foundation of the CIA's discovery response in this
3 case, including its responses to these discovery requests:

- 4 a. Documents concerning the actual or contemplated testing on volunteer service
5 members as part of any CIA-sponsored project, including but not limited to
6 Project OFTEN;
- 7 b. Documents concerning testing on volunteer service members at Edgewood
8 Arsenal or other military facilities, including studies or information provided
9 to the CIA by the DoD concerning such testing (provided that producing such
10 documents is not determined to be unduly burdensome);
- 11 c. Documents concerning whether the CIA has any obligation to provide notice
12 or medical care to volunteer service members who may have been tested as
13 part of Project OFTEN or any CIA-sponsored project;
- 14 d. Documents concerning whether the CIA has any relevant secrecy oaths with
15 volunteer service members who may have been tested as part of Project
16 OFTEN or any CIA-sponsored project;
- 17 e. Documents concerning the substances known as EA 3167 and the Boomer;
- 18 f. Documents relevant to the CIA's repeated conclusion that it did not fund or
19 conduct drug research on volunteer service members;
- 20 g. Documents relevant to the correspondence between the CIA and the Army in
21 1979, in which the Army represented that it "is currently reviewing various
22 testing programs that involved human subjects. Should that review indicate
23 that follow-up action is necessary, appropriate steps will be taken. The testing
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1 of compound EA#3167 on volunteer personnel at Edgewood Arsenal in June
2 1973 will be included in our review program.”

- 3 h. Documents relevant to the correspondence between the CIA and Department
4 of Veterans Affairs in 2006-07, including the CIA Director’s representation
5 that “there are no Project OFTEN records or records from any other Agency
6 programs that identify or could lead to the identification of any military
7 volunteers for any drug testing programs that may have involved the Agency.”
8

- 9 i. Documents concerning the named individual Plaintiffs.

10 The scope of CIA’s searches in response to Plaintiffs’ discovery requests are limited to those
11 described above, and CIA will regard information it finds in connection with those searches
12 responsive to the extent the document falls within categories a-i above. The exception to this is
13 that, without conceding the relevance of the information being requested, the CIA has agreed to
14 conduct searches for and produce responsive, non-privileged documents in its possession,
15 custody or control in response to Request Nos. 8-11, 64, and 65 to the extent it finds such
16 documents after a reasonable search. The CIA is willing to meet and confer with Plaintiffs to
17 discuss additional, reasonable searches for and production of documents provided that Plaintiffs’
18 request is reasonably specific, relevant to the narrow legal claims remaining against the CIA in
19 this APA case, and not unduly burdensome.
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22 11. In order to locate these documents, the CIA has undertaken a substantial effort to
23 search several records systems, including the active, non-archived records of relevant CIA
24 components; the CIA’s archived records, which are stored in a remote location and only
25 available in hard copy; and the electronic CIA Automatic Declassification and Release
26 Environment (“CADRE”), an electronic database that stores information pursuant to the
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1 Agency's information release programs, such as the FOIA, Privacy Act, and Mandatory
2 Declassification Review programs. The CIA has already searched these systems numerous times
3 as part of this case in order to find responsive information. In addition to the dozens of
4 electronic searches that it has conducted, the CIA has hand-searched approximately eleven boxes
5 of documents related to Project OFTEN in an attempt to find responsive documents. To search
6 these systems for information beyond those categories noted above would impose significant
7 burdens on the CIA and would be highly unlikely to lead to the discovery of information relevant
8 to Plaintiffs' three narrow APA claims against the CIA. As noted above, Plaintiffs have defined
9 "TEST PROGRAMS" to include programs that did not involve testing on volunteer service
10 members and "TEST SUBJECTS" to include any person regardless of whether he or she is a
11 potential member of the proposed putative class of former volunteer service members. Plaintiffs'
12 have defined "TEST SUBSTANCES" to includes chemical and biological substance that were
13 not – and which Plaintiffs have not alleged to have been – tested on volunteer service members
14 by the CIA. The CIA objects to these definitions and all of Plaintiffs' discovery requests to the
15 extent they seek information related to the CIA's behavioral research programs, such as
16 MKULTRA, that did not contemplate or conduct testing on volunteer service members. In
17 addition, to the extent Plaintiffs seek this information from the CIA for use in their claims
18 against the other Defendants, the CIA further objects to such discovery because it is a third-party
19 to such claims and there has been no showing that this information is unavailable from those
20 Defendants.

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25 12. In addition to the lack of relevance of such information to the three narrow APA
26 claims against the CIA, *see* Fed. R. Civ. P. 26(b), the burden of responding to discovery requests
27 on topics unrelated to testing on volunteer service members greatly outweighs the marginal, if
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1 any relevance, of such information. With respect to this burden, the CIA notes that it previously
2 provided to Plaintiffs outside of discovery approximately 20,000 pages of documents within the
3 CIA's possession, custody, or control related to MKULTRA and its other behavioral research
4 programs from the 1950s-70s. Moreover, if these largely irrelevant documents are deemed to be
5 subject to formal discovery in this case, the CIA would have to undertake a substantial effort to
6 re-review and re-produce them due to difficulties relating to how the documents are physically
7 stored on CIA systems and reviewed for purposes of assessing and asserting privileges. Because
8 it is a clandestine intelligence agency and its operations "must of necessity be highly
9 confidential," H.R. Rep. No. 1853, at 2 (1948), such privilege reviews are particularly frequent
10 and time consuming for the CIA. The CIA is willing to meet and confer with Plaintiffs to
11 explain in detail this process and the nature of the burden. Nevertheless, the effort of re-
12 reviewing and re-producing documents related to MKULTRA and the CIA's other behavioral
13 research programs unrelated to testing on volunteer service members alone would impose a
14 significant burden on the CIA, and the CIA estimates that it would take approximately three to
15 five months to complete such an effort. It would also be unduly burdensome to require the CIA
16 to produce documents contained in the eleven boxes of documents related to Project OFTEN that
17 do not concern actual or contemplated testing on volunteer service members or the other
18 categories described above. As far as the CIA is aware, the majority of those documents has
19 never been reviewed for purposes of assessing and asserting privileges, and as noted above, this
20 process is particularly time consuming for the CIA. Accordingly, it would impose a significant
21 burden on the CIA to require it to produce Project OFTEN documents unrelated to actual or
22 contemplated testing on volunteer service members, and the CIA estimates that it would take an
23 additional three months to complete such an effort. The potential burdens on the CIA are
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1 compounded to the extent it is required to search for and produce information unrelated to testing
2 on volunteer service member and beyond Project OFTEN or the 20,000 pages of documents
3 relating to the CIA's behavioral research programs. The CIA's archived records are stored in a
4 remote location. Each file folder contains numerous documents in hardcopy form only; these
5 files are not full-text searchable by any electronic system. The archived records are searchable
6 only by use of an electronic index listing the title of each file folder in the archived records
7 system. Therefore, a search of the electronic index can, at best, reveal individual archived file
8 folders that could contain responsive records. File folders vary in size, but can include over 100
9 individual documents inside. Thus, for any potentially responsive file folder in the archived
10 records, CIA personnel would have to retrieve the relevant boxes, unseal them, locate the correct
11 file folder identified by the electronic index, and then manually review all of the documents in
12 each folder merely to identify archived documents that might be responsive to Plaintiffs'
13 discovery requests. In addition, although the CADRE database is full-text searchable and is
14 entirely electronic, to conduct searches that would allow it to respond to Plaintiffs' extensive
15 discovery requests would be both unreasonable and an undue burden. For example, running a
16 search in CADRE on "LSD" alone results in over 9,000 hits. In order to evaluate the
17 responsiveness of these documents, CIA personnel would have to review each document, and the
18 amount of time required to do so would place an undue burden on the CIA's already limited
19 resources. Once documents are evaluated for responsiveness, after either a search of the CIA's
20 archived records or the CADRE system, the documents would then also need to be reviewed for
21 purposes of assessing and asserting privilege. As with the CIA's other statements regarding the
22 burdens of searching for and producing documents, it is willing to meet and confer with
23 Plaintiffs to explain in detail the process and the nature of the burden.
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1 13. Defendant Attorney General Eric Holder objects to Plaintiffs' discovery requests
2 to the extent they demand that the Attorney General identify documents or information not
3 relevant to the claims against the Attorney General. Plaintiffs' Third Amended Complaint
4 references the Department of Justice ("DOJ") or the Attorney General in only three paragraphs,
5 and all three paragraphs pertain solely to Plaintiffs' claims regarding the identification and
6 notification of participants in government test programs. Third Am. Compl. ¶¶13, 14, 98.
7 Paragraph 13 alleges both that the CIA testified that it was working with the Attorney General
8 regarding the identification of test participants and that the Attorney General participated in
9 efforts to locate test participants. *Id.* ¶ 13. Paragraph 14 characterizes a DOJ letter and
10 memorandum regarding whether the CIA had a duty to locate participants in the CIA's
11 MKULTRA program. *Id.* ¶ 14. Paragraph 98 then expressly states that the Attorney General "is
12 named solely in his official capacity and in connection with the Attorney General's assumption
13 of responsibility to notify the victims of biological and chemical weapons tests." *Id.* ¶ 98. It
14 would be unduly burdensome and not reasonably calculated to lead to the discovery of
15 admissible evidence to require the Attorney General to search for documents and information not
16 relevant to the single narrow claim specifically pertaining to the Attorney General. Based on
17 Plaintiffs' claims in the Third Amended Complaint, therefore, Defendant Attorney General has
18 limited his search and response to information relevant to the allegations in the Third Amended
19 Complaint that pertain to the Attorney General, and has specifically limited his search to those
20 components of the Department of Justice that are most likely to have been involved in the
21 allegations contained in the three paragraphs related to the Attorney General; namely: the offices
22 of the Attorney General, Deputy Attorney General, and the Associate Attorney General
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1 (collectively, the “Senior Leadership Offices”); the Departmental Executive Secretariat; the
2 Office of Legal Counsel (“OLC”); and the Office of Legislative Affairs (“OLA”).

3 a. Any records of the “Senior Leadership Offices” up through January 1993 have
4 been permanently accessioned to the National Archives. DOJ has produced to
5 Plaintiffs the box lists that reflect, in broad terms, those records that have been
6 accessioned so that Plaintiffs may attempt to retrieve records from National
7 Archives if they so desire. (VET010_00030). Because the claims in
8 Plaintiffs’ Third Amended Complaint against the DOJ all substantially pre-
9 date January 1993, the Senior Leadership Offices would not have records or
10 information in their possession, custody or control responsive to Plaintiffs’
11 discovery requests.
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14 b. Any records of the Departmental Executive Secretariat, an office which was
15 created in 1982, up through January 1993 have been permanently accessioned
16 to the National Archives. Because the claims in Plaintiffs’ Third Amended
17 Complaint against the DOJ all substantially pre-date January 1993, the Office
18 of the Executive Secretariat would not have records or information in its
19 possession, custody or control responsive to Plaintiffs’ discovery requests.
20

21 c. OLC maintains an electronic database known as ISYS (the documents in
22 which are also in hard copy form) that is searchable by search term, and has
23 run numerous searches through that database in an attempt to find responsive
24 information. Conducting searches for documents generated between 1975 and
25 1984, OLC has found a limited number of responsive documents on the ISYS
26 database. In addition, OLC maintains some hard copy unclassified records
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1 from that period and classified daybooks and other classified materials in
2 safes and has hand-searched those sources to look for responsive information
3 during the relevant time period. OLC has found no responsive documents
4 after searching these other materials.

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6 d. OLA does not possess documents related to Cold War-era drug testing by the
7 Department of the Army and/or the CIA or any congressional activity
8 regarding these tests.

9 14. Defendant VA objects to Plaintiffs' Amended Production Requests to the extent
10 the requests seek information that is irrelevant to the sole claim against the Department;
11 specifically, that VA is biased in its adjudication determinations of ChemBio claims. Defendant
12 VA further objects to Plaintiffs' Amended Production Requests to the extent it would require VA
13 to produce the claims files and health-care files of approximately 9,000 individuals. Such a
14 search would be unduly burdensome and unlikely to yield fruitful results beyond the more than
15 14,000 pages of documents VA has already produced in response to Plaintiffs' Rule 45 subpoena
16 and Plaintiffs' Amended Production Requests.
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19 15. In response to Plaintiffs' Amended Production Requests, VA is conducting a
20 search (described below), and will continue to produce relevant, non-privileged documents to
21 Plaintiffs on a rolling basis, subject to a protective order. The following offices have searched,
22 and are continuing to search, for email, electronic, and hardcopy files for relevant documents:
23 Veterans Benefit Administration ("VBA"), Board of Veterans' Appeals, Veterans Health
24 Administration ("VHA"), and other VA Central Offices ("VACO"), which include Executive
25 Secretariat, Office of Congressional and Legislative Affairs, Office of Policy and Planning,
26 Records Management Service in the Office of Information and Technology, and the Office of
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1 Public and Intergovernmental Affairs. The following terms were used in conducting the search:
2 Artichoke, Bluebird, Edgewood or Edgewood Arsenal, Material Testing Program EA 1729,
3 MKCHICKWIT or CHICKWIT, MKDELTA, MKNAOMI, MKOFTEN, MKSEARCH,
4 MKULTRA, Bruce Price, Franklin D. Rochelle, Larry Mierow, Eric P. Muth, David C. Dufrane,
5 Wray C. Forrest, Tim Michael Josephs, William Blazinski. In addition, VA has produced the
6 claim files and health files for all individually named plaintiffs.
7

8 16. Expansion of these searches beyond those identified in the individual request
9 responses below would be unduly burdensome. VA estimates that an expanded search, such as
10 appears to be contemplated by Plaintiffs' overly broad production requests would engender the
11 following burden:
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- 13 a. Veterans Benefits Administration: VA currently has approximately 3.9
14 million claim files, which are held at regional offices across the country, VA
15 Central Office, the Appeals Management Center, the Board of Veterans'
16 Appeals, and other VA offices. These claim files are not held electronically,
17 thus VBA is unable to conduct an electronic search of the contents of these
18 claim folders to determine whether any document in the claim file contains a
19 complaint, correspondence, etc. regarding exposure to biological or chemical
20 weapons at Edgewood Arsenal or Fort Detrick. Assuming that VBA has all
21 the claim files in its custody and control, VBA estimates that it would take
22 over 3.5 hours to locate and review each relevant claim file, then identify and
23 copy any responsive material, for a total of 24,500 hours (assuming 7000
24 individuals or 29,946 hours for 8,556 individuals).
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1 b. Veterans Health Administration: The Veterans Health Administration
2 conservatively estimates that, given the need to search for medical records for
3 approximately 9,000 servicemembers whose names are in the DoD ChemBio
4 database, ambiguity of personal identifiers associated with each
5 servicemember, the timeframe of the requested records, change in medical
6 record procedures during the relevant time period, and the size of VHA, it
7 would take more than 15,268 staff hours to search for and provide copies of
8 the medical records for these servicemembers.
9

10 c. VA Central Office: With regard to an electronic search for responsive emails,
11 VA's Office of Information and Technology ("OI&T") estimates a search of
12 the 12,264 Exchange/Outlook mailboxes at VA Central Office would entail:
13 350 hours of employee time to establish an index of mailboxes; 1752 days of
14 computer time to index the archived contents into Intelligent Data Operating
15 Layer ("IDOL"); 2102 hours of employee time to monitor and troubleshoot
16 the IDOL indexer; 700 hours of employee time to configure the restore utility
17 and test/verify the results; 350-525 hours of computer time to search and
18 restore the results to a .pst file of positive hits; 175-350 hours of computer
19 time to copy .pst files to a share location; and 14 hours of employee time to
20 kick off and monitor the copying process.
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23 i. A broad search for responsive documents would have a similarly
24 burdensome effect. There are 12 different file share servers for
25 VACO, each of which contains hundreds of thousands of documents.
26 Each server must be searched separately for each search term. The
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1 servers maintain only those documents that an employee stores on a
2 shared drive. In order to obtain documents filed on a local hard drive,
3 each VA employee likely to have relevant documents would have to
4 conduct a search of his or her computer. OI&T estimates that it
5 would take eight weeks to search all twelve file share servers for
6 VACO. In addition, OI&T has 60,000 backup tapes for the servers
7 dating back to September 2004, but no index of the tapes. However, it
8 is substantially burdensome to restore all of this data contained on the
9 backup tapes because VA does not have enough storage space for the
10 restored material.
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- 13 ii. Such a search, however, would likely not be fruitful. An OI&T search
14 is unlikely to produce any document that pre-dates 1991, when
15 personal computers were installed on employees' desks. There are no
16 tapes for the word processing system used by VA prior to 1991. It is
17 also unlikely that OI&T will be able to produce documents that pre-
18 date 2000 because prior to 2000, there was a limited amount of disc
19 space available.
20

21 Defendants are willing to meet and confer with Plaintiffs to develop a reasonable, agreed-upon
22 number of claims and medical files that VA will produce.
23

24 17. Defendants object to Plaintiffs' requests for production on the grounds that they
25 greatly exceed the scope of permissible discovery in this narrow APA case. *See Norton v.*
26 *Southern Utah Wilderness Alliance*, 542 U.S. 55, 64 (2004) (holding that a section 706(1) claim
27 under the APA may not be used for "broad programmatic attacks[s]" to agency action; but rather
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1 such a claim is limited to challenges to *discrete* agency action that the agency is *required* to
2 take). A claim under section 706(1) is one seeking mandamus, *id.* at 63, and whether “the
3 elements of the mandamus test are satisfied is a question of law,” not fact. *See Independence*
4 *Min. Co., Inc. v. Babbitt*, 105 F.3d 502, 505 (9th Cir. 1997); *Baptist Memorial Hosp. v. Johnson*,
5 603 F. Supp. 2d 40, 44 (D.D.C. 2009) (rejecting request for discovery in mandamus action).
6 Indeed, “[i]f the record before the agency does not support the agency action, if the agency has
7 not considered all the relevant factors, or if the reviewing court simply cannot evaluate the
8 challenged agency action on the basis of the record before it, the proper course, except in rare
9 circumstances, is to remand to the agency for additional investigation or explanation.” *Florida*
10 *Power & Light Co. v. Lorion*, 470 U.S. 729, 744 (1985). Defendants further object to Plaintiffs’
11 requests for production on the grounds that they greatly exceed the scope of permissible
12 discovery in a class action.
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15 18. Defendants object to each discovery request to the extent that it is deemed to
16 require disclosure of classified, confidential, or proprietary information or matters subject to the
17 attorney-client privilege, the attorney work product doctrine, other applicable privileges, or any
18 statutory or regulatory restriction upon disclosure, including but not limited to, the Central
19 Intelligence Agency Act of 1949, 50 U.S.C. § 403g, which states that in the interest of
20 “protecting intelligence sources and methods from unauthorized disclosure, the Agency shall be
21 exempted from the . . . provisions of any other law which require the publication or disclosure of
22 the organization, functions, names, official titles, salaries, or numbers of personnel employed by
23 the Agency;” the National Security Act of 1947, 50 U.S.C. § 403-1(i)(1), which states that “[t]he
24 Director of National Intelligence shall protect intelligence sources and methods from
25 unauthorized disclosure;” Executive Order 13,526 and its predecessors or its successors, which
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1 protect classified national security information from unauthorized disclosure; and/or the state
2 secrets privilege. Defendants will not produce privileged or protected documents, materials, or
3 information in response to these discovery requests. The inadvertent production by Defendants
4 of information or documents protected by any privilege or protection shall not constitute a
5 waiver of the applicable privilege or protection as to any information or documents disclosed. In
6 addition, to the extent appropriate, Defendants will produce responsive documents subject to the
7 protective order issued in this case.
8

9 19. Defendants object to each discovery request to the extent the request seeks
10 information that is publicly available and/or is equally or more available to Plaintiffs.
11

12 20. Defendants object to Plaintiffs' Amended Set of Requests For Production of
13 Documents to All Defendants for failing to tailor the requests to each individual Defendant.
14 Instead, Plaintiffs have directed all 118 requests to all four federal government agency
15 Defendants, regardless of the fact that many of the requests plainly relate to one particular
16 agency. In doing so, Plaintiffs appear to have given no regard to fact that Plaintiffs have
17 different claims against each Defendant and that each Defendant has a different role with respect
18 to the factual allegations in the Third Amended Complaint. Plaintiffs' failure to tailor their
19 discovery requests to each specific Defendant has drastically increased the burden on the
20 Defendants to respond to these requests, and runs afoul of the Court's order to "make a sincere
21 effort to limit the scope of discovery sought." Dkt. No. 178, at 7.
22

23 21. Defendants object to Plaintiffs' Amended Set of Requests For Production of
24 Documents to All Defendants because it fails to comply with the Court's order requiring
25 Plaintiffs' to "reevaluate what information is central to their case, recognize limits on usefulness
26 of some of the information they seek, and make a sincere effort to reduce the scope of discovery
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1 sought.” Dkt. No. 178, at 7. Contrary to the Court’s order, Plaintiffs have not reduced the scope
2 of discovery sought; rather Plaintiffs appear to have reduced the number of requests simply by
3 combining prior document production requests together. Accordingly, while the absolute
4 number of requests may have decreased, the overall scope appears to have largely remained the
5 same. In addition, the overwhelming scope and number of Plaintiffs’ production requests (118
6 not counting discrete sub-parts) has made it unduly burdensome for the Defendants to respond to
7 each request individually. Defendants have made a good faith effort to fully respond to
8 Plaintiffs’ requests in a reasonable manner, but they are unable to provide more fulsome
9 responses until Plaintiffs’ comply with this Court’s order and narrow the scope of the discovery
10 they seek. To this end, consistent with the stipulation entered by the Court, Defendants propose
11 that the scope of discovery, including these discovery requests, be discussed at the case
12 management/discovery meeting.
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15 **SPECIFIC OBJECTIONS AND RESPONSES**
16 **TO AMENDED REQUESTS FOR PRODUCTION**

17 Each of the foregoing statements and/or objections is incorporated by reference into each
18 and every specific response set forth below, and Defendants’ response below is not a waiver of
19 any of their General Objections.
20

21 **AMENDED REQUEST FOR PRODUCTION NO. 1:**

22 The types and properties of all TEST SUBSTANCES, including but not limited to
23 studies, reports, surveys, amounts administered to participants in the TEST PROGRAMS,
24 dose-response relationships, or other analyses of the health effects of the TEST
25 SUBSTANCES.
26

27 **OBJECTIONS**
28

1 Defendants object to this amended production request for the reasons described in
2 General Objections 1, 3, 5, 6 and 8-21. Among other objections, and described in detail above,
3 the definitions of “TEST SUBSTANCES” and “TEST PROGRAMS” are overly broad and
4 include substances and programs that are not relevant to the narrow legal claims in this APA
5 case. Furthermore, this request is overly broad in that it would require Defendants to produce
6 any document that referenced a type of TEST SUBSTANCE. In addition, as to the CIA, to the
7 extent these expansive definitions encompass substances that the CIA never tested on service
8 members and programs that did not involve testing on service members by the CIA, it is
9 substantially overbroad, and CIA’s search for such information irrelevant to Plaintiffs’ claims
10 against the CIA would be unduly burdensome, particularly in light of the considerations
11 identified in General Objections 10-12. As discussed in General Objection 12, CIA previously
12 provided to Plaintiffs outside of discovery approximately 20,000 pages of documents related to
13 MKULTRA and its other behavioral research programs from the 1950s-70s. It would take a
14 substantial effort by the CIA, and require approximately three-to-five months, to re-review and
15 re-produce them due to difficulties relating to how the documents are physically stored on CIA
16 systems and reviewed for purposes of assessing and asserting privileges.
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19

20 RESPONSES

21 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
22 produce responsive, non-privileged documents in its possession, custody and/or control to the
23 extent it can locate such documents after a reasonably diligent search.
24

25 CIA: Subject to and without waiving the foregoing objections, CIA responds that it will produce
26 responsive, non-privileged documents in its possession, custody and/or control to the extent it
27 can locate such documents after a reasonably diligent search.
28

1 AG: Subject to and without waiving the foregoing objections, the AG responds that it has no
2 documents in his possession, custody and/or control responsive to this request.

3 VA: Because this amended request for production has no relationship to the sole claim against
4 VA, which alleges bias in the claims adjudication process, and based upon the burden of
5 conducting such a search as described in General Objections 14-16, VA will not conduct a search
6 in response to this amended request.
7

8
9 **AMENDED REQUEST FOR PRODUCTION NO. 2:**

10 Complaints, claims, allegations or notice provided to YOU, from any source, of any
11 physical or psychological harm to any participant in the TEST PROGRAMS.

12 **OBJECTIONS**

13
14 Defendants object to this amended production request for the reasons described in
15 General Objections 1, 3, 5-21. Among other objections, and described in detail above, the
16 definition of “TEST PROGRAMS” is overly broad and includes programs that are not relevant
17 to the narrow legal claims in this APA case. Defendants further object on the grounds that this
18 request is overly broad and unduly burdensome, insofar as it is requesting information
19 concerning any “complaint, claims, allegations, or notice” provided “from any source” over a
20 seventy-year period, from approximately 7,000 volunteer service member test subjects.
21

22 **RESPONSES**

23
24 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
25 produce responsive, non-privileged documents in its possession, custody and/or control to the
26 extent it can locate such documents after a reasonably diligent search.
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28

1 CIA: Subject to and without waiving the foregoing objections, CIA responds that it will produce
2 responsive, non-privileged documents in its possession, custody and/or control to the extent it
3 can locate such documents after a reasonably diligent search.

4 AG: Subject to and without waiving the foregoing objections, the AG responds that it has no
5 documents in his possession, custody and/or control responsive to this request.

6
7 VA: VA objects to this request as unduly burdensome, because, as discussed above in the
8 General Objections, the time and expense of obtaining the claims files and treatment files for
9 approximately 7,000 veterans who participated as volunteer test subjects during the Cold War
10 would far exceed the relevance of producing this information. Subject to this objection, and the
11 General Objections, VA will produce responsive, non-privileged documents related to the named
12 Plaintiffs in its possession, custody and/or control to the extent it can locate such documents after
13 a reasonably diligent search.
14

15
16 **AMENDED REQUEST FOR PRODUCTION NO. 3:**

17
18 Deaths, hospitalizations, emergency room visits and diseases or medical conditions
19 resulting from or related to the administration of TEST SUBSTANCES to participants in the
20 TEST PROGRAMS.

21 **OBJECTIONS**

22
23 Defendants object to this amended production request for the reasons described in
24 General Objections 1, 3, 8-21. Among other objections, and described in detail above, the
25 definition of “TEST SUBSTANCES” is overly broad and includes substances that is not relevant
26 to the narrow legal claims in this APA case. Defendants further object to the term “medical
27 condition,” an undefined term, as vague and overbroad.
28

RESPONSES

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2 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
3 produce responsive, non-privileged documents in its possession, custody and/or control to the
4 extent it can locate such documents after a reasonably diligent search.

5 CIA: Subject to and without waiving the foregoing objections, CIA responds that it will produce
6 responsive, non-privileged documents in its possession, custody and/or control to the extent it
7 can locate such documents after a reasonably diligent search.
8

9 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
10 documents in his possession, custody and/or control responsive to this request.

11 VA: VA objects to this request as unduly burdensome, because, as discussed above in the
12 General Objections, the time and expense of obtaining the claims files and treatment files for
13 approximately 7,000 veterans who participated as volunteer test subjects during the Cold War
14 would far exceed the relevance of producing this information. Subject to this objection, and the
15 General Objections, VA will produce responsive, non-privileged documents related to the named
16 Plaintiffs in its possession, custody and/or control to the extent it can locate such documents after
17 a reasonably diligent search.
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19

20
21 **AMENDED REQUEST FOR PRODUCTION NO. 4:**

22 All tabulations, summaries, analyses or descriptions of the types of medical problems
23 (both physical and mental) experienced by participants in the TEST PROGRAMS, including
24 but not limited to analyses of the frequency with which particular medical problems or
25 conditions (whether physical or mental) occur amongst participants in the TEST PROGRAMS,
26 and/or the cause and effect relationship between exposures and particular diseases or
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28

1 conditions.

2 OBJECTIONS

3 Defendants object to this amended production request for the reasons described in
4 General Objections 1, 3, 5, 6, 8-21. Among other objections, and described in detail above, the
5 definition of “TEST PROGRAMS” is overly broad and includes programs that are not relevant
6 to the narrow legal claims in this APA case.

7 RESPONSES

8 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
9 produce responsive, non-privileged documents in its possession, custody and/or control to the
10 extent it can locate such documents after a reasonably diligent search.

11 CIA: Subject to and without waiving the foregoing objections, CIA responds that it will produce
12 responsive, non-privileged documents in its possession, custody and/or control to the extent it
13 can locate such documents after a reasonably diligent search.

14 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
15 documents in his possession, custody and/or control responsive to this request.

16 VA: Subject to and without waiving the foregoing objections, VA responds that it has produced
17 responsive, non-privileged documents it has related to this topic in connection with Plaintiffs’
18 Rule 45 subpoena, and will continue to produce responsive, non-privileged documents in its
19 possession, custody and/or control to the extent it can locate such documents after a reasonably
20 diligent search.

21 AMENDED REQUEST FOR PRODUCTION NO. 5:

22 Mortality data and/or statistics CONCERNING participants in the TEST PROGRAMS
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1 and comparisons to the general population and/or an unexposed population group or groups.

2 OBJECTIONS

3 Defendants object to this amended production request for the reasons described in
4 General Objections 1, 3, 5, 6, 8-21. Among other objections, and described in detail above, the
5 definitions of “TEST PROGRAMS” is overly broad and includes programs that are not relevant
6 to the narrow legal claims in this APA case.

7 RESPONSES

8 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
9 produce responsive, non-privileged documents in its possession, custody and/or control to the
10 extent it can locate such documents after a reasonably diligent search.

11 CIA: Subject to and without waiving the foregoing objections, CIA responds that it will produce
12 responsive, non-privileged documents in its possession, custody and/or control to the extent it
13 can locate such documents after a reasonably diligent search.

14 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
15 documents in his possession, custody and/or control responsive to this request.

16 VA: Subject to and without waiving the foregoing objections, VA responds that it has produced
17 responsive, non-privileged documents it has related to this topic in connection with Plaintiffs’
18 Rule 45 subpoena, and will continue to produce responsive, non-privileged documents in its
19 possession, custody and/or control to the extent it can locate such documents after a reasonably
20 diligent search.

21 AMENDED REQUEST FOR PRODUCTION NO. 6:

22 Research, reports, MEETINGS and other COMMUNICATIONS CONCERNING the
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1 synergistic effects of radiation on chemical and biological agents or weapons and any
2 combinations of them.

3 OBJECTIONS

4 Defendants object to this amended production request for the reasons described in
5 General Objections 1, and 8-21. Defendants further object on the ground that the “synergistic
6 effects of radiation on chemical and biological agents or weapons” is irrelevant to any of the
7 narrow, remaining APA claims in this case, particularly in light of the fact that there are no
8 allegations in Plaintiffs’ 234-paragraph Third Amended Complaints suggesting that the
9 individual Plaintiffs (or even unnamed putative class members, for that matter), were exposed to
10 radiation in connection with DoD’s biological and chemical testing program. Defendants further
11 object on the ground that the request is overbroad, as it is not limited to the “chemical and
12 biological agents” contained in the Chem-Bio database (let alone a reasonable subset of the
13 substances contained in that database) and, accordingly, the marginal benefit, if any, of such
14 documents reflecting biological and chemical agents beyond those contained in the Chem-Bio
15 database is greatly outweighed by the substantial burden of identifying and producing such
16 documents. Defendants further object to the request as overbroad and unduly burdensome to the
17 extent it seeks all “meetings and other communications” concerning tests that took place over 35
18 years ago and spanned a quarter-century, and the burden in terms of time and expense of
19 conducting such a broad search greatly outweighs the relevance, if any, of such a search.
20 Accordingly, searches for responsive documents will be limited to research and reports.

24 RESPONSES

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1 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
2 produce responsive, non-privileged documents in its possession, custody and/or control to the
3 extent it can locate such documents after a reasonably diligent search.

4 CIA: Subject to and without waiving the foregoing objections, CIA responds that it will produce
5 responsive, non-privileged documents in its possession, custody and/or control to the extent it
6 can locate such documents after a reasonably diligent search.

7 AG: Subject to and without waiving the foregoing objections, the AG responds that it has no
8 documents in his possession, custody and/or control responsive to this request.

9 VA: Subject to and without waiving the foregoing objections, VA responds that, in the absence
10 of a reasonably narrowed request, the burden of conducting a search responsive to this request,
11 as described in General Objections 14-16, substantially outweighs the relevance, if any, and VA
12 will not conduct such a search.
13
14

15
16 **AMENDED REQUEST FOR PRODUCTION NO. 7:**

17 Research, studies, reports, findings, experiments and/or discussions of the relationship
18 between or among EA-1476 and its analogs, EA-2233 and its analogs, and DHMP and/or its
19 analogs, and all MEETINGS and COMMUNICATIONS CONCERNING the same.
20

21 **OBJECTIONS**

22 Defendants object to this amended production request for the reasons described in
23 General Objections 1 and 8-21. Defendants further object to the request as overbroad and unduly
24 burdensome to the extent it seeks all “meetings and communications” concerning tests that took
25 place over 35 years ago and spanned a quarter-century, and the burden in terms of time and
26 expense of conducting such a broad search greatly outweighs the relevance, if any, of such a
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1 search. Accordingly, searches for responsive documents will not include “meetings and
2 communications.”

3 RESPONSES

4 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
5 produce responsive, non-privileged documents in its possession, custody and/or control to the
6 extent it can locate such documents after a reasonably diligent search.
7

8 CIA: Subject to and without waiving the foregoing objections, CIA responds that it will produce
9 responsive, non-privileged documents in its possession, custody and/or control to the extent it
10 can locate such documents after a reasonably diligent search.

11 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
12 documents in his possession, custody and/or control responsive to this request.
13

14 VA: Subject to and without waiving the foregoing objections, VA responds that it will produce
15 responsive, non-privileged documents in its possession, custody and/or control to the extent it
16 can locate such documents after a reasonably diligent search.
17

18
19 **AMENDED REQUEST FOR PRODUCTION NO. 8:**

20 All DOCUMENTS CONCERNING the report issued by one or more of YOU in
21 October 1980 entitled *LSD Follow-up Study Report*, as well as MEETINGS and
22 COMMUNICATIONS CONCERNING the same.
23

24 OBJECTIONS

25 Defendants object to this amended production request for the reasons described in
26 General Objections 1 and 7-21. Defendants further object on the ground that this request is not
27 reasonably calculated to lead to the discovery of admissible evidence on the remaining, narrow
28

1 APA claims in this case, as the *LSD Follow-up Study Report*, which Defendants previously have
2 produced in this case, itself reflects the long-term health effects of LSD on volunteer service
3 members. Defendants further object on the grounds that the search and production of “all
4 documents” concerning the *LSD Follow-up Study Report* would be unduly burdensome, because
5 the report is over thirty years old, and the burden in terms of time and expense in conducting
6 such a search greatly outweighs the relevance, if any, of such documents. Defendants further
7 object to the request as overbroad and unduly burdensome to the extent it seeks all “meetings and
8 communications” concerning a 31-year-old study, and the burden in terms of time and expense
9 of conducting such a broad search greatly outweighs the relevance, if any, of such a search.
10 Accordingly, searches for responsive documents will not include “meetings and
11 communications.”
12
13

14 RESPONSES

15 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
16 produce responsive, non-privileged documents in its possession, custody and/or control to the
17 extent it can locate such documents after a reasonably diligent search.
18

19 CIA: Subject to and without waiving the foregoing objections, CIA responds that it will produce
20 responsive, non-privileged documents in its possession, custody and/or control to the extent it
21 can locate such documents after a reasonably diligent search.
22

23 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
24 documents in his possession, custody and/or control responsive to this request.

25 VA: Subject to and without waiving the foregoing objections, VA responds that it will produce
26 responsive, non-privileged documents in its possession, custody and/or control to the extent it
27 can locate such documents after a reasonably diligent search.
28

1
2 **AMENDED REQUEST FOR PRODUCTION NO. 9:**

3 All DOCUMENTS CONCERNING the NRC study issued in 1982 entitled *Possible*
4 *Long-Term Health Effects of Short-Term Exposure to Chemical Agents; Vol. 1:*
5 *Anticholinesterases and Anticholinergics*, as well as MEETINGS and COMMUNICATIONS
6 CONCERNING the same.

7
8 **OBJECTIONS**

9 Defendants object to this amended production request for the reasons described in General
10 Objections 1 and 8-21. Defendants further object on the ground that this request is not
11 reasonably calculated to lead to the discovery of admissible evidence given the narrow,
12 remaining APA claims, as the NRC study itself reflects the long-term health effects of chemical
13 testing on volunteer service members. Defendants further object to the request as overbroad and
14 unduly burdensome to the extent it seeks all “meetings and communications” concerning an
15 almost thirty year old document, and the burden in terms of time and expense of conducting such
16 a broad search greatly outweighs the relevance, if any, of such a search. Accordingly, searches
17 for responsive documents will not include “meetings and communications.”
18
19

20 **RESPONSES**

21 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
22 produce responsive, non-privileged documents in its possession, custody and/or control to the
23 extent it can locate such documents after a reasonably diligent search.
24

25 CIA: Subject to and without waiving the foregoing objections, CIA responds that it will produce
26 responsive, non-privileged documents in its possession, custody and/or control to the extent it
27 can locate such documents after a reasonably diligent search.
28

1 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
2 documents in his possession, custody and/or control responsive to this request.

3 VA: Subject to and without waiving the foregoing objections, VA responds that it will produce
4 responsive, non-privileged documents in its possession, custody and/or control to the extent it
5 can locate such documents after a reasonably diligent search.
6

7
8 **AMENDED REQUEST FOR PRODUCTION NO. 10:**

9 All DOCUMENTS CONCERNING the NRC study issued in 1984 entitled *Possible*
10 *Long-Term Health Effects of Short-Term Exposure to Chemical Agents; Vol. 2: Cholinesterase*
11 *Reactivators, Psychochemicals, and Irritants and Vesicants*, as well as MEETINGS and
12 COMMUNICATIONS CONCERNING the same.
13

14 **OBJECTIONS**

15 Defendants object to this amended production request for the reasons described in General
16 Objections 1 and 8-21. Defendants further object on the ground that this request is not
17 reasonably calculated to lead to the discovery of admissible evidence given the narrow,
18 remaining APA claims, as the NRC study itself reflects the long-term health effects of chemical
19 testing on volunteer service members. Defendants further object to the request as overbroad and
20 unduly burdensome to the extent it seeks all “meetings and communications” concerning a
21 twenty-seven year old document, and the burden in terms of time and expense of conducting
22 such a broad search greatly outweighs the relevance, if any, of such a search. Accordingly,
23 searches for responsive documents will not include “meetings and communications.”
24
25

26 **RESPONSES**
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28

1 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
2 produce responsive, non-privileged documents in its possession, custody and/or control to the
3 extent it can locate such documents after a reasonably diligent search.

4 CIA: Subject to and without waiving the foregoing objections, CIA responds that it will produce
5 responsive, non-privileged documents in its possession, custody and/or control to the extent it
6 can locate such documents after a reasonably diligent search.

7 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
8 documents in his possession, custody and/or control responsive to this request.

9 VA: Subject to and without waiving the foregoing objections, VA responds that it will produce
10 responsive, non-privileged documents in its possession, custody and/or control to the extent it
11 can locate such documents after a reasonably diligent search.
12
13

14
15 **AMENDED REQUEST FOR PRODUCTION NO. 11:**

16 All DOCUMENTS CONCERNING the NRC study issued in 1985 entitled *Possible*
17 *Long-Term Health Effects of Short-Term Exposure to Chemical Agents; Vol. 3: Final Report:*
18 *Current Health Status of Test Subjects*, as well as MEETINGS and COMMUNICATIONS
19 CONCERNING the same.
20

21 **OBJECTIONS**

22 Defendants object to this amended production request for the reasons described in
23 General Objections 1 and 8-21. Defendants further object on the ground that this request is not
24 reasonably calculated to lead to the discovery of admissible evidence, as the NRC study itself
25 reflects the long-term health effects of chemical testing on volunteer service members.
26 Defendants further object to the request as overbroad and unduly burdensome to the extent it
27
28

1 seeks all “meetings and communications” concerning a twenty-six year old document, and the
2 burden in terms of time and expense of conducting such a broad search greatly outweighs the
3 relevance, if any, of such a search. Accordingly, searches for responsive documents will not
4 include “meetings and communications.”

5 RESPONSES

6 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
7 produce responsive, non-privileged documents in its possession, custody and/or control to the
8 extent it can locate such documents after a reasonably diligent search.

9 CIA: Subject to and without waiving the foregoing objections, CIA responds that it will produce
10 responsive, non-privileged documents in its possession, custody and/or control to the extent it
11 can locate such documents after a reasonably diligent search.

12 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
13 documents in his possession, custody and/or control responsive to this request.

14 VA: Subject to and without waiving the foregoing objections, VA responds that it will produce
15 responsive, non-privileged documents in its possession, custody and/or control to the extent it
16 can locate such documents after a reasonably diligent search.

17 AMENDED REQUEST FOR PRODUCTION NO. 12:

18 Presentations, reports, agendas, MEETINGS and COMMUNICATIONS involving the
19 Agents Committee and Medical Committee of the U.S. Army Chemical Corps Advisory
20 Council CONCERNING TEST SUBSTANCES and/or health effects of the same.

21 OBJECTIONS

1 Defendants object to this amended production request for the reasons described in
2 General Objections 1, 3 and 8-21. Defendants further object to the request as overbroad and
3 unduly burdensome to the extent it seeks all “meetings and communications” concerning tests
4 that took place over 35 years ago and spanned a quarter-century, and the burden in terms of time
5 and expense of conducting such a broad search greatly outweighs the relevance, if any, of such a
6 search, particularly in light of the facts that Defendants will produce, on a rolling basis, the test
7 plans, the individual test files, and the technical reports describing test results. Accordingly,
8 searches for responsive documents will not include “meetings and communications.”
9
10 Defendants further object on cumulateness grounds to the extent presentations, reports, or
11 agendas involving the Agents Committee and Medical Committee of the U.S. Army Chemical
12 Corps Advisory Council reflect the chemical substances used on volunteer service members or
13 reflect the health effects, if any, of such chemical substances, as that information will be
14 reflected in the baseline discovery that DoD will produce to Plaintiffs on a rolling basis, as
15 described in General Objection 9.
16

17 RESPONSES

18
19 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
20 produce responsive, non-privileged documents in its possession, custody and/or control to the
21 extent it can locate such documents after a reasonably diligent search.

22 CIA: Subject to and without waiving the foregoing objections, CIA responds that it will produce
23 responsive, non-privileged documents in its possession, custody and/or control to the extent it
24 can locate such documents after a reasonably diligent search.

25
26 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
27 documents in his possession, custody and/or control responsive to this request.
28

1 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
2 documents in its possession, custody and/or control responsive to this request.
3

4 **AMENDED REQUEST FOR PRODUCTION NO. 13:**

5 The memorandum prepared by or on behalf of the Deputy Secretary of Defense,
6 William Perry, in 1993 CONCERNING chemical weapons research programs using human test
7 subjects and all MEETINGS and COMMUNICATIONS CONCERNING the same.
8

9 **OBJECTIONS**

10 Defendants object to this amended production request for the reasons described in
11 General Objections 1 and 8-21. Defendants further object to the request on relevance grounds to
12 the extent it seeks all “meetings and communications” concerning the 1993 Perry Memorandum,
13 as the memorandum speaks for itself in terms of releasing service members from secrecy oaths.
14 In addition, Defendants object to this request as unduly burdensome to the extent it seeks all
15 “meetings and communications” concerning the 1993 Perry Memorandum, and the burden in
16 terms of time and expense of conducting such a broad search greatly outweighs the relevance, if
17 any, of such a search. Accordingly, searches for responsive documents will not include
18 “meetings and communications.”
19

20 **RESPONSES**

21 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
22 produce responsive, non-privileged documents in its possession, custody and/or control to the
23 extent it can locate such documents after a reasonably diligent search.
24

25 CIA: Subject to and without waiving the foregoing objections, CIA responds that it has no
26 documents in its possession, custody and/or control responsive to this request.
27
28

1 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
2 documents in his possession, custody and/or control responsive to this request.

3 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
4 documents in its possession, custody and/or control responsive to this request.
5

6 **AMENDED REQUEST FOR PRODUCTION NO. 14:**
7

8 Copies of all participation agreements and consent forms prepared for, given to or
9 received from participants in the TEST PROGRAMS, including but not limited to, all
10 participant agreements or consent forms signed by participants in the TEST PROGRAMS.
11

12 **OBJECTIONS**

13 Defendants object to this amended production request for the reasons described in
14 General Objections 1, 3, 5, 6 and 8-21. Defendants further preserve their objection to the
15 relevance of this request, as the Court has dismissed Plaintiffs' claims related to the lawfulness
16 of the chemical and biological test programs, and, therefore, the issue of consent is no longer
17 relevant to the remaining claims in this case.
18

19 **RESPONSES**

20 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
21 produce responsive, non-privileged documents in its possession, custody and/or control to the
22 extent it can locate such documents after a reasonably diligent search.
23

24 CIA: Subject to and without waiving the foregoing objections, the CIA responds that it has no
25 documents in its possession, custody and/or control responsive to this request.

26 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
27 documents in his possession, custody and/or control responsive to this request.
28

1 VA: Subject to and without waiving the foregoing objections, VA responds that it will produce
2 responsive, non-privileged documents in its possession, custody and/or control related to the
3 named Plaintiffs to the extent it can locate such documents after a reasonably diligent search.
4

5 **AMENDED REQUEST FOR PRODUCTION NO. 15:**
6

7 Copies of all documents that YOU rely upon to support YOUR affirmative defense of
8 consent in YOUR Answer to the Second Amended Complaint.

9 **OBJECTIONS**

10 Defendants object to this amended production request for the reasons described in
11 General Objections 1, 7-21. Defendants further object to this request as premature, as
12 Defendants have not yet answered Plaintiffs' Third Amended Complaint. Defendants further
13 preserve their objection to the relevance of this request, as the Court has dismissed Plaintiffs'
14 claims related to the lawfulness of the chemical and biological test programs, and, therefore, the
15 issue of consent is no longer relevant to the remaining claims in this case.
16
17

18 **AMENDED REQUEST FOR PRODUCTION NO. 16:**
19

20 Copies of all "volunteer handbooks" or other materials given to or prepared for delivery
21 to participants in the TEST PROGRAMS, including but not limited to, all versions and drafts
22 of the DOCUMENTS titled "Medical Research Volunteer Program" and "Medical Volunteer
23 Handbook."
24

25 **OBJECTIONS**

26 Defendants object to this amended production request for the reasons described in
27 General Objections 1, 3, 5, 6 and 8-21. Defendants further preserve their objection to the
28

1 relevance of this request, as the Court has dismissed Plaintiffs' claims related to the lawfulness
2 of the chemical and biological test programs, and, therefore, the issue of consent is no longer
3 relevant to the remaining claims in this case. Defendants further object to the use of the phrase
4 "other materials given to or prepared for delivery to participants in the TEST PROGRAMS" as
5 vague and overbroad and, accordingly, Defendants responses will be limited to copies of the
6 "volunteer handbooks" and the documents titled "Medical Research Volunteer Program," and
7 "Medical Volunteer Handbook."
8

9 RESPONSES

10 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
11 produce responsive, non-privileged documents in its possession, custody and/or control to the
12 extent it can locate such documents after a reasonably diligent search.
13

14 CIA: Subject to and without waiving the foregoing objections, CIA responds that it will produce
15 responsive, non-privileged documents in its possession, custody and/or control to the extent it
16 can locate such documents after a reasonably diligent search.
17

18 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
19 documents in his possession, custody and/or control responsive to this request.

20 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
21 documents in its possession, custody and/or control responsive to this request.
22

23 **AMENDED REQUEST FOR PRODUCTION NO. 17:**
24

25 All requests for, authorizations, and denials of authorization pursuant to the Wilson
26 Directive.
27

28 OBJECTIONS

1 Defendants object to this amended production request for the reasons described in
2 General Objections 8-21. Defendants further preserve their objection to the relevance of this
3 request, as the Court has dismissed Plaintiffs' claims related to the lawfulness of the chemical
4 and biological test programs.

5 RESPONSES

6
7 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
8 produce responsive, non-privileged documents in its possession, custody and/or control to the
9 extent it can locate such documents after a reasonably diligent search.

10 CIA: Subject to and without waiving the foregoing objections, CIA responds that it has no
11 documents in its possession, custody and/or control responsive to this request.

12
13 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
14 documents in his possession, custody and/or control responsive to this request.

15 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
16 documents in its possession, custody and/or control responsive to this request.
17
18

19 **AMENDED REQUEST FOR PRODUCTION NO. 18:**

20 The DA 137 forms for all armed services participants in the TEST PROGRAMS.

21 OBJECTIONS

22 Defendants object to this amended production request for the reasons described in
23 General Objections 1, 3, 5, 6 and 8-21. Defendants further object on the ground that "DA 137"
24 is an undefined term and, absent some definition, Defendants are unaware of the form to which
25 Plaintiffs' request refers.
26

27 RESPONSES
28

1 DoD: Subject to and without waiving the foregoing objections, DoD responds that absent a
2 definition or further clarification as to what a “DA 137 form[]” is, it is unable to provide a
3 response to this request.

4 CIA: Subject to and without waiving the foregoing objections, CIA responds that absent a
5 definition or further clarification as to what a “DA 137 form[]” is, it is unable to provide a
6 response to this request.

7
8 AG: Subject to and without waiving the foregoing objections, the AG responds that absent a
9 definition or further clarification as to what a “DA 137 form[]” is, he is unable to provide a
10 response to this request.

11 VA: Subject to and without waiving the foregoing objections, VA responds that absent a
12 definition or further clarification as to what a “DA 137 form[]” is, it is unable to provide a
13 response to this request.
14

15
16 **AMENDED REQUEST FOR PRODUCTION NO. 19:**

17
18 All reported, alleged, or actual violations of protocols involving the use of human
19 subjects in chemical or biological weapons tests at EDGEWOOD ARSENAL or any other
20 TEST LOCATION.

21 **OBJECTIONS**

22
23 Defendants object to this amended production request for the reasons described in
24 General Objections 1, 5 and 8-21. Defendants further object on the ground that the request is
25 overbroad insofar as it seeks all “reported, alleged, or actual violations” of any protocols,
26 regardless of whether the protocol involved the actual chemical or biological testing itself. The
27 protocols covered a multitude of things, such as the service of meals during testing, and any
28

1 “reported, alleged, or actual” violation of such a protocol would be irrelevant to the narrow,
2 remaining claims in this case. Defendants further object to the use of the term “TEST
3 LOCATION,” as discussed in detail in General Objection 5, as Plaintiffs define this term to
4 include location that lack any apparent nexus to the testing of volunteer service members with
5 biological or chemical agents and/or are not even identified in Plaintiffs’ 234-paragraph Third
6 Amended Complaint. Defendants further object to this request on cumulativeness grounds
7 because the Department of the Army’s 1976 Inspector General report, which Defendants
8 previously have produced in this case, provides a detailed discussion of the subject matter
9 identified in this discovery request. Furthermore, “alleged” violations of protocols are irrelevant
10 to any claim remaining in this case.
11

12 RESPONSES

13
14 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
15 produce responsive, non-privileged documents in its possession, custody and/or control to the
16 extent it can locate such documents after a reasonably diligent search.
17

18 CIA: Subject to and without waiving the foregoing objections, CIA responds that it will produce
19 responsive, non-privileged documents in its possession, custody and/or control to the extent it
20 can locate such documents after a reasonably diligent search.
21

22 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
23 documents in his possession, custody and/or control responsive to this request.

24 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
25 documents in its possession, custody and/or control responsive to this request.
26

27 AMENDED REQUEST FOR PRODUCTION NO. 20:

28

1 Attempts or efforts by Defendants to enforce the secrecy oaths described in Paragraphs
2 156-160 of the Second Amended Complaint.

3 OBJECTIONS

4 Defendants object to this amended production request for the reasons described in
5 General Objections 1 and 8-21. Defendants further object on the ground that the Second
6 Amended Complaint is no longer operative, and will respond as if the request refers to the Third
7 Amended Complaint.
8

9 RESPONSES

10 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
11 produce responsive, non-privileged documents in its possession, custody and/or control to the
12 extent it can locate such documents after a reasonably diligent search.
13

14 CIA: Subject to and without waiving the foregoing objections, CIA responds that it has no
15 documents in its possession, custody and/or control responsive to this request.
16

17 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
18 documents in his possession, custody and/or control responsive to this request.
19

20 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
21 documents in its possession, custody and/or control responsive to this request.
22

23 **AMENDED REQUEST FOR PRODUCTION NO. 21:**

24 The content of registries YOU have created CONCERNING participants in the TEST
25 PROGRAMS, including without limitation, rosters, lists or other DOCUMENTS identifying
26 the participants in the TEST PROGRAMS, fields, manuals, data definitions, data, protocols
27 and instructions.
28

1 OBJECTIONS

2 Defendants object to this amended production request for the reasons described in
3 General Objections 1, 3, and 5-21. Defendants further object to the term “registries” as vague, as
4 it is an undefined term not susceptible to a common meaning. Defendants further object to the
5 use of the term “TEST PROGRAMS,” as discussed in detail in General Objection 6, to the extent
6 it includes programs that did not involve testing on volunteer service members.
7

8 RESPONSES

9 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
10 produce responsive, non-privileged documents in its possession, custody and/or control to the
11 extent it can locate such documents after a reasonably diligent search.
12

13 CIA: Subject to and without waiving the foregoing objections, CIA responds that it will produce
14 responsive, non-privileged documents in its possession, custody and/or control to the extent it
15 can locate such documents after a reasonably diligent search.
16

17 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
18 documents in his possession, custody and/or control responsive to this request.
19

20 VA: Subject to and without waiving the foregoing objections, VA responds that it has produced
21 responsive, non-privileged documents it has related to this topic in connection with Plaintiffs’
22 Rule 45 subpoena, and will continue to produce responsive, non-privileged documents in its
23 possession, custody and/or control to the extent it can locate such documents after a reasonably
24 diligent search.
25

26 **AMENDED REQUEST FOR PRODUCTION NO. 22:**

27 MEETINGS or COMMUNICATIONS between YOU and any one or more of the
28

1 participants in the TEST PROGRAMS.

2 OBJECTIONS

3 Defendants object to this amended production request for the reasons described in
4 General Objections 1, 3, and 5-21. Defendants further object that this request is substantially
5 overbroad because, as written, it would include any communication with a test participant,
6 regardless of whether the test programs were the subject of the communication.

7
8 Communications with test participants about matters that go beyond the subject matter of the
9 participant's testing (and, which, in many cases, are over fifty years old) are irrelevant to any of
10 the remaining, narrow claims in this case, and the burden of identifying and producing such
11 information greatly outweighs any nominal relevance, if any. Accordingly, the Defendants will
12 limit the scope of their searches for responsive documents to communications between
13 Defendants and the participants about the claims at issue in this case. Defendants further object
14 to the request as overbroad and unduly burdensome to the extent it seeks all "meetings or
15 communications" concerning tests that took place over 35 years ago and spanned a quarter-
16 century, and the burden in terms of time and expense of conducting such a broad search greatly
17 outweighs the relevance, if any, of such a search. Accordingly, searches for responsive
18 documents will not include "meetings or communications." Defendants further object to the use
19 of the term "TEST PROGRAMS," as discussed in detail in General Objection 6, to the extent it
20 includes programs that did not involve testing on volunteer service members.

21
22 RESPONSES

23
24 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
25 produce responsive, non-privileged documents in its possession, custody and/or control to the
26 extent it can locate such documents after a reasonably diligent search.
27
28

1 CIA: Subject to and without waiving the foregoing objections, CIA responds that it will produce
2 responsive, non-privileged documents in its possession, custody and/or control to the extent it
3 can locate such documents after a reasonably diligent search.

4 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
5 documents in his possession, custody and/or control responsive to this request.

6
7 VA: Subject to and without waiving the foregoing objections, VA responds that it has produced
8 responsive, non-privileged documents it has related to this topic in connection with Plaintiffs'
9 Rule 45 subpoena, and, subject to General Objections 14-16, will continue to produce
10 responsive, non-privileged documents related to the named Plaintiffs in its possession, custody
11 and/or control to the extent it can locate such documents after a reasonably diligent search.
12

13
14 **AMENDED REQUEST FOR PRODUCTION NO. 23:**

15 The "large Edgewood Arsenal Binders compiled by the U.S. Army Surgeon General's
16 Office," that contain alphabetical listing of approximately 7,000 army medical volunteers,
17 including "case numbers, drug/agent administered, date, dose, and route of agent
18 administration, height and weight and additive (in case of multiple agents/drugs) and or
19 treatment used," as referred to in the DOCUMENT bearing Bates stamp VVA-VA023589.
20

21 **OBJECTIONS**

22 Defendants object to this amended production request for the reasons described in
23 General Objections 9-21. Defendants further object to this request on the grounds of
24 cumulativeness, as it seeks information that is contained in, among other places, the Chem-Bio
25 database and the servicemember participant test files.
26

27 **RESPONSES**

1 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
2 produce responsive, non-privileged documents in its possession, custody and/or control to the
3 extent it can locate such documents after a reasonably diligent search.

4 CIA: Subject to and without waiving the foregoing objections, CIA responds that it has no
5 documents in its possession, custody and/or control responsive to this request.

6
7 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
8 documents in his possession, custody and/or control responsive to this request.

9 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
10 documents in its possession, custody and/or control responsive to this request.
11

12
13 **AMENDED REQUEST FOR PRODUCTION NO. 24:**

14 The planning, conduct, activities, task plans, findings, and results of the TEST
15 PROGRAMS.

16 **OBJECTIONS**

17
18 Defendants object to this amended production request for the reasons described in
19 General Objections 1, 3, 5, 6 and 8-21. Defendants further object to this request on relevance
20 grounds, as the “planning, conduct, activities, [and] task plans,” have no bearing on the narrow
21 legal claims remaining in this case. Defendants further object to the use of the term “TEST
22 PROGRAMS,” as discussed in detail in General Objection 6, to the extent it includes programs
23 that did not involve testing on volunteer service members. As discussed in General Objection
24 12, CIA previously provided to Plaintiffs outside of discovery approximately 20,000 pages of
25 documents related to MKULTRA and its other behavioral research programs from the 1950s-
26 70s. It would take a substantial effort by the CIA, and require approximately three-to-five
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1 months, to re-review and re-produce them due to difficulties relating to how the documents are
2 physically stored on CIA systems and reviewed for purposes of assessing and asserting
3 privileges.

4 RESPONSES

5 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
6 produce responsive, non-privileged documents in its possession, custody and/or control to the
7 extent it can locate such documents after a reasonably diligent search.
8

9 CIA: Subject to and without waiving the foregoing objections, CIA responds that it will produce
10 responsive, non-privileged documents in its possession, custody and/or control to the extent it
11 can locate such documents after a reasonably diligent search.
12

13 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
14 documents in his possession, custody and/or control responsive to this request.

15 VA: Subject to and without waiving the foregoing objections, VA responds that it will produce
16 responsive, non-privileged documents in its possession, custody and/or control to the extent it
17 can locate such documents after a reasonably diligent search.
18

19
20 **AMENDED REQUEST FOR PRODUCTION NO. 25:**

21 All lists, code definitions and other documents explaining the code names used for
22 TEST SUBSTANCES in the TEST PROGRAMS.

23 OBJECTIONS

24 Defendants object to this amended production request for the reasons described in
25 General Objections 1, 3, 5, 6 and 8-21.
26

27 RESPONSES
28

1 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
2 produce responsive, non-privileged documents in its possession, custody and/or control to the
3 extent it can locate such documents after a reasonably diligent search.

4 CIA: Subject to and without waiving the foregoing objections, CIA responds that it has no
5 documents in its possession, custody and/or control responsive to this request.

6 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
7 documents in his possession, custody and/or control responsive to this request.

8 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
9 documents in its possession, custody and/or control responsive to this request.
10

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12
13 **AMENDED REQUEST FOR PRODUCTION NO. 26:**

14 Experiments CONCERNING the installation or use of septal implants upon human
15 subjects, including without limitation, Bruce Price.

16 **OBJECTIONS**

17 Defendants object to this amended production request for the reasons described in
18 General Objections 1 and 8-21. Defendants further object to this request on the ground that Mr.
19 Price's claims are barred by res judicata. *See Price v. United States*, No. 2:06-CV-153, 2007 WL
20 2897891 (E.D. Tenn. Sept. 27, 2007). Defendants further object on the grounds of relevance to
21 the extent that there were no septal implants installed in human volunteer test subjects in
22 connection with DoD's chemical and biological testing programs. Defendants further object to
23 the use of the term "TEST PROGRAMS," as discussed in detail in General Objection 6, to the
24 extent it includes programs that did not involve testing on volunteer service members.
25
26

27 **RESPONSES**
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1 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
2 produce responsive, non-privileged documents in its possession, custody and/or control to the
3 extent it can locate such documents after a reasonably diligent search.

4 CIA: Subject to and without waiving the foregoing objections, CIA responds that it will produce
5 responsive, non-privileged documents in its possession, custody and/or control to the extent it
6 can locate such documents after a reasonably diligent search.

7 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
8 documents in his possession, custody and/or control responsive to this request.

9 VA: Subject to and without waiving the foregoing objections, VA responds that it has produced
10 responsive, non-privileged documents it has related to this topic in connection with Plaintiffs'
11 Rule 45 subpoena, and will continue to produce responsive, non-privileged documents in its
12 possession, custody and/or control related to Plaintiff Bruce Price to the extent it can locate such
13 documents after a reasonably diligent search.
14
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17
18 **AMENDED REQUEST FOR PRODUCTION NO. 27:**

19 The IDENTITY and last known contact information CONCERNING PERSONS who
20 directed, ordered, controlled or participated in any of the experiments using human subjects
21 that were conducted at the EDGEWOOD ARSENAL.

22 **OBJECTIONS**

23
24 Defendants object to this amended production request for the reasons described in
25 General Objections 1, 2 and 8-21. Defendants further object to this request as unduly
26 burdensome and overbroad, to the extent it seeks the identity of all individuals who “directed,
27 ordered, controlled or participated in any of the experiments using human subjects” at Edgewood
28

1 Arsenal, in light of the fact that the test program ended more than 35 years ago and spanned a
2 period of 25 years, and the burden of searching for and producing such documentation greatly
3 outweighs the minimal, if any, relevance of such information.

4 RESPONSES

5 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
6 produce responsive, non-privileged documents in its possession, custody and/or control to the
7 extent it can locate such documents after a reasonably diligent search.
8

9 CIA: Subject to and without waiving the foregoing objections, CIA responds that it will produce
10 responsive, non-privileged documents in its possession, custody and/or control to the extent it
11 can locate such documents after a reasonably diligent search.
12

13 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
14 documents in his possession, custody and/or control responsive to this request.

15 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
16 documents in its possession, custody and/or control responsive to this request.
17
18

19 **AMENDED REQUEST FOR PRODUCTION NO. 28:**

20 Minutes, memoranda, notes, reports, and other activities of the USA
21 Chemical-Biological Briefing Team at the Edgewood Arsenal, and all MEETINGS and
22 COMMUNICATIONS CONCERNING the same.
23

24 OBJECTIONS

25 Defendants object to this amended production request for the reasons described in
26 General Objections 1, and 8-21. Defendants also object on the ground that “USA Chemical-
27 Biological Briefing Team” is an undefined term and, accordingly, is vague. Absent some
28

1 identification by Plaintiffs as to what the “USA Chemical Biological Briefing Team” is,
2 Defendants are currently unable to respond to this request.

3
4 **AMENDED REQUEST FOR PRODUCTION NO. 29:**

5 All Directory and Station Lists for the U.S. Army which list or contain the name of the
6 Edgewood Arsenal and/or any other Army base or facility where chemical or biological
7 weapons tests were conducted.
8

9 **OBJECTIONS**

10 Defendants object to this amended production request for the reasons described in
11 General Objections 1 and 8-21. Defendants further object on the ground that this request is
12 substantially overly broad, as it requests all “directory and station lists for the U.S. Army” which
13 “list or contain the name of the Edgewood Arsenal and/or any other Army base or facility where
14 chemical or biological weapons tests were conducted.” This request, as written would require
15 the production of every Army directory that happened to identify Edgewood Arsenal or other
16 Army facilities where chemical or biological weapons tests were alleged to have been conducted,
17 regardless of its relevance, over the course of a twenty-five year period. In addition, to the extent
18 Plaintiffs seek information concerning the identity of volunteer test subjects and the health
19 effects associated with the chemical and biological testing, this request seeks information that is
20 cumulative of other materials Defendants are producing in this case, including, among other
21 things, the categories of documents identified in General Objection 9. Because of the substantial
22 overbreadth and undue burden of this request, as well as its cumulateness, and the lack of
23 relevance to any claim remaining in this case, Defendants will not respond to this request. *See*
24 Fed. R. Civ. P. 26(b), 26(c).
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1
2 **AMENDED REQUEST FOR PRODUCTION NO. 30:**

3 Reports, minutes, memos, budgets, notes, minutes, transcripts and other DOCUMENTS
4 CONCERNING activities of the Chemical Corps Advisory Council that relate to consideration
5 or approval of testing chemical or biological substances on volunteer service members, and all
6 MEETINGS and COMMUNICATIONS CONCERNING the same.
7

8 **OBJECTIONS**

9 Defendants object to this amended production request for the reasons described in
10 General Objections 1 and 8-21. Defendants further object to this request on the grounds that it is
11 substantially overbroad and unduly burdensome to the extent it seeks all “reports, minutes,
12 memos, budgets, notes, minutes, transcripts and other documents” relating to the Chemical
13 Corps Advisory Council, without any specification as to the particular documents sought. This
14 burden is particularly substantial insofar as it seeks documents that, in many cases, may be over
15 sixty years old. Defendants further object to the general relevance of this request, as the
16 “consideration or approval of testing chemical or biological substances on military personnel”
17 relates solely to the lawfulness of the chemical and biological test programs, a claim that the
18 Court has dismissed from this case. Defendants further object to the request as overbroad and
19 unduly burdensome to the extent it seeks all “meetings and communications” concerning tests
20 that took place over 35 years ago and spanned a quarter-century, and the burden in terms of time
21 and expense of conducting such a broad search greatly outweighs the relevance, if any, of such a
22 search. In addition, to the extent Plaintiffs seek information concerning the identity of volunteer
23 test subjects and the health effects associated with the chemical and biological testing, this
24 request seeks information that is cumulative of other materials Defendants are producing in this
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1 case, including, among other things, the categories of documents identified in General Objection
2 9. Because of the substantial overbreadth and undue burden of this request, as well as its
3 cumulateness, and the lack of relevance to any claim remaining in this case, Defendants will
4 not respond to this request. *See* Fed. R. Civ. P. 26(b), 26(c).
5

6
7 **AMENDED REQUEST FOR PRODUCTION NO. 31:**

8 Reports, historical reports, budgets, minutes, memos, notes, minutes, transcripts and
9 other DOCUMENTS CONCERNING activities of the Chemical Corps R&D Command that
10 relate to consideration or approval of testing chemical or biological substances on military
11 personnel, and all MEETINGS and COMMUNICATIONS CONCERNING the same.
12

13 **OBJECTIONS**

14 Defendants object to this amended production request for the reasons described in
15 General Objections 1 and 8-21. Defendants further object to this request on the grounds that it is
16 substantially overbroad and unduly burdensome to the extent it seeks all “reports, minutes,
17 memos, budgets, notes, minutes, transcripts and other documents” relating to the Chemical
18 Corps R&D Command, without any specification as to the particular documents sought. This
19 burden is particularly substantial insofar as it seeks documents that, in many cases, may be over
20 sixty years old. Defendants further object to the general relevance of this request, as the
21 “consideration or approval of testing chemical or biological substances on military personnel”
22 relates solely to the lawfulness of the chemical and biological test programs, a claim that the
23 Court has dismissed from this case. Defendants further object to the request as overbroad and
24 unduly burdensome to the extent it seeks all “meetings and communications” concerning tests
25 that took place over 35 years ago and spanned a quarter-century, and the burden in terms of time
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1 and expense of conducting such a broad search greatly outweighs the relevance, if any, of such a
2 search. In addition, to the extent Plaintiffs seek information concerning the identity of volunteer
3 test subjects and the health effects associated with the chemical and biological testing, this
4 request seeks information that is cumulative of other materials Defendants are producing in this
5 case, including, among other things, the categories of documents identified in General Objection
6
7 9. Because of the substantial overbreadth and undue burden of this request, as well as its
8 cumulateness, and the lack of relevance to any claim remaining in this case, Defendants will
9 not respond to this request. *See* Fed. R. Civ. P. 26(b), 26(c).

10
11 **AMENDED REQUEST FOR PRODUCTION NO. 32:**

12
13 Reports, historical reports, minutes, memos, notes, minutes, transcripts and other
14 DOCUMENTS CONCERNING activities of the Chemical Warfare Laboratory that relate to
15 consideration or approval of testing chemical or biological substances on military personnel,
16 and all MEETINGS and COMMUNICATIONS CONCERNING the same.

17
18 **OBJECTIONS**

19 Defendants object to this amended production request for the reasons described in
20 General Objections 1 and 8-21. Defendants further object to this request on the grounds that it is
21 substantially overbroad and unduly burdensome to the extent it seeks all “reports, minutes,
22 memos, budgets, notes, minutes, transcripts and other documents” relating to the Chemical
23 Warfare Laboratory, without any specification as to the particular documents sought. This
24 burden is particularly substantial insofar as it seeks documents that, in many cases, may be over
25 sixty years old. Defendants further object to the general relevance of this request, as the
26 “consideration or approval of testing chemical or biological substances on military personnel”
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1 relates solely to the lawfulness of the chemical and biological test programs, a claim that the
2 Court has dismissed from this case. Defendants further object to the request as overbroad and
3 unduly burdensome to the extent it seeks all “meetings and communications” concerning tests
4 that took place over 35 years ago and spanned a quarter-century, and the burden in terms of time
5 and expense of conducting such a broad search greatly outweighs the relevance, if any, of such a
6 search. In addition, to the extent Plaintiffs seek information concerning the identity of volunteer
7 test subjects and the health effects associated with the chemical and biological testing, this
8 request seeks information that is cumulative of other materials Defendants are producing in this
9 case, including, among other things, the categories of documents identified in General Objection
10 9. Because of the substantial overbreadth and undue burden of this request, as well as its
11 cumulativeness, and the lack of relevance to any claim remaining in this case, Defendants will
12 not respond to this request. *See* Fed. R. Civ. P. 26(b), 26(c).
13
14
15

16 **AMENDED REQUEST FOR PRODUCTION NO. 33:**

17 Reports, historical reports, minutes, memos, notes, minutes, transcripts and other
18 DOCUMENTS CONCERNING activities of the Chemical Research and Development
19 Laboratory that relate to consideration or approval of testing chemical or biological substances
20 on military personnel, and all MEETINGS and COMMUNICATIONS CONCERNING the
21 same.
22
23

24 **OBJECTIONS**

25 Defendants object to this amended production request for the reasons described in
26 General Objections 1 and 8-21. Defendants further object to this request on the grounds that it is
27 substantially overbroad and unduly burdensome to the extent it seeks all “reports, minutes,
28

1 memos, budgets, notes, minutes, transcripts and other documents” relating to the Chemical
2 Research and Development Laboratory, without any specification as to the particular documents
3 sought. This burden is particularly substantial insofar as it seeks documents that, in many cases,
4 may be over sixty years old. Defendants further object to the general relevance of this request,
5 as the “consideration or approval of testing chemical or biological substances on military
6 personnel” relates solely to the lawfulness of the chemical and biological test programs, a claim
7 that the Court has dismissed from this case. Defendants further object to the request as
8 overbroad and unduly burdensome to the extent it seeks all “meetings and communications”
9 concerning tests that took place over 35 years ago and spanned a quarter-century, and the burden
10 in terms of time and expense of conducting such a broad search greatly outweighs the relevance,
11 if any, of such a search. In addition, to the extent Plaintiffs seek information concerning the
12 identity of volunteer test subjects and the health effects associated with the chemical and
13 biological testing, this request seeks information that is cumulative of other materials Defendants
14 are producing in this case, including, among other things, the categories of documents identified
15 in General Objection 9. Because of the substantial overbreadth and undue burden of this request,
16 as well as its cumulateness, and the lack of relevance to any claim remaining in this case,
17 Defendants will not respond to this request. *See* Fed. R. Civ. P. 26(b), 26(c).
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22 **AMENDED REQUEST FOR PRODUCTION NO. 34:**

23
24 Reports, historical reports, minutes, memos, notes, minutes, transcripts and other
25 DOCUMENTS CONCERNING all activities of the Chemical Corps Technical Committee
26 Meeting that relate to consideration or approval of testing chemical or biological substances on
27 military personnel, and all MEETINGS and COMMUNICATIONS CONCERNING the same.
28

OBJECTIONS

1
2 Defendants object to this amended production request for the reasons described in
3 General Objections 1 and 8-21. Defendants further object to this request on the grounds that it is
4 substantially overbroad and unduly burdensome to the extent it seeks all “reports, minutes,
5 memos, budgets, notes, minutes, transcripts and other documents” relating to the Chemical
6 Corps Technical Committee, without any specification as to the particular documents sought.
7 This burden is particularly substantial insofar as it seeks documents that, in many cases, may be
8 over sixty years old. Defendants further object to the general relevance of this request, as the
9 “consideration or approval of testing chemical or biological substances on military personnel”
10 relates solely to the lawfulness of the chemical and biological test programs, a claim that the
11 Court has dismissed from this case. Defendants further object to the request as overbroad and
12 unduly burdensome to the extent it seeks all “meetings and communications” concerning tests
13 that took place over 35 years ago and spanned a quarter-century, and the burden in terms of time
14 and expense of conducting such a broad search greatly outweighs the relevance, if any, of such a
15 search. In addition, to the extent Plaintiffs seek information concerning the identity of volunteer
16 test subjects and the health effects associated with the chemical and biological testing, this
17 request seeks information that is cumulative of other materials Defendants are producing in this
18 case, including, among other things, the categories of documents identified in General Objection
19 9. Because of the substantial overbreadth and undue burden of this request, as well as its
20 cumulateness, and the lack of relevance to any claim remaining in this case, Defendants will
21 not respond to this request. *See* Fed. R. Civ. P. 26(b), 26(c).
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AMENDED REQUEST FOR PRODUCTION NO. 35:

1 The development, purpose, testing, design, and use of the “Boomer” as identified in the
2 May 6, 1974 Memorandum for the Inspector General re Project OFTEN (*see* VVA023823-25),
3 and all MEETINGS and COMMUNICATIONS CONCERNING the same.

4 OBJECTIONS

5 Defendants object to this amended production request for the reasons described in
6 General Objections 1 and 8-21. Defendants further object to the request as overbroad and unduly
7 burdensome to the extent it seeks all “meetings and communications” concerning tests that took
8 place over 35 years ago and spanned a quarter-century, and the burden in terms of time and
9 expense of conducting such a broad search greatly outweighs the relevance, if any, of such a
10 search. Accordingly, searches for responsive documents will not include “meetings and
11 communications.”
12

13 RESPONSES

14
15 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
16 produce responsive, non-privileged documents in its possession, custody and/or control to the
17 extent it can locate such documents after a reasonably diligent search.
18

19 CIA: Subject to and without waiving the foregoing objections, CIA responds that it will produce
20 responsive, non-privileged documents in its possession, custody and/or control to the extent it
21 can locate such documents after a reasonably diligent search.
22

23 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
24 documents in his possession, custody and/or control responsive to this request.

25 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
26 documents in its possession, custody and/or control responsive to this request.
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2 **AMENDED REQUEST FOR PRODUCTION NO. 36:**

3 The records referred to in the Records Retirement Request dated May 14, 1974 re
4 “Project Files 1965 to 1973,” as shown in the DOCUMENT bearing Bates stamp VVA023826-
5 33, the IDENTITY of the records center where they were sent for storage, and the “Attachment
6 A” as shown in the DOCUMENT bearing Bates stamp VVA023834.
7

8 **OBJECTIONS**

9 Defendants object to this amended production request for the reasons described in
10 General Objections 1 and 9-21. CIA further objects to the extent this request seeks information
11 on the physical location of the “records center,” on the grounds that such information is
12 irrelevant, classified, and otherwise protected from disclosure by the CIA Act. The CIA will not
13 produce documents revealing this information. CIA further objects to this request on the
14 grounds of undue burden. The CIA previously conducted a hand-search of documents related to
15 Project OFTEN to find responsive documents, as identified in General Objection 10. If the CIA
16 were required to search these records again and produce additional Project OFTEN documents
17 that do not concern actual or contemplated testing on volunteer service members or the other
18 categories of information described in General Objection 10, it would take approximately three
19 months. Defendants further object on the grounds that this request is properly directed to one
20 agency, and the burden of searching for such information, as described in General Objection 9,
21 greatly outweighs the relevance, if any, of that information to the claims against the other
22 Defendants.
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26 **RESPONSES**
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1 DoD: Subject to and without waiving the foregoing objections, DoD responds that it has no
2 documents in its possession, custody and/or control responsive to this request.

3 CIA: Subject to and without waiving the foregoing objections, CIA responds that it will
4 produce responsive, non-privileged documents in its possession, custody and/or control to the
5 extent it can locate such documents after a reasonably diligent search.
6

7 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
8 documents in his possession, custody and/or control responsive to this request.

9 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
10 documents in its possession, custody and/or control responsive to this request.
11

12
13 **AMENDED REQUEST FOR PRODUCTION NO. 37:**

14 All COMMUNICATIONS and MEETINGS between YOU and the “principal
15 contractor” under Project OFTEN, as described in the first paragraph of the DOCUMENT
16 bearing Bates stamp VVA023838, and all reports, recommendations, summaries, budgets,
17 assignments, research, test results, and analysis CONCERNING the activities performed by the
18 principal contractor involving TEST SUBSTANCES.
19

20 **OBJECTIONS**

21 Defendants object to this amended production request for the reasons described in
22 General Objections 1, 3 and 7-21. Defendants further object to this request as overbroad insofar
23 as it seeks “all” “reports, recommendations, summaries, budgets, assignments, research, test
24 results, and analysis,” as such information is not reasonably calculated to lead to the discovery of
25 admissible evidence concerning the narrow legal claims remaining in this APA case. Defendants
26 further object because the document bearing Bates stamp VVA023838 indicates that the program
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1 concerns testing on animals and, accordingly, is not relevant to Plaintiffs' narrow APA claims
2 concerning the alleged testing of volunteer service members. In addition, this request is
3 irrelevant to the claims against the CIA to the extent it seeks information on substances that were
4 not used on volunteer service members. Notwithstanding this issue, the burden on the CIA of
5 responding to discovery requests on topics that do not pertain to volunteer service members is
6 substantial. The CIA conducted a hand-search of documents related to Project OFTEN to find
7 responsive documents. If the CIA were required to search these records again and produce
8 additional Project OFTEN documents that do not concern actual or contemplated testing on
9 volunteer service members or the other categories of information described above, it would take
10 substantial time. Defendants further object on the grounds that this request is properly directed
11 to one agency, and the burden of searching for such information, as described in General
12 Objection 9, greatly outweighs the relevance, if any, of that information to the claims against the
13 other Defendants.
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15

16 RESPONSES

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18 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will not
19 search for information responsive to this request in the absence of a court order.

20 CIA: Subject to and without waiving the foregoing objections, CIA responds that it will
21 produce responsive, non-privileged documents in its possession, custody and/or control to the
22 extent it can locate such documents after a reasonably diligent search.

23
24 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
25 documents in his possession, custody and/or control responsive to this request.

26 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
27 documents in its possession, custody and/or control responsive to this request.
28

1
2 **AMENDED REQUEST FOR PRODUCTION NO. 38:**

3 All COMMUNICATIONS and MEETINGS between YOU and the “subcontractor”
4 under Project OFTEN, as described in the first paragraph of the DOCUMENT bearing Bates
5 stamp VVA023838, and all reports, recommendations, summaries, budgets, assignments,
6 research, test results, and analysis CONCERNING the activities performed by the
7 subcontractor involving TEST SUBSTANCES.
8

9 **OBJECTIONS**

10 Defendants object to this amended production request for the reasons described in
11 General Objections 1, 3 and 7-21. Defendants further object to this request as overbroad insofar
12 as it seeks “all” “reports, recommendations, summaries, budgets, assignments, research, test
13 results, and analysis,” as such information is not reasonably calculated to lead to the discovery of
14 admissible evidence concerning the narrow legal claims remaining in this APA case. Defendants
15 further object because the document bearing Bates stamp VVA023838 indicates that the program
16 concerns testing on animals and, accordingly, is not relevant to Plaintiffs’ narrow APA claims
17 concerning the alleged testing of volunteer service members. In addition, this request is
18 irrelevant to the claims against the CIA to the extent that it seeks information on substances the
19 CIA did not test on volunteer service members. Notwithstanding this issue, the burden on the
20 CIA of responding to discovery requests on topics that do not pertain to volunteer service
21 members is substantial. The CIA previously conducted a hand-search of documents related to
22 Project OFTEN to find responsive documents, as described in General Objection 10. If the CIA
23 were required to search these records again and produce additional Project OFTEN documents
24 that do not concern actual or contemplated testing on volunteer service members or the other
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1 categories of information described above, it would take substantial time. Defendants further
2 object on the grounds that this request is properly directed to one agency, and the burden of
3 searching for such information, as described in General Objection 9, greatly outweighs the
4 relevance, if any, of that information to the claims against the other Defendants.

5 RESPONSES

6 DoD: Based upon the above objections, DoD responds that it will not search for documents
7 responsive to this request in the absence of a court order.

8 CIA: Subject to and without waiving the foregoing objections, CIA responds that it will produce
9 responsive, non-privileged documents in its possession, custody and/or control to the extent it
10 can locate such documents after a reasonably diligent search.

11 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
12 documents in his possession, custody and/or control responsive to this request.

13 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
14 documents in its possession, custody and/or control responsive to this request.

15 AMENDED REQUEST FOR PRODUCTION NO. 39:

16 The human experiment involving military volunteers and EA#3167, described in the
17 DOCUMENT bearing Bates stamp VVA023907 as occurring in June 1973, and all
18 MEETINGS and COMMUNICATIONS CONCERNING the same.

19 OBJECTIONS

20 Defendants object to this amended production request for the reasons described in
21 General Objections 1 and 9-21. Defendants further object to the request as overbroad and unduly
22 burdensome to the extent it seeks all “meetings and communications” concerning tests that took
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1 place over 35 years ago and spanned a quarter-century, and the burden in terms of time and
2 expense of conducting such a broad search greatly outweighs the relevance, if any, of such a
3 search. Accordingly, searches for responsive documents will not include “meetings and
4 communications.”

5 RESPONSES

6 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
7 produce responsive, non-privileged documents in its possession, custody and/or control to the
8 extent it can locate such documents after a reasonably diligent search.

9 CIA: Subject to and without waiving the foregoing objections, CIA responds that it will produce
10 responsive, non-privileged documents in its possession, custody and/or control to the extent it
11 can locate such documents after a reasonably diligent search.

12 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
13 documents in his possession, custody and/or control responsive to this request.

14 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
15 documents in its possession, custody and/or control responsive to this request.

16 AMENDED REQUEST FOR PRODUCTION NO. 40:

17 The termination of the CIA OFTEN program and “Agency” support to the clinical
18 testing of EA#3167 in January 1973 and the basis for and/or truth or falsity of the statement in
19 Page 5, Paragraph 13 of the DOCUMENT bearing Bates stamp VVA023861 that “Edgewood
20 did not progress to testing materials on human volunteer subjects under the work sponsored by
21 the CIA.

22 OBJECTIONS

1 Defendants object to this amended production request for the reasons described in
2 General Objections 1 and 9-21.

3 RESPONSES

4 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
5 produce responsive, non-privileged documents in its possession, custody and/or control to the
6 extent it can locate such documents after a reasonably diligent search.

7
8 CIA: Subject to and without waiving the foregoing objections, CIA responds that it will produce
9 responsive, non-privileged documents in its possession, custody and/or control to the extent it
10 can locate such documents after a reasonably diligent search.

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12 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
13 documents in its possession, custody and/or control responsive to this request.

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15 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
16 documents in its possession, custody and/or control responsive to this request.

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18 **AMENDED REQUEST FOR PRODUCTION NO. 41:**

19 The DOCUMENTS saved upon CIA's termination of the OFTEN program, as
20 described in Page 5, Paragraph 14 of the DOCUMENT bearing Bates stamp VVA023861,
21 including data withdrawn from CIA computers, tapes, and other records.

22 OBJECTIONS

23
24 Defendants object to this amended production request for the reasons described in
25 General Objections 1 and 9-21. CIA further objects to this request on the grounds of undue
26 burden. The CIA previously conducted a hand-search of documents related to Project OFTEN to
27 find responsive documents, as identified in General Objection 10. If the CIA were required to
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1 search these records again and produce additional Project OFTEN documents that do not concern
2 actual or contemplated testing on volunteer service members or the other categories of
3 information described in General Objection 10, it would take approximately three months.

4 RESPONSES

5 DoD: Subject to and without waiving the foregoing objections, DoD responds that it has no
6 documents in its possession, custody and/or control responsive to this request.

7 CIA: Subject to and without waiving the foregoing objections, CIA responds that it will produce
8 responsive, non-privileged documents in its possession, custody and/or control to the extent it
9 can locate such documents after a reasonably diligent search.

10 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
11 documents in his possession, custody and/or control responsive to this request.

12 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
13 documents in its possession, custody and/or control responsive to this request.

14 AMENDED REQUEST FOR PRODUCTION NO. 42:

15 The activities, decisions, files, approvals, comments and other DOCUMENTS
16 CONCERNING the panel established to review the OFTEN program, as described on Page 5,
17 Paragraph 12 of the DOCUMENT bearing Bates stamp VVA023861, and all MEETINGS and
18 COMMUNICATIONS CONCERNING the same.

19 OBJECTIONS

20 Defendants object to this amended production request for the reasons described in
21 General Objections 1 and 9-21. Defendants further object to the request as overbroad and unduly
22 burdensome to the extent it seeks all “meetings and communications” concerning a panel
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1 established decades ago, and the burden in terms of time and expense of conducting such a broad
2 search greatly outweighs the relevance, if any, of such a search. Accordingly, searches for
3 responsive documents will not include “meetings and communications.” Defendants further
4 object on the grounds that the request is overbroad, unduly burdensome, and irrelevant to the
5 extent that it seeks information that is not related to testing on volunteer service members.

6 Defendants further object on the grounds that this request is properly directed to one agency, and
7 the burden of searching for such information, as described in General Objection 9, greatly
8 outweighs the relevance, if any, of that information to the claims against the other Defendants.

9 RESPONSES

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11 DoD: Subject to and without waiving the foregoing objections, DoD responds that it has no
12 documents in its possession, custody and/or control responsive to this request.

13
14 CIA: Subject to and without waiving the foregoing objections, CIA responds that it will produce
15 responsive, non-privileged documents in its possession, custody and/or control to the extent it
16 can locate such documents after a reasonably diligent search.

17
18 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
19 documents in his possession, custody and/or control responsive to this request.

20
21 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
22 documents in its possession, custody and/or control responsive to this request.

23 AMENDED REQUEST FOR PRODUCTION NO. 43:

24
25 The IDENTITY of the author of the May 6, 1974 Memorandum for the Inspector
26 General re Project OFTEN, produced as VVA023823-25, the database of clinical records
27 identified in Paragraph 3 of the Memorandum, the IDENTITY of the private industry members
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1 and university professors referred to in Paragraphs 4 and 5 of the Memorandum, the
2 IDENTITY of the Division Chief referred to in Paragraph 7 of the Memorandum, copies of the
3 Activity Reports referred to in Paragraph 8 of the Memorandum, and all MEETINGS and
4 COMMUNICATIONS CONCERNING the same.

5 OBJECTIONS

6
7 Defendants object to this amended production request for the reasons described in
8 General Objections 1 and 9-21. Defendants further object to the request as overbroad and unduly
9 burdensome to the extent it seeks all “meetings and communications” concerning a 36 years ago
10 report, and the burden in terms of time and expense of conducting such a broad search greatly
11 outweighs the relevance, if any, of such a search. Accordingly, searches for responsive
12 documents will not include “meetings and communications.” Defendants further object on the
13 grounds that this request is properly directed to one agency, and the burden of searching for such
14 information, as described in General Objection 9, greatly outweighs the relevance, if any, of that
15 information to the claims against the other Defendants. The CIA further objects to the request on
16 the grounds that the identities of the author of the May 6, 1974 Memorandum, the Division
17 Chief, and the private industry members and university professors referred to in the request are
18 protected from disclosure pursuant to the National Security Act and the CIA Act.
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21 RESPONSES

22 DoD: Subject to and without waiving the foregoing objections, DoD responds that it has no
23 documents in its possession, custody and/or control responsive to this request.
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25 CIA: Subject to and without waiving the foregoing objections, CIA responds that it will produce
26 responsive, non-privileged documents in its possession, custody and/or control to the extent it
27 can locate such documents after a reasonably diligent search.
28

1 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
2 documents in his possession, custody and/or control responsive to this request.

3 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
4 documents in its possession, custody and/or control responsive to this request.
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6 **AMENDED REQUEST FOR PRODUCTION NO. 44:**
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8 Members of, assignments to, MEETINGS of, reports by, agendas, and
9 COMMUNICATIONS CONCERNING the activities of the “special review panel” of members
10 of the ORD and TSD organized to assist the drug research program as described on the last
11 paragraph of the DOCUMENT bearing Bates stamp VVA023837.
12

13 **OBJECTIONS**

14 Defendants object to this amended production request for the reasons described in
15 General Objections 1 and 8-21. Defendants further object to the request as overbroad and unduly
16 burdensome to the extent it seeks all “communications” concerning a “special review panel”
17 formed decades ago, and the burden in terms of time and expense of conducting such a broad
18 search greatly outweighs the relevance, if any, of such a search. Accordingly, searches for
19 responsive documents will not include “communications.” Defendants further object on the
20 grounds that the request is overbroad, unduly burdensome, and irrelevant to the extent that it
21 seeks information that is not related to testing on volunteer service members. Defendants further
22 object on the grounds that this request is properly directed to one agency, and the burden of
23 searching for such information, as described in General Objection 9, greatly outweighs the
24 relevance, if any, of that information to the claims against the other Defendants.
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27 **RESPONSES**
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1 DoD: Subject to and without waiving the foregoing objections, DoD responds that it has no
2 documents in its possession, custody and/or control responsive to this request.

3 CIA: Subject to and without waiving the foregoing objections, CIA responds that it has no
4 documents in its possession, custody and/or control responsive to this request.

5 AG: Subject to and without waiving the foregoing objections, the AG responds that it has no
6 documents in his possession, custody and/or control responsive to this request.

7 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
8 documents in its possession, custody and/or control responsive to this request.
9

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11 **AMENDED REQUEST FOR PRODUCTION NO. 45:**

12
13 All COMMUNICATIONS and MEETINGS between YOU and the PERSON(S) who
14 synthesized new drugs or derivatives under Project OFTEN, as described in the second
15 paragraph of the DOCUMENT bearing Bates stamp VVA023838, and all reports,
16 recommendations, summaries, budgets, assignments, research, test results, and analysis
17 CONCERNING the activities performed by the PERSON(S) performing the synthesis work.
18

19 **OBJECTIONS**

20 Defendants object to this amended production request for the reasons described in
21 General Objections 1 and 7-21. Defendants further object on the grounds that the identification
22 and production of “all reports, recommendations, summaries, budgets, assignments, research, test
23 results, and analysis” is unduly burdensome, for the reasons discussed in General Objections 10-
24 12, and this burden greatly outweighs the minimal, if any, relevance of such information.
25 Furthermore, to the extent this request seeks information as to the chemical and biological agents
26 that was used in the volunteer service member test program, this request is cumulative of other
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1 information that has been or will be produced in this case, as the Chem-Bio database and the
2 service member participant files will reflect each of the chemical or biological agents that were
3 used in the testing of volunteer service members. Defendants further object to the request as
4 overbroad and unduly burdensome to the extent it seeks all “meetings and communications”
5 concerning tests that took place over 35 years ago and spanned a quarter-century, and the burden
6 in terms of time and expense of conducting such a broad search greatly outweighs the relevance,
7 if any, of such a search. Accordingly, searches for responsive documents will not include
8 “meetings and communications.” In addition, the CIA objects to this request on the grounds that
9 the identity of the “PERSON(S) who synthesized new drugs or derivatives under Project
10 OFTEN,” is subject to non-disclosure pursuant to the CIA Act and the National Security Act.
11 Defendants further object on the grounds that the request is overbroad, unduly burdensome, and
12 irrelevant to the extent that it seeks information that is not related to testing on volunteer service
13 members. Defendants further object on the grounds that this request is properly directed to one
14 agency, and the burden of searching for such information, as described in General Objection 9,
15 greatly outweighs the relevance, if any, of that information to the claims against the other
16 Defendants.
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20 RESPONSES

21 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
22 produce responsive, non-privileged documents in its possession, custody and/or control to the
23 extent it can locate such documents after a reasonably diligent search.
24

25 CIA: Subject to and without waiving the foregoing objections, CIA responds that it has no
26 documents in its possession, custody and/or control responsive to this request.
27
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1 AG: Subject to and without waiving the foregoing objections, The AG responds that he has no
2 documents in his possession, custody and/or control responsive to this request.

3 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
4 documents in its possession, custody and/or control responsive to this request.
5

6 **AMENDED REQUEST FOR PRODUCTION NO. 46:**
7

8 All COMMUNICATIONS and MEETINGS between YOU and the George Washington
9 University and/or between its professors and staff CONCERNING Project OFTEN, as
10 described in the third paragraph of the DOCUMENT bearing Bates stamp VVA023838, and all
11 reports, recommendations, summaries, budgets, assignments, research, test results, and analysis
12 CONCERNING the activities performed by George Washington University and/or its
13 professors and staff.
14

15 **OBJECTIONS**
16

17 Defendants object to this amended production request for the reasons described in
18 General Objections 1 and 7-21. Defendants further object to the request on the grounds that such
19 information is not reasonably calculated to lead to the discovery of admissible evidence
20 concerning the narrow legal claims remaining in this APA case. This is particularly true where,
21 on the face of the document Bates labeled VVA023838, the “activities performed by George
22 Washington University,” were related to the performance of “several literature searches,” rather
23 than the testing on service members. Defendants further object on the grounds that the
24 identification and production of “all reports, recommendations, summaries, budgets,
25 assignments, research, test results, and analysis” is unduly burdensome for the reasons outlined
26 in General Objections 10-12, and this burden greatly outweighs the minimal, if any, relevance of
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1 such information. Defendants further object to the request as overbroad and unduly burdensome
2 to the extent it seeks all “meetings and communications” concerning tests that took place over 35
3 years ago and spanned a quarter-century, and the burden in terms of time and expense of
4 conducting such a broad search greatly outweighs the relevance, if any, of such a search.
5 Accordingly, searches for responsive documents will not include “meetings and
6 communications.” In addition, the CIA objects to this request on the grounds that the identity of
7 individuals from George Washington University are subject to non-disclosure pursuant to the
8 CIA Act and the National Security Act. Defendants further object on the grounds that the
9 request is overbroad, unduly burdensome, and irrelevant to the extent that it seeks information
10 that is not related to testing on volunteer service members. Defendants further object on the
11 grounds that this request is properly directed to one agency, and the burden of searching for such
12 information, as described in General Objection 9, greatly outweighs the relevance, if any, of that
13 information to the claims against the other Defendants.
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16 RESPONSES

17 DoD: Subject to and without waiving the foregoing objections, DoD responds that it has no
18 documents in its possession, custody and/or control responsive to this request.
19

20 CIA: Subject to and without waiving the foregoing objections, CIA responds that it has no
21 documents in its possession, custody and/or control responsive to this request.
22

23 AG: Subject to and without waiving the foregoing objections, the AG responds that it has no
24 documents in his possession, custody and/or control responsive to this request.

25 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
26 documents in its possession, custody and/or control responsive to this request.
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1 **AMENDED REQUEST FOR PRODUCTION NO. 47:**

2 The MKPILOT Project and all MEETINGS and COMMUNICATIONS between or
3 among YOU and the Lexington Narcotics Hospital in connection with same.

4 **OBJECTIONS**

5 Defendants object to this amended production request for the reasons described in
6 General Objections 1 and 7-18. Defendants further object to the request on the grounds that such
7 information is not reasonably calculated to lead to the discovery of admissible evidence
8 concerning the narrow legal claims remaining in this APA case, as Plaintiffs do not even mention
9 the MKPILOT Project or the Lexington Hospital in their 234-paragraph Third Amended
10 Complaint. Defendants further object to the request as overbroad and unduly burdensome to the
11 extent it seeks all “meetings and communications” concerning a project that ended decades ago,
12 and the burden in terms of time and expense of conducting such a broad search greatly outweighs
13 the relevance, if any, of such a search. Accordingly, searches for responsive documents will not
14 include “meetings and communications.” CIA also objects on the grounds of undue burden.
15 Defendants further object on the grounds that the request is overbroad, unduly burdensome, and
16 irrelevant to the extent that it seeks information that is not related to testing on volunteer service
17 members. Defendants further object on the grounds that this request is properly directed to one
18 agency, and the burden of searching for such information, as described in General Objection 9,
19 greatly outweighs the relevance, if any, of that information to the claims against the other
20 Defendants.
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25 **RESPONSES**

26 **DoD:** Subject to and without waiving the foregoing objections, DoD responds that it has no
27 documents in its possession, custody and/or control responsive to this request.
28

1 CIA: Subject to and without waiving the foregoing objections, CIA responds that it has no
2 documents in its possession, custody and/or control responsive to this request.

3 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
4 documents in his possession, custody and/or control responsive to this request.

5 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
6 documents in its possession, custody and/or control responsive to this request.
7

8
9 **AMENDED REQUEST FOR PRODUCTION NO. 48:**

10 All COMMUNICATIONS and MEETINGS between YOU and the Ivy Research
11 Laboratories and/or Dr. Herbert W. Copelan CONCERNING Project OFTEN, whose names
12 are listed in the first continuation paragraph on the DOCUMENT bearing Bates stamp
13 VVA023839, and all reports, recommendations, summaries, budgets, assignments, research,
14 test results, and analysis CONCERNING the activities performed by the Ivy Research
15 Laboratories and/or Dr. Copelan.
16

17 **OBJECTIONS**

18
19 Defendants object to this amended production request for the reasons described in
20 General Objections 1 and 7-21. Defendants further object on the grounds that the identification
21 and production of “all reports, recommendations, summaries, budgets, assignments, research, test
22 results, and analysis” is unduly burdensome, for the reasons articulated in General Objections
23 10-12. Defendants further object to the request as overbroad and unduly burdensome to the
24 extent it seeks all “meetings and communications.” Accordingly, the burden in terms of time and
25 expense of conducting such a broad search greatly outweighs the relevance, if any, of such a
26 search.
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1 RESPONSES

2 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
3 produce responsive, non-privileged documents in its possession, custody and/or control to the
4 extent it can locate such documents after a reasonably diligent search.

5 CIA: Subject to and without waiving the foregoing objections, CIA responds that it will produce
6 responsive, non-privileged documents in its possession, custody and/or control to the extent it
7 can locate such documents after a reasonably diligent search.

8 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
9 documents in his possession, custody and/or control responsive to this request.
10

11 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
12 documents in its possession, custody and/or control responsive to this request.
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15 **AMENDED REQUEST FOR PRODUCTION NO. 49:**

16 YOUR destruction of DOCUMENTS as described in Paragraph 130 of the Complaint,
17 and the IDENTITY of DOCUMENTS destroyed, and all MEETINGS and
18 COMMUNICATIONS CONCERNING the same, that mention any one or more of the
19 individual plaintiffs.
20

21 OBJECTIONS

22 Defendants object to this request on the ground that Paragraph 130 of the Third Amended
23 Complaint has nothing to do with allegations of document destruction and, accordingly, this
24 request is nonsensical as written. Defendants further object to the request on the ground that
25 such information is not reasonably calculated to lead to the discovery of admissible evidence
26 concerning the narrow legal claims remaining in this APA case. Defendants further object to the
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1 request as overbroad and unduly burdensome to the extent it seeks all “meetings and
2 communications” concerning tests that took place decades ago, and the burden in terms of time
3 and expense of conducting such a broad search greatly outweighs the relevance, if any, of such a
4 search. Accordingly, searches for responsive documents will not include “meetings and
5 communications.” Furthermore, the CIA objects on the grounds of undue burden and, even to
6 the degree such documents were relevant, the burden would outweigh the relevance. Defendants
7 further object on the grounds that this request is properly directed to one agency, and the burden
8 of searching for such information, as described in General Objection 9, greatly outweighs the
9 relevance, if any, of that information to the claims against the other Defendants.
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13 **AMENDED REQUEST FOR PRODUCTION NO. 50:**

14 The negotiation, content, application, interpretation or other DOCUMENTS
15 CONCERNING the 1952 Memorandum of Understanding between the CIA and the Army’s
16 Chief Chemical Corps Officer CONCERNING an agreement which established that the
17 Chemical Corp’s Special Operations Division would pursue projects requested by the CIA and
18 the CIA would provide funding for those projects, and all MEETINGS and
19 COMMUNICATIONS CONCERNING the same.
20

21 **OBJECTIONS**

22 Defendants object to this amended production request for the reasons described in
23 General Objections 1 and 8-21. Defendants further object on the grounds that the request, as
24 written, is overbroad to the extent it seeks information concerning the “negotiation, application,
25 and interpretation” of a 1952 memorandum of understanding, “as well as all meetings and
26 communications” concerning that memorandum of understanding, as such information has no
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1 relevance to the narrow, remaining legal issues in this case. Defendants further object to the
2 request as overbroad and unduly burdensome to the extent it seeks all “meetings and
3 communications” concerning tests that took place decades ago, and the burden in terms of time
4 and expense of conducting such a broad search greatly outweighs the relevance, if any, of such a
5 search. Accordingly, searches for responsive documents will not include “meetings and
6 communications.” CIA further objects to this request as overbroad, unduly burdensome, and
7 irrelevant because the project this request is referring to, MKNAOMI, did not involve testing on
8 volunteer service members by the CIA, and there is no allegation in Plaintiffs’ 234-paragraph
9 Third Amended Complaint that it did.
10

11 RESPONSES

12
13 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
14 produce responsive, non-privileged documents in its possession, custody and/or control to the
15 extent it can locate such documents after a reasonably diligent search.

16 CIA: Subject to and without waiving the foregoing objections, CIA responds that it will produce
17 responsive, non-privileged documents in its possession, custody and/or control to the extent it
18 can locate such documents after a reasonably diligent search.

19
20 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
21 documents in his possession, custody and/or control responsive to this request.

22 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
23 documents in its possession, custody and/or control responsive to this request.
24

25 26 AMENDED REQUEST FOR PRODUCTION NO. 51:

27 The fields, data, printouts, information and instructions CONCERNING the database
28

1 identified in the May 6, 1974 CIA Inspector General report.

2 OBJECTIONS

3 Defendants object to this amended production request for the reasons described in
4 General Objections 1 and 9-21. Defendants further object to this request on the grounds that
5 Defendants are not aware of a “May 6, 1974 CIA Inspector General report”; Defendants will
6 interpret this request as referring to the document identified in Request for Production No. 43.
7 Defendants further object on the grounds that the request is overbroad, unduly burdensome, and
8 irrelevant to the extent that it seeks information that is not related to testing on volunteer service
9 members. Defendants further object on the grounds that this request is properly directed to one
10 agency, and the burden of searching for such information, as described in General Objection 9,
11 greatly outweighs the relevance, if any, of that information to the claims against the other
12 Defendants.
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14

15 RESPONSES

16 DoD: Subject to and without waiving the foregoing objections, DoD responds that it has no
17 documents in its possession, custody and/or control responsive to this request.
18

19 CIA: Subject to and without waiving the foregoing objections, CIA responds that it will produce
20 responsive, non-privileged documents in its possession, custody and/or control to the extent it
21 can locate such documents after a reasonably diligent search.
22

23 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
24 documents in his possession, custody and/or control responsive to this request.

25 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
26 documents in its possession, custody and/or control responsive to this request.
27
28

1 **AMENDED REQUEST FOR PRODUCTION NO. 52:**

2 The IDENTITY, role and actions of all “cut-outs” directly or indirectly funded by YOU
3 that performed testing using TEST SUBSTANCES, including but not limited to, the allegations
4 set forth in Paragraph 124(a) of the Complaint.

5 **OBJECTIONS**

6
7 Defendants object to this amended production request for the reasons described in
8 General Objections 1, 2, 7-21. Defendants further object on the grounds that “cut-out,” an
9 undefined term, is vague. Defendants object to this request on the grounds that Paragraph 124(a)
10 of the Third Amended Complaint has nothing to do with allegations of “cut-outs” and,
11 accordingly, this request is nonsensical as written and Defendants cannot currently respond.
12
13 Defendants further object on the grounds that this request is properly directed to one agency, and
14 the burden of searching for such information, as described in General Objection 9, greatly
15 outweighs the relevance, if any, of that information to the claims against the other Defendants.
16

17
18 **AMENDED REQUEST FOR PRODUCTION NO. 53:**

19 Current programs and sites where YOU test or sponsor the testing of chemicals,
20 biological substances or drugs on active service members.

21 **OBJECTIONS**

22
23 Defendants object to this amended production request for the reasons described in
24 General Objections 1 and 7-21. Defendants further object on the grounds that the request is
25 substantially overbroad and unduly burdensome, for the reasons identified in General Objections
26 9-16, as it purports to seek information concerning the testing of any chemical or biological
27 substances, regardless of whether those substances are contained within the Chem-Bio database.
28

1 In addition, to the extent Plaintiffs' request seeks information concerning the health effects
2 associated with chemical and biological agents associated with DoD's volunteer testing
3 programs, this request seeks information that is cumulative of other materials Defendants are
4 producing in this case, including, among other things, the categories of documents identified in
5 General Objection 9. Because of the substantial overbreadth and undue burden of this request, as
6 well as its cumulativeness, and the lack of relevance to any claim remaining in this case,
7 Defendants will not respond to this request. *See* Fed. R. Civ. P. 26(b), 26(c).
8

9
10 **AMENDED REQUEST FOR PRODUCTION NO. 54:**

11 The relationship and interactions between EDGEWOOD ARSENAL and the
12 Holmesburg Prison and/or the University of Pennsylvania CONCERNING experiments
13 involving TEST SUBSTANCES, and ALL DOCUMENTS concerning those experiments.
14

15 **OBJECTIONS**

16 Defendants object to this amended production request for the reasons described in
17 General Objections 1, 3 and 8-21. In addition, to the extent Plaintiffs' request seeks information
18 concerning the health effects associated with chemical and biological agents associated with
19 DoD's volunteer testing programs, this request seeks information that is cumulative of other
20 materials Defendants are producing in this case, including, among other things, the categories of
21 documents identified in General Objection 9. Defendants further object to the use of the
22 undefined term "interactions" as unduly vague. Defendants further object on the grounds that
23 the request is overbroad, unduly burdensome, and irrelevant to the extent that it seeks
24 information that is not related to testing on volunteer service members.
25
26

27 **RESPONSES**
28

1 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
2 produce responsive, non-privileged documents in its possession, custody and/or control to the
3 extent it can locate such documents after a reasonably diligent search.

4 CIA: Subject to and without waiving the foregoing objections, CIA responds that it will produce
5 responsive, non-privileged documents in its possession, custody and/or control to the extent it
6 can locate such documents after a reasonably diligent search.

7 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
8 documents in his possession, custody and/or control responsive to this request.

9 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
10 documents in its possession, custody and/or control responsive to this request.
11
12

13
14 **AMENDED REQUEST FOR PRODUCTION NO. 55:**

15 Research results, reports, notes, contracts, subcontracts and other DOCUMENTS
16 CONCERNING studies conducted by Albert Kligman at Holmesburg Prison, Pennsylvania
17 regarding dioxin exposure and chloracne and any other similar studies conducted using military
18 personnel as test subjects.
19

20 **OBJECTIONS**

21 Defendants object to this amended production request for the reasons described in
22 General Objections 1 and 8-21. In addition, to the extent Plaintiffs' request seeks information
23 concerning the health effects associated with chemical and biological agents associated with
24 DoD's volunteer testing programs, this request seeks information that is cumulative of other
25 materials Defendants are producing in this case, including, among other things, the categories of
26 documents identified in General Objection 9.
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RESPONSES

1
2 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
3 produce responsive, non-privileged documents in its possession, custody and/or control to the
4 extent it can locate such documents after a reasonably diligent search.

5 CIA: Subject to and without waiving the foregoing objections, CIA responds that it has no
6 documents in its possession, custody and/or control responsive to this request.

7
8 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
9 documents in his possession, custody and/or control responsive to this request.

10 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
11 documents in its possession, custody and/or control responsive to this request.
12

13
14 **AMENDED REQUEST FOR PRODUCTION NO. 56:**

15 MKULTRA Subprojects 106, 95, and 94, and any other projects or sub-projects
16 CONCERNING research, use or installation of septal electrodes in human subjects, and all
17 MEETINGS and COMMUNICATIONS CONCERNING the same.
18

19 OBJECTIONS

20 Defendants object to this amended production request for the reasons described in
21 General Objections 1 and 8-21. Defendants further object to the request as overbroad and unduly
22 burdensome to the extent it seeks all “meetings and communications” concerning tests that took
23 place 50 years ago, and the burden in terms of time and expense of conducting such a broad
24 search greatly outweighs the relevance, if any, of such a search. Accordingly, searches for
25 responsive documents will not include “meetings and communications.” Defendants further
26 object to this request as overbroad, unduly burdensome, and irrelevant because MKULTRA
27
28

1 Subprojects 106, 95, and 94 did not involve testing on volunteer service members, and there is
2 no allegation in the 234-paragraph Third Amended Complaint that they did. To the extent
3 Plaintiffs' assert that this information is relevant to Plaintiff Bruce Price's claims, Defendants
4 object on the grounds on Mr. Price's claims are barred by res judicata. Defendants further object
5 on the grounds that this request is properly directed to one agency, and the burden of searching
6 for such information, as described in General Objection 9, greatly outweighs the relevance, if
7 any, of that information to the claims against the other Defendants.
8

9 RESPONSES

10 DoD: Subject to and without waiving the foregoing objections, DoD responds that it has no
11 documents in its possession, custody and/or control responsive to this request.
12

13 CIA: Subject to and without waiving the foregoing objections, CIA responds that it has no
14 documents in its possession, custody and/or control responsive to this request.
15

16 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
17 documents in his possession, custody and/or control responsive to this request.
18

19 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
20 documents in its possession, custody and/or control responsive to this request.
21

22 AMENDED REQUEST FOR PRODUCTION NO. 57:

23 The briefings delivered to upper management, including the DCI, the Executive
24 Director/Comptroller, DDP and the DD/S&T regarding the TEST PROGRAMS, as described
25 in the DOCUMENT bearing Bates stamp VVA023837.

26 OBJECTIONS
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28

1 Defendants object to this amended production request for the reasons described in
2 General Objections 1 and 3, 5, 6, 8-21. Defendants further object to the phrase “upper
3 management,” an undefined term, as vague. Defendants further object to this request as
4 overbroad, unduly burdensome, and irrelevant to the extent this request seeks information that is
5 unrelated to the testing on volunteer service members. In addition, to the extent Plaintiffs’
6 request seeks information concerning the health effects associated with chemical and biological
7 agents associated with DoD’s volunteer testing programs, this request seeks information that is
8 cumulative of other materials Defendants are producing in this case, including, among other
9 things, the categories of documents identified in General Objection 9. Defendants further object
10 on the grounds that this request is properly directed to one agency, and the burden of searching
11 for such information, as described in General Objection 9, greatly outweighs the relevance, if
12 any, of that information to the claims against the other Defendants.
13
14

15 RESPONSES

16 DoD: Subject to and without waiving the foregoing objections, DoD responds that it has no
17 documents in its possession, custody and/or control responsive to this request.
18

19 CIA: Subject to and without waiving the foregoing objections, CIA responds that it has no
20 documents in its possession, custody and/or control responsive to this request.
21

22 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
23 documents in his possession, custody and/or control responsive to this request.
24

25 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
26 documents in its possession, custody and/or control responsive to this request.
27

28 AMENDED REQUEST FOR PRODUCTION NO. 58:

1 The U.S. Army's involvement in Project Bluebird between 1949 and 1951, including,
2 but not limited to Project Bluebird programs in which former American prisoners of war in
3 Army hospitals were subjected to various behavioral modification programs, including the use
4 of experimental drugs and special interrogation methods.

5 OBJECTIONS

6
7 Defendants object to this amended production request for the reasons described in
8 General Objections 1 and 8-21. Defendants further object to the request on the grounds that such
9 information is not reasonably calculated to lead to the discovery of admissible evidence
10 concerning the narrow legal claims remaining in this APA case, particularly in light of the fact
11 that Project Bluebird has nothing to do with the chemical and biological test program involving
12 volunteer service members and allegedly took place before the Wilson Memorandum. Indeed,
13 the request on its face is actually referring to *foreign* prisoners of war held by the United States.
14 Furthermore, CIA objects to this request as unduly burdensome because, as discussed in General
15 Objection 12, CIA previously provided to Plaintiffs outside of discovery approximately 20,000
16 pages of documents related to MKULTRA and its other behavioral research programs from the
17 1950s-70s. It would take a substantial effort by the CIA to re-review and re-produce them due to
18 difficulties relating to how the documents are physically stored on CIA systems and reviewed for
19 purposes of assessing and asserting privileges. In addition, to the extent Plaintiffs' request seeks
20 information concerning the health effects associated with chemical and biological agents
21 associated with DoD's volunteer testing programs, this request seeks information that is
22 cumulative of other materials Defendants are producing in this case, including, among other
23 things, the categories of documents identified in General Objection 9. Because of the
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1 cumulateness of this request and the lack of relevance to any claim remaining in this case,
2 Defendants will not respond to this request. *See* Fed. R. Civ. P. 26(b), 26(c).

3
4 **AMENDED REQUEST FOR PRODUCTION NO. 59:**

5 Collaboration between officials within CIA's Security Office, scientists from Fort
6 Detrick's Special Operations Division, and scientists from other Army installations, including
7 Edgewood Arsenal, on experiments with LSD, mescaline, peyote, and synthesized substance
8 known as "Smasher" in the summer of 1951.

9
10 **OBJECTIONS**

11 Defendants object to this amended production request for the reasons described in
12 General Objections 1 and 8-21. Defendants further object to the request on the grounds that such
13 information is not reasonably calculated to lead to the discovery of admissible evidence
14 concerning the narrow legal claims remaining in this APA case, as "Smasher" is not even
15 referenced in the 234-paragraph Third Amended Complaint and, per the production request,
16 appears to have taken place before the Wilson Memorandum was signed. Defendants further
17 object on the ground that this request is overbroad, unduly burdensome, and irrelevant, as there is
18 no allegation in the Third Amended Complaint that the "collaboration" referred to in the
19 production request involved testing on volunteer service members.

20
21
22 **RESPONSES**

23 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
24 produce responsive, non-privileged documents in its possession, custody and/or control to the
25 extent it can locate such documents after a reasonably diligent search.
26
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1 CIA: Subject to and without waiving the foregoing objections, CIA responds that it has no
2 documents in its possession, custody and/or control responsive to this request.

3 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
4 documents in his possession, custody and/or control responsive to this request.

5 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
6 documents in its possession, custody and/or control responsive to this request.
7

8
9 **AMENDED REQUEST FOR PRODUCTION NO. 60:**

10 The information, samples, data, risks, reports received or sent, qualities of,
11 classification and other information CONCERNING the drugs and substances the CIA
12 obtained from drug and pharmaceutical companies, other government agencies, including the
13 VA, NIH, FDA, and EARL, research laboratories, and other researchers, as described in the
14 DOCUMENT bearing Bates stamp VVA02387.
15

16 **OBJECTIONS**

17 Defendants object to this amended production request for the reasons described in
18 General Objections 1 and 8-21. Defendants further object to the request on both overbreadth and
19 relevance grounds to the extent the alleged “drugs and substances” are not contained in the
20 Chem-Bio database and were not used on volunteer service members. In addition, to the extent
21 Plaintiffs’ request seeks information concerning the health effects associated with chemical and
22 biological agents associated with DoD’s volunteer testing programs, this request seeks
23 information that is cumulative of other materials Defendants are producing in this case,
24 including, among other things, the categories of documents identified in General Objection 9.
25 Because of the substantial overbreadth and undue burden of this request, as well as its
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1 cumulativeness, and the lack of relevance to any claim remaining in this case, Defendants will
2 not respond to this request. *See* Fed. R. Civ. P. 26(b), 26(c).

3
4 **AMENDED REQUEST FOR PRODUCTION NO. 61:**

5 Collaboration between officials within CIA's Security Office, scientists from Fort
6 Detrick's Special Operations Division, and scientists from other Army installations, including
7 Edgewood Arsenal, on experiments with LSD, mescaline, peyote, and synthesized substance
8 known as "Smasher" in the summer of 1951.

9
10 **OBJECTIONS AND RESPONSES**

11 Plaintiffs' "Amended Request for Production No. 61" is a duplicate of Plaintiffs'
12 "Amended Request for Production No. 59," and Defendants refer Plaintiffs to the objections and
13 responses set forth in connection with that production request.
14

15
16 **AMENDED REQUEST FOR PRODUCTION NO. 62:**

17 MEETINGS and COMMUNICATIONS between or among any of the following
18 persons and the CIA CONCERNING psychochemicals:

19 Dr. L. Wilson Greene, Technical Director, Chemical Corps, Chemical and Radiological
20 Laboratories, Army Chemical Center;

21 Dr. David Bruce Dill, Scientific Director, Chemical Corps, Medical Laboratory, Army
22 Chemical Center;

23 Dr. Armedeo Marrazzi, a scientist at the Medical Laboratory, Army Chemical Center;
24 Capt. Clifford P. Phoebus, Chief, Biological Sciences Division, Office of Naval
25 Research;
26
27
28

1 Brig. Gen. Don D. Flickinger, ARDC, U.S.A.F.; and

2 Lt. Col. Alexander Batlin, Office of the Assistant Secretary of Defense (Research and
3 Development).

4 OBJECTIONS

5 Defendants object to this amended production request for the reasons described in
6 General Objections 1 and 8-21. Defendants further object to the request on the grounds that such
7 information is not reasonably calculated to lead to the discovery of admissible evidence
8 concerning the narrow legal claims remaining in this APA case, particularly given that none of
9 the individuals identified in this request for production are referenced in the 234-paragraph Third
10 Amended Complaint. Defendants further object to the request as overly broad and unduly
11 burdensome, for the reasons identified in General Objections 9-12, as it literally seeks all
12 documents and communications between or among six individuals and anyone at the CIA,
13 regardless of the connection to the narrow, legal claims remaining in this case. Defendants
14 further object to the request as overbroad and unduly burdensome to the extent it seeks all
15 “meetings and communications” concerning tests that took place decades ago, and the burden in
16 terms of time and expense of conducting such a broad search greatly outweighs the relevance, if
17 any, of such a search. In addition, to the extent Plaintiffs’ request seeks information concerning
18 the health effects associated with chemical and biological agents associated with DoD’s
19 volunteer testing programs, this request seeks information that is cumulative of other materials
20 Defendants are producing in this case, including, among other things, the categories of
21 documents identified in General Objection 9.

22 RESPONSES

1 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
2 produce responsive, non-privileged documents in its possession, custody and/or control to the
3 extent it can locate such documents after a reasonably diligent search.

4 CIA: Subject to and without waiving the foregoing objections, CIA responds that it has no
5 documents in its possession, custody and/or control responsive to this request.

6 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
7 documents in his possession, custody and/or control responsive to this request.

8 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
9 documents in its possession, custody and/or control responsive to this request.
10

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13 **AMENDED REQUEST FOR PRODUCTION NO. 63:**

14 Reports, contracts, notes, subcontracts and other DOCUMENTS CONCERNING the
15 Kharasch program of collaboration between university professors and the Chemical Corps, as
16 described on pages 101 through 103 of the Summary of Major Events and Problems, United
17 States Army Chemical Corps, Fiscal Year 1956, Chemical Corps Historical Office (Nov.
18 1956), and all MEETINGS and COMMUNICATIONS CONCERNING the same.
19

20 **OBJECTIONS**

21 Defendants object to this amended production request for the reasons described in
22 General Objections 1 and 8-21. Defendants further object to the request on the grounds that such
23 information is not reasonably calculated to lead to the discovery of admissible evidence
24 concerning the narrow legal claims remaining in this APA case, particularly given that the
25 “Kharasch program” identified in this request for production is not even referenced in the 234-
26 paragraph Third Amended Complaint. Defendants further object to the request as overbroad and
27
28

1 unduly burdensome to the extent it seeks all “meetings and communications” concerning tests
2 that took place decades ago, and the burden in terms of time and expense of conducting such a
3 broad search greatly outweighs the relevance, if any, of such a search. In addition, to the extent
4 Plaintiffs’ request seeks information concerning the health effects associated with chemical and
5 biological agents associated with DoD’s volunteer testing programs, this request seeks
6 information that is cumulative of other materials Defendants are producing in this case,
7 including, among other things, the categories of documents identified in General Objection 9.
8 Because of the substantial overbreadth and undue burden of this request, as well as its
9 cumulativeness, and the lack of relevance to any claim remaining in this case, Defendants will
10 not respond to this request. *See* Fed. R. Civ. P. 26(b), 26(c).
11
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13

14 **AMENDED REQUEST FOR PRODUCTION NO. 64:**

15 The 1960 Gottlieb Report referred to in Paragraph 27 page 19 of Exhibit B to the
16 Second Amended Complaint.

17 **OBJECTIONS**

18 Defendants object to this amended production request for the reasons described in
19 General Objections 1 and 9-21. Defendants further interpret Plaintiffs’ reference to the “Second
20 Amended Complaint” as a reference to the “Third Amended Complaint.” Defendants further
21 object on the grounds that this request is properly directed to one agency, and the burden of
22 searching for such information, as described in General Objection 9, greatly outweighs the
23 relevance, if any, of that information to the claims against the other Defendants.
24
25

26 **RESPONSES**

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28

1 DoD: Subject to and without waiving the foregoing objections, DoD responds that it has no
2 documents in its possession, custody and/or control responsive to this request.

3 CIA: Subject to and without waiving the foregoing objections, CIA responds that it will produce
4 responsive, non-privileged documents in its possession, custody and/or control to the extent it
5 can locate such documents after a reasonably diligent search.

6 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
7 documents in his possession, custody and/or control responsive to this request.

8 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
9 documents in its possession, custody and/or control responsive to this request.
10

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12
13 **AMENDED REQUEST FOR PRODUCTION NO. 65:**

14 Study prepared by Dr. Sidney Gottlieb, Deputy Chief of TSD, scientific advisor to the
15 Deputy Director/Plans, dated April 21, 1960, entitled “Scientific and Technical Problems in
16 Covert Action Operations,” including Appendix B entitled “The Applicability of Special
17 Chemicals and Biologicals to Clandestine Operations.”
18

19 **OBJECTIONS**

20 Defendants object to this amended production request for the reasons described in
21 General Objections 1 and 9-21. Defendants further object on the grounds that this request is
22 properly directed to one agency, and the burden of searching for such information, as described
23 in General Objection 9, greatly outweighs the relevance, if any, of that information to the claims
24 against the other Defendants.
25

26 **RESPONSES**
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28

1 DoD: Subject to and without waiving the foregoing objections, DoD responds that it has no
2 documents in its possession, custody and/or control responsive to this request.

3 CIA: Subject to and without waiving the foregoing objections, CIA responds that it will produce
4 responsive, non-privileged documents in its possession, custody and/or control to the extent it
5 can locate such documents after a reasonably diligent search.

6 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
7 documents in his possession, custody and/or control responsive to this request.

8 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
9 documents in its possession, custody and/or control responsive to this request.
10

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12
13 **AMENDED REQUEST FOR PRODUCTION NO. 66:**

14 The DOCUMENTS listed in Appendix A (Army DOCUMENTS) of the DOCUMENT
15 bearing Bates stamp range VVA023903-23919, and the DOCUMENTS listed in Appendix C
16 (CIA) of the DOCUMENT bearing Bates stamp range VVA023903-23919

17
18 **OBJECTIONS**

19 Defendants object to this amended production request for the reasons described in
20 General Objections 1 and 9-21.

21 **RESPONSES**

22 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
23 produce responsive, non-privileged documents in its possession, custody and/or control to the
24 extent it can locate such documents after a reasonably diligent search.
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1 CIA: Subject to and without waiving the foregoing objections, CIA responds that it will produce
2 responsive, non-privileged documents in its possession, custody and/or control to the extent it
3 can locate such documents after a reasonably diligent search.

4 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
5 documents in his possession, custody and/or control responsive to this request.

6 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
7 documents in its possession, custody and/or control responsive to this request.
8

9
10 **AMENDED REQUEST FOR PRODUCTION NO. 67:**

11 The "VOLS TEAS Data," a 1981 printout which is described as "a data collection
12 concerning persons possibly exposed to toxic substances at Edgewood who were seen at the
13 Toxic Exposure Aid station. . . .," as described in the DOCUMENT bearing Bates stamp VVA-
14 VA023589.
15

16 **OBJECTIONS**

17 Defendants object to this amended production request for the reasons described in
18 General Objections 1 and 9-21. Defendants further object to this request on the grounds that it
19 seeks irrelevant information, as the VOL TEAS Data" printout relates to accidental exposures to
20 chemical agents, rather than the testing of chemical agents on volunteer service members.
21 Defendants further object on the grounds that this request is properly directed to one agency, and
22 the burden of searching for such information, as described in General Objection 9, greatly
23 outweighs the relevance, if any, of that information to the claims against the other Defendants.
24
25

26 **RESPONSES**
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28

1 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
2 produce the document identified in Plaintiffs' "Amended Request for Production No. 67."

3 CIA: Subject to and without waiving the foregoing objections, CIA responds that it has no
4 documents in its possession, custody and/or control responsive to this request.

5 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
6 documents in his possession, custody and/or control responsive to this request.

7
8 VA: Subject to and without waiving the foregoing objections, VA responds that it will conduct a
9 reasonable search for the document identified in Plaintiffs' "Amended Request for Production
10 No. 67," and produce it to the extent it can find the document.
11

12
13 **AMENDED REQUEST FOR PRODUCTION NO. 68:**

14 All DOCUMENTS CONCERNING the 1976 report issued by the DAIG entitled *Use of*
15 *Volunteers in Chemical Agent Research*, Report DAIG-IN 21-75.
16

17 **OBJECTIONS**

18 Defendants object to this amended production request for the reasons described in
19 General Objections 1 and 9-21. Defendants further object on the grounds that the request is
20 overbroad and unduly burdensome, for the reasons described in General Objections, insofar as it
21 seeks "all documents concerning" a 1976 DAIG report, without any attempt to define the
22 specific information Plaintiffs seek. Defendants further object on the grounds that this request is
23 properly directed to one agency, and the burden of searching for such information, as described
24 in General Objection 9, greatly outweighs the relevance, if any, of that information to the claims
25 against the other Defendants.
26

27 **RESPONSES**
28

1 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
2 produce responsive, non-privileged documents in its possession, custody and/or control to the
3 extent it can locate such documents after a reasonably diligent search.

4 CIA: Subject to and without waiving the foregoing objections, CIA responds that it will produce
5 responsive, non-privileged documents in its possession, custody and/or control to the extent it
6 can locate such documents after a reasonably diligent search.

7 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
8 documents in his possession, custody and/or control responsive to this request.

9 VA: Subject to and without waiving the foregoing objections, VA responds that it will produce
10 responsive, non-privileged documents in its possession, custody and/or control to the extent it
11 can locate such documents after a reasonably diligent search.
12
13

14
15 **AMENDED REQUEST FOR PRODUCTION NO. 69:**

16 A copy of the research report entitled “Black Hats and White Hats, the Effect of
17 Organizational Culture and Institutional Identity on the Twenty-third Air Force,” by Lt. Col.
18 Ioannis Koskinas, USAF.

19
20 **RESPONSE**

21 Defendants previously produced to Plaintiffs a copy of the document identified in
22 Plaintiffs’ “Amended Request for Production No. 69,” which has the Bates label VET10_00091.
23
24

25 **AMENDED REQUEST FOR PRODUCTION NO. 70:**

26 Those DOCUMENTS IDENTIFIED in the DOD Radiation Records Command Center,
27 **MEMORANDUM FOR THE RECORD, SUBJECT:** Records Review, Edgewood Arsenal,
28

1 Maryland, dated April 26, 1995, including, without limitation, the records and files
2 IDENTIFIED under Tab C (listing documents in the Office of the Command Historian,
3 Corporate Information Officer, Chemical and Biological Defense Command (“CBDCOM”),
4 Tab D (Higher Command Room), Tab E (Edgewood Room), and Tab F (Classified Records
5 Room), Tab H (MCIRD files) and Tab I (Edgewood Arsenal Holding Area), excluding those
6 DOCUMENTS that relate exclusively to radiological tests.
7

8 OBJECTIONS

9 Defendants object to this amended production request for the reasons described in
10 General Objections 1 and 9-21. Defendants further object on the grounds that this request is
11 properly directed to one agency, and the burden of searching for such information, as described
12 in General Objection 9, greatly outweighs the relevance, if any, of that information to the claims
13 against the other Defendants.
14

15 RESPONSES

16 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
17 produce the documents identified in Plaintiffs’ “Amended Request for Production No. 70.”
18

19 CIA: Subject to and without waiving the foregoing objections, CIA responds that it has no
20 documents in its possession, custody and/or control responsive to this request.

21 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
22 documents in his possession, custody and/or control responsive to this request.
23

24 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
25 documents in its possession, custody and/or control responsive to this request.
26

27 AMENDED REQUEST FOR PRODUCTION NO. 71:

28

1 “Summaries of Major Events and Problems” prepared by the U.S. Army Chemical
2 Corps (and its successors) or received by YOU for the fiscal years 1943 to present.

3 OBJECTIONS

4 Defendants object to this amended production request for the reasons described in
5 General Objections 1 and 7, 9-21. Defendants further object on the grounds that the request is
6 overly broad and unduly burdensome, to the extent that it seeks sixty-seven years of reports
7 without any demonstration as to the relevance of such documents that pre-date and post-date the
8 Army’s chemical and biological testing program. In addition, to the extent Plaintiffs’ request
9 seeks information concerning the health effects associated with chemical and biological agents
10 associated with DoD’s volunteer testing programs, this request seeks information that is
11 cumulative of other materials Defendants are producing in this case, including, among other
12 things, the categories of documents identified in General Objection 9. Defendants further object
13 on the grounds that this request is properly directed to one agency, and the burden of searching
14 for such information, as described in General Objection 9, greatly outweighs the relevance, if
15 any, of that information to the claims against the other Defendants.
16
17
18

19 RESPONSES

20 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
21 produce responsive, non-privileged documents from the years 1953-1975 that are in its
22 possession, custody and/or control to the extent it can locate such documents after a reasonably
23 diligent search.
24

25 CIA: Subject to and without waiving the foregoing objections, CIA responds that it has no
26 documents in its possession, custody and/or control responsive to this request.
27
28

1 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
2 documents in his possession, custody and/or control responsive to this request.

3 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
4 documents in its possession, custody and/or control responsive to this request.
5

6
7 **AMENDED REQUEST FOR PRODUCTION NO. 72:**

8 The “master DOCUMENT” covering the major areas of chemical and biological
9 weapons research and all of the supporting DOCUMENTS relating to concepts of use, research
10 and development, material guidance, planning of mission, delivery, use, estimation of
11 casualties, and supply considerations, as described on pages 13-17 in the Summary of the
12 MEETING of the U.S. Army Chemical Corps Advisory Council held on June 23-24, 1958, at
13 the Army Chemical Center, Maryland.
14

15 **OBJECTIONS**

16 Defendants object to this amended production request for the reasons described in
17 General Objections 1 and 9-21. Defendants further object on the grounds that this request is
18 properly directed to one agency, and the burden of searching for such information, as described
19 in General Objection 9, greatly outweighs the relevance, if any, of that information to the claims
20 against the other Defendants.
21

22 **RESPONSES**

23
24 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
25 produce responsive, non-privileged documents in its possession, custody and/or control to the
26 extent it can locate such documents after a reasonably diligent search.
27
28

1 CIA: Subject to and without waiving the foregoing objections, CIA responds that it has no
2 documents in its possession, custody and/or control responsive to this request.

3 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
4 documents in his possession, custody and/or control responsive to this request.

5 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
6 documents in its possession, custody and/or control responsive to this request.
7

8
9 **AMENDED REQUEST FOR PRODUCTION NO. 73:**

10 A certain Report of the Ad Hoc Study Group on Psychochemicals, published on or
11 around November 19, 1955, which made recommendations regarding the study of
12 psychochemicals and is sometimes referred to as the “Wolff Committee Report” or the “Wolff
13 Report.”
14

15 **OBJECTIONS**

16 Defendants object to this amended production request for the reasons described in
17 General Objections 1 and 9-21. Defendants further object to the request as irrelevant, as the
18 report identified in the request is not even referenced in the 234-paragraph Third Amended
19 Complaint. Defendants further object on the grounds that this request is properly directed to one
20 agency, and the burden of searching for such information, as described in General Objection 9,
21 greatly outweighs the relevance, if any, of that information to the claims against the other
22 Defendants.
23

24 **RESPONSES**

25
26 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
27 produce the document referenced in this request for production to the extent it is in its
28

1 possession, custody and/or control and to the extent it can locate such documents after a
2 reasonably diligent search.

3 CIA: Subject to and without waiving the foregoing objections, the CIA responds that it has no
4 documents in its possession, custody and/or control responsive to this request.

5 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
6 documents in his possession, custody and/or control responsive to this request.

7 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
8 documents in its possession, custody and/or control responsive to this request.
9

10
11 **AMENDED REQUEST FOR PRODUCTION NO. 74:**

12
13 A memorandum from the chairman of the U.S. Army Research and Development
14 Coordinating Committee on Biological and Chemical Warfare, dated on or around June 3,
15 1955, which requested the Technical Advisory Panel on Biological and Chemical Warfare to
16 study the use of psychochemical agents and preceded the creation of the Ad Hoc Study Group
17 on Psychochemicals (“Wolff Committee”).
18

19 **OBJECTIONS**

20 Defendants object to this amended production request for the reasons described in
21 General Objections 1 and 9-21. Defendants further object on the grounds that this request is
22 properly directed to one agency, and the burden of searching for such information, as described
23 in General Objection 9, greatly outweighs the relevance, if any, of that information to the claims
24 against the other Defendants.
25

26 **RESPONSES**
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28

1 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
2 produce the document referenced in this request for production to the extent it is in its
3 possession, custody and/or control and to the extent it can locate such documents after a
4 reasonably diligent search.

5 CIA: Subject to and without waiving the foregoing objections, CIA responds that it has no
6 documents in its possession, custody and/or control responsive to this request.

7 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
8 documents in his possession, custody and/or control responsive to this request.

9 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
10 documents in its possession, custody and/or control responsive to this request.
11
12

13
14 **AMENDED REQUEST FOR PRODUCTION NO. 75:**

15 The agendas, transcripts, correspondence, reports, recommendations, presentations and
16 COMMUNICATIONS and MEETINGS CONCERNING the Wolff Committee as referred to
17 on page 129 of the Summary of Major Events and Problems, United States Army Chemical
18 Corps, Fiscal Year 1956, Chemical Corps Historical Office (Nov. 1956).
19

20 **OBJECTIONS**

21 Defendants object to this amended production request for the reasons described in
22 General Objections 1 and 9-21. Defendants further object on the grounds that the request is
23 overly broad and unduly burdensome, as it seeks all “agenda, transcripts, correspondence,
24 recommendations, presentations, and communications and meetings,” concerning a committee
25 that apparently met approximately 55 years ago, and such information, even if it were still
26 available, has no relevance to the remaining, narrow claims in this case. In addition, to the
27
28

1 extent Plaintiffs' request seeks information concerning the health effects associated with
2 chemical and biological agents associated with DoD's volunteer testing programs, this request
3 seeks information that is cumulative of other materials Defendants are producing in this case,
4 including, among other things, the categories of documents identified in General Objection 9.
5 Because of the substantial overbreadth and undue burden of this request, as well as its
6 cumulateness, and the lack of relevance to any claim remaining in this case, Defendants will
7 not respond to this request. *See* Fed. R. Civ. P. 26(b), 26(c).
8
9

10 **AMENDED REQUEST FOR PRODUCTION NO. 76:**

11 The DOD study of the potential importance of certain psychochemical materials,
12 including LSD, which was conducted by the Ad Hoc Study Group of Psychochemicals under
13 the Technical Advisory Panel on CW and BW of the Offices of the Assistant Secretary of
14 Defense for Research and Development, which was ongoing as of 1955, and ALL
15 DOCUMENTS regarding the CIA's financial support of this study.
16
17

18 **OBJECTIONS**

19 Defendants object to this amended production request for the reasons described in
20 General Objections 1 and 9-21. Defendants further object because there are no allegations in the
21 Third Amended Complaint concerning the study identified in this request. Defendants further
22 object to the request on relevance, overbreadth, and burden grounds to the extent it seeks "all
23 documents regarding the CIA's financial support of this study," as such information is not
24 reasonably calculated to lead to the discovery of admissible evidence regarding the remaining,
25 narrow legal issues in this case, and the minimal relevance, if any, is greatly outweighed by the
26 substantial burden in searching for documents that are over fifty years old. Defendants further
27
28

1 object on the grounds that this request is properly directed to one agency, and the burden of
2 searching for such information, as described in General Objection 9, greatly outweighs the
3 relevance, if any, of that information to the claims against the other Defendants.

4 RESPONSES

5 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
6 produce the “DoD study” referenced in this request for production to the extent it is in its
7 possession, custody and/or control and to the extent it can locate such documents after a
8 reasonably diligent search.

9
10 CIA: Subject to and without waiving the foregoing objections, CIA responds that it has no
11 documents in its possession, custody and/or control responsive to this request.

12
13 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
14 documents in his possession, custody and/or control responsive to this request.

15
16 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
17 documents in its possession, custody and/or control responsive to this request.

18
19 **AMENDED REQUEST FOR PRODUCTION NO. 77:**

20 Chronic toxicity studies discussed in the 1963 U.S. Army Report AD 716997 (NTIS:
21 August 1946), CONCERNING EA-1476 or its analogs and and/or dimethylheptyl (DHMP) or
22 its analogs.

23
24 OBJECTIONS

25 Defendants object to this amended production request for the reasons described in
26 General Objections 1 and 9-21. Defendants further object on the grounds that this request is
27 properly directed to one agency, and the burden of searching for such information, as described
28

1 in General Objection 9, greatly outweighs the relevance, if any, of that information to the claims
2 against the other Defendants.

3 RESPONSES

4 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
5 produce responsive, non-privileged documents in its possession, custody and/or control to the
6 extent it can locate such documents after a reasonably diligent search.

7
8 CIA: Subject to and without waiving the foregoing objections, CIA responds that it has no
9 documents in its possession, custody and/or control responsive to this request.

10 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
11 documents in his possession, custody and/or control responsive to this request.

12
13 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
14 documents in its possession, custody and/or control responsive to this request.

15
16 **AMENDED REQUEST FOR PRODUCTION NO. 78:**

17
18 The DOCUMENT referred to at the top of the DOCUMENT bearing Bates stamp
19 VVA023839 as unclassified Research Report Number VII, ID50 of Agent 926 by Dr. Herbert
20 W. Copelan, Ivy Research Laboratories, Inc. submitted in May 1970, to the Medical Research
21 Laboratories, Directorate of Laboratories, Edgewood Arsenal.

22 OBJECTIONS

23
24 Defendants object to this amended production request for the reasons described in
25 General Objections 1 and 9-21.

26 RESPONSES

1 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
2 produce the document identified in Plaintiffs' "Amended Request for Production No. 78."

3 CIA: Subject to and without waiving the foregoing objections, CIA responds that it will produce
4 the document identified in Plaintiffs' "Amended Request for Production No. 78."

5 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
6 documents in his possession, custody and/or control responsive to this request.
7

8 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
9 documents in its possession, custody and/or control responsive to this request.
10

11 **AMENDED REQUEST FOR PRODUCTION NO. 79:**

12
13 The 1949 report by Dr. L. Wilson Greene, Technical Director of the Chemical and
14 Radiological Laboratories at the Army Chemical Center, entitled "Psychochemical Warfare, A
15 New Concept of War."

16 **OBJECTIONS**

17
18 Defendants object to this amended production request for the reasons described in
19 General Objections 1 and 8-21. Defendants further object to the request on the grounds that such
20 information is not reasonably calculated to lead to the discovery of admissible evidence
21 concerning the narrow legal claims remaining in this APA case, particularly in light of the fact
22 that this document pre-dates the chemical and biological volunteer test program at issue in this
23 case. Defendants further object on the grounds that this request is properly directed to one
24 agency, and the burden of searching for such information, as described in General Objection 9,
25 greatly outweighs the relevance, if any, of that information to the claims against the other
26 Defendants.
27
28

1 RESPONSES

2 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
3 produce the requested document to the extent it can locate the document after a reasonably
4 diligent search.

5 CIA: Subject to and without waiving the foregoing objections, CIA responds that it has no
6 documents in its possession, custody and/or control responsive to this request.

7 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
8 documents in his possession, custody and/or control responsive to this request.

9 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
10 documents in its possession, custody and/or control responsive to this request.
11

12
13
14 **AMENDED REQUEST FOR PRODUCTION NO. 80:**

15 The CmlC Consolidated R&D Annual Report, Project 4-08-03-016 and other
16 DOCUMENTS referred to in footnote 170, page 98 of the Summary of Major Events and
17 Problems, United States Army Chemical Corps, Fiscal Year 1956, Chemical Corps Historical
18 Office (Nov. 1956).
19

20 OBJECTIONS

21 Defendants object to this amended production request for the reasons described in
22 General Objections 1 and 9-21. Defendants further object on the grounds that this request is
23 properly directed to one agency, and the burden of searching for such information, as described
24 in General Objection 9, greatly outweighs the relevance, if any, of that information to the claims
25 against the other Defendants.
26

27 RESPONSES
28

1 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
2 produce the document identified in this production request to the extent it is in its possession,
3 custody and/or control and to the extent it can locate such documents after a reasonably diligent
4 search.

5 CIA: Subject to and without waiving the foregoing objections, the CIA responds that it has no
6 documents in its possession, custody and/or control responsive to this request.

7 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
8 documents in his possession, custody and/or control responsive to this request.

9 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
10 documents in its possession, custody and/or control responsive to this request.
11
12

13
14 **AMENDED REQUEST FOR PRODUCTION NO. 81:**

15 The Report of the Ad Hoc Advisory Committee on Chemical Corps Mission and
16 Structure as referred to on pages 6-7 of the Summary of Major Events and Problems, United
17 States Army Chemical Corps (November 1956).
18

19 **OBJECTIONS**

20 Defendants object to this amended production request for the reasons described in
21 General Objections 1 and 9-21. Defendants further object to the requested report as irrelevant
22 because, on its face, it addresses the administration and structure of the Chemical Corps
23 command, an issue that is not reasonably calculated to lead to the discovery of admissible
24 evidence concerning the narrow, APA claims remaining in this case. Defendants further object
25 to the request as cumulative, as the findings and recommendations of the Ad Hoc Advisory
26 Committee are discussed in great detail in the Summary of Major Events and Problems, United
27
28

1 States Army Chemical Corps (November 1956), between pages 6-14. Defendants further object
2 on the grounds that this request is properly directed to one agency, and the burden of searching
3 for such information, as described in General Objection 9, greatly outweighs the relevance, if
4 any, of that information to the claims against the other Defendants.

5 RESPONSES

6 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
7 produce the document identified in this production request to the extent it is in its possession,
8 custody and/or control and to the extent it can locate such documents after a reasonably diligent
9 search.
10

11 CIA: Subject to and without waiving the foregoing objections, the CIA responds that it has no
12 documents in its possession, custody and/or control responsive to this request.
13

14 AG: Subject to and without waiving the foregoing objections, the AG responds that it has no
15 documents in its possession, custody and/or control responsive to this request.
16

17 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
18 documents in its possession, custody and/or control responsive to this request.
19

20 AMENDED REQUEST FOR PRODUCTION NO. 82:

21 The Biennial Reports of the Chief Chemical Officer of the U.S. Army Chemical Corps.

22 OBJECTIONS

23 Defendants object to this amended production request for the reasons described in
24 General Objections 1 and 9-21. Defendants further object on the grounds that the request is
25 overly broad and unduly burdensome, as it is not limited to a particular time frame. Defendants'
26 search and resultant production of responsive documents will be limited to the time period of
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1 1953-1975. Defendants further object on the grounds that this request is properly directed to one
2 agency, and the burden of searching for such information, as described in General Objection 9,
3 greatly outweighs the relevance, if any, of that information to the claims against the other
4 Defendants.

5 RESPONSES

6
7 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
8 produce responsive, non-privileged documents in its possession, custody and/or control to the
9 extent it can locate such documents after a reasonably diligent search.

10 CIA: Subject to and without waiving the foregoing objections, the CIA has no documents in its
11 possession, custody and/or control responsive to this request.

12
13 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
14 documents in his possession, custody and/or control responsive to this request.

15 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
16 documents in its possession, custody and/or control responsive to this request.
17

18
19 **AMENDED REQUEST FOR PRODUCTION NO. 83:**

20 Agendas, presentations, materials, reports or other DOCUMENTS CONCERNING the
21 Quadripartite Standing Working Group on Chemical Warfare, including but not limited to the
22 Proceedings of the 1st Meeting of the Quadripartite Standing Working Group on Chemical
23 Warfare at Edgewood Arsenal in 1965.
24

25 OBJECTIONS

26 Defendants object to this amended production request for the reasons described in
27 General Objections 1 and 9-21. Defendants further object to the request on the grounds that it is
28

1 overbroad and unduly burdensome, for the reasons described in General Objections 9-16, as it
2 seeks all “agendas, presentations, materials, reports, or other DOCUMENTS CONCERNING,”
3 the “Quadripartite Standing Working Group on Chemical Warfare,” documents that are forty-
4 five years ago and have no bearing upon the narrow, APA claims remaining in this case. In
5 addition, to the extent Plaintiffs’ request seeks information concerning the health effects
6 associated with chemical and biological agents associated with DoD’s volunteer testing
7 programs, this request seeks information that is cumulative of other materials Defendants are
8 producing in this case, including, among other things, the categories of documents identified in
9 General Objection 9. Because of the substantial overbreadth and undue burden of this request, as
10 well as its cumulateness, and the lack of relevance to any claim remaining in this case,
11 Defendants will not respond to this request. *See* Fed. R. Civ. P. 26(b), 26(c).
12
13
14

15 **AMENDED REQUEST FOR PRODUCTION NO. 84:**

16 Reports, agendas, presentations, transcripts, MEETINGS and other
17 COMMUNICATIONS CONCERNING tri-service conferences to address the health hazards of
18 military chemicals, including, without limitation, those authored or received by Colonel
19 William E.R. Sullivan, Deputy Commander of the Army Chemical Corps Research and
20 Engineering Command.
21

22 **OBJECTIONS**

23
24 Defendants object to this amended production request for the reasons described in
25 General Objections 1 and 9-21. Defendants further object to this request as overbroad and
26 unduly burdensome, for the reasons described in General Objections 9-16, as it seeks all
27 “reports, agendas, presentations, transcripts, MEETINGS and other COMMUNICATIONS
28

1 CONCERNING tri-service conferences,” dating back over 40 years. In addition, to the extent
2 Plaintiffs’ request seeks information concerning the health effects associated with chemical and
3 biological agents associated with DoD’s volunteer testing programs, this request seeks
4 information that is cumulative of other materials Defendants are producing in this case,
5 including, among other things, the categories of documents identified in General Objection 9.
6 Because of the substantial overbreadth and undue burden of this request, as well as its
7 cumulateness, and the lack of relevance to any claim remaining in this case, Defendants will
8 not respond to this request. *See* Fed. R. Civ. P. 26(b), 26(c).
9
10

11 **AMENDED REQUEST FOR PRODUCTION NO. 85:**

12
13 Violations, suspected violations or violations reported to YOU CONCERNING the
14 Nuremberg Code, the Wilson Directive or the Official Directives as defined in the Complaint,
15 in connection with the TEST PROGRAMS, as well as MEETINGS and COMMUNICATIONS
16 CONCERNING the same.
17

18 **OBJECTIONS**

19 Defendants object to this amended production request for the reasons described in
20 General Objections 1, 3, 5, 6, and 9-21. Defendants further preserve their objection to the
21 relevance of this request, as the Court has dismissed Plaintiffs’ claims related to the lawfulness
22 of the chemical and biological test programs, and, therefore, the issue of consent is no longer
23 relevant to the remaining claims in this case. Defendants further object to the request as
24 overbroad and unduly burdensome to the extent it seeks all “meetings and communications”
25 concerning the Nuremberg Code, the Wilson Directive, or the “Official Directives,” and the
26 burden in terms of time and expense of conducting such a broad search greatly outweighs the
27
28

1 relevance, if any, of such a search. Accordingly, searches for responsive documents will not
2 include “meetings and communications.”

3 RESPONSES

4 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
5 produce unit reports that are in its possession, custody and/or control to the extent it can locate
6 such documents after a reasonably diligent search.

8 CIA: Subject to and without waiving the foregoing objections, the CIA responds that it has no
9 documents in its possession, custody and/or control responsive to this request.

10 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
11 documents in his possession, custody and/or control responsive to this request.

12 VA: Subject to and without waiving the foregoing objections, VA responds that it has produced
13 responsive, non-privileged documents it has related to this topic in connection with Plaintiffs’
14 Rule 45 subpoena, and will continue to produce responsive, non-privileged documents in its
15 possession, custody and/or control to the extent it can locate such documents after a reasonably
16 diligent search.
17
18

19 **AMENDED REQUEST FOR PRODUCTION NO. 86:**

20 Applications and supporting documentation submitted to the Human Use Review
21 Committee and/or the U.S. Surgeon General, and actions taken by or recommendations made
22 by the Human Use Review Committee and/or Surgeon General between 1953 and present
23 relating to the TEST PROGRAMS, and all MEETINGS and COMMUNICATIONS
24 CONCERNING the same.
25

26 OBJECTIONS
27
28

1 Defendants object to this amended production request for the reasons described in
2 General Objections 1 and 8-21. Defendants further object to the request on the grounds that such
3 information is not reasonably calculated to lead to the discovery of admissible evidence
4 concerning the narrow legal claims remaining in this APA case, specifically given that this
5 request appears to seek information concerning the approval or rejection of experiments using
6 human subjects, and any claims related to the lawfulness of the test programs has been
7 dismissed. Defendants further object to the request as overbroad and unduly burdensome to the
8 extent it seeks all “meetings and communications” concerning tests that took place decades ago,
9 and the burden in terms of time and expense of conducting such a broad search greatly outweighs
10 the relevance, if any, of such a search. Defendants further object to the request as overly broad
11 and unduly burdensome, for the reasons articulated in General Objections 9-16, to the extent it is
12 seeking all “applications and supporting documentation submitted,” all “actions taken by or
13 recommendations made,” and all “meetings and communications” concerning the Human Use
14 Review Committee and/or the Surgeon General over the course of a fifty-seven year period.
15
16

17 RESPONSES

18
19 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
20 produce documents that are its possession, custody and/or control to the extent it can locate such
21 documents after a reasonably diligent search.

22 CIA: Subject to and without waiving the foregoing objections, the CIA responds that it has no
23 documents in its possession, custody and/or control responsive to this request.
24

25 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
26 documents in his possession, custody and/or control responsive to this request.
27
28

1 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
2 documents in its possession, custody and/or control responsive to this request.
3

4 **AMENDED REQUEST FOR PRODUCTION NO. 87:**

5 Minutes, notes, proceedings, correspondence, actions, transcripts or other
6 DOCUMENTS CONCERNING the activities of the Human Use Review Office, and/or the
7 Army Investigational Drug Review Board relating to the TEST PROGRAMS, from their
8 inception to present, including without limitation, its approval or rejection of experiments
9 using human subjects.
10

11 **OBJECTIONS**

12 Defendants object to this amended production request for the reasons described in
13 General Objections 1 and 8-21. Defendants further object to the request on the grounds that such
14 information is not reasonably calculated to lead to the discovery of admissible evidence
15 concerning the narrow legal claims remaining in this APA case, specifically given that this
16 request seeks information concerning the approval or rejection of experiments using human
17 subjects, and any claims related to the lawfulness of the test programs has been dismissed.
18 Defendants further object to the request as overly broad and unduly burdensome to the extent it
19 is seeking all “minutes, notes proceedings, correspondence, actions, transcripts or other
20 documents concerning the activities of the Human Use Review Office and/or the Army
21 Investigational Drug Review Board” over the course of a fifty-seven year period. The burden of
22 searching for such far-reaching documents dating back over fifty years greatly outweighs the
23 relevance, if any, of such information. In addition, to the extent Plaintiffs’ request seeks
24 information concerning the health effects associated with chemical and biological agents
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1 associated with DoD's volunteer testing programs, this request seeks information that is
2 cumulative of other materials Defendants are producing in this case, including, among other
3 things, the categories of documents identified in General Objection 9. Because of the substantial
4 overbreadth and undue burden of this request, as well as its cumulateness, and the lack of
5 relevance to any claim remaining in this case, Defendants will not respond to this request. *See*
6 Fed. R. Civ. P. 26(b), 26(c).
7

8
9 **AMENDED REQUEST FOR PRODUCTION NO. 88:**

10 The negotiation, content, application, interpretation or other DOCUMENTS
11 CONCERNING the Department of Health Education and Welfare Memorandum of
12 Understanding with The Department of Defense in 1964 and/or Army Regulation 40-7, and all
13 MEETINGS and COMMUNICATIONS CONCERNING the same.
14

15 **OBJECTIONS**

16 Defendants object to this amended production request for the reasons described in
17 General Objections 1 and 8-21. Defendants further object to the request as overly broad and
18 unduly burdensome to the extent it is seeking both the "negation, content, application,
19 interpretation or other DOCUMENTS" and "all meetings and communications" concerning a
20 forty-six year old contract that has no bearing on the narrow legal claims remaining in this case.
21 Because the burden of searching for such documents, as outlined in General Objections 9-16,
22 greatly outweighs the relevance, if any, of those documents to the narrow APA claims remaining
23 in this case, this request is inappropriate under Rule 26. Defendants further object on the
24 grounds that this request is properly directed to one agency, and the burden of searching for such
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1 information, as described in General Objection 9, greatly outweighs the relevance, if any, of that
2 information to the claims against the other Defendants.

3 RESPONSES

4 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
5 produce the 1964 Department of Health, Education and Welfare Memorandum of Understanding
6 with the DoD to the extent it is in DoD's possession, custody and/or control and to the extent it
7 can locate such documents after a reasonably diligent search.
8

9 CIA: Subject to and without waiving the foregoing objections, CIA responds that it has no
10 documents in its possession, custody and/or control responsive to this request.
11

12 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
13 documents in his possession, custody and/or control responsive to this request.

14 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
15 documents in its possession, custody and/or control responsive to this request.
16

17 **AMENDED REQUEST FOR PRODUCTION NO. 89:**

18
19 The agendas, minutes, reports, presentations to, and other DOCUMENTS
20 CONCERNING the activities of the Medical Review Committee for scientific evaluation of
21 protocols using human subjects and a Human Use Committee for the moral and ethical review
22 of such protocols for use of volunteers at the Edgewood Arsenal.
23

24 OBJECTIONS

25 Defendants object to this amended production request for the reasons described in
26 General Objections 1 and 8-21. Defendants further object on the grounds that this request seeks
27 information that bears on the lawfulness of the test program, an issue the Court dismissed from
28

1 this case. In addition, to the extent Plaintiffs' request seeks information concerning the health
2 effects associated with chemical and biological agents associated with DoD's volunteer testing
3 programs, this request seeks information that is cumulative of other materials Defendants are
4 producing in this case, including, among other things, the categories of documents identified in
5 General Objection 9. Because of the cumulateness and the lack of relevance to any claim
6 remaining in this case, Defendants will not respond to this request. *See* Fed. R. Civ. P. 26(b),
7 26(c).
8

9
10 **AMENDED REQUEST FOR PRODUCTION NO. 90:**

11 Reports or submissions by YOU to the Surgeon General for the approval of any
12 experiment involving the use of human volunteers or subjects, the approval of any such
13 experiments by the Surgeon General and all MEETINGS and COMMUNICATIONS
14 CONCERNING the same.
15

16 **OBJECTIONS**

17 Defendants object to this amended production request for the reasons described in
18 General Objections 1, 7 and 8-21. Defendants further object on the grounds that the request is
19 overly broad insofar as it is not limited to seeking information related to experiments involving
20 the biological and chemical materials identified in the Chem-Bio database (let alone a reasonable
21 subset of the materials contained in that database). Defendants further object on the grounds that
22 this request seeks information that bears on the lawfulness of the test program, an issue the Court
23 dismissed from this case. Defendants further object to the request as overbroad and undue
24 burdensome to the extent it seeks all "meetings and communications" concerning tests that took
25 place decades ago, and the burden in terms of time and expense of conducting such a broad
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1 search greatly outweighs the relevance, if any, of such a search. In addition, to the extent
2 Plaintiffs' request seeks information concerning the health effects associated with chemical and
3 biological agents associated with DoD's volunteer testing programs, this request seeks
4 information that is cumulative of other materials Defendants are producing in this case,
5 including, among other things, the categories of documents identified in General Objection 9.
6 Because of the substantial overbreadth and undue burden of this request, as well as its
7 cumulateness, and the lack of relevance to any claim remaining in this case, Defendants will
8 not respond to this request. *See* Fed. R. Civ. P. 26(b), 26(c).
9

10
11 **AMENDED REQUEST FOR PRODUCTION NO. 91:**

12
13 Activities, directions, procedures, regulations, requirements, standards, and violations
14 of any of the same, and other DOCUMENTS CONCERNING the use of human beings in
15 experiments received by, prepared by, and/or reviewed by the Medical Policy Council of the
16 Armed Forces, and all MEETINGS and COMMUNICATIONS CONCERNING the same.
17

18 **OBJECTIONS**

19 Defendants object to this amended production request for the reasons described in
20 General Objections 1 and 8-21. Defendants further object on the grounds that this request seeks
21 information that bears on the lawfulness of the test program, an issue the Court dismissed from
22 this case. Defendants further object to the request as overbroad and unduly burdensome to the
23 extent it seeks all "meetings and communications" concerning tests that took place decades ago,
24 and the burden in terms of time and expense of conducting such a broad search greatly outweighs
25 the relevance, if any, of such a search. In addition, to the extent Plaintiffs' request seeks
26 information concerning the health effects associated with chemical and biological agents
27
28

1 associated with DoD's volunteer testing programs, this request seeks information that is
2 cumulative of other materials Defendants are producing in this case, including, among other
3 things, the categories of documents identified in General Objection 9. Because of the substantial
4 overbreadth and undue burden of this request, as well as its cumulateness, and the lack of
5 relevance to any claim remaining in this case, Defendants will not respond to this request. *See*
6 Fed. R. Civ. P. 26(b), 26(c).
7

8
9 **AMENDED REQUEST FOR PRODUCTION NO. 92:**

10 The permission granted for the use of human volunteers in the evaluation of biological
11 agents, the plan drawn up at Fort Detrick for the assessment of BW agents and vaccines and
12 plan approval by the Surgeon General, and the work carried out under contract in a medical
13 school, as described on page 6 of the document entitled Summary of Major Events and
14 Problems (Reports Control Symbol CSHIS-6), Historical Office of the Chief Chemical Officer
15 for Fiscal Year 1954 (September 1954), and all MEETINGS and COMMUNICATIONS
16 CONCERNING the same.
17

18
19 **OBJECTIONS**

20 Defendants object to this amended production request for the reasons described in
21 General Objections 1 and 9-21. Defendants further object to this request as irrelevant because it
22 seeks information that bears on the lawfulness of the test program, an issue the Court dismissed
23 from this case. Defendants further object to the request as overbroad and unduly burdensome to
24 the extent it seeks all "meetings and communications" concerning tests that took place decades
25 ago, and the burden in terms of time and expense of conducting such a broad search greatly
26 outweighs the relevance, if any, of such a search. In addition, to the extent Plaintiffs' request
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1 seeks information concerning the health effects associated with chemical and biological agents
2 associated with DoD's volunteer testing programs, this request seeks information that is
3 cumulative of other materials Defendants are producing in this case, including, among other
4 things, the categories of documents identified in General Objection 9. Because of the substantial
5 overbreadth and undue burden of this request, as well as its cumulateness, and the lack of
6 relevance to any claim remaining in this case, Defendants will not respond to this request. *See*
7 Fed. R. Civ. P. 26(b), 26(c).
8

9
10 **AMENDED REQUEST FOR PRODUCTION NO. 93:**

11 Army Contract DA-18-108-CML-5596 and any other contract or COMMUNICATIONS
12 between YOU and Tulane University concerning research involving TEST SUBSTANCES or
13 the implantation of electrodes in the human brain, including without limitation, DOCUMENTS
14 concerning research performed by Dr. Edward Heath and Dr.
15 Russell Monroe.
16

17 **OBJECTIONS**

18
19 Defendants object to this amended production request for the reasons described in
20 General Objections 1, 3, and 5-21. Defendants further object to the request on the grounds that it
21 is overly broad and unduly burdensome to the extent it seeks "without limitation" all
22 communications between the federal agency Defendants and Tulane University concerning
23 research involving the "test substances" or the "implantation of electrodes in the human brain."
24 In addition, to the extent Plaintiffs' request seeks information concerning the health effects
25 associated with chemical and biological agents associated with DoD's volunteer testing
26 programs, this request seeks information that is cumulative of other materials Defendants are
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1 producing in this case, including, among other things, the categories of documents identified in
2 General Objection 9. Defendants further object to the request as overbroad and unduly
3 burdensome to the extent it seeks all “meetings and communications” concerning tests that took
4 place decades ago, and the burden in terms of time and expense of conducting such a broad
5 search greatly outweighs the relevance, if any, of such a search. Defendants further object on the
6 grounds that the request is overbroad, unduly burdensome, and irrelevant to the extent that it
7 seeks information that is not related to testing on volunteer service members. Defendants further
8 object on the grounds that this request is properly directed to one agency, and the burden of
9 searching for such information, as described in General Objection 9, greatly outweighs the
10 relevance, if any, of that information to the claims against the other Defendants.
11

12 RESPONSES

13
14 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
15 produce Army Contract DA-18-108-CML-5596 to the extent it is in DoD’s possession, custody
16 and/or control and to the extent it can locate the document after a reasonably diligent search.
17

18 CIA: Subject to and without waiving the foregoing objections, the CIA responds that it has no
19 documents in its possession, custody and/or control responsive to this request.

20 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
21 documents in his possession, custody and/or control responsive to this request.
22

23 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
24 documents in its possession, custody and/or control responsive to this request.
25

26 AMENDED REQUEST FOR PRODUCTION NO. 94:

27 COMMUNICATIONS and MEETINGS between you and Dr. Russell Monroe, Tulane
28

1 University School of Medicine, and University of Maryland School of Medicine,
2 CONCERNING EA-1476 or its analogs and/or dimethylheptyl (DHMP) or its analogs.

3 OBJECTIONS

4 Defendants object to this amended production request for the reasons described in
5 General Objections 1, 3, and 5-21. Defendants further object to the request on the grounds that it
6 is overly broad and unduly burdensome, for the reasons described in General Objections 9-16, to
7 the extent it seeks all communications and meetings between the federal agency Defendants and
8 Dr. Russell Monroe, of Tulane University School of Medicine, and the University of Maryland
9 School of Medicine. The substantial burden of searching for such information greatly outweighs
10 the relevance, if any, to the remaining, narrow APA claims in this case. Defendants further
11 object to the request as overbroad and unduly burdensome to the extent it seeks all “meetings and
12 communications” concerning tests that took place decades ago, and the burden in terms of time
13 and expense of conducting such a broad search greatly outweighs the relevance, if any, of such a
14 search. In addition, to the extent Plaintiffs’ request seeks information concerning the health
15 effects associated with chemical and biological agents associated with DoD’s volunteer testing
16 programs, this request seeks information that is cumulative of other materials Defendants are
17 producing in this case, including, among other things, the categories of documents identified in
18 General Objection 9. Defendants further object on the grounds that this request is properly
19 directed to one agency, and the burden of searching for such information, as described in General
20 Objection 9, greatly outweighs the relevance, if any, of that information to the claims against the
21 other Defendants.
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26 RESPONSES
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1 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
2 produce responsive, non-privileged documents in its possession, custody and/or control to the
3 extent it can locate such documents after a reasonably diligent search.

4 CIA: Subject to and without waiving the foregoing objections, CIA responds that it has no
5 documents in its possession, custody and/or control responsive to this request.

6
7 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
8 documents in his possession, custody and/or control responsive to this request.

9 VA: Subject to and without waiving the foregoing objections, VA responds that it will produce
10 responsive, non-privileged documents in its possession, custody and/or control to the extent it
11 can locate such documents after a reasonably diligent search.
12

13
14 **AMENDED REQUEST FOR PRODUCTION NO. 95:**

15 The negotiation, performance, terms, output, reports, samples, chemical substances, and
16 characterization of chemical substances developed by third party contractors for the U.S. Army
17 that were tested on military personnel in connection with the TEST PROGRAMS, and all
18 MEETINGS and COMMUNICATIONS CONCERNING the same.
19

20 **OBJECTIONS**

21 Defendants object to this amended production request for the reasons described in
22 General Objections 1, 3, 5, 6 and 8-21. In addition, to the extent Plaintiffs' request seeks
23 information concerning the health effects associated with chemical and biological agents
24 associated with DoD's volunteer testing programs, this request seeks information that is
25 cumulative of other materials Defendants are producing in this case, including, among other
26 things, the categories of documents identified in General Objection 9. Defendants further object
27
28

1 to the request as overbroad and unduly burdensome to the extent it seeks all “meetings and
2 communications” concerning tests that took place over 35 years ago and spanned a quarter-
3 century, and the burden in terms of time and expense of conducting such a broad search greatly
4 outweighs the relevance, if any, of such a search. Accordingly, searches for responsive
5 documents will not include “meetings and communications.” Defendants further object on the
6 grounds that this request is properly directed to one agency, and the burden of searching for such
7 information, as described in General Objection 9, greatly outweighs the relevance, if any, of that
8 information to the claims against the other Defendants.
9

10 RESPONSES

11 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
12 produce responsive, non-privileged documents in its possession, custody and/or control to the
13 extent it can locate such documents after a reasonably diligent search.
14

15 CIA: Subject to and without waiving the foregoing objections, CIA responds that it has no
16 documents in its possession, custody and/or control responsive to this request.
17

18 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
19 documents in his possession, custody and/or control responsive to this request.
20

21 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
22 documents in its possession, custody and/or control responsive to this request.
23

24 AMENDED REQUEST FOR PRODUCTION NO. 96:

25 The negotiation, performance, terms, output, reports, samples, chemical substances,
26 characterization of chemical substances developed by Arthur D. Little, Inc., including the so-
27 called “Red Oil” or EA-1476, for the U.S. Army in connection with the TEST PROGRAMS,
28

1 and all MEETINGS and COMMUNICATIONS CONCERNING the same.

2 OBJECTIONS

3 Defendants object to this amended production request for the reasons described in
4 General Objections 1, 3, 5, 6 and 8-21. Defendants further object to this request as overbroad as
5 it seeks information concerning “chemical substances developed by Arthur D. Little,” without
6 regard to whether those same chemicals were actually used in tests of volunteer service members
7 as reflected in the Chem-Bio database. Defendants further object to the request as overbroad and
8 unduly burdensome to the extent it seeks all “meetings and communications,” and the burden in
9 terms of time and expense of conducting such a broad search greatly outweighs the relevance, if
10 any, of such a search. Accordingly, searches for responsive documents will not include
11 “meetings and communications.” In addition, to the extent Plaintiffs’ request seeks information
12 concerning the health effects associated with chemical and biological agents associated with
13 DoD’s volunteer testing programs, this request seeks information that is cumulative of other
14 materials Defendants are producing in this case, including, among other things, the categories of
15 documents identified in General Objection 9. Defendants further object on the grounds that this
16 request is properly directed to one agency, and the burden of searching for such information, as
17 described in General Objection 9, greatly outweighs the relevance, if any, of that information to
18 the claims against the other Defendants.
19

22 RESPONSES

23
24 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
25 produce responsive, non-privileged documents in its possession, custody and/or control to the
26 extent it can locate such documents after a reasonably diligent search.
27
28

1 CIA: Subject to and without waiving the foregoing objections, CIA responds that it has no
2 documents in his possession, custody and/or control responsive to this request.

3 AG: Subject to and without waiving the foregoing objections, the AG responds that it has no
4 documents in his possession, custody and/or control responsive to this request.

5 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
6 documents in its possession, custody and/or control responsive to this request.
7

8
9 **AMENDED REQUEST FOR PRODUCTION NO. 97:**

10 All DOCUMENTS CONCERNING the following contracts: #4504, #4405, #5843,
11 #9384, #71-530, #70-606, #73-605, ORD 7001-69, including, without limitation, interim and
12 final reports, proposals, extensions, follow-on contracts, magnetic tapes, computer tabulations
13 of test data, and all other contract files, correspondence, and reports listed or referred to in
14 “Attachment B,” bearing Bates stamp VVA023827-23831.
15

16 **OBJECTIONS**

17 Defendants object to this amended production request for the reasons described in
18 General Objections 1 and 8-21. The CIA further objects to this request as overbroad, unduly
19 burdensome, and irrelevant, as contracts #4504, #4405, #5843, #9384, #71-530, #70-606, #73-
20 605, and the report listed as ORD 7001-69 did not involve testing on volunteer service members.
21 In fact, according to the document, ORD 7001-69 concerns “Grooming Activities of Albion
22 Mice.” The CIA further objects to the remainder of the request to the extent it requests
23 information that it not relevant to Plaintiffs’ narrow APA claims against the CIA. The CIA
24 conducted a hand-search of documents related to Project OFTEN to find responsive documents.
25 If the CIA were required to search these records again and produce additional Project OFTEN
26
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1 documents that do not concern actual or contemplated testing on volunteer service members or
2 the other categories of information described above, it would take approximately three months.
3 The CIA further objects to this request to the extent that it seeks the disclosure of the identities of
4 contractors and other persons whose identities are protected from disclosure by the National
5 Security Act and CIA Act.
6

7 RESPONSES

8 DoD: Subject to and without waiving the foregoing objections, DoD responds that it has no
9 documents in its possession, custody and/or control responsive to this request.

10 CIA: Subject to and without waiving the foregoing objections, CIA responds that it will produce
11 responsive, non-privileged documents in its possession, custody and/or control to the extent it
12 can locate such documents after a reasonably diligent search.
13

14 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
15 documents in his possession, custody and/or control responsive to this request.

16 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
17 documents in its possession, custody and/or control responsive to this request.
18

19
20 **AMENDED REQUEST FOR PRODUCTION NO. 98:**

21 All DOCUMENTS CONCERNING the following contracts: ONR 73-530, including,
22 without limitation, interim and final reports, proposals, extensions, follow-on contracts,
23 magnetic tapes, computer tabulations of test data, and all other contract files, correspondence,
24 and reports listed or referred to in Tables 1 through 4 in the DOCUMENTS bearing Bates
25 stamp VVA023840-23843.
26

27 OBJECTIONS
28

1 Defendants object to this amended production request for the reasons described in
2 General Objections 1 and 8-21. Defendants further object to the request on the ground that ONR
3 73-530 did not involve testing on volunteer service members and therefore is not relevant to
4 Plaintiffs' narrow APA claims in this case; to the extent it is relevant, searching for and
5 producing the requested documents would be unduly burdensome. Defendants further object on
6 the ground that there are no "reports listed or referred to in Tables 1 through 4 in the
7 DOCUMENTS bearing Bates stamp VVA023840-23843," and therefore they are unable to
8 respond to that portion of the request.
9

10 RESPONSES

11 DoD: Subject to and without waiving the foregoing objections, DoD responds that it has no
12 documents in its possession, custody and/or control responsive to this request.
13

14 CIA: Subject to and without waiving the foregoing objections, CIA responds that it will produce
15 responsive, non-privileged documents in its possession, custody and/or control to the extent it
16 can locate such documents after a reasonably diligent search.
17

18 AG: Subject to and without waiving the foregoing objections, the AG responds that it has no
19 documents in its possession, custody and/or control responsive to this request.
20

21 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
22 documents in its possession, custody and/or control responsive to this request.
23

24 AMENDED REQUEST FOR PRODUCTION NO. 99:

25 MEETINGS, conferences, reports, contracts, and other COMMUNICATIONS
26 involving the Operations Research Office, described by the Army Chemical Corps Advisory
27 Council, as a contracting agency for the Army operating out of Johns Hopkins University,
28

1 CONCERNING chemical or biological weapons or research.

2 OBJECTIONS

3 Defendants object to this amended production request for the reasons described in
4 General Objections 1, 3, 5, 6 and 8-21. Defendants further object to the request on the grounds
5 that such information is not reasonably calculated to lead to the discovery of admissible evidence
6 concerning the narrow legal claims remaining in this APA case. Defendants further object to this
7 request on the ground that it is overly broad and unduly burdensome, for the reasons articulated
8 in General Objections 9-16, because it requests all “meetings, conferences, reports, contracts,
9 and other communications” involving the Operations Research Office concerning “chemical or
10 biological weapons or research.” Defendants further object to this request on over breadth
11 grounds because it is not limited to the chemical or biological agents that were actually used in
12 volunteer service member tests as reflected in the Chem-Bio database. Defendants further object
13 on the grounds that this request is properly directed to one agency, and the burden of searching
14 for such information, as described in General Objection 9, greatly outweighs the relevance, if
15 any, of that information to the claims against the other Defendants.
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19 RESPONSES

20 DoD: Absent a reasonable narrowing of this request, DoD will not respond to this request for
21 production.

22 CIA: Subject to and without waiving the foregoing objections, CIA responds that it has no
23 documents in its possession, custody and/or control responsive to this request.

24 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
25 documents in his possession, custody and/or control responsive to this request.
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1 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
2 documents in its possession, custody and/or control responsive to this request.
3

4 **AMENDED REQUEST FOR PRODUCTION NO. 100:**

5 COMMUNICATIONS and MEETINGS between or amongst YOU and the Society of
6 Biological Psychiatry, whose address at one time was 2010 Wilshire Boulevard, Los Angeles,
7 California, and or its officers, including, without limitation, Dr. Amedeo S. Marrazzi,
8 President; Dr. Max Rinkel, First VP; Dr. George Thompson, Second VP; Dr. Karl O. Von
9 Hagen; Dr. Laretta Bender; Dr. Paul Hoch; Dr. Leo Alexander; Dr. Howard Hoagland;
10

11 **OBJECTIONS**

12 Defendants object to this amended production request for the reasons described in
13 General Objections 1 and 8-21. Defendants further object to the request on the grounds that such
14 information is not reasonably calculated to lead to the discovery of admissible evidence
15 concerning the narrow legal claims remaining in this APA case, particularly given that the
16 individuals referenced in this discovery request are not even identified in Plaintiffs' 234-
17 paragraph Third Amended Complaint. Defendants further object to this request as overbroad
18 insofar as it is not limited to "communications and meetings" concerning the testing of volunteer
19 service members with the chemical and biological substances reflected in the Chem-Bio
20 database.
21

22 **RESPONSES**

23
24 DoD: Subject to and without waiving the foregoing objections, DoD responds that it has no
25 documents in its possession, custody and/or control responsive to this request.
26
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1 CIA: Subject to and without waiving the foregoing objections, CIA responds that it will produce
2 responsive, non-privileged documents in its possession, custody and/or control to the extent it
3 can locate such documents after a reasonably diligent search.

4 AG: Subject to and without waiving the foregoing objections, the AG responds that it has no
5 documents in his possession, custody and/or control responsive to this request.

6
7 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
8 documents in its possession, custody and/or control responsive to this request.

9
10 **AMENDED REQUEST FOR PRODUCTION NO. 101:**

11 A Project Artichoke program using American military men serving court martial
12 sentences in federal prisons as human test subjects in experiments conducted at a reformatory
13 in Bordertown, New Jersey, St. Elizabeth's Hospital, Washington, D.C., a Veteran
14 Administration hospital in Detroit Michigan, and a Federal Narcotics Farm in Lexington
15 Kentucky, among other places, including, but not limited to a September 1953 memorandum
16 from Project Artichoke director Morse Allen to Paul Gaynor, head of the CIA's Security
17 Research Staff, suggesting that the government induce participation in the experiments by
18 promising that recommendations would be made to the Adjutant General's office to have
19 prisoners' sentences appropriately reduced if they co-operated in experimentation.

20
21
22 **OBJECTIONS**

23
24 Defendants object to this amended production request for the reasons described in
25 General Objections 1 and 8-21. Defendants further object to the request on the grounds that such
26 information is not reasonably calculated to lead to the discovery of admissible evidence
27 concerning the narrow legal claims remaining in this APA case, particularly in light of the fact
28

1 that the items identified in this response are not even referenced in Plaintiffs' 234-paragraph
2 Third Amended Complaint, and there are no allegations in the Third Amended Complaint that
3 Project Artichoke involved testing on volunteer service members. In addition, Plaintiffs'
4 definition of "TEST PROGRAMS" does not refer to the facilities identified in this request.
5 Furthermore, CIA objects to this request as unduly burdensome because, as discussed in General
6 Objection 12, CIA previously provided to Plaintiffs outside of discovery approximately 20,000
7 pages of documents related to MKULTRA and its other behavioral research programs from the
8 1950s-70s. It would take a substantial effort by the CIA to re-review and re-produce them due to
9 difficulties relating to how the documents are physically stored on CIA systems and reviewed for
10 purposes of assessing and asserting privileges. Defendants further object on the grounds that this
11 request is properly directed to one agency, and the burden of searching for such information, as
12 described in General Objection 9, greatly outweighs the relevance, if any, of that information to
13 the claims against the other Defendants.
14
15

16 RESPONSES

17
18 DoD: Subject to and without waiving the foregoing objections, DoD responds that it has no
19 documents in its possession, custody and/or control responsive to this request.

20 CIA: Subject to and without waiving the foregoing objections, CIA responds that it has no
21 documents in its possession, custody and/or control responsive to this request. CIA is willing to
22 consider conducting additional searches in response to this request if Plaintiffs provide the CIA
23 with additional information to support the basis for this request.
24

25 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
26 documents in his possession, custody and/or control responsive to this request.
27
28

1 VA: Subject to and without waiving the foregoing objections, VA responds that it will produce
2 responsive, non-privileged documents in its possession, custody and/or control to the extent it
3 can locate such documents after a reasonably diligent search of the VA hospital in Detroit,
4 Michigan.

5
6 **AMENDED REQUEST FOR PRODUCTION NO. 102:**

8 All requests YOU have made for any records or DOCUMENTS CONCERNING any of
9 the individual plaintiffs, including but not limited to, all requests directed to the Department of
10 Veterans Affairs or any of its regional offices, and all DOCUMENTS that YOU have received
11 pursuant to any such request.

12 **OBJECTIONS**

13
14 Defendants object to this amended production request for the reasons described in
15 General Objections 1 and 7-21. Defendants further object to this request as substantially
16 overbroad and unduly burdensome, for the reasons articulated in General Objections 9-16,
17 insofar as it seeks information regarding “requests” any of the federal agency Defendants “have
18 made for any records or documents concerning any of the individual plaintiffs,” regardless of
19 whether such requests were related to the subject matter of their participation as volunteer test
20 subjects.

21 **RESPONSES**

22
23 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
24 produce responsive, non-privileged documents in its possession, custody and/or control to the
25 extent it can locate such documents after a reasonably diligent search.
26
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1 CIA: Subject to and without waiving the foregoing objections, CIA responds that it has no
2 documents in its possession, custody and/or control responsive to this request.

3 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
4 documents in his possession, custody and/or control responsive to this request.

5 VA: Subject to and without waiving the foregoing objections, VA responds that it has produced
6 responsive, non-privileged documents it has related to this topic in connection with Plaintiffs'
7 Rule 45 subpoena, and will continue to produce responsive, non-privileged documents in its
8 possession, custody and/or control to the extent it can locate such documents after a reasonably
9 diligent search.
10
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13 **AMENDED REQUEST FOR PRODUCTION NO. 103:**

14 The minutes, activities, reports to, decisions by, applications to, members of, and other
15 DOCUMENTS CONCERNING the ARTICHOKE Committee, as described in the
16 DOCUMENT bearing Bates stamp VVA023857.

17
18 **OBJECTIONS**

19 Defendants object to this amended production request for the reasons described in
20 General Objections 1 and 8-21. Defendants further object to this request as overbroad,
21 irrelevant, and unduly burdensome. The document cited in the request contains no indication
22 that the ARTICHOKE Committee involved testing on volunteer service members, and the 234-
23 paragraph Third Amended Complaint contains no allegation that Project Artichoke involved
24 testing on volunteer service members. In addition, CIA objects to this request as unduly
25 burdensome because, as discussed in General Objection 12, CIA previously provided to
26 Plaintiffs outside of discovery approximately 20,000 pages of documents related to MKULTRA
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1 and its other behavioral research programs from the 1950s-70s. It would take a substantial effort
2 by the CIA to re-review and re-produce them due to difficulties relating to how the documents
3 are physically stored on CIA systems and reviewed for purposes of assessing and asserting
4 privileges. Defendants further object on the grounds that this request is properly directed to one
5 agency, and the burden of searching for such information, as described in General Objection 9,
6 greatly outweighs the relevance, if any, of that information to the claims against the other
7 Defendants.
8

9 RESPONSES

10 DoD: Subject to and without waiving the foregoing objections, DoD responds that it has no
11 documents in its possession, custody and/or control responsive to this request.
12

13 CIA: Subject to and without waiving the foregoing objections, CIA responds that it has no
14 documents in its possession, custody and/or control responsive to this request.
15

16 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
17 documents in his possession, custody and/or control responsive to this request.
18

19 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
20 documents in its possession, custody and/or control responsive to this request.
21

22 AMENDED REQUEST FOR PRODUCTION NO. 104:

23 The IDENTITY of the “institutions” referred to in the DOCUMENT bearing Bates
24 stamp VVA023857, and their activities or role in BLUEBIRD/ARTICHOKE.

25 OBJECTIONS

26 Defendants object to this amended production request for the reasons described in
27 General Objections 1 and 8-21. Defendants further object to this request as overbroad and
28

1 unduly burdensome, as it would require the Defendants to search for and produce any document
2 that contained the name of the institutions referred to in the DOCUMENT bearing Bates stamp
3 VVA023857. Defendants further object to this request because the identity of some of the
4 institutions is protected from disclosure by the National Security Act and CIA Act. Defendants
5 further object to this request because the potential “activities or role” of these institutions in
6 BLUEBIRD/ARTICHOKE has no relevance to the narrow claims at issue in this APA case; the
7 document itself contains no indication that these institutions were involved in testing on
8 volunteer service members, and the 234-paragraph Third Amended Complaint contains no
9 allegation that project BLUEBIRD/ARTICHOKE involved testing on volunteer service
10 members. In addition, CIA objects to this request as unduly burdensome because, as discussed
11 in General Objection 12, CIA previously provided to Plaintiffs outside of discovery
12 approximately 20,000 pages of documents related to MKULTRA and its other behavioral
13 research programs from the 1950s-70s. It would take a substantial effort by the CIA to re-review
14 and re-produce them due to difficulties relating to how the documents are physically stored on
15 CIA systems and reviewed for purposes of assessing and asserting privileges. Defendants further
16 object on the grounds that this request is properly directed to one agency, and the burden of
17 searching for such information, as described in General Objection 9, greatly outweighs the
18 relevance, if any, of that information to the claims against the other Defendants.
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22 RESPONSES

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24 DoD: Subject to and without waiving the foregoing objections, DoD responds that it has no
25 documents in its possession, custody and/or control responsive to this request.
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1 CIA: Subject to and without waiving the foregoing objections, CIA responds that it will produce
2 responsive, non-privileged documents in its possession, custody and/or control to the extent it
3 can locate such documents after a reasonably diligent search.

4 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
5 documents in his possession, custody and/or control responsive to this request.

6 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
7 documents in its possession, custody and/or control responsive to this request.
8

9
10 **AMENDED REQUEST FOR PRODUCTION NO. 105:**

11 The research programs and studies of biological weapons described on page 104 of the
12 Summary of Major Events and Problems, United States Army Chemical Corps, Fiscal Year
13 1956, Chemical Corps Historical Office (Nov. 1956), including but not limited to, experiments
14 and the results of experiments, conducted at or under the direction of the special medical unit
15 set up by the Surgeon General at Fort Detrick to operate the hospital facility and all
16 MEETINGS and COMMUNICATIONS CONCERNING the same.
17

18 **OBJECTIONS**

19 Defendants object to this amended production request for the reasons described in
20 General Objections 1 and 8-21. Defendants further object to this request as overbroad and
21 unduly burdensome, for the reasons described in General Objections 9-16, to the extent it seeks
22 “all meetings and communications” concerning research programs that are over fifty years old.
23 Accordingly, searches for responsive documents will not include “meetings and
24 communications.” In addition, to the extent Plaintiffs’ request seeks information concerning the
25 health effects associated with chemical and biological agents associated with DoD’s volunteer
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1 testing programs, this request seeks information that is cumulative of other materials Defendants
2 are producing in this case, including, among other things, the categories of documents identified
3 in General Objection 9. Defendants further object on the grounds that this request is properly
4 directed to one agency, and the burden of searching for such information, as described in General
5 Objection 9, greatly outweighs the relevance, if any, of that information to the claims against the
6 other Defendants.

8 RESPONSES

9 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
10 produce responsive, non-privileged documents in its possession, custody and/or control to the
11 extent it can locate such documents after a reasonably diligent search.

12
13 CIA: Subject to and without waiving the foregoing objections, the CIA responds that it has no
14 documents in its possession, custody and/or control responsive to this request.

15 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
16 documents in its possession, custody and/or control responsive to this request.

17
18 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
19 documents in its possession, custody and/or control responsive to this request.

20 21 AMENDED REQUEST FOR PRODUCTION NO. 106:

22
23 The report and DOCUMENTS referenced in the report of the Ad Hoc Committee or
24 Reeves Committee and its approval by the Defense Science Board, as referenced on pages 88
25 and 93 of the Summary of Major Events and Problems, United States Army Chemical Corp,
26 Fiscal Year 1958, U.S. Army Chemical Corps Field Office (MARCH 1959).

27 OBJECTIONS

28

1 Defendants object to this amended production request for the reasons described in
2 General Objections 1 and 8-21. In addition, to the extent Plaintiffs' request seeks information
3 concerning the health effects associated with chemical and biological agents associated with
4 DoD's volunteer testing programs, this request seeks information that is cumulative of other
5 materials Defendants are producing in this case, including, among other things, the categories of
6 documents identified in General Objection 9. Defendants further object on the grounds that this
7 request is properly directed to one agency, and the burden of searching for such information, as
8 described in General Objection 9, greatly outweighs the relevance, if any, of that information to
9 the claims against the other Defendants.
10

11 RESPONSES

12
13 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
14 produce responsive, non-privileged documents in its possession, custody and/or control to the
15 extent it can locate such documents after a reasonably diligent search.

16 CIA: Subject to and without waiving the foregoing objections, CIA responds that it has no
17 documents in its possession, custody and/or control responsive to this request.

18
19 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
20 documents in his possession, custody and/or control responsive to this request.

21 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
22 documents in its possession, custody and/or control responsive to this request.
23

24
25 AMENDED REQUEST FOR PRODUCTION NO. 107:

26 DOCUMENTS regarding "Project Whitecoat" and biological tests on human beings
27 performed at Fort Detrick or other sites that were under YOUR direction, supervision,
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1 financing or control, including but not limited to DOCUMENTS regarding the follow-up study
2 of the participants in “Project Whitecoat” to assess the “long-term effects, if any, of their
3 participation in medical research” at Fort Detrick, as described in the DOCUMENT bearing
4 Bates stamp VVA-VA023591.

5 OBJECTIONS

6
7 Defendants object to this amended production request for the reasons described in
8 General Objections 1 and 7-21. In addition, to the extent Plaintiffs’ request seeks information
9 concerning the health effects associated with chemical and biological agents associated with
10 DoD’s volunteer testing programs, this request seeks information that is cumulative of other
11 materials Defendants are producing in this case, including, among other things, the categories of
12 documents identified in General Objection 9.

13 RESPONSES

14
15 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
16 produce responsive, non-privileged documents in its possession, custody and/or control to the
17 extent it can locate such documents after a reasonably diligent search.

18
19 CIA: Subject to and without waiving the foregoing objections, CIA responds that it has no
20 documents in its possession, custody and/or control responsive to this request.

21
22 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
23 documents in his possession, custody and/or control responsive to this request.

24
25 VA: Subject to and without waiving the foregoing objections, VA responds that it has produced
26 responsive, non-privileged documents it has related to this topic in connection with Plaintiffs’
27 Rule 45 subpoena, and will continue to produce responsive, non-privileged documents in its
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1 possession, custody and/or control to the extent it can locate such documents after a reasonably
2 diligent search.

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4 **AMENDED REQUEST FOR PRODUCTION NO. 108:**

5 DOCUMENTS regarding technical manuals, user guides, software, and hardware
6 platform CONCERNING Department of Defense follow-on databases.

7
8 **OBJECTIONS**

9 Defendants object to this amended production request for the reasons described in
10 General Objections 1 and 8-21. Defendants further object to the term “follow-on databases,” an
11 undefined term, as vague. Defendants further object on the grounds that this request is properly
12 directed to one agency, and the burden of searching for such information, as described in General
13 Objection 9, greatly outweighs the relevance, if any, of that information to the claims against the
14 other Defendants.

15
16 **RESPONSES**

17 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
18 produce responsive, non-privileged documents in its possession, custody and/or control to the
19 extent it can locate such documents after a reasonably diligent search.

20 CIA: Subject to and without waiving the foregoing objections, the CIA responds that it has no
21 documents in its possession, custody and/or control responsive to this request.

22 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
23 documents in his possession, custody and/or control responsive to this request.
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1 VA: Subject to and without waiving the foregoing objections, VA responds that it will produce
2 responsive, non-privileged documents in its possession, custody and/or control to the extent it
3 can locate such documents after a reasonably diligent search.
4

5 **AMENDED REQUEST FOR PRODUCTION NO. 109:**
6

7 DOCUMENTS sent, loaned or shown to any Congressional Committee, member of
8 Congress or Congressional staff CONCERNING the TEST PROGRAMS.

9 **OBJECTIONS**

10 Defendants object to this amended production request for the reasons described in
11 General Objections 1, 3, 5, 6 and 8-21. Defendants further object to this request on the grounds
12 that it is substantially overbroad and unduly burdensome, for the reasons described in General
13 Objections 9-16, as it asks for all documents “sent, loaned or shown” to any Congressional
14 Committee, member of Congress or Congressional staff, regardless of who “sent, loaned or
15 show[ed]” the documents, and without any limitation as to time frame or particular
16 Congressional Committee, member of Congress or Congressional staff. Defendants further
17 object to this request as overbroad and unduly burdensome because the term “TEST
18 PROGRAMS” is defined to include programs that did not involve the testing on volunteer
19 service members. Absent a reasonable narrowing of this substantially overbroad and unduly
20 burdensome request, Defendants cannot reasonably respond.
21
22
23

24 **AMENDED REQUEST FOR PRODUCTION NO. 110:**
25

26 Transcripts of all of YOUR depositions, hearings, Congressional and/or trial testimony
27 CONCERNING the TEST PROGRAMS.
28

OBJECTIONS

1
2 Defendants object to this amended production request for the reasons described in
3 General Objections 1, 3, 5, 6 and 8-21. Defendants further object to this request as overbroad
4 and unduly burdensome because the term “TEST PROGRAMS” is defined to include programs
5 that did not involve the testing on volunteer service members. Defendants further object to this
6 request on the grounds that it is substantially overbroad and unduly burdensome, for the reasons
7 described in General Objections 9-16, as it asks for literally all transcripts of any of the federal
8 agency Defendants’ “depositions, hearings, Congressional and/or trial testimony concerning the
9 test programs.” Defendants further object on the grounds that this request seeks information that
10 bears on the lawfulness of the test program, an issue the Court dismissed from this case. In
11 addition, to the extent Plaintiffs’ request seeks information concerning the health effects
12 associated with chemical and biological agents associated with DoD’s volunteer testing
13 programs or notice to service members concerning the health effects of such testing, this request
14 seeks information that is cumulative of other materials Defendants are producing in this case,
15 including, among other things, the categories of documents identified in General Objection 9.
16 Because of the substantial overbreadth and undue burden of this request, as well as its
17 cumulateness, and the lack of relevance to any claim remaining in this case, Defendants will
18 not respond to this request. *See* Fed. R. Civ. P. 26(b), 26(c).

AMENDED REQUEST FOR PRODUCTION NO. 111:

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25 All DOCUMENTS produced to the plaintiffs in *Orlikow v. United States*, Civ. Action
26 No. 80-3163 (D.D.C. 1988), and the transcripts of all trial and deposition testimony in the
27 *Orlikow* case.
28

OBJECTIONS

1
2 Defendants object to this amended production request for the reasons described in
3 General Objections 1, 3, 5, 6 and 8-21. Defendants further object to the request on the grounds
4 that such information is not reasonably calculated to lead to the discovery of admissible evidence
5 concerning the narrow legal claims remaining in this APA case, as the *Orlikow* case involved
6 allegations related to testing on non-service members in a foreign country and has minimal, if
7 any, relevance to Plaintiffs claims against the CIA or other Defendants. Defendants further
8 object on the grounds that this request seeks information that bears on the lawfulness of the test
9 program, an issue the Court dismissed from this case. In addition, to the extent Plaintiffs'
10 request seeks information concerning the health effects associated with chemical and biological
11 agents associated with DoD's volunteer testing programs or notice to service members
12 concerning the health effects of such testing, this request seeks information that is cumulative of
13 other materials Defendants are producing in this case, including, among other things, the
14 categories of documents identified in General Objection 9. Because of the substantial
15 overbreadth and undue burden of this request, as well as its cumulateness, and the lack of
16 relevance to any claim remaining in this case, Defendants will not respond to this request. *See*
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20 Fed. R. Civ. P. 26(b), 26(c).

AMENDED REQUEST FOR PRODUCTION NO. 112:

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22
23 All DOCUMENTS CONCERNING the Report to Congress by the Comptroller General
24 of the United States, dated July 15, 1976, entitled *Federal Control of New Drug Testing is Not*
25 *Adequately Protecting Human Test Subjects and the Public*, Pub. No. HRD-76-96.
26

OBJECTIONS

1 Defendants object to this amended production request for the reasons described in
2 General Objections 1 and 8-18.

3 RESPONSES

4 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
5 produce responsive, non-privileged documents in its possession, custody and/or control to the
6 extent it can locate such documents after a reasonably diligent search.

7
8 CIA: Subject to and without waiving the foregoing objections, CIA responds that it has no
9 documents in its possession, custody and/or control responsive to this request.

10 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
11 documents in his possession, custody and/or control responsive to this request.

12
13 VA: Subject to and without waiving the foregoing objections, VA responds that it will produce
14 responsive, non-privileged documents in its possession, custody and/or control to the extent it
15 can locate such documents after a reasonably diligent search.

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18 **AMENDED REQUEST FOR PRODUCTION NO. 113:**

19 Reports, presentations, memoranda, MEETINGS and other COMMUNICATIONS
20 CONCERNING Suffield F.E. 197 of March 30, 1944, relating to field trials of lewisite on
21 human subjects, as referenced on page 2 of enclosure 3 to the Minutes of the MEETING of the
22 Research Council of the Chemical Corps Advisory Board held on June 3, 1947.

23
24 OBJECTIONS

25 Defendants object to this amended production request for the reasons described in
26 General Objections 1 and 7-21. Defendants further object to the relevance of this response as it
27 seeks information related to seventy-six year old field trials – trials that occurred a decade before
28

1 the volunteer service member testing at issue in this case. Defendants further object to the
2 request as overbroad and unduly burdensome to the extent it seeks all “meetings and
3 communications” concerning tests that took place decades ago, and the burden in terms of time
4 and expense of conducting such a broad search greatly outweighs the relevance, if any, of such a
5 search. In addition, to the extent Plaintiffs’ request seeks information concerning the health
6 effects associated with chemical and biological agents associated with DoD’s volunteer testing
7 programs, this request seeks information that is cumulative of other materials Defendants are
8 producing in this case, including, among other things, the categories of documents identified in
9 General Objection 9. Because of the substantial overbreadth and undue burden of this request, as
10 well as its cumulateness, and the lack of relevance to any claim remaining in this case,
11 Defendants will not respond to this request. *See* Fed. R. Civ. P. 26(b), 26(c).
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17 **AMENDED REQUEST FOR PRODUCTION NO. 114:**

18 Medical Laboratories Contract Reports CONCERNING biological or chemical
19 weapons or agents, including, without limitation, the entities and PERSONS listed on pages
20 17-18 of Chemical Corps Medical Laboratories Special Report No. 59, Clarence J. Hylander,
21 Chief, Technical Information Office (January 1955), and all MEETINGS and
22 COMMUNICATIONS CONCERNING the same.
23

24 **OBJECTIONS**

25 Defendants object to this amended production request for the reasons described in
26 General Objections 1 and 8-21. Defendants further object to this request as overbroad and
27 unduly burdensome for at least two reasons. First, the request, which seeks information
28

1 concerning “biological or chemical agents,” is not limited to a reasonable subset of the biological
2 or chemical agents contained in the Chem-Bio database. Second, Defendants object to the
3 request as overbroad and unduly burdensome to the extent it seeks all “meetings and
4 communications” concerning a 56-year-old document, and the burden in terms of time and
5 expense of conducting such a broad search, as articulated in General Objections 9-16, greatly
6 outweighs the relevance, if any, of such a search. Accordingly, searches for responsive
7 documents will not include “meetings and communications.” Defendants further object on the
8 grounds that this request is properly directed to one agency, and the burden of searching for such
9 information, as described in General Objection 9, greatly outweighs the relevance, if any, of that
10 information to the claims against the other Defendants.
11

12 RESPONSES

13
14 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
15 produce responsive, non-privileged documents in its possession, custody and/or control to the
16 extent it can locate such documents after a reasonably diligent search.
17

18 CIA: Subject to and without waiving the foregoing objections, CIA responds that it has no
19 documents in its possession, custody and/or control responsive to this request.

20 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
21 documents in his possession, custody and/or control responsive to this request.
22

23 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
24 documents in its possession, custody and/or control responsive to this request.
25

26 AMENDED REQUEST FOR PRODUCTION NO. 115:

27 Presentations and reports made to the Armed Forces Policy Council CONCERNING
28

1 chemical warfare, biological warfare, or mind control agents or weapons, including, without
2 limitation, the presentation delivered by General William M. Creasy in 1958.

3 OBJECTIONS

4 Defendants object to this amended production request for the reasons described in
5 General Objections 1 and 8-21. Defendants further object to this request as overbroad to the
6 extent it seeks information concerning “chemical warfare, biological warfare, or mind control
7 agents or weapons,” and is not limited to a reasonable subset of the biological or chemical agents
8 contained in the Chem-Bio database. Defendants further respond that the request is unduly
9 burdensome to the extent it seeks all “presentation and reports” made in the late 1950s to the
10 Armed Forces Policy Council. In addition, to the extent Plaintiffs’ request seeks information
11 concerning the health effects associated with chemical and biological agents associated with
12 DoD’s volunteer testing programs, this request seeks information that is cumulative of other
13 materials Defendants are producing in this case, including, among other things, the categories of
14 documents identified in General Objection 9. Defendants further object on the grounds that this
15 request is properly directed to one agency, and the burden of searching for such information, as
16 described in General Objection 9, greatly outweighs the relevance, if any, of that information to
17 the claims against the other Defendants.
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21 RESPONSES

22 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
23 produce the “presentation delivered by General William M. Creasy in 1958” to the extent it is in
24 DoD’s possession, custody and/or control and to the extent it can locate such documents after a
25 reasonably diligent search.
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1 CIA: Subject to and without waiving the foregoing objections, CIA responds that it has no
2 documents in its possession, custody and/or control responsive to this request.

3 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
4 documents in his possession, custody and/or control responsive to this request.

5 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
6 documents in its possession, custody and/or control responsive to this request.
7

8
9 **AMENDED REQUEST FOR PRODUCTION NO. 116:**

10 Reports, minutes, MEETINGS and other COMMUNICATIONS CONCERNING the
11 Ad Hoc Study Group on Limited Warfare of the Defense Science Board and/or the role or
12 effects of chemical or biological weapons or agents in modern warfare.
13

14 **OBJECTIONS**

15 Defendants object to this amended production request for the reasons described in
16 General Objections 1 and 8-21. Defendants further object to the request as overbroad and unduly
17 burdensome, for the reasons described in General Objections 9-16, to the extent it seeks all
18 “meetings and communications,” and the burden in terms of time and expense of conducting
19 such a broad search, as articulated in General Objections 9-16, greatly outweighs the relevance,
20 if any, of such a search. In addition, to the extent Plaintiffs’ request seeks information
21 concerning the health effects associated with chemical and biological agents associated with
22 DoD’s volunteer testing programs, this request seeks information that is cumulative of other
23 materials Defendants are producing in this case, including, among other things, the categories of
24 documents identified in General Objection 9. Defendants further object on relevance grounds
25 because this request seeks information that relates to the general subject matter of the litigation
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1 rather than the narrow APA claims remaining in this case. Because of the substantial
2 overbreadth and undue burden of this request, as well as its cumulateness, and the lack of
3 relevance to any claim remaining in this case, Defendants will not respond to this request. *See*
4 Fed. R. Civ. P. 26(b), 26(c).

5
6
7 **AMENDED REQUEST FOR PRODUCTION NO. 117:**

8 The report issued by the so-called Miller Committee identified on page 6 of the
9 DOCUMENT entitled Summary of Major Events and Problems, United States Chemical Corps
10 for Fiscal Year 1955, Historical Office of the Chief Chemical Officer (December 1955).

11 **OBJECTIONS**

12 Defendants object to this amended production request for the reasons described in
13 General Objections 1 and 9-21. In addition, to the extent Plaintiffs' request seeks information
14 concerning the health effects associated with chemical and biological agents associated with
15 DoD's volunteer testing programs, this request seeks information that is cumulative of other
16 materials Defendants are producing in this case, including, among other things, the categories of
17 documents identified in General Objection 9. Defendants further object to the requested report
18 as irrelevant because, on its face, it addresses the administration and structure of the Chemical
19 Corps command, topics not reasonably calculated to lead to the discovery of admissible evidence
20 concerning any of the narrow, remaining APA claims in this case. Defendants further object to
21 the requested report on cumulative grounds, as the findings and recommendations of the Ad Hoc
22 Advisory Committee are discussed in great detail in the Summary of Major Events and
23 Problems, United States Army Chemical Corps (November 1956), between pages 6-14.
24 Defendants further object on the grounds that this request is properly directed to one agency, and
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1 the burden of searching for such information, as described in General Objection 9, greatly
2 outweighs the relevance, if any, of that information to the claims against the other Defendants.

3 RESPONSES

4 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
5 produce responsive, non-privileged documents in its possession, custody and/or control to the
6 extent it can locate such documents after a reasonably diligent search.

7
8 CIA: Subject to and without waiving the foregoing objections, CIA responds that it has no
9 documents in its possession, custody and/or control responsive to this request.

10 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
11 documents in his possession, custody and/or control responsive to this request.

12
13 VA: Subject to and without waiving the foregoing objections, VA responds that it has no
14 documents in its possession, custody and/or control responsive to this request.

15
16 **AMENDED REQUEST FOR PRODUCTION NO. 118:**

17 All DOCUMENTS CONCERNING any of the individual plaintiffs, including but not
18 limited to, military service records, physical or mental health records, correspondence and
19 records CONCERNING all COMMUNICATIONS with any individual plaintiff.

20
21 OBJECTIONS

22 Defendants object to this amended production request for the reasons described in
23 General Objections 1 and 8-21. Defendants further object to this request on the grounds that it is
24 substantially overbroad and unduly burdensome, for the reasons described in General Objections
25 9-16, as it literally requests any document or correspondent between the individual plaintiffs over
26 a sixty-year period, regardless of whether that communication relates to the narrow APA claims
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1 remaining in this case and regardless of whether the communication was directed to one of the
2 federal agency Defendants in this action. Defendants further object to the request as overbroad
3 and unduly burdensome to the extent it seeks all “meetings and communications” concerning
4 tests that took place decades ago, and the burden in terms of time and expense of conducting
5 such a broad search greatly outweighs the relevance, if any, of such a search.
6

7 RESPONSES

8 DoD: Subject to and without waiving the foregoing objections, DoD responds that it will
9 produce responsive, non-privileged documents in its possession, custody and/or control to the
10 extent it can locate such documents after a reasonably diligent search.
11

12 CIA: Subject to and without waiving the foregoing objections, CIA responds that it will produce
13 responsive, non-privileged documents in its possession, custody and/or control to the extent it
14 can locate such documents after a reasonably diligent search.
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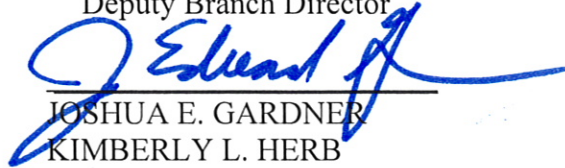
16 AG: Subject to and without waiving the foregoing objections, the AG responds that he has no
17 documents in his possession, custody and/or control responsive to this request.
18

19 VA: Subject to and without waiving the foregoing objections, VA responds that it will produce
20 responsive, non-privileged documents in its possession, custody and/or control to the extent it
21 can locate such documents after a reasonably diligent search.
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1 Dated: January 6, 2011

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19 Attorneys for Defendants
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PROOF OF SERVICE

I declare that I am over the age of eighteen and not a party to the above captioned action.

My business address is 20 Massachusetts Avenue, NW, P.O. Box 883, Washington, DC 20530.

I further declare that on January 6, 2011, I served a copy of:

**DEFENDANTS' RESPONSE TO PLAINTIFFS' AMENDED SET OF
REQUESTS FOR PRODUCTION TO ALL DEFENDANTS**

on counsel for Plaintiffs, as addressed below:

Gordon Erspamer
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105

(X) By overnight delivery: I placed a true copy in a sealed envelope, with delivery provided, to the address and person stated above and, pursuant to the usual business practice of the Department of Justice for collection and processing of mail, deposited on the same day in a collection box regularly maintained by Federal Express.

(X) By electronic mail: I caused said document to be delivered to the above named individual by electronic mail.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 6, 2011 at Washington, D.C.


JOSHUA E. GARDNER



U.S. Department of Justice

Civil Division
Federal Programs Branch

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March 25, 2011

Via Electronic Mail

Mr. Gordon Erspamer, Esq.
Morrison & Foerster, LLP
425 Market Street
San Francisco, CA 94105-2482

RE: *Vietnam Veterans of Am., et al. v. CIA, et al.*, No. CV 09 0037-CW (N.D. Cal.)

Dear Mr. Erspamer:

Thank you for your letter of March 21 regarding discovery in this action. We are evaluating the letter and appreciate Plaintiffs' efforts to clarify the information they seek in discovery. However, lead counsel and one of our agency counsel are out of the office and largely unavailable this week. For this and other reasons, most of the matters raised in your letter require deliberation and consultation that cannot be completed within the short timeframe by which you request a response. We are, however, in a position to respond in part. We will endeavor to respond to the remaining issues by next Friday, April 1, 2011.

Discovery Deadline

As a threshold matter, to the degree that your timeline for response arose out of concerns related to the discovery cut-off date of May 31, 2011, Defendants are willing to meet and confer with Plaintiffs on this issue. Without prejudice to Defendants' right to make objections to discovery, including the appropriate scope of discovery in an action under the Administrative Procedure Act, Defendants would consider a proposal to extend the fact-discovery deadline. While we disagree with your characterization of Defendants' discovery response and efforts, we believe it is in the parties' interest, and in accordance with the Magistrate Judge's November 12, 2010 Order, that we work together to attempt to resolve issues or narrow those that remain. To the degree that an extension of the fact-discovery period would enable us to more fully discuss issues, including those addressed in your letter such as the list of substances at issue, we are willing to consider a proposal on this matter.

Defendants' Document Productions

You have asked for a status update regarding Defendants' document productions. The requested update is set forth below for the Department of Defense ("DoD") and Central Intelligence Agency ("CIA"). With regard to the Department of Veterans Affairs ("VA"), VA will continue to produce, on a rolling basis, relevant, non-privileged documents responsive to Plaintiffs' Amended Set

of Requests for Production (“RFPs”). This production will be in addition to the more than 14,000 pages VA already has produced in response to Plaintiffs’ subpoena. VA is currently reviewing Plaintiffs’ most recent discovery requests, and we will address those requests in a separate letter.

DoD

As set forth in Defendants’ Responses and Objections to Plaintiffs’ RFPs, DoD is producing and has produced a variety of non-privileged records, including test participant personnel files, Battelle search results (including source documents and reports to DoD), the Chem-Bio database, test plans and progress reports reproduced from the National Archives, USAMRIID test protocols, DTIC bibliography results, biological tests result bibliographies, and unit reports from the National Archives. In addition, DoD is searching for other documents as set forth in Defendants’ written discovery responses.

As to the personnel files, files for participants with last names A through J have been located. Thus far, letters A through C have been produced, with the C files being transmitted to Plaintiffs on Wednesday. We estimate that processing of letters D through J will take approximately six weeks, with productions on a rolling basis. We are hopeful that arrangements can be made to expedite this process. We also estimate that retrieval of letters K through Z by DoD will be complete by the end of the month. After letters K through Z are retrieved by DoD, we expect processing to take an additional month, although, again, we are hopeful that we will be able to shorten that time. Regarding the Battelle search results and reports, DoD believes it produced everything in its possession (and is working to confirm that is the case) and will continue to produce responsive documents as they are received. Regarding the documents being retrieved from the National Archives, the estimate from the contractor is that production to DoD may be complete as soon as the end of March. We expect additional processing, such as the addition of Bates-numbers, to add a few days or more to the estimate for production to DoD. As to the bibliography results from the DTIC database, we have produced all such results based on keyword searches done to date. Our search for other documents is continuing.

CIA

The CIA has largely completed its document productions. It has, however, transferred materials to DoD for a classification review, namely magnetic computer tapes and a computer printout. That process is ongoing.

Defendants’ Initial Disclosures

With regard to Defendants’ initial disclosures, I can confirm that Defendants intend to provide revised initial disclosures, and that we expect to be able to provide them to Plaintiffs by April 8, 2011.

Battelle Subpoena

While the government maintains its position that DoD and Army Touhy regulations apply to your subpoena to Battelle insofar as it seeks governmental information, DoD is willing, in the spirit of cooperation, to engage in a joint meet and confer, to include counsel from Plaintiffs, DoD, and

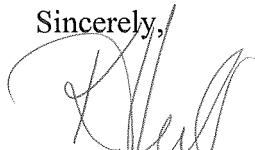
Battelle, regarding the subpoena and the information sought thereby. Of course, our willingness to discuss these matters is made without prejudice to and does not waive any objections the government may have to the subpoena. Please note that we do not speak for Battelle in this regard and make no representations regarding its response to the subpoena or its willingness (or lack thereof) to meet and confer.

Class Certification

With regard to your question concerning the schedule for class certification briefing, we did not understand Plaintiffs to be delaying class certification briefing to accommodate depositions of the named Plaintiffs. During the February 3 discovery conference, you indicated that you intended to file for class certification within a few weeks, and we had not heard differently in the following six weeks. While we inquired as to the dates for depositions of the named Plaintiffs, we believe it would be most productive if Plaintiffs filed for class certification and then Defendants conducted depositions. Such a process would ensure that the named Plaintiffs need only be deposed once. Nonetheless, we are willing to meet and confer with you regarding both class certification briefing and the depositions of the named Plaintiffs.

Please let me know if you have any questions on the above.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Herb', written over a light blue horizontal line.

Kimberly L. Herb
Trial Attorney



U.S. Department of Justice

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April 26, 2011

Via Electronic Mail and Federal Express

Mr. Gordon Erspamer
Morrison & Foerster, LLP
425 Market Street
San Francisco, CA 94105-2482

RE: *Vietnam Veterans of America, et al. v. CIA, et al.*, No. CV 09 0037-CW (N.D. Cal.)

Dear Mr. Erspamer:

I am writing in response to your March 21, April 7 and April 14, 2011 letters, as well as Mr. Kryston's April 5, 2011 email.

Chemical and Biological Agents

We first address the scope of the agents at issue in this case. First, in your March 21, 2011 letter, you provide what you term a "narrowed list of test substances," for "trial." Yet, in your April 7, 2011 letter, you claim that Defendants have misstated the purpose of Plaintiffs' list to the extent that Defendants suggest that it "eliminates any substances not listed from the substances 'at issue' in this case." To the extent Defendants have misunderstood the purpose of Plaintiffs' "narrowed list of test substances" for "trial," please specify the precise purpose of Plaintiffs' "narrowed list of test substances."

Second, you state in your April 7, 2011 letter that it is "unclear" whether the Department of Defense ("DoD") has searched for analogs of each substance contained in Plaintiffs' "narrowed" list. To the extent DoD has been able to determine that analogs exist for a particular chemical substance identified by Plaintiffs, DoD is searching for information concerning those analogs. However, to avoid any confusion between the parties, please identify with specificity those "variants and analogs" that Plaintiffs believe exist with respect to the specific chemical agents contained on Plaintiffs' "narrowed" list from March 21, 2011.

Third, in your April 7 letter, you note that the Food and Drug Administration (“FDA”) approves drugs for certain therapeutic purposes and, thereby, seem to contend that the health effects associated with an approved therapeutic use are irrelevant to the health effects of off-label use of that same drug. We disagree. While the balance between risk and efficacy depends on the intended use of a particular drug, in the vast majority of cases, the long- and short-term health effect of a drug would be the same regardless of whether an individual used a drug for approved or off-label purposes. That seems particularly true here where the FDA-approved substances at issue are ones that have been subjected to extensive, long-term investigation for a number of uses, such as Ritalin, Atropine, and Scopolamine. Accordingly, in light of the wealth of publicly available information concerning those FDA-approved substances, we request that you reconsider your position on this issue.

Fourth, you also claim in your April 7 letter that the Chemical and Biological database is “restricted in time, and does not purport to be comprehensive or to list all analogs.” We disagree with your assertion. The Chemical and Biological database contains the names, chemical and/or biological agents used, and the dosages, where available, for the volunteer service members who participated in DoD’s Cold War-era testing, to the extent such information is available. It is unclear from your letter how you believe that the database is somehow restricted by time frame in any manner that is relevant to this case. In addition, as you know, DoD has a contract with Battelle to search for information DoD can use to identify any test volunteers not already included in DoD’s chemical exposure database. To the extent you believe you have identified volunteer service members who participated in the DoD’s Cold War-era chemical and biological test programs who are not included in the database, please identify those individuals.

Having said that, it appears that the most recent version of the Chemical and Biological database that we produced omitted exposures and testing conducted prior to 1955. Enclosed is a version of the database that includes this information, which is Bates labeled VET057-000001. We believe that the inclusion of this data in the database resolves both the questions identified in Mr. Kryston’s April 5, 2011 email and the comments contained in your April 7 letter.¹

In addition, you request that Defendants produce “the document key for the ‘EA’ coded substances.” Defendants previously have produced documents that identify the chemical substances coded as “EA” substances. For example, the National Research Council’s “Possible Long-Term Health Effects of Short-Term Exposures to Chemical Agents,” Vol. II (1984), correlates some “EA” substances with the substances’ more common name. Additionally, “The Search for Toxic Chemical Agents,” Edgewood Arsenal Technical Report (1969), also correlates “EA” substances with the substances’ more common chemical name. Finally, the Chemical and Biological database often provides the chemical designation for “EA” substances (*i.e.*, EA 1729 is characterized in the database as “EA 1729 (Lysergic acid diethylamide)” and EA 1476 is characterized as “EA 1476 (Tetrahydrocannabinol)”). To the extent you cannot discern the common name or chemical composition of an “EA” substance from these or other sources, please provide us a list.

With specific regard to the Central Intelligence Agency (“CIA” or “Agency”), I note as an initial matter that it appears that you are satisfied with the search conducted by the CIA as it relates to

¹ To avoid any future confusion, we once again reiterate our offer to make available to you the full web-based Chemical and Biological database.

Plaintiffs' claims against the Agency. As outlined in General Objection 10 to Defendants' Response to Plaintiffs' Amended Set of Requests for Production of Documents ("RFPs"), the CIA conducted broad searches for documents concerning any project that involved testing on volunteer service members. These searches focused on, but were not limited to, documents concerning (a) testing on volunteer service members at Edgewood Arsenal or Fort Detrick or (b) Project OFTEN, the only CIA program known to CIA to have contemplated testing on volunteer service members. To date, Plaintiffs have not identified any deficiencies with the CIA's broad-based document searches as they relate to Plaintiffs' claims against the CIA, and as such, we presume the only conflict remaining with regard to the CIA is its search for documents reflecting the possible health effects of substances allegedly administered by DoD as part of its test programs.

Despite the lack of relevance of CIA documents bearing on the health effects of DoD's test programs and the extreme burden of searching for and producing such documents, as was stated previously, the CIA is willing to consider a reasonable, significantly narrowed approach to this issue. It appears, however, that Plaintiffs intend to insist that CIA must search for test substances allegedly administered by DoD in the exact same manner that DoD conducts its search, regardless of the nexus of that substance to the claims against the CIA, the relevance and utility of the information to the claims against DoD, and even the fact that many of the substances have been approved by the FDA and thus there is significant public information regarding the health effects of the substances.

The CIA cannot agree to such a broad request for three independent but related reasons. First, even if we presume for the sake of argument that the CIA has useful information on the health effects of substances administered by DoD, this information is not only irrelevant to the claims against the CIA, but it is also legally irrelevant to Plaintiffs' claims against DoD. In Plaintiffs' action against DoD under Section 706(1) of the Administrative Procedures Act ("APA"), the relevant questions are whether DoD has a legal obligation to provide notice to volunteer service members and, if so, whether DoD has timely discharged that legal obligation. That sort of inquiry must be directed to DoD, not CIA. To the extent that Plaintiffs instead seek to challenge the substance of DoD's provision of notice to volunteer service members, you might accordingly seek to argue that DoD could or should have consulted with public or private entities about the possible health effects of substances DoD administered. At most, however, such an inquiry under the APA would not require that outside entities provide information to the Court for an independent review, but rather that the Court remand the issue to DoD with an order for it to obtain and consider health effects information potentially possessed by other organizations such as the CIA. *See Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 744 (1985) ("[I]f the agency has not considered all the relevant factors . . . the proper course, except in rare circumstances, is to remand to the agency for additional investigation or explanation."); *Asarco, Inc. v. U.S. Envtl. Prot. Agency*, 616 F.2d 1153, 1160 (9th Cir. 1980) ("If the court determines that the agency's course of inquiry was insufficient or inadequate, it should remand the matter to the agency for further consideration and not compensate for the agency's dereliction by undertaking its own inquiry into the merits."). Thus, Plaintiffs have yet to demonstrate how documents, if any, possessed by the CIA (or any other federal agency, such as the Department of Veterans Affairs) concerning the health effects of the substances administered by DoD are legally relevant to the narrow APA claims against DoD.

Second, this information has no potential to the putative class action alleged by Plaintiffs, if such a class is ever certified. You indicated during the discovery summit that Plaintiffs intend to seek

class certification under Federal Rule of Civil Procedure 23(b)(2). In such cases, however, the issues before the court can only relate to a common policy or questions of law that do not depend on individualized factual determinations that vary among members of the class. *See Lemon v. Int'l Union of Operating Eng'rs, Local No. 139, AFL-CIO*, 216 F.3d 577, 580 (7th Cir. 2000) ("Rule 23(b)(2) operates under the presumption that the interests of the class members are cohesive and homogeneous such that the case will not depend on adjudication of facts particular to any subset of the class nor require a remedy that differentiates materially among class members."); *Holmes v. Cont'l Can Co.*, 706 F.2d 1144, 1155 n. 8 (11th Cir. 1983) ("At base, the (b)(2) class is distinguished from the (b)(3) class by class cohesiveness Injuries remedied through (b)(2) actions are really group, as opposed to individual injuries."). Thus, the health effects of each individual substance may not be a relevant consideration to a class action that is certified under Rule 23(b)(2).

Third, searching for and producing this information would be unduly burdensome for the CIA, particularly in light of the fact that, for more than a year, Plaintiffs have had the CIA documents that would form the basis of the Agency's response. As has been previously stated, those documents contain only modest redactions that do not, in the CIA's view, hamper Plaintiffs' ability to review those documents and derive health effects information therefrom. Given the nature of the CIA's test programs and its records related thereto, the CIA also believes that the information contained in these documents is of limited-to-no utility to an evaluation of the long-term health effects of these test substances. Nonetheless, as has been repeatedly offered with no response from Plaintiffs, the CIA is willing to discuss with Plaintiffs whether the CIA can undertake a renewed privilege review of a small number of documents that Plaintiffs believe are particularly important or relevant to their narrow, remaining APA claims. To this end, it would help inform the discussion if Plaintiffs identified the specific redacted documents they believe are important to their legal claims and that they would like the CIA to re-review for purposes of classification and privilege. As noted previously, the CIA estimates that the process of re-processing and re-reviewing this entire set of documents would take approximately nine to twelve months. It seems unnecessary and unwise to delay the case for that period of time given that Plaintiffs already possess minimally redacted version of these documents and their lack of legal relevance to the narrow claims against DoD.

Defendants' Document Production

Department of Defense and Department of the Army

In your April 14 letter, you inquire about the "universe of test files encompassed" by the volunteer service member test files that are being produced on a rolling basis. Specifically, you ask whether these files involve volunteer service members who participated in testing only at Edgewood Arsenal, or whether it includes other locations, including Fort Detrick. The volunteer service member test files that we are producing on a rolling basis relate to the chemical tests conducted at Edgewood Arsenal, Dugway Proving Ground, Ft. Benning, Ft. McClellan, and Ft. Bragg. To date, Defendants have produced those test files from service members with the last names "A" through "J", "L" through "Q" and "U" through "Z." The files beginning with the last name "K" were damaged, but we have recently obtained new files and are in the process of producing them. In addition, we are in the process of processing the files for "R," "S", and "T," which are quite large, and hope to produce them by May 2.

The production does not include the over 2,000 service member files concerning biological tests at Fort Detrick. First, it is unclear how the biological testing program conducted at Ft. Detrick is legitimately at issue in this case. None of the individual plaintiffs were subject to biological testing; each was subject to chemical agent testing at Edgewood. Nor is there any allegation in the Third Amended Complaint (or elsewhere) that Swords to Plowshares has had to devote any resources to former service members who participated in biological testing. Moreover, to the extent Plaintiffs do seek class certification, Plaintiffs do not appear to have any class representative whose claims are representative of the biological test subjects. Finally, and perhaps most fundamentally, the vast majority of biological test participants were Seventh Day Adventists who participated in the test program because they were conscientious war objectors. Those participants have been subject to follow-up analysis, and the health effects, if any, on those participants have been documented. *See* Phillip R. Pittman, "An Assessment of Health Status Among Medical Research Volunteers Who Served in the Project Whitecoat Program at Fort Detrick, Maryland," (2005).

Second, the burden of producing these over 2,000 additional service member files concerning biological tests at Fort Detrick is extremely high. Unlike the files at Edgewood, these files are not contained on microfiche, but rather are maintained solely in hard copy. DoD has focused its limited resources on collecting and producing the 7,591 test files for those volunteer service members who participated in the testing of chemicals, antidotes, and protective equipment administered through Edgewood Arsenal (and the other locations referenced above), as well as collecting the large volume of potentially responsive documents residing at the National Archives and searching for and producing documents responsive to Plaintiffs' large number of discovery requests.

Third, we note that, to the extent Plaintiffs are interested in information concerning the biological test subjects, pursuant to its contract with DoD, Battelle has collected information concerning the volunteer service members that participated in the biological tests at Ft. Detrick, and the results of that collection efforts – including the identity of the service member and the biological substances and doses tested – was used to populate the Chemical and Biological database. To the extent Plaintiffs wish to review the test files from Ft. Detrick, and based on a showing of relevance, we are willing to discuss making them available for inspection and copying.

As for your question concerning the documents obtained from National Archives, DoD has finished collecting those documents, and we hope to produce these files by May 2.

With regard to your question concerning the Battelle search results and reports, we can confirm that we have – and will continue to produce during the discovery period – certain documents received from Battelle. This includes the summary of Battelle's search efforts for particular time periods. *See, e.g.*, "Interim Technical Report, CBAIMS & US Biological and Tests Repository, Sept. 30, 2010. More specifically, we are producing all non-privileged documents that are deliverables under the contract between Battelle and the government. We are not, however, producing other documents that do not constitute deliverables under the contract, like administrative emails between DoD and Battelle that might have been exchanged over the 8 year span of the contract. Not only would such an undertaking constitute an enormous burden, but the results of any such search clearly outweigh the potential relevance, if any, of such a production effort in this APA case.

With respect to the Defense Technical Information Center ("DTIC") database searches, DoD

has completed running its searches and we hope to produce the bibliographies for the substances identified in your March 21, 2011 letter by early May. With respect to your question about analogs or common names for EA code numbers, this question relates to our comments earlier in this letter about the chemical and biological substances at issue in this case. As for how those searches are being conducted, DoD is using the names listed for each chemical and biological substance contained in your March 21, 2011 letter. To the extent you wish to add search terms, please provide us with those additional terms so that we properly can evaluate the burden of running those searches.

With respect to your question about the classification review of the magnetic computer tapes, DoD has submitted those tapes for classification review. We do not know when that process will be completed, particularly given that the tapes were generated using forty-year old computer technology, but we will let you know when it is.

To date, DoD has been unable to locate the 1942 and 1943 records identified in Mr. Vecchio's March 16, 2011 letter.

Finally, your assumption that the Department of the Army's production efforts are co-extensive with the Department of Defense's efforts is correct.

Central Intelligence Agency

As stated in Defendants' letter of March 25, 2011, the CIA has largely completed its document search and production. The CIA conducted a search as outlined in General Objection 10 of Defendants' Response to Plaintiffs' RFPs. The CIA has completed production of all non-privileged documents arising from those searches, with the exception of materials related to the magnetic tapes and print-outs that were transferred to DoD for a classification review. While the classification review of the magnetic tapes and print-outs are ongoing, we are prepared to produce a small set of non-privileged documents that were located in a folder that accompanied the tapes and print-outs. We anticipate producing these additional documents by May 7, 2011.

In response to your question, the CIA's searches were limited as described in General Objection 10; the CIA has not conducted any additional searches, including for chemical agents, beyond those discussed. That said, as stated in Defendants' Response to Plaintiffs' RFPs, the CIA conducted a broad search for documents related to any project that involved testing on volunteer service members. Furthermore, the CIA agreed to produce non-privileged documents identified in that search that concerned "testing on volunteer service members at Edgewood Arsenal or other military facilities, including studies or information provided to the CIA by the DoD concerning such testing." Thus, to the degree that the CIA located documents pertaining to substances other than EA 3167 and the Boomer that were allegedly administered by DoD, the CIA has completed its search for and production of these documents.

Department of Veterans Affairs

You have also asked about the status of the Department of Veterans Affairs' ("VA") discovery efforts. To date, VA has produced over 14,000 pages of documents in response to Plaintiffs' Rule 45 subpoena. Because of the scope of Plaintiffs' additional discovery requests, VA recently retained a

litigation support contractor to process its documents. VA currently is reviewing approximately 250,000 pages of documents for responsiveness and privilege. In addition, we estimate there are approximately 132 gigabytes of unencrypted email, well over two million pages of documents recovered from the Central Office servers, and an undetermined quantity of formerly encrypted email that will be reviewed for responsiveness and privilege. VA anticipates making its first production by May 6, and currently estimates that its production efforts will be completed by August 31.

Rule 30(b)(6) Depositions

DoD/Army

With respect to Topic 1, you are correct that Dr. Kilpatrick will testify on behalf of both DoD and the Army (and that he will also testify on behalf of both DoD and Army for each topic for which he is designated). With respect to your second comment, we can confirm that Dr. Kilpatrick will be prepared to testify about the implementation, general application, and any modifications of the Wilson Memorandum, CS: 385, and AR 70-25. In addition, Dr. Kilpatrick will be prepared to testify as to DoD's view as to whether, and to what extent, these three sources create an obligation to provide notice and healthcare to the volunteer service members at issue in this case. One point that is unclear from your letter is your statement that Dr. Kilpatrick should be prepared to testify about the "implementation" of these three items, "even if they were implemented through internal plans, policies, letters to the field, instructional memoranda, or other directives." We do not understand what you mean by "implementation" in this regard. In order to ensure that we properly prepare Dr. Kilpatrick to respond to your questions, please explain with more specificity what you mean concerning the "implementation" of these three items.

With respect to Topic 2, we are unclear precisely what information Plaintiffs seek. To the extent you want to know DoD's position about the long-term health effects of the chemical and biological substances used during the Cold War-era testing on volunteer service members, we are prepared to present Dr. Kilpatrick to testify on this issue. And, to be clear, the studies we identified in our April 1, 2011 letter reflect the "sources of the DoD's knowledge about all health effects," associated with the Cold War-era volunteer service member test program. We are unclear what information beyond this that you seek. Please identify precisely what information you seek beyond DoD's understanding of the long-term health effects associated with the Cold War-era volunteer service member testing as reflected in the studies identified in Defendants' April 1, 2011 letter – including the specific documents beyond those identified studies that you wish to know DoD's position about.

It appears that the Plaintiffs and DoD are in agreement as to the scope of Topics 3 and 4.

Topic 5 seeks testimony from DoD regarding (1) DoD's interactions and communications with VA concerning the claims made by volunteer service member test subjects; and (2) the use of VA patients as test subjects by DoD. With respect to the first aspect of Topic 5, DoD designates Dr. Kilpatrick. With respect to the second aspect of this topic concerning the use of VA patients as part of Defendants' testing programs, while you assert that you believe that such information would be relevant to Plaintiffs' claims against the Defendants, you do not make it clear how—Plaintiffs' putative class and definition of "test subjects" has been limited to individuals tested while they were

active duty service members. Additionally, you incorrectly assert that this topic could provide information potentially relevant to Plaintiffs' claims against the VA. Your sole claim against the VA is a facial bias claim, under which the relevant inquiry is not the nature of any alleged historical relationship between DoD or CIA and the VA, but whether the VA's alleged role in testing hampers its ability to serve as a "neutral, unbiased benefits determinations for veterans who were test participants." (Order Granting in Part and Den. in Part Pls.' Mot. to File a Third Am. Compl. at 11.) Thus, discovery on this claim must be limited to what the VA knows of its involvement in testing on human subjects and whether this knowledge, if it exists, inherently affects the VA's ability to fairly adjudicate claims brought by volunteer service members. The relevant inquiry must be directed to the VA, not the CIA. As such, it would be inappropriate to seek testimony from the DoD or CIA on this topic and impute the DoD's or CIA's knowledge to the VA for purposes of Plaintiffs' facial bias claim against the VA.

With respect to Topic 6 – which requests a Rule 30(b)(6) designee concerning DoD and the Army's resources to assist the Court if it were to apply a "TRAC" analysis – we disagree that depositions for purposes of a TRAC analysis are appropriate. As an initial matter, we note that you cite to the Ninth Circuit's decision in *Brower v. Evans*, 257 F.3d 1058 (9th Cir. 2001), for the proposition that the Court will engage in a TRAC factor analysis. Notably, the *Brower* case was one under 706(1) and the Ninth Circuit held there that its review would be conducted "in light of the administrative record," and thus *Brower* makes clear that even in 706(1) cases review is confined to an agency record and not an open and broad-based inquiry into the subject matter underlying the suit. *Id.* at 1065. Furthermore, an evaluation of cases involving the TRAC factors, including the D.C. Circuit case from which the factors originated, demonstrates that these factors are used when there is some clear obligation to act, but the agency is seeking to explain its delay in doing so. *See Telecomms. Research and Action Ctr. ("TRAC") v. F.C.C.*, 750 F.2d 70, 80 (D.C. Cir. 1984) ("[T]he FCC has assured us that it is moving expeditiously on both overcharge claims, [and thus] we need not test the delay here against the above standard to determine if it is egregious enough to warrant mandamus."). The TRAC factors would not apply here, where unlike the *TRAC* case, none of the Defendants have acknowledged a duty to act and, in fact, the Defendants have expressly disclaimed such a legal obligation. Thus, discovery on the source and amount of funding available for any notification process would not be warranted in this case.

With respect to Topic 7, we do not understand how the DoD's views about the CIA's involvement in the volunteer service member test program are relevant to any issue in this case. What DoD knows about the CIA's programs is not relevant to Plaintiffs' claims against DoD, as DoD has stated that it would include any service member allegedly tested with CIA funds in DoD's notice efforts. And, for reasons similar to the CIA's health effects response, DoD's views as to the CIA's involvement are not relevant to Plaintiffs' claims against CIA. To the degree Plaintiffs want to challenge the CIA's conclusion that it did not conduct or fund testing on service members based on information from DoD that is not part of the CIA's Administrative Record, the only appropriate remedy would be to seek remand to the CIA for additional information, not a mandate for Defendants to produce documents so that the Court can reach its own independent conclusion about the CIA's role. Moreover, because there are no current agency employees at DoD with knowledge about any involvement by CIA in DoD's test programs, DoD's testimony would mirror that which is contained in response to Plaintiffs' interrogatory. Under these circumstances, any testimony by a DoD witness would necessarily be cumulative of that interrogatory response. Accordingly, we ask that you

reconsider the need for a DoD designee on this topic.

In terms of the durational limit for Dr. Kilpatrick's deposition as a Rule 30(b)(6) designee, as you may be aware, the Committee Notes to the 2000 Amendments to the Federal Rules indicate that, absent agreement or court order, each person designated under Rule 30(b)(6) is subject to the presumptive one day, seven hour limitation contained in Rule 30(d)(1). We may be willing to agree to a longer deposition for Dr. Kilpatrick than what is contemplated under Rule 30(d)(1). Please specify how much time you contemplate so that we can properly consider your request.

CIA

As Plaintiffs acknowledge, testimony on Topic 1 would not be relevant if "the Court grants the CIA's motion to dismiss Plaintiffs' notice claim against it." Thus, it is inappropriate to schedule CIA testimony on this topic at this time.² Furthermore, we note that testimony on this topic is also premature until the parties resolve their dispute about the appropriate scope of CIA test programs that may be relevant to this action, as the CIA sought a protective order limiting discovery into its test programs that did not involve testing on service members, which the Court denied without prejudice. Finally, the CIA believes that testimony on this topic is unwarranted in this APA case where "the focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court." *Camp v. Pitts*, 411 U.S. 138, 142 (1973). Thus, the CIA's certified Administrative Record provides the CIA's response on any alleged duty to provide notice, and it is inappropriate to create a new record pursuant to litigation.

With regard to Topic 2, you state that "Plaintiffs are entitled to seek testimony concerning the health effects associated with exposure to substances utilized by the CIA that also were used during the test programs." As the CIA has repeatedly stated, and as supported in its certified Administrative Record, the CIA has reached a conclusion that it did not conduct or fund testing on service members. Thus, it becomes clear that topic 2 seeks testimony from the CIA concerning the health effects of substances allegedly administered by DoD as part of its test programs. For the reasons articulated in more detail above, the CIA believes that information the CIA might possess, if any, regarding the health effects of substances administered by DoD would be legally irrelevant to Plaintiffs' claims against both the CIA and DoD. As such, the CIA will not provide a witness to testify on this topic.

In regard to proposed Topic 3 concerning secrecy oaths, we believe that testimony from the CIA on this topic is unwarranted in light of the complete lack of factual basis for this claim. You have admitted that you had no evidentiary basis for this claim against the CIA at the time you filed your Complaint. (Pls.' Am. & Supplemental Resps. to Defs.' First Set of Interrogs. at 15 ("Plaintiffs do not currently have facts identifying specific circumstances where the Central Intelligence Agency directly administered secrecy oaths to Plaintiffs.")) Combined with the CIA's sworn representation that "[b]ased on a reasonable search of its records, the CIA has uncovered no records indicating that it ever administered or otherwise entered into 'secrecy oaths' or other types of non-disclosure agreements with volunteer service members (including the individual Plaintiffs) relating to the testing of chemical

² In the event that the Court denies the CIA's pending motion to dismiss, the CIA is willing to promptly meet-and-confer with Plaintiffs so that any outstanding issues relating to this topic and the others discussed below can be resolved expeditiously.

or biological substances upon them, as alleged in this case,” (Certification of Administrative R. (Dkt. 208.1) at 12), it is clear that there is no merit to this claim against the CIA. We therefore request that you withdraw this claim.

With respect to Topic 5, the CIA shares the same concerns articulated with regard to DoD’s position on this topic.

With regard to Topic 6, the CIA believes that testimony is not warranted for the reason articulated above concerning the inappropriateness of TRAC factor analysis. Beyond this, we also note that Plaintiffs have withdrawn their health care claim against the CIA, and thus testimony from the CIA on this aspect of Topic 6 is not warranted. CIA testimony on this topic as it relates to Plaintiffs’ notice claims is also unwarranted in light of the notification efforts undertaken by the CIA in the late 1970s (as set forth in the Administrative Record), which would satisfy any obligation to provide notice should the Court find such a judicially-enforceable duty. Those issues notwithstanding, Plaintiffs acknowledge that testimony on Topic 6 would not be relevant if the Court grants the CIA’s pending motion to dismiss, and thus, it is premature to schedule CIA testimony on this topic at this time.

Finally, with regard to Topic 7, Plaintiffs seek testimony on two distinct issues: (1) the CIA’s alleged involvement in testing on service members or testing on non-service members that involved substances that may also have been administered by DoD on service members, and (2) the CIA’s certification of its Administrative Record. First, Defendants disagree with Plaintiffs regarding their entitlement to testimony concerning CIA involvement in testing on service members. As discussed with respect to Topic 1, the APA limits review in this case to the “administrative record already in existence,” and not a new record created in the litigation. *Camp*, 411 U.S. at 142. Thus, the CIA’s certified Administrative Record provides the CIA’s response on any alleged duty to provide notice, Plaintiffs’ sole remaining legal claim against the CIA given Plaintiffs’ withdrawal of their health care claim against the CIA, (Dkt. 217 at 2 n.2), and acknowledgement that they have no factual basis for their secrecy oath claim against the CIA. There is no basis to create a new record here, as case law clearly circumscribes the role of the Courts in a case under the APA.

Additionally, while you continue to assert that Plaintiffs are entitled to broad-based discovery with regard to substances allegedly tested by the CIA on non-service members that may also have been administered by DoD on service members, you appear to concede, given your repeated failure to address Defendants’ argument, that your request for discovery includes test programs that are not relevant to this action and also far exceeds the scope of claims in this action. As Defendants have repeatedly noted, Plaintiffs have sought discovery on test programs that were not identified in the complaint and which have no nexus to testing on service members. Furthermore, as also has been repeatedly noted, Plaintiffs seek testimony on all aspects of CIA test programs—including funding, personnel, administration, approval, conduct, etc.—despite the fact that Plaintiffs’ sole articulated contention with regard to non-service member testing is that such information might be of some relevance regarding the health effects of substances that DoD (not the CIA) may have tested on service members.³ Defendants have noted these significant shortcomings in Plaintiffs discovery requests on

³The CIA also notes that testimony regarding the health effects of substances allegedly administered by DoD is also unwarranted because it is not relevant to Plaintiffs’ claims against DoD or CIA, as explained in more detail above.

numerous occasions, and Plaintiffs have neither responded nor refuted them. Thus, it is unclear how Plaintiffs continue to believe that testimony on this topic is warranted as it relates to testing on non-service members.

With respect to the second component of Topic 7, as it relates to the certification of the CIA's Administrative Record, the CIA is willing to discuss this issue with Plaintiffs but believe it is inappropriate to do so at this time. We note that Plaintiffs chose not to withdraw their motion to strike the CIA's Administrative Record. Thus, by Plaintiffs' choice, there remains a live dispute as to the continued viability of CIA's certified Administrative Record. It would be inappropriate to consider testimony on this topic until either Plaintiffs formally withdraw their motion to strike or the Court resolves it.⁴

Individual Depositions

In your April 14 letter, you request deposing Paul Black both in his capacity as VA's Rule 30(b)(6) designee concerning Topics 3, 4 and 5 at the end of May, while deposing Mr. Black in his individual capacity at a later date. As you are aware, VA has raised a number of objections to certain aspects of Topics 3, 4 and 5, as reflected in VA's April 11, 2011 response to Plaintiffs' Notice of Deposition Pursuant to Rule 30(b)(6). As a matter of efficiency, the parties should first attempt to resolve these objections and the scope of these topics consistent with the meet and confer process prior to setting dates for these three topics.⁵

With respect to Mr. Roberts, you have asked whether he is available for deposition after the first week in May. Mr. Roberts is available for deposition the week of June 6, 2011. In addition, Mr. Lee is available for deposition during that same week.

Case Schedule

Finally, in your April 14 letter, you propose "that the fact discovery deadline (and concurrent disclosure of expert reports) be moved from May 31 to July 15, 2011." As I mentioned in my April 15, 2011 email to Mr. Blakely, we agree in principle to an enlargement of the fact discovery cut-off in this case. However, we have some questions about the specifics of your proposal.

First, any agreement as to the scope of an enlargement of fact discovery should take into account Plaintiffs' plan for the timing of its motion for class certification. When do Plaintiffs intend to move for class certification? And, what are Plaintiffs' views regarding Defendants' proposal, as explained in our March 25, 2011 letter, that the depositions of the named Plaintiffs and representatives from the two Plaintiff service organizations be conducted immediately after Plaintiffs file their motion

4 One additional issue relates to the definitions contained in the Rule 30(b)(6) notice, as originally served. Obviously, both parties have sought to revise and refine what is truly at issue in this case, consistent with the orders from the Court. The original deposition notice does not reflect those considerations. We suggest that, once the parties reach a final agreement on the scope of the Rule 30(b)(6) depositions, that Plaintiffs either re-serve the notice with revised definitions, or that we memorialize in writing the parties' understanding of the revised definitions.

5 Ms. Sprenkel indicated to my colleague Ms. Farel several weeks ago that she was drafting a letter addressing VA's objections to the scope of Plaintiffs' Rule 30(b)(6) deposition notice. To date, we have not received that letter.

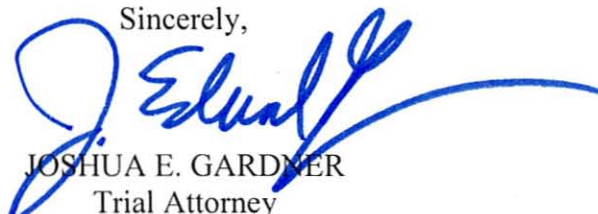
for class certification? In that regard, it would be both helpful and appreciated if Plaintiffs responded to Defendants' January 6, 2011 letter raising questions about the individuals identified in Plaintiffs' December 29, 2010 amended Rule 26(a)(1) initial disclosures. Moreover, during our video conference discovery summit in February, you had indicated that certain of the Plaintiffs could be made available in Washington, D.C. Please identify which of those individuals you intend to make available here. Beyond those individuals, we will assume that the remainder of the individual class representatives (and the individuals from the two organizational Plaintiffs), will be deposed in the districts where they reside. Please let me know if that assumption is incorrect.

Second, it is unclear what precisely you mean by "concurrent disclosure of expert reports."⁶ Currently, the deadline for the completion of expert discovery is August 31, 2011. Are you proposing moving the identification of expert reports back to mid-July, but retaining the expert discovery cutoff as August 31, 2011? If so, in the absence of more information, we cannot agree to that proposal. The parties originally believed that a three-month period for expert discovery was appropriate, and we do not currently see any basis to revisit that specific conclusion. To the extent Plaintiffs would be willing to tell us how many experts they intend to use and the nature of that testimony, we would be willing to reconsider this issue. One other option is for Plaintiffs to retain the May 31, 2011 deadline for expert reports, but supplement those reports as appropriate under Federal Rule of Civil Procedure 26(e). We are open to discussing other possibilities that meet both parties' needs.

Defendants' Supplemental Initial Disclosures

Finally, your assumption that Defendants' April 1, 2011 Supplemental Rule 26(a)(1) Disclosures replace rather than augment Defendants' prior Rule 26(a)(1) disclosures is correct.

Sincerely,



JOSHUA E. GARDNER
Trial Attorney
Federal Programs Branch

Enclosure

⁶ By discussing a schedule for expert discovery, Defendants are in no way conceding that expert testimony is appropriate in an APA case, and we expressly reserve the right to challenge Plaintiffs' use of expert testimony in this APA case.

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January 10, 2011

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By E-Mail and Overnight Delivery

Joshua E. Gardner, Esq.
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave., N.W.
Washington, D.C. 20001

Re: *Vietnam Veterans of America, et. al. v. Central Intelligence Agency, et. al.*,
No. CV 09-00037-CW (N.D. Cal.)

Dear Mr. Gardner:

Please find enclosed Plaintiffs' responses to Defendants' interrogatories and requests for production of documents. Please also note that verifications from two of the Plaintiffs are not included and will be sent tomorrow.

Very truly yours,



Michael Kryston.

Enclosure

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 Vietnam Veterans of America; Swords to Plowshares: Veterans
 10 Rights Organization; Bruce Price; Franklin D. Rochelle; Larry
 Meirow; Eric P. Muth; David C. Dufrane; Tim Michael Josephs;
 11 and William Blazinski

12
 13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA
 15 OAKLAND DIVISION

16 VIETNAM VETERANS OF AMERICA, *et al.*,
 17
 Plaintiffs,
 18
 v.
 19
 CENTRAL INTELLIGENCE AGENCY, *et al.*,
 20
 Defendants.
 21

Case No. CV 09-0037-CW

**RESPONSES TO DEFENDANTS'
 FIRST SET OF
 INTERROGATORIES &
 SECOND SET OF PRODUCTION
 REQUESTS**

Complaint filed January 7, 2009

1 Pursuant to Federal Rules of Civil Procedure 33 and 34, Plaintiffs, Vietnam Veterans of
2 America, Swords to Plowshares: Veterans Rights Organization, Bruce Price, Franklin D.
3 Rochelle, Larry Meirow, Eric P. Muth, David C. Dufrane, Tim Michael Josephs and William
4 Blazinski hereby respond to Defendants' First Set of Interrogatories and Second Set of Requests
5 for Production, dated December 6, 2010 ("Request" or "Requests").

6 Plaintiffs have conducted and are continuing to conduct a diligent search for information
7 and documents in response to Defendants' Requests. Plaintiffs have not completed their
8 investigation of the facts related to this case, have not completed discovery and have not
9 completed preparation for trial. Additional investigation, research, and analysis may require
10 amendment or revision of these responses. Plaintiffs' responses are based on information
11 presently known to them, and are given without prejudice to Plaintiffs' right to supplement,
12 amend, or modify these responses or to argue evidence at trial on these issues.

13 Unless otherwise noted, the responses provided herein are those of all named plaintiffs.
14 Swords to Plowshares has not joined in the contentions of the Fourth Claim for Relief of the
15 Third Amended Complaint made against the Department of Veterans Affairs, and has therefore
16 not joined in the responses to Interrogatories 8(d), 9-17 and 23.

17 Subject to the foregoing conditions, Plaintiffs object and respond to the Requests as
18 follows:

19 **GENERAL OBJECTIONS**

20 1. Plaintiffs object to each of the Requests to the extent that they seek information or
21 documents that are neither relevant to the claims or defenses of any party nor reasonably
22 calculated to lead to the discovery of admissible evidence. In responding to the Requests,
23 Plaintiffs concede neither the relevance nor the materiality of the information contained in the
24 written responses or the responsive documents.

25 2. Plaintiffs object to each of the Requests to the extent that they seek information or
26 documents protected by the attorney-client privilege, the attorney work product doctrine, or any
27 other available evidentiary privilege or protection. Nothing contained herein is intended to be or
28 should be construed as a waiver of the attorney-client privilege, the attorney work product

1 doctrine, or any other applicable privilege or protection. Privileged information and work product
2 are not provided in these responses, and inadvertent disclosure is not a waiver of any privilege or
3 of the work product protection. Plaintiffs therefore construe each Request to exclude requests for
4 privileged information of any sort. If, despite Plaintiffs' best efforts, Plaintiffs produce one or
5 more privileged, otherwise protected, or non-responsive documents, such production will have
6 been inadvertent and not intended in any way whatsoever to waive any legal protection that
7 attaches to such document(s). Plaintiffs object to any reading, copying, summarizing, or other
8 use by defendants of such document(s), and Plaintiffs request that Defendants immediately notify
9 Plaintiffs of any instance where it knows, or reasonably suspects, that such an inadvertent
10 production has occurred and immediately return such document(s) to Plaintiffs.

11 3. Plaintiffs object to each of the Requests to the extent that they seek information or
12 documents protected by common law, constitutional, and/or statutory rights of privacy.

13 4. Plaintiffs object to each of the Requests to the extent that they are overbroad,
14 unduly burdensome, and oppressive.

15 5. Plaintiffs object to each of the Requests to the extent that they seek information
16 not in Plaintiffs' possession, custody, or control.

17 6. Plaintiffs object to each of the Requests to the extent that they seek information to
18 which Defendants have equal access and/or which is already in the possession, custody, or control
19 of Defendants. Plaintiffs will not produce documents that are otherwise publicly available.

20 7. Plaintiffs object to each of the Requests, including all definitions and instructions
21 contained or incorporated therein, to the extent they seek to impose obligations beyond those
22 specified under the Federal Rules of Civil Procedure or other applicable rules.

23 8. Plaintiffs object to each of the requests, including all definitions contained or
24 incorporated therein, to the extent that they require words to be construed in any manner other
25 than their plain meaning. To the extent that Plaintiffs adopt or use any term or phrase defined by
26 Defendants, they do so only for convenience in responding to these Requests. Plaintiffs do not
27 accept or concede that any of the terms or definitions are appropriate, descriptive, or accurate.

28 9. Where Plaintiffs state that they will produce documents, this does not mean that

1 responsive documents exist. It represents only that responsive documents will be produced if
2 they exist, can be located with reasonable diligence, and are not otherwise protected from
3 disclosure.

4 10. By producing documents and providing information in the form of written
5 responses, Plaintiffs do not concede the relevance or materiality of the Requests or their subject
6 matter. Plaintiffs' written responses and production of documents are made subject to all
7 objections as to competency, relevance, materiality, privilege, and admissibility as evidence for
8 any purpose in this action

9 11. Plaintiffs state these objections without waiving or intending to waive, but on the
10 contrary preserving and intending to preserve:

- 11 a. all objections to competency, relevancy, materiality, privilege, and admissibility as
12 evidence or for any purpose of the responses to these Requests, or subject matter
13 thereof, in any subsequent proceeding in, or the trial of, this or any other action;
- 14 b. the right to object on any ground to the use of said responses or the subject matter
15 thereof, in any subsequent proceeding in, or the trial of, this or any other action;
- 16 c. the right to object on any ground at any time to a demand for further responses to
17 these or any other discovery procedures involving or related to the subject matter
18 of the Requests directed to Plaintiffs; and (d) the right to object on any ground as
19 to any other or future discovery requests.

20 Subject to the foregoing General Objections, Plaintiffs respond as follows:

21 **RESPONSES AND OBJECTIONS**

22 **INTERROGATORY NO. 1:**

23 Identify all material facts upon which you base your claim that the Central Intelligence
24 Agency either directly or indirectly participated in the biological or chemical testing of volunteer
25 service members from 1950 through 1975.

26 **RESPONSE TO INTERROGATORY NO. 1:**

27 Plaintiffs object to this contention interrogatory as premature and cannot provide a full
28 and complete response at this time. Discovery is not completed. Defendants have only recently

1 begun to produce tens of thousands of documents previously withheld after extensive motion
2 practice. Moreover, Defendants have yet to produce a single witness for deposition, and
3 discovery remains in the very early stages. It is far too early for contention interrogatories.

4 Plaintiffs also object to this interrogatory as unduly burdensome, oppressive, and
5 overbroad. The request for “all material facts” calls for an exhaustive recitation at a level of
6 detail that cannot be justified at this stage of discovery. Plaintiffs further object to this
7 interrogatory on the grounds that the Central Intelligence Agency has destroyed or withheld
8 documents and information relevant this request. Plaintiffs further object on grounds that the
9 interrogatory seeks information equally available or more accessible to Defendants. Subject to
10 and without waiving all forgoing general and specific objections, Plaintiffs respond as follows:

11 Based on Plaintiffs’ review of Defendants’ production to date, and as described in the
12 Third Amended Complaint the following facts prove, establish, confirm, corroborate, and/or
13 provide relevant evidence that the Central Intelligence Agency directly or indirectly participated
14 in the testing of biological or chemical agents on service members from 1950 to 1975:

- 15 • The sources identified in Attachment A to Plaintiffs’ Initial Disclosures, and also
16 the following secondary sources: Seymour Hersh, *Chemical & Biological*
17 *Warfare: America’s Hidden Arsenal* (1968); John Marks, *The Search for the*
18 *“Manchurian Candidate”*: *The CIA and Mind Control – The Story of the Agency’s*
19 *Secret Efforts to Control Human Behavior* (1979).
- 20 • A December 3, 1955 Memorandum from Allen Dulles, Director of Central
21 Intelligence (Bates No. JK 04 0005626-27; *see also* Docket No. 129-7) indicates
22 that the Central Intelligence Agency “offer[ed] its co-operation and assistance to
23 research and development programs [regarding psychochemicals] which the
24 Department of Defense is considering at this time.” The Memorandum further
25 states that the Central Intelligence Agency “has provided financial support for
26 certain projects in the field of psychochemicals conducted by the Chemical Corps
27 and by the Office of Naval Research.”

- 1 • In approximately 1964 or 1965, two agents from the Central Intelligence Agency
2 visited Edgewood Arsenal over a period of days, during which they were
3 administered doses of LSD, as described in deposition testimony given by Dr.
4 George Aghajanian.
- 5 • On February 17, 1971, the Central Intelligence Agency transferred \$37,000 to
6 Edgewood Arsenal “for the purpose of determining the clinical effects of EA
7 #3167,” as described in the May 29, 1973 Memorandum for the Director of
8 Research and Development, produced by Defendants bearing the Bates numbers
9 VVA023819 through VVA023820. This document also states that “fifteen
10 military volunteers in the Edgewood program were tested.”
- 11 • A Memorandum for the Inspector General dated May 6, 1974, produced by
12 Defendants bearing the Bates numbers VVA023823 through VVA023825
13 indicates that Edgewood Arsenal “supplied U.S. Army volunteers for testing of
14 [the Central Intelligence Agency’s] candidate compounds.” This document also
15 indicates that the Central Intelligence Agency received a large data base containing
16 test records from Edgewood Arsenal.
- 17 • A January 31, 1975 Memorandum by James V. Hirsch, produced by Defendants
18 bearing the Bates numbers VVA023835 through VVA023843 notes that the
19 Central Intelligence Agency worked with Edgewood Arsenal from 1967 through
20 1973 in connection with EA #3167, which was being tested on humans.
- 21 • In September 1977, Dianne C. Siemer, General Counsel for the Department of
22 Defense, testified before the Senate Subcommittee on Health & Scientific
23 Research and stated that Edgewood Arsenal had received funding from the CIA,
24 and that human testing at Edgewood was conducted as part of a CIA program.
25 Defendants produced this testimony bearing the Bates numbers VVA023924
26 through VVA023939. Ms. Siemer also wrote a memorandum describing CIA-
27 funded testing on military servicemembers dated September 20, 1977, produced by
28 Defendants bearing the Bates numbers VVA023903 to VVA023919.

- 1 • A July 19, 2006 letter from CIA Director Michael V. Hayden to the Honorable R.
2 James Nicholson, produced by Defendants bearing the Bates number VA023968,
3 states that Project OFTEN “may have involved testing on volunteer military
4 personnel,” but that the CIA has not maintained records sufficient to identify the
5 test subjects.

6 Plaintiffs anticipate that further discovery and investigation will disclose additional facts
7 and provided meaning and context to the materials and information previously provided to
8 Plaintiffs. Plaintiffs are unable to completely respond to this Interrogatory at this time, and the
9 information set forth in this response is provided without prejudice to Plaintiffs’ right to
10 supplement or modify the information set forth herein to reflect materials or information
11 subsequently discovered or developed.

12 **INTERROGATORY NO. 2:**

13 Identify each and every document that you allege supports your contention that the
14 Central Intelligence Agency has an obligation “to notify and provide medical care to Plaintiffs
15 and class members,” as alleged in paragraph 21.b of the Third Amended Complaint.

16 **RESPONSE TO INTERROGATORY NO. 2:**

17 Plaintiffs object to this contention interrogatory as premature and cannot provide a full
18 and complete response at this time. Discovery is not completed. Defendants have only recently
19 begun to produce tens of thousands of documents previously withheld after extensive motion
20 practice. Moreover, Defendants have yet to produce a single witness for deposition, and
21 discovery remains in the very early stages. It is far too early for contention interrogatories.

22 Plaintiffs also object to this interrogatory as unduly burdensome, oppressive, and
23 overbroad in that the request for “each and every document” calls for an exhaustive level of detail
24 that is not justified at this stage of discovery. Plaintiffs further object to this Interrogatory on to
25 the extent that it requires a legal conclusion. Plaintiffs further object to this Interrogatory on
26 grounds that the Central Intelligence Agency has destroyed or withheld documents and
27 information relevant this request. Plaintiffs further object on grounds that the interrogatory seeks
28

1 information equally available or more accessible to Defendants. Subject to and without waiving
2 all forgoing general and specific objections, Plaintiffs respond as follows:

3 Based on Plaintiffs' review of Defendants' production to date, and Plaintiffs' further
4 investigation the following documents prove, establish, confirm, corroborate, and/or provide
5 relevant evidence that Defendant Central Intelligence Agency has an obligation to notify and
6 provide medical care to Plaintiffs and class members:

- 7 • The July 17, 1978 Department of Justice Opinion Letter attached as Exhibit A to
8 the Third Amended Complaint, which states that the CIA has a legal duty to
9 notify participants in the test programs. Plaintiffs anticipate that further
10 discovery and investigation will disclose additional facts and provided meaning
11 and context to the materials and information previously provided to Plaintiffs.
12 Plaintiffs are unable to completely respond to this Interrogatory at this time, and
13 the information set forth in this response is provided without prejudice to
14 Plaintiffs' right to supplement or modify the information set forth herein to
15 reflect materials or information subsequently discovered or developed.

16 **INTERROGATORY NO. 3:**

17 Identify the specific "Vietnam-era veterans who were unwilling to share information
18 relevant to possible VA claims because of perceived secrecy obligations" with Swords to
19 Plowshares, as contended in paragraph 158 of Plaintiffs' Third Amended Complaint.

20 **RESPONSE TO INTERROGATORY NO. 3:**

21 Plaintiffs object to this contention interrogatory as premature and cannot provide a full
22 and complete response at this time. Discovery is not completed. Defendants have only recently
23 begun to produce tens of thousands of documents previously withheld after extensive motion
24 practice. Moreover, Defendants have yet to produce a single witness for deposition, and
25 discovery remains in the very early stages. It is far too early for contention interrogatories.

26 Plaintiffs further object that this interrogatory seeks information protected by the attorney-
27 client privilege.

1 Plaintiffs anticipate that further discovery and investigation will disclose additional facts
2 and provided meaning and context to the materials and information previously provided to
3 Plaintiffs. Plaintiffs are unable to completely respond to this Interrogatory at this time, and the
4 information set forth in this response is provided without prejudice to Plaintiffs' right to
5 supplement or modify the information set forth herein to reflect materials or information
6 subsequently discovered or developed.

7 **INTERROGATORY NO. 4:**

8 Identify all material facts upon which you base your claim in paragraph 161 of the Third
9 Amended Complaint that “[t]he ‘volunteers’ were given no information about the chemicals used
10 on them in the experiments, no warning as to the potential health risks, and no or inadequate
11 follow-up health care to determine the effects (and resulting injuries) caused by the tests.”

12 **RESPONSE TO INTERROGATORY NO. 4:**

13 Plaintiffs object to this contention interrogatory as premature and cannot provide a full
14 and complete response at this time. Discovery is not completed. Defendants have only recently
15 begun to produce tens of thousands of documents previously withheld after extensive motion
16 practice. Moreover, Defendants have yet to produce a single witness for deposition, and
17 discovery remains in the very early stages. It is far too early for contention interrogatories.

18 Plaintiffs further object on grounds that the interrogatory seeks information equally
19 available or more accessible to Defendants. Subject to all forgoing general and specific
20 objections, Plaintiffs respond as follows:

21 Based on Plaintiffs' review of Defendants' production to date, and as described in the
22 Third Amended Complaint the following facts prove, establish, confirm, corroborate, and/or
23 provide relevant evidence that many test subjects were given no information about the chemicals
24 used on them in the experiments, no warning as to the potential health risks, and no or inadequate
25 follow-up health care to determine the effects (and resulting injuries) caused by the tests:

- 26 • The “consent forms” produced by Defendants in this action do not list any of the
27 chemicals or biological substances that were tested on the test subjects. Nor do
28 these consent forms describe any potential health effects related to the test

1 substances, noting only that the test subject may experience “temporary
2 discomfiture.” *See, e.g.*, VVA0006440-6442, PLTF000271, VVA006591,
3 VVA007350, VVA008305, VVA008514-8517. The 1976 report of the Army
4 Inspector General notes that often “consent was relegated to a simple, all-purpose
5 statement to be signed by the volunteer.” (Third Amended Complaint ¶ 164.)

- 6 • The 1976 of the Army Inspector General report stated that “the revised [volunteer
7 agreement] form did not require disclosure of the chemical agent to be used or
8 the full effects of the drugs, nor did the publication appended to the volunteer
9 agreement form contain that information. . . . Reading and understanding [the
10 “Medical Research Volunteer Program” publication] would not provide detailed
11 knowledge regarding the specific experiment or agent to which he would be
12 exposed.” (VVA026816).
- 13 • The purported “follow-up studies” performed by [Agencies] consisted of
14 telephone and/or mail surveys, not actual medical tests of any test subjects.

15 Plaintiffs anticipate that further discovery and investigation will disclose additional facts
16 and provided meaning and context to the materials and information previously provided to
17 Plaintiffs. Plaintiffs are unable to completely respond to this Interrogatory at this time, and the
18 information set forth in this response is provided without prejudice to Plaintiffs’ right to
19 supplement or modify the information set forth herein to reflect materials or information
20 subsequently discovered or developed.

21 **INTERROGATORY NO. 5:**

22 Identify all material facts upon which you base your claim in paragraph 173 of the Third
23 Amended Complaint that “[d]efendants have failed and refused to supply all available
24 information to the VA concerning the exposures of ‘volunteers’ who have filed or whose
25 survivors have filed claims for service-connected death or disability compensation,” including the
26 identification of the specific information that you contend Defendants have failed or refused to
27 supply to the VA.

RESPONSE TO INTERROGATORY NO. 5:

1
2 Plaintiffs object to this contention interrogatory as premature and cannot provide a full
3 and complete response at this time. Discovery is not completed. Defendants have only recently
4 begun to produce tens of thousands of documents previously withheld after extensive motion
5 practice. Moreover, Defendants have yet to produce a single witness for deposition, and
6 discovery remains in the very early stages. It is far too early for contention interrogatories.

7 Plaintiffs object to this Interrogatory on grounds that Defendants have withheld
8 documents and information relevant this request or that documents in Defendants sole possession
9 and control and relevant to this request have been lost or destroyed. Plaintiffs further object on
10 grounds that the interrogatory seeks information equally available or more accessible to
11 Defendants. Subject to all forgoing general and specific objections, Plaintiffs respond as follows:

12 Defendants are the custodians of all materials and information required to respond to this
13 Interrogatory, and therefore the burden of deriving or ascertaining the answer to this Interrogatory
14 is substantially less for Defendants than for Plaintiffs. Defendants are in possession and control
15 of all records concerning the exposure of “volunteers” to test substances, including the dates and
16 times of exposures, the specific substances administered, and the dosages given to the
17 “volunteers.” Additionally, Defendants are in possession and control of the records of all claims
18 made by “volunteers” who have filed or whose survivors have filed claims for service-connected
19 death or disability compensation. Defendants may ascertain the answer to this Interrogatory by
20 comparing the claims files and correspondence between the Army, DoD, DVA and claimants
21 with the exposure records to determine what available information was withheld by Defendants
22 from DVA.

INTERROGATORY NO. 6:

23
24 To the extent you contend that the Central Intelligence Agency and/or the Department of
25 Justice has an obligation to “notify Plaintiffs and other test participants and provide all available
26 documents and evidence concerning [the Plaintiffs’] exposures and known health effects,” as
27 identified in paragraph 183 of the Third Amended Complaint, identify the factual and legal bases
28 for that claimed obligation.

RESPONSE TO INTERROGATORY NO. 6:

Plaintiffs object to this contention interrogatory as premature and cannot provide a full and complete response at this time. Discovery is not completed. Defendants have only recently begun to produce tens of thousands of documents previously withheld after extensive motion practice. Moreover, Defendants have yet to produce a single witness for deposition, and discovery remains in the very early stages. It is far too early for contention interrogatories.

Plaintiffs object to this Interrogatory on grounds that the Central Intelligence Agency has destroyed or withheld documents and information relevant this request. Plaintiffs further object on grounds that the interrogatory seeks information equally available or more accessible to Defendants. Plaintiffs further object to this Interrogatory on to the extent that it requires a legal conclusion. Subject to all forgoing general and specific objections, Plaintiffs respond as follows:

Based on Plaintiffs' review of Defendants' production to date, and as described in the Third Amended Complaint the following facts and/or legal principles prove, establish, confirm, corroborate, and/or provide relevant evidence that the Central Intelligence Agency and/or the Department of Justice has an obligation to notify Plaintiffs and other test participants and provide all available documents and evidence concerning the Plaintiffs' exposures and known health effects:

- Administrative Procedures Act §§ 702, 706.
- The common law duty to warn.
- The July 17, 1978 Department of Justice Opinion Letter attached as Exhibit A to the Third Amended Complaint, which states that the CIA has a legal duty to notify participants in the test programs because the agency placed them in harm's way.
- The fact that Defendants conducted tests of chemical and biological agents on human subjects, as described at length in the Third Amended Complaint.

Plaintiffs anticipate that further discovery and investigation will disclose additional facts and provided meaning and context to the materials and information previously provided to Plaintiffs. Plaintiffs are unable to completely respond to this Interrogatory at this time, and the

1 information set forth in this response is provided without prejudice to Plaintiffs' right to
2 supplement or modify the information set forth herein to reflect materials or information
3 subsequently discovered or developed.

4 **INTERROGATORY NO. 7:**

5 To the extent you contend that the Central Intelligence Agency administered secrecy oaths
6 to Plaintiffs, identify the factual basis for your contention, including the identification of the
7 service members to whom the Central Intelligence Agency allegedly administered such secrecy
8 oaths and the date(s) of such administration.

9 **RESPONSE TO INTERROGATORY NO. 7:**

10 Plaintiffs object to this contention interrogatory as premature and cannot provide a full
11 and complete response at this time. Discovery is not completed. Defendants have only recently
12 begun to produce tens of thousands of documents previously withheld after extensive motion
13 practice. Moreover, Defendants have yet to produce a single witness for deposition, and
14 discovery remains in the very early stages. It is far too early for contention interrogatories.

15 Plaintiffs object to this Interrogatory on grounds that the Central Intelligence Agency has
16 destroyed or withheld documents and information relevant this request. Plaintiffs further object
17 on grounds that the interrogatory seeks information equally available or more accessible to
18 Defendants. Subject to all forgoing general and specific objections, Plaintiffs respond as follows:

19 Plaintiffs do not currently have facts identifying specific circumstances where the Central
20 Intelligence Agency directly administered secrecy oaths to Plaintiffs. However, the Central
21 Intelligence Agency provided financial support for testing by the Chemical Corps and the Office
22 of Naval Research and had knowledge that secrecy oaths were administered by these
23 organizations.

24 Plaintiffs anticipate that further discovery and investigation will disclose additional facts
25 and provided meaning and context to the materials and information previously provided to
26 Plaintiffs. Plaintiffs are unable to completely respond to this Interrogatory at this time, and the
27 information set forth in this response is provided without prejudice to Plaintiffs' right to
28

1 supplement or modify the information set forth herein to reflect materials or information
2 subsequently discovered or developed.

3 **INTERROGATORY NO. 8:**

4 Identify the specific source(s) and/or base(s) for the claimed “duty to locate and warn all
5 test participants” alleged in paragraph 184.e of the Third Amended Complaint for:

- 6 a. The Central Intelligence Agency;
7 b. The Department of Defense;
8 c. The Department of Justice;
9 d. The Department of Veterans Affairs

10 **RESPONSE TO INTERROGATORY NO. 8:**

11 Plaintiffs object on grounds that this Interrogatory is compound. Plaintiffs further object
12 to this Interrogatory on grounds that the Central Intelligence Agency destroyed or withheld
13 documents and information relevant this request. Plaintiffs further object to this Interrogatory on
14 to the extent that it requires a legal conclusion. Plaintiffs further object on grounds that the
15 interrogatory seeks information equally available or more accessible to Defendants. Subject to all
16 forgoing general and specific objections, Plaintiffs respond as follows:

17 Based on Plaintiffs’ review of Defendants’ production to date, and as described in the
18 Third Amended Complaint the following are the sources and/or bases establishing that
19 Defendants have a duty to locate and warn all test participants as alleged in the Third Amended
20 Complaint at ¶ 184.e.:

- 21 • The Central Intelligence Agency
22 ○ Administrative Procedures Act §§ 702, 706.
23 ○ The common law duty to warn.
24 ○ The July 17, 1978 Department of Justice Opinion Letter attached as Exhibit
25 A to the Third Amended Complaint, which states that the CIA has a legal
26 duty to notify participants in the test.
27 ○ CIA Director Stansfield Turner’s 1977 testimony before the Senate Select
28 Subcommittee on Intelligence and the Senate Subcommittee on Health &

1 Scientific Research, as described in the Third Amended Complaint at ¶ 13.

2 Director Turner later described his promises in a letter to Clifford L.

3 Alexander, Secretary of the Army, dated January 10, 1979, produced by
4 Plaintiffs as PLTF000733.

- 5 ○ CIA Director Stansfield Turner's 10 August 1977 Memorandum for the
6 Record, "Conversations with the Attorney General."
- 7 ● The Department of Defense
 - 8 ○ Administrative Procedures Act §§ 702, 706.
 - 9 ○ The common law duty to warn.
 - 10 ○ AR 70-25
 - 11 ○ The Wilson Memorandum
 - 12 ○ Department of the Army, Chief of Staff Memorandum, CS-385: "Use of
13 Volunteers in Research (30 June 1953).
- 14 ● The Department of Justice
 - 15 ○ Administrative Procedures Act §§ 702, 706.
 - 16 ○ The common law duty to warn.
 - 17 ○ AR 70-25
 - 18 ○ The Wilson Memorandum
- 19 ● The Department of Veterans Affairs
 - 20 ○ Administrative Procedures Act §§ 702, 706.
 - 21 ○ The common law duty to warn.
 - 22 ○ AR 70-25
 - 23 ○ The Wilson Memorandum

24 The information set forth in this response is provided without prejudice to Plaintiffs' right
25 to supplement or modify the information set forth herein to reflect materials or information
26 subsequently discovered or developed.

1 **INTERROGATORY NO. 9:**

2 Identify all material facts upon which you base your claim in paragraph 234 of the Third
3 Amended Complaint that Defendants have used “biased decision makers to decide [Plaintiffs’]
4 eligibility for free, priority health care and for SDDC, including DIC”

5 **RESPONSE TO INTERROGATORY NO. 9:**

6 Plaintiffs object to this contention interrogatory as premature and cannot provide a full
7 and complete response at this time. Discovery is not completed. Defendants have only recently
8 begun to produce tens of thousands of documents previously withheld after extensive motion
9 practice. Moreover, Defendants have yet to produce a single witness for deposition, and
10 discovery remains in the very early stages. It is far too early for contention interrogatories.

11 Plaintiffs object to this Interrogatory on grounds that Defendants have withheld
12 documents and information relevant this request or that documents in Defendants sole possession
13 and control and relevant to this request have been lost or destroyed. Plaintiffs further object on
14 grounds that the interrogatory seeks information equally available or more accessible to
15 Defendants. Subject to all forgoing general and specific objections, Plaintiffs respond as follows:

16 Based on Plaintiffs’ review of Defendants’ production to date, and as described in the
17 Third Amended Complaint the following facts prove, establish, confirm, corroborate, and/or
18 provide relevant evidence that Defendant DVA has used biased decision makers to decide test
19 subjects’ eligibility for free, priority health care and for SDDC, including DIC:

- 20 • The misleading notice provided by the DVA to test veterans, as described in
21 paragraph 231 of the Third Amended Complaint.
- 22 • The small percentage of veterans located and the incomplete rosters of veterans
23 selected to receive notice, as described in paragraphs 229-230 of the Third
24 Amended Complaint.
- 25 • The low success rate on claims for DVA benefits brought by test veterans, as
26 described in paragraphs 229-230 of the Third Amended Complaint.
- 27 • The DVA’s participation in CIA funded experiments on conducted on veterans at
28 DVA facilities. See e.g. MKULTRA Subproject 125 conducted at Veterans

1 Administration Center, Martinsburg, West Virginia 1960-1963 (CIA FOIA
2 release).

3 Plaintiffs anticipate that further discovery and investigation will disclose additional facts
4 and provided meaning and context to the materials and information previously provided to
5 Plaintiffs. Plaintiffs are unable to completely respond to this Interrogatory at this time, and the
6 information set forth in this response is provided without prejudice to Plaintiffs' right to
7 supplement or modify the information set forth herein to reflect materials or information
8 subsequently discovered or developed.

9 **INTERROGATORY NO. 10:**

10 Identify all material facts upon which you base your claim in paragraph 231 of the Third
11 Amended Complaint that the Department of Veterans Affairs' "represent[ion] that scientific
12 studies had been conducted showing that exposed veterans did not have any significant adverse
13 health effects and that 'available evidence and follow-up' studies had been conducted which
14 '[did] not support significant long-term physical harm among subjects exposed to acutely toxic
15 amounts of [these] agents other than mustard gas and Lewisite," is false.

16 **RESPONSE TO INTERROGATORY NO. 10:**

17 Plaintiffs object to this contention interrogatory as premature and cannot provide a full
18 and complete response at this time. Discovery is not completed. Defendants have only recently
19 begun to produce tens of thousands of documents previously withheld after extensive motion
20 practice. Moreover, Defendants have yet to produce a single witness for deposition, and
21 discovery remains in the very early stages. It is far too early for contention interrogatories.

22 Plaintiffs object to this Interrogatory on grounds that Defendants have withheld
23 documents and information relevant this request or that documents in Defendants sole possession
24 and control and relevant to this request have been lost or destroyed. Plaintiffs further object on
25 grounds that the interrogatory seeks information equally available or more accessible to
26 Defendants. Subject to all forgoing general and specific objections, Plaintiffs respond as follows:

27 Based on Plaintiffs' review of Defendants' production to date, and as described in the
28 Third Amended Complaint the following facts prove, establish, confirm, corroborate, and/or

1 provide relevant evidence that the notification letters and other materials sent by the DVA,
2 together with other information prepared or circulated as part of the DVA outreach efforts, falsely
3 represent that scientific studies had been conducted showing that exposed veterans did not have
4 any significant adverse health effects and that “available evidence and follow-up” studies had
5 been conducted which “[did] not support significant physical harm among subjects exposed to
6 acutely toxic amounts of [these] agents other than mustard gas and Lewisite:”

- 7 • The fact that the only follow-up studies conducted regarding the test subjects
8 consisted not of scientific or medical evaluations or studies, but of telephone
9 and/or mail interviews conducted on only a small percentage of test veterans.

10 Plaintiffs anticipate that further discovery and investigation will disclose additional facts
11 and provided meaning and context to the materials and information previously provided to
12 Plaintiffs. Plaintiffs are unable to completely respond to this Interrogatory at this time, and the
13 information set forth in this response is provided without prejudice to Plaintiffs’ right to
14 supplement or modify the information set forth herein to reflect materials or information
15 subsequently discovered or developed.

16 **INTERROGATORY NO. 11:**

17 Identify all material facts upon which you base your claim in paragraph 231 of the Third
18 Amended Complaint that the Department of Veterans Affairs’ “represent[ation] that the doses and
19 safety of the test substances had been pre-confirmed in animal tests and that doses were increased
20 only where there was ‘a low risk of serious side effects’” is false.

21 **RESPONSE TO INTERROGATORY NO. 11:**

22 Plaintiffs object to this contention interrogatory as premature and cannot provide a full
23 and complete response at this time. Discovery is not completed. Defendants have only recently
24 begun to produce tens of thousands of documents previously withheld after extensive motion
25 practice. Moreover, Defendants have yet to produce a single witness for deposition, and
26 discovery remains in the very early stages. It is far too early for contention interrogatories.

27 Plaintiffs object to this Interrogatory on grounds that Defendants have withheld
28 documents and information relevant this request or that documents in Defendants sole possession

1 and control and relevant to this request have been lost or destroyed. Plaintiffs further object on
2 grounds that the interrogatory seeks information equally available or more accessible to
3 Defendants. Subject to all forgoing general and specific objections, Plaintiffs respond that their
4 investigation is ongoing.

5 Plaintiffs anticipate that further discovery and investigation will disclose additional facts
6 and provided meaning and context to the materials and information previously provided to
7 Plaintiffs. Plaintiffs are unable to completely respond to this Interrogatory at this time, and the
8 information set forth in this response is provided without prejudice to Plaintiffs' right to
9 supplement or modify the information set forth herein to reflect materials or information
10 subsequently discovered or developed.

11 **INTERROGATORY NO. 12:**

12 Identify all material facts upon which you base your claim in paragraph 231 of the Third
13 Amended Complaint that the Department of Veterans Affairs' "represent[ation] that the
14 participants in the tests had received low doses" is false.

15 **RESPONSE TO INTERROGATORY NO. 12:**

16 Plaintiffs object to this contention interrogatory as premature and cannot provide a full
17 and complete response at this time. Discovery is not completed. Defendants have only recently
18 begun to produce tens of thousands of documents previously withheld after extensive motion
19 practice. Moreover, Defendants have yet to produce a single witness for deposition, and
20 discovery remains in the very early stages. It is far too early for contention interrogatories.

21 Plaintiffs object to this Interrogatory on grounds that Defendants have withheld
22 documents and information relevant this request or that documents in Defendants sole possession
23 and control and relevant to this request have been lost or destroyed. Plaintiffs further object to
24 this interrogatory on grounds that the interrogatory seeks information equally available or more
25 accessible to Defendants, and that this interrogatory calls for expert testimony. Subject to all
26 forgoing general and specific objections, Plaintiffs respond as follows:

27 Based on Plaintiffs' review of Defendants' production to date, and as described in the
28 Third Amended Complaint the following facts prove, establish, confirm, corroborate, and/or

1 provide relevant evidence that that the notification letters and other materials sent by the DVA,
2 together with other information prepared or circulated as part of the DVA outreach efforts, falsely
3 represent that the participants in the tests had received low doses of test substances:

- 4 • Dosages of test substances as reflected in documents produced by Defendants in
5 this action, including but not limited to the so-called “chem-bio database.”

6 Plaintiffs anticipate that further discovery and investigation will disclose additional facts
7 and provided meaning and context to the materials and information previously provided to
8 Plaintiffs. Plaintiffs are unable to completely respond to this Interrogatory at this time, and the
9 information set forth in this response is provided without prejudice to Plaintiffs’ right to
10 supplement or modify the information set forth herein to reflect materials or information
11 subsequently discovered or developed.

12 **INTERROGATORY NO. 13:**

13 Identify the specific “known, material information about the adverse physical and mental
14 health effects of the chemicals and biological substances derived from earlier studies or incidents
15 involving humans, past studies of industrial accidents, animal studies, and other sources,” that
16 you contend in paragraph 231 of the Third Amended Complaint the Department of Veterans
17 Affairs has “omitted” in its notification letters sent to veterans.

18 **RESPONSE TO INTERROGATORY NO. 13:**

19 Plaintiffs object to this contention interrogatory as premature and cannot provide a full
20 and complete response at this time. Discovery is not completed. Defendants have only recently
21 begun to produce tens of thousands of documents previously withheld after extensive motion
22 practice. Moreover, Defendants have yet to produce a single witness for deposition, and
23 discovery remains in the very early stages. It is far too early for contention interrogatories.

24 Plaintiffs object to this Interrogatory on grounds that Defendants have withheld
25 documents and information relevant this request or that documents in Defendants sole possession
26 and control and relevant to this request have been lost or destroyed. Plaintiffs further object on
27 grounds that the interrogatory seeks information equally available or more accessible to
28 Defendants. Subject to all forgoing general and specific objections, Plaintiffs respond as follows:

1 Based on Plaintiffs' review of Defendants' production to date, and as described in the
2 Third Amended Complaint the following facts prove, establish, confirm, corroborate, and/or
3 provide relevant evidence that the notification letters and other materials sent by the DVA,
4 together with other information prepared or circulated as part of the DVA outreach efforts,
5 omitted known, material information about the adverse physical and mental health effects of the
6 chemicals and biological substances derived from earlier studies or incidents involving humans,
7 past studies of industrial accidents, animal studies, and other sources:

8 Defendants are the custodians of materials and information required to respond to this
9 Interrogatory, and therefore the burden of deriving or ascertaining the answer to this Interrogatory
10 is substantially less for Defendants than for Plaintiffs. Defendants are in possession and control
11 of all records concerning the subject tests conducted on veterans, including information about
12 what chemicals and drugs were administered and records concerning the incidents of diseases or
13 conditions experienced by these veterans. Additionally, Defendants are in possession and control
14 of the records and correspondence between Defendants and veterans who participated in the tests
15 including the notification letters, "Fact Sheets" and answers to "Frequently Asked Questions."
16 Defendants may ascertain the answer to this Interrogatory by comparing Defendants known
17 information regarding diseases or conditions experienced by veterans exposed to chemicals or
18 drugs in the tests with the information disclosed to veterans via the notification letters sent by the
19 DVA to determine what available information was withheld by the DVA from Plaintiffs.

20 Plaintiffs also refer Defendants to publicly available materials and documents, much of
21 which has been prepared by United States government agencies. For example, *see* Medical
22 Aspects of Chemical and Biological Warfare, edited by Frederick R. Sidell. Washington, Walter
23 Reed Medical Center, May 1997, 616.98023. Materials in this book, including numerous cited
24 studies as well as published articles by Drs. Sidell, Ketchum, Sim and others drawing on data
25 collected during experiments on veterans at Edgewood Arsenal as well as earlier studies and
26 incidents involving humans, animal studies and other sources that provide information on the
27 adverse physical and mental health effects of the chemical and biological substances administered
28 to the veterans.

1 **INTERROGATORY NO. 14:**

2 Identify the specific “data” that you contend in paragraph 231 of the Third Amended
3 Complaint that the Department of Veterans Affairs has withheld from Plaintiffs “concerning the
4 incidence of diseases or conditions experienced by veterans that had been exposed to chemicals
5 and drugs in experiments and the known dangers of interactions between or among different
6 chemicals or substances administered to veterans.”

7 **RESPONSE TO INTERROGATORY NO. 14:**

8 Plaintiffs object to this contention interrogatory as premature and cannot provide a full
9 and complete response at this time. Discovery is not completed. Defendants have only recently
10 begun to produce tens of thousands of documents previously withheld after extensive motion
11 practice. Moreover, Defendants have yet to produce a single witness for deposition, and
12 discovery remains in the very early stages. It is far too early for contention interrogatories.

13 Plaintiffs object to this Interrogatory on grounds that Defendants have withheld
14 documents and information relevant this request or that documents in Defendants sole possession
15 and control and relevant to this request have been lost or destroyed. Plaintiffs further object on
16 grounds that the interrogatory seeks information equally available or more accessible to
17 Defendants. Subject to all forgoing general and specific objections, Plaintiffs respond as follows:

18 Defendants are the custodians of materials and information required to respond to this
19 Interrogatory, and therefore the burden of deriving or ascertaining the answer to this Interrogatory
20 is substantially less for Defendants than for Plaintiffs. Defendants are in possession and control
21 of all records concerning the subject tests conducted on veterans, including information about
22 what chemicals and drugs were administered alone or in combination with other chemicals and/or
23 drugs, and records concerning any adverse diseases or conditions experienced by these veterans.
24 Additionally, Defendants are in possession and control of the records and correspondence
25 between Defendants and veterans who participated in the tests including the notification letters,
26 “Fact Sheets” and answers to “Frequently Asked Questions.” Defendants may ascertain the
27 answer to this Interrogatory by comparing Defendants known information regarding diseases or
28 conditions experienced by veterans exposed to chemicals or drugs in the tests and known dangers

1 of interactions between or among different chemicals or substances administered to veterans with
2 the information disclosed to veterans via the notification letters sent by the DVA to determine
3 what available information was withheld by the DVA from Plaintiffs.

4 Plaintiffs also refer Defendants to publicly available materials and documents, much of
5 which has been prepared by United States government agencies. For example, *see* Medical
6 Aspects of Chemical and Biological Warfare, edited by Frederick R. Sidell. Washington, Walter
7 Reed Medical Center, May 1997, 616.98023. Materials in this book, including numerous cited
8 studies as well as published articles by Drs. Sidell, Ketchum, Sim and others drawing on data
9 collected during experiments on veterans at Edgewood Arsenal provide information on the
10 dangers and potential long-term harmful effects exposure to the substances administered to the
11 veterans.

12 **INTERROGATORY NO. 15:**

13 Identify all material facts upon which you base your claim in paragraph 231 of the Third
14 Amended Complaint that the Department of Veterans Affairs' representation "that no specific
15 medical tests or evaluations were available for the types of exposures experienced by veterans" is
16 false.

17 **RESPONSE TO INTERROGATORY NO. 15:**

18 Plaintiffs object to this contention interrogatory as premature and cannot provide a full
19 and complete response at this time. Discovery is not completed. Defendants have only recently
20 begun to produce tens of thousands of documents previously withheld after extensive motion
21 practice. Moreover, Defendants have yet to produce a single witness for deposition, and
22 discovery remains in the very early stages. It is far too early for contention interrogatories.

23 Plaintiffs also object to this interrogatory as unduly burdensome, oppressive, and
24 overbroad in that the request implicates hundreds of different chemicals and drugs administered
25 by Defendants at various concentrations and quantities. Plaintiffs object to this Interrogatory on
26 grounds that Defendants have withheld documents and information relevant this request or that
27 documents in Defendants sole possession and control and relevant to this request have been lost
28 or destroyed. Plaintiffs further object on grounds that the interrogatory calls for expert opinion.

1 Plaintiffs further object on grounds that the interrogatory seeks information equally available or
2 more accessible to Defendants. Subject to all forgoing general and specific objections, Plaintiffs
3 respond as follows:

4 Plaintiffs refer Defendants to publicly available materials and documents, much of which
5 has been prepared by United States government agencies. For example, *see* Medical Aspects of
6 Chemical and Biological Warfare, edited by Frederick R. Sidell. Washington, Walter Reed
7 Medical Center, May 1997 616.98023. Chapter 8 of this book, “Long-Term Health Effects of
8 Nerve Agents and Mustard” provides information indicating that certain useful information for
9 medical evaluation was available. For example, a 1993 study sponsored by the VA (Pechura CM,
10 Rall DP. Eds Veterans at Risk: the Health Effects of Mustard Gas and Lewisite. Washington, DC:
11 Institute of Medicine, National Academy Press; 1993) reported a casual relationship between
12 mustard gas exposure and the following conditions:

- 13 • Chronic respiratory diseases (asthma, chronic bronchitis, emphysema, chronic
14 obstructive pulmonary disease, chronic laryngitis),
- 15 • Respiratory cancers (nasopharyngeal, laryngeal, and lung),
- 16 • Pigmented abnormalities of the skin,
- 17 • Chronic conjunctivitis,
- 18 • Recurrent keratitis,
- 19 • Leukemia (nitrogen mustard),
- 20 • Bone marrow depression and (resulting) immunosuppression,
- 21 • Psychological disorders (mood disorders, anxiety disorders, and traumatic stress
22 disorders), and sexual dysfunction as a result of scrotal and penile scarring.

23 *Medical Aspects*, p. 236.

24 Numerous other publicly available sources and studies provide valuable information on
25 the long-term health effects of exposure to many of the toxins used in the experiments conducted
26 on the veterans. Contrary to the DVA’s notification letter, substantial information was available
27 to the DVA that would have been useful in testing and evaluating whether a veteran’s medical
28 conditions were likely the result of exposure to the chemical toxins administered by Defendants.

1 **INTERROGATORY NO. 16:**

2 Identify all material facts upon which you base your claim in paragraph 231 of the Third
3 Amended Complaint that the Department of Veterans Affairs has failed to “train adjudicators and
4 medical personnel to fairly evaluate and process SCDDC claims based upon exposure to
5 substances used in chemical and biological weapons or the program of mind-control
6 experimentation.”

7 **RESPONSE TO INTERROGATORY NO. 16:**

8 Plaintiffs object to this contention interrogatory as premature and cannot provide a full
9 and complete response at this time. Discovery is not completed. Defendants have only recently
10 begun to produce tens of thousands of documents previously withheld after extensive motion
11 practice. Moreover, Defendants have yet to produce a single witness for deposition, and
12 discovery remains in the very early stages. It is far too early for contention interrogatories.

13 Plaintiffs further object on grounds that the interrogatory calls for expert opinion.
14 Plaintiffs further object on grounds that the interrogatory seeks information equally available or
15 more accessible to Defendants. Subject to all forgoing general and specific objections, Plaintiffs
16 respond as follows:

17 Based on Plaintiffs’ review of Defendants’ production to date, and as described in the
18 Third Amended Complaint the following facts prove, establish, confirm, corroborate, and/or
19 provide relevant evidence that the DVA has failed to train adjudicators and medical personnel to
20 fairly evaluate and process SCDDC claims based upon exposure to substances used in chemical
21 and biological weapons or the program of mind-control experimentation:

22 Plaintiffs review of the DVA Adjudication Procedures Manual M21-1, Defendants
23 document production and publicly available records have failed to identify any specific training
24 provided by DVA to the their claims adjudicators regarding the exposure to substances used in
25 chemical or biological weapons or the program of mind-control experimentation and the diseases
26 or conditions related to these exposures. Plaintiffs are not aware of any specific training for
27 claims adjudicators and medical personnel that would assist them in fairly evaluating and
28 processing the SCDDC claims of veterans used as human test subjects by Defendants.

1 Plaintiffs anticipate that further discovery and investigation will disclose additional facts
2 and provided meaning and context to the materials and information previously provided to
3 Plaintiffs. Plaintiffs are unable to completely respond to this Interrogatory at this time, and the
4 information set forth in this response is provided without prejudice to Plaintiffs' right to
5 supplement or modify the information set forth herein to reflect materials or information
6 subsequently discovered or developed.

7 **INTERROGATORY NO. 17:**

8 Identify all material facts upon which you base your claim in paragraph 232 of the Third
9 Amended Complaint that the Department of Veterans Affairs' decision makers "respecting
10 eligibility for health care and SCDDC" are biased.

11 **RESPONSE TO INTERROGATORY NO. 17:**

12 Plaintiffs object to this contention interrogatory as premature and cannot provide a full
13 and complete response at this time. Discovery is not completed. Defendants have only recently
14 begun to produce tens of thousands of documents previously withheld after extensive motion
15 practice. Moreover, Defendants have yet to produce a single witness for deposition, and
16 discovery remains in the very early stages. It is far too early for contention interrogatories.

17 Plaintiffs object to this Interrogatory on grounds that Defendants have withheld
18 documents and information relevant this request or that documents in Defendants sole possession
19 and control and relevant to this request have been lost or destroyed. Plaintiffs further object on
20 grounds that the interrogatory seeks information equally available or more accessible to
21 Defendants. Subject to all forgoing general and specific objections, Plaintiffs respond as follows:

22 Based on Plaintiffs' review of Defendants' production to date the following facts prove,
23 establish, confirm, corroborate, and/or provide relevant evidence that the DVA's decisions
24 described in the Third Amended Complaint are reflections, manifestations, or the results of bias
25 and the violations of the due process rights of Plaintiffs and members of the proposed class:

- 26 • The misleading notice provided by the DVA to test veterans, as described in
27 paragraph 231 of the Third Amended Complaint.

- 1 • The small percentage of veterans located and the incomplete rosters of veterans
2 selected to receive notice, as described in paragraphs 229-230 of the Third
3 Amended Complaint.
- 4 • The low success rate on claims for DVA benefits brought by test veterans, as
5 described in paragraphs 229-230 of the Third Amended Complaint.

6 The DVA's participation in CIA funded experiments on conducted on veterans at DVA
7 facilities. *See e.g.* MKULTRA Subproject 125 conducted at Veterans Administration Center,
8 Martinsburg, West Virginia 1960-1963 (CIA FOIA release).

9 Plaintiffs anticipate that further discovery and investigation will disclose additional facts
10 and provided meaning and context to the materials and information previously provided to
11 Plaintiffs. Plaintiffs are unable to completely respond to this Interrogatory at this time, and the
12 information set forth in this response is provided without prejudice to Plaintiffs' right to
13 supplement or modify the information set forth herein to reflect materials or information
14 subsequently discovered or developed.

15 **INTERROGATORY NO. 18:**

16 Identify with specificity each and every instance alleged in paragraph 20 of the Third
17 Amended Complaint where "Plaintiffs have repeatedly petitioned Congress ... to honor the
18 promises made to them," including the identity of the individual(s) who petitioned Congress, who
19 the petition(s) was sent to, and the date(s) the petition(s) was sent.

20 **RESPONSE TO INTERROGATORY NO. 18:**

21 Plaintiffs object on grounds that this Interrogatory is compound. Plaintiffs further object
22 on grounds that the interrogatory seeks information equally available or more accessible to
23 Defendants. Subject to all forgoing general and specific objections, Plaintiffs respond as follows:

- 24 • In 2009, Plaintiff Franklin D. Rochelle corresponded via e-mail with Mindi
25 Walker, a Republican staff member on the Senate Committee on Veterans' Affairs.
26 Copies of this correspondence were produced by Plaintiffs as PLTF000755 to
27 PLTF000780.

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- In 2007, Plaintiff Franklin Rochelle sent a letter to Senator Elizabeth Dole. A copy of Mr. Rochelle's letter and a August 17, 2007 letter from Senator Dole to Mr. R.L. Hindman, National Records Center forwarding Mr. Rochelle's letter was produced by Defendants as VVA 008555-8639.
- In 2006, Plaintiff Eric Muth sent a letter to Senator Christopher Dodd. A copy of Mr. Muth's September 21, 2006 letter was produced by Plaintiffs as PLTF000747-0753.
- In 2006, Plaintiff Eric Muth sent a letter to Congressman John Boozman. A copy of Congressman Boozman's August 30, 2006 reply letter was produced by Plaintiffs as PLTF0007378.
- In 2005 Plaintiff Larry Meirow sent a letter to Congressman Joe Knollenger. A copy of this letter, and a letter to Charlie Likel, Director of Congressional Operations, U.S. Department of Veterans Affairs from Congressman Knollenger forwarding Meirow's letter and requesting comment was produced by Defendants as VVA 001630-1632.
- In 2005, Plaintiff Eric Muth sent a letter to Congressman John Boozman. A copy of Congressman Boozman's November 1, 2005 reply letter was produced by Plaintiffs as PLTF000737.
- In 2001, Plaintiff David Dufrane sent a letter to the office of Senator Hilary Rodham Clinton. A copy of Mr. Dufrane's letter and a May 7, 2001 letter from Senator Clinton to Mr. Philip R. Mayo, Director of Congressional Liaison, U.S. Department of Veterans Affairs forwarding Mr. Dufrane's letter was produced by Defendants as VVA-VA 010207-209.
- In 1999, Plaintiff Eric Muth sent a letter to Congressman Max Cleland. A copy of Congressman Cleland's July 27, 1999 reply letter was produced by Plaintiffs as PLTF000740.

- 1 • In 1999, Plaintiff Eric Muth sent a letter to Senator John McCain. A copy of
2 Senator McCain’s August 10, 1999 reply letter was produced by Plaintiffs as
3 PLTF000743.
- 4 • In 1998, Plaintiff Eric Muth sent a letter to Congresswoman Rosa DeLauro. A
5 copy of Mr Muth’s January 29, 1998 letter was produced by Defendants as
6 VVA 001891-1892.

7 Once Defendants provide names of all “volunteers” Plaintiffs anticipate that further
8 discovery and investigation will identify additional correspondence petitioning Congress to honor
9 the promises made to them. Plaintiffs are unable to completely respond to this Interrogatory at
10 this time, and the information set forth in this response is provided without prejudice to Plaintiffs’
11 right to supplement or modify the information set forth herein to reflect materials or information
12 subsequently discovered or developed.

13 **INTERROGATORY NO. 19:**

14 Identify by name each and every member of the Vietnam Veterans of America who is a
15 “former member of the armed services who participated in DEFENDANTS programs of human
16 experimentation into drugs, chemicals and other substances,” as alleged in paragraph 26 of the
17 Third Amended Complaint, including the dates that these members participated in the programs
18 and the specific “drugs, chemicals and other substances” that you contend were tested on each of
19 these members.

20 **RESPONSE TO INTERROGATORY NO. 19:**

21 Plaintiffs object on grounds that this Interrogatory is compound. Plaintiffs further object
22 on grounds that this Interrogatory is overbroad , unduly burdensome, and oppressive.
23 Identification of “each” and “every” member of Vietnam Veterans of America who participated
24 in the test programs would require an exhaustive inquiry that is not called for at this stage of
25 discovery. Plaintiffs further object on grounds that the interrogatory seeks information equally
26 available or more accessible to Defendants. Subject to all forgoing general and specific
27 objections, Plaintiffs respond as follows:
28

1 Individual Plaintiffs David Dufrane and Tim Michael Joseph are members of Vietnam
2 Veterans of America. The names of other members of Vietnam Veterans of America who were
3 test subjects are presumably listed in the unredacted version of Defendants' "chem.-bio"
4 database, which Defendants have not yet produced.

5 Once Defendants provide names of all "volunteers" Plaintiffs anticipate that further
6 discovery and investigation will identify additional members of the Vietnam Veterans of America
7 who are former members of the armed services who participated in Defendants programs of
8 human experimentation into drugs, chemicals and other substances. Plaintiffs are unable to
9 completely respond to this Interrogatory at this time, and the information set forth in this response
10 is provided without prejudice to Plaintiffs' right to supplement or modify the information set forth
11 herein to reflect materials or information subsequently discovered or developed.

12 **INTERROGATORY NO. 20:**

13 Identify all of the "resources" that Swords to Plowshares alleges it has "diverted and
14 devoted" to "provide additional serves to veterans harmed by DEFENDANTS' actions and
15 failures to act," as alleged in paragraph 28 of the Third Amended Complaint.

16 **RESPONSE TO INTERROGATORY NO. 20:**

17 Plaintiffs object on grounds that this interrogatory is compound, vague, and ambiguous.
18 Plaintiffs further object on grounds that this interrogatory is overbroad and unduly burdensome.
19 Plaintiffs further object that this interrogatory seeks information protected by the attorney-client
20 privilege and attorney work product doctrine. Subject to all forgoing general and specific
21 objections, Plaintiffs respond as follows:

22 Swords to Plowshares has expended employee time and fiscal resources in responding to
23 inquiries by veterans harmed by Defendants' test programs, including expenditures of employee
24 time and fiscal resources dedicated to assisting such veterans in seeking adjudication of DVA
25 benefits decisions.

26 Plaintiffs anticipate that further discovery and investigation will disclose additional facts
27 and provided meaning and context to the materials and information previously provided to
28 Plaintiffs. Plaintiffs are unable to completely respond to this Interrogatory at this time, and the

1 information set forth in this response is provided without prejudice to Plaintiffs' right to
2 supplement or modify the information set forth herein to reflect materials or information
3 subsequently discovered or developed.

4 **INTERROGATORY NO. 21:**

5 Identify all material facts upon which you base your claim in paragraph 162 of the Third
6 Amended Complaint that "Defendants withheld information from the 'volunteers' concerning
7 health problems that they had discovered from examinations and tests at Edgewood."

8 **RESPONSE TO INTERROGATORY NO. 21:**

9 Plaintiffs object to this contention interrogatory as premature and cannot provide a full
10 and complete response at this time. Discovery is not completed. Defendants have only recently
11 begun to produce tens of thousands of documents previously withheld after extensive motion
12 practice. Moreover, Defendants have yet to produce a single witness for deposition, and
13 discovery remains in the very early stages. It is far too early for contention interrogatories.

14 Plaintiffs object to this Interrogatory on grounds that Defendants have withheld
15 documents and information relevant this request or that documents in Defendants sole possession
16 and control and relevant to this request have been lost or destroyed. Plaintiffs further object on
17 grounds that the interrogatory seeks information equally available or more accessible to
18 Defendants. Subject to all forgoing general and specific objections, Plaintiffs respond as follows:

19 Based on Plaintiffs' review of Defendants' production to date, and as described in the
20 Third Amended Complaint the following facts prove, establish, confirm, corroborate, and/or
21 provide relevant evidence that informed consent by the test subjects was not possible because
22 Defendants withheld information from the test subjects concerning health problems that they had
23 discovered from examinations and tests at Edgewood:

24 Plaintiffs incorporate by reference their answer to Interrogatory No. 4.

25 Plaintiffs anticipate that further discovery and investigation will disclose additional facts
26 and provided meaning and context to the materials and information previously provided to
27 Plaintiffs. Plaintiffs are unable to completely respond to this Interrogatory at this time, and the
28 information set forth in this response is provided without prejudice to Plaintiffs' right to

1 supplement or modify the information set forth herein to reflect materials or information
2 subsequently discovered or developed.

3 **INTERROGATORY NO. 22:**

4 Identify each and every instance in which individual Plaintiffs or members of the
5 organizational Plaintiffs have submitted claims for benefits or treatment related to his or her
6 participation in chemical or biological testing by the Defendants to any state or federal
7 government entity.

8 **RESPONSE TO INTERROGATORY NO. 22:**

9 Plaintiffs object on grounds that this Interrogatory is compound. Plaintiffs further object
10 that this interrogatory is vague and ambiguous as to the term “any state or federal government
11 agency.” Plaintiffs further object on grounds that this interrogatory is overbroad , unduly
12 burdensome, and oppressive to the extent it seeks information regarding claims for benefits by
13 unnamed potential class members to “any” governmental agency or “entity.” Plaintiffs further
14 object on grounds that the interrogatory seeks information equally available or more accessible to
15 Defendants. Subject to all forgoing general and specific objections, Plaintiffs respond as follows:

16 The Individual Plaintiffs have submitted claims to Defendant DVA for benefits in
17 connection with their participation in Defendants’ test programs. The DVA is in possession of
18 records of these claims, and they have been produced in this litigation. *See* VVA-VA 013134 to
19 VVA-VA 014589 / VET003_000001 to VET003_001456 (David C. Dufrane); VVA-VA 016835
20 to VVA-VA 018071 / VET002_004860 to VET002_006096 (Larry Meirow); VVA-VA 018072
21 to VVA-VA 020934 / VET002_006097 to VET002_008959 (Eric P. Muth); VVA-VA 020935 to
22 VVA-VA 022222 / VET002_008960 to VET002_010247 (Bruce Price); VVA-VA 022223 to
23 VVA-VA 023301 / VET002_010248 to VET002_011326 (Franklin D. Rochelle).

24 Plaintiffs anticipate that further discovery and investigation will disclose additional
25 relevant documents. Plaintiffs are unable to completely respond to this Interrogatory at this time,
26 and the information set forth in this response is provided without prejudice to Plaintiffs’ right to
27 supplement or modify the information set forth herein to reflect materials or information
28 subsequently discovered or developed.

1 **INTERROGATORY NO. 23:**

2 Identify all documents referenced in paragraph 225 of the Third Amended Complaint that
3 you contend “reveal[s] that the Army, DOD, and CIA procured from DVA some of the
4 substances, including samples of drugs and chemicals, that the Army and CIA used to conduct
5 experiments on military personnel or veterans.”

6 **RESPONSE TO INTERROGATORY NO. 23:**

7 Plaintiffs object to this contention interrogatory as premature and cannot provide a full
8 and complete response at this time. Discovery is not completed. Defendants have only recently
9 begun to produce tens of thousands of documents previously withheld after extensive motion
10 practice. Moreover, Defendants have yet to produce a single witness for deposition, and
11 discovery remains in the very early stages. It is far too early for contention interrogatories.

12 Plaintiffs object to this Interrogatory on grounds that Defendants have withheld
13 documents and information relevant this request or that documents in Defendants sole possession
14 and control and relevant to this request have been lost or destroyed. Plaintiffs further object on
15 grounds that the interrogatory seeks information equally available or more accessible to
16 Defendants. Subject to all forgoing general and specific objections, Plaintiffs respond as follows:

17 Based on Plaintiffs’ review of Defendants’ production to date, and as described in the
18 Third Amended Complaint the following facts prove, establish, confirm, corroborate, and/or
19 provide relevant evidence that the Army, DOD, and CIA procured from DVA some of the
20 substances, including samples of drugs and chemicals, that the Army and CIA used to conduct
21 experiments on military personnel or veterans:

22 Defendants produced documents that identified sources used by the CIA to obtain
23 substances for their secret drug research programs. These documents stated that “Samples of
24 drugs and chemicals were obtained from drug and pharmaceutical companies, government
25 agencies such as Edgewood, NIH, FDA and the Veterans Administration, as well as from
26 research laboratories and individual researchers. (VVA023861); and “Samples of drugs and
27 chemicals from drug and pharmaceutical companies, government agencies (EARL, NIH, FDA,
28

1 and VA), research laboratories and other researchers; most came from the drug industries where
2 the substances had been rejected because of undesired side effects. (VVA023637).

3 Plaintiffs anticipate that further discovery and investigation will disclose additional facts
4 and provided meaning and context to the materials and information previously provided to
5 Plaintiffs. Plaintiffs are unable to completely respond to this Interrogatory at this time, and the
6 information set forth in this response is provided without prejudice to Plaintiffs' right to
7 supplement or modify the information set forth herein to reflect materials or information
8 subsequently discovered or developed.

9 **INTERROGATORY NO. 24:**

10 Identify the specific location(s) where you contend the Central Intelligence Agency
11 conducted the testing of chemical and/or biological agents on service members of the armed
12 forces.

13 **RESPONSE TO INTERROGATORY NO. 24:**

14 Plaintiffs object to this contention interrogatory as premature and cannot provide a full
15 and complete response at this time. Discovery is not completed. Defendants have only recently
16 begun to produce tens of thousands of documents previously withheld after extensive motion
17 practice. Moreover, Defendants have yet to produce a single witness for deposition, and
18 discovery remains in the very early stages. It is far too early for contention interrogatories.

19 Plaintiffs object to this Interrogatory on grounds that Central Intelligence Agency has
20 destroyed or withheld documents and information relevant this request. Plaintiffs further object
21 on grounds that the interrogatory seeks information equally available or more accessible to
22 Defendants. Subject to all forgoing general and specific objections, Plaintiffs respond as follows:

23 Plaintiffs incorporate by reference their answer to Interrogatory No. 1.

24 Plaintiffs anticipate that further discovery and investigation will disclose additional facts
25 and provided meaning and context to the materials and information previously provided to
26 Plaintiffs. Plaintiffs are unable to completely respond to this Interrogatory at this time, and the
27 information set forth in this response is provided without prejudice to Plaintiffs' right to
28

1 supplement or modify the information set forth herein to reflect materials or information
2 subsequently discovered or developed.

3 **INTERROGATORY NO. 25:**

4 For each specific location that you contend the Central Intelligence Agency conducted the
5 testing of chemical and/or biological agents on service members of the armed forces, identify all
6 material facts you claim support your contention that the Central Intelligence Agency conducted
7 tests at each location.

8 **RESPONSE TO INTERROGATORY NO. 25:**

9 Plaintiffs object to this contention interrogatory as premature and cannot provide a full
10 and complete response at this time. Discovery is not completed. Defendants have only recently
11 begun to produce tens of thousands of documents previously withheld after extensive motion
12 practice. Moreover, Defendants have yet to produce a single witness for deposition, and
13 discovery remains in the very early stages. It is far too early for contention interrogatories.

14 Plaintiffs object to this Interrogatory on grounds that Central Intelligence Agency has
15 destroyed or withheld documents and information relevant this request. Plaintiffs further object
16 on grounds that the interrogatory seeks information equally available or more accessible to
17 Defendants. Subject to all forgoing general and specific objections, Plaintiffs respond as follows:

18 Plaintiffs incorporate by reference their answer to Interrogatory No. 1.

19 Plaintiffs anticipate that further discovery and investigation will disclose additional facts
20 and provided meaning and context to the materials and information previously provided to
21 Plaintiffs. Plaintiffs are unable to completely respond to this Interrogatory at this time, and the
22 information set forth in this response is provided without prejudice to Plaintiffs' right to
23 supplement or modify the information set forth herein to reflect materials or information
24 subsequently discovered or developed.

25
26 **DEFENDANTS' SECOND REOUEST TO PLAINTIFFS FOR PRODUCTION OF
DOCUMENTS**

1 **REQUEST FOR PRODUCTION NO. 11:**

2 Produce all documents concerning the allegations in paragraphs 183-187 of Plaintiffs'
3 Third Amended Complaint, including, without limitation, those documents that you contend
4 support and/or undermine the allegations in those paragraphs.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**

6 Plaintiffs incorporate by reference each General Objection above as though fully set forth
7 herein. Plaintiffs also object to this Request as premature, insofar as it seeks documents
8 supporting Plaintiffs' contentions, and discovery is ongoing. Defendants have only recently
9 begun to produce tens of thousands of documents previously withheld after extensive motion
10 practice. Moreover, Defendants have yet to produce a single witness for deposition, and
11 discovery remains in the very early stages.

12 Plaintiffs further object to this Request as vague, ambiguous, unintelligible, overbroad,
13 and unduly burdensome in its use of the undefined term "undermine." Plaintiffs further object to
14 this Request to the extent it seeks information protected by the attorney-client privilege, the
15 attorney work-product privilege, and/or any other privilege or immunity. Plaintiffs further object
16 to this Request to the extent that it seeks documents equally available to or already in the
17 possession of Defendants. Plaintiffs further object to this request to the extent it seeks documents
18 that are confidential, proprietary, and/or contain trade secret(s). Subject to all forgoing general
19 and specific objections, Plaintiffs respond as follows:

20 After a reasonably diligent search, Plaintiffs will produce all documents on which they
21 base their allegations in paragraphs 183-187 of the Third Amended Complaint.

22 **REQUEST FOR PRODUCTION NO. 12:**

23 Produce all documents concerning the allegations in paragraph 189a-e of Plaintiffs' Third
24 Amended Complaint, including, without limitation, those documents that you contend support
25 and/or undermine the allegations in that paragraph.

26 **RESPONSE TO REQUEST FOR PRODUCTION NO. 12:**

27 Plaintiffs incorporate by reference each General Objection above as though fully set forth
28 herein. Plaintiffs also object to this Request as premature, insofar as it seeks documents

1 supporting Plaintiffs' contentions, and discovery is ongoing. Defendants have only recently
2 begun to produce tens of thousands of documents previously withheld after extensive motion
3 practice. Moreover, Defendants have yet to produce a single witness for deposition, and
4 discovery remains in the very early stages.

5 Plaintiffs further object to this Request as vague, ambiguous, unintelligible, overbroad,
6 and unduly burdensome in its use of the undefined term "undermine." Plaintiffs further object to
7 this Request to the extent it seeks information protected by the attorney-client privilege, the
8 attorney work-product privilege, and/or any other privilege or immunity. Plaintiffs further object
9 to this Request to the extent that it seeks documents equally available to or already in the
10 possession of Defendants. Plaintiffs further object to this request to the extent it seeks documents
11 that are confidential, proprietary, and/or contain trade secret(s). Subject to all forgoing general
12 and specific objections, Plaintiffs respond as follows:

13 After a reasonably diligent search, Plaintiffs will produce all documents on which they
14 base their allegations in paragraph 189a-e of the Third Amended Complaint.

15 **REQUEST FOR PRODUCTION NO. 13:**

16 Produce all documents concerning the allegations in paragraphs 192-221 of Plaintiffs'
17 Third Amended Complaint.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 13:**

19 Plaintiffs incorporate by reference each General Objection above as though fully set forth
20 herein. Plaintiffs also object to this Request as premature to the extent it seeks documents
21 supporting Plaintiffs' contentions, and discovery is ongoing. Defendants have only recently
22 begun to produce tens of thousands of documents previously withheld after extensive motion
23 practice. Moreover, Defendants have yet to produce a single witness for deposition, and
24 discovery remains in the very early stages.

25 Plaintiffs further object to this request because it is vague, ambiguous, overbroad, and
26 unduly burdensome, and fails to describe the information sought with reasonable particularity.
27 Plaintiffs further object to this Request to the extent it seeks information protected by the
28 attorney-client privilege, the attorney work-product privilege, and/or any other privilege or

1 immunity. Plaintiffs further object to this Request to the extent that it seeks documents equally
2 available to or already in the possession of Defendants. Plaintiffs further object to this request to
3 the extent it seeks documents that are confidential, proprietary, and/or contain trade secret(s).

4 Subject to all forgoing general and specific objections, Plaintiffs respond as follows:

5 After a reasonably diligent search, Plaintiffs will produce all documents on which they
6 base their allegations in paragraphs 192-221 of the Third Amended Complaint.

7 **REQUEST FOR PRODUCTION NO. 14:**

8 Produce all documents, data, assumptions, bases, and any information communicated to,
9 provided to, given to, or otherwise relied on or considered by any person or entity who may or
10 will offer expert testimony on behalf of Plaintiffs in this action in connection with such
11 testimony.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 14:**

13 Plaintiffs incorporate by reference each General Objection above as though fully set forth
14 herein. Plaintiffs also object to this Request as premature because it seeks information regarding
15 expert testimony. Plaintiffs object to this request because it is vague, ambiguous, overbroad,
16 unduly burdensome, and oppressive, particularly insofar as it seeks documents concerning any
17 entity who “may” offer expert testimony. Plaintiffs further object to this Request to the extent it
18 seeks information protected by the attorney-client privilege or the attorney work product doctrine.
19 Subject to all forgoing general and specific objections, Plaintiffs respond as follows:

20 Plaintiffs are willing to meet and confer with Defendants regarding the appropriate scope
21 and timing of expert discovery in this action.

22 **REQUEST FOR PRODUCTION NO. 15:**

23 Produce all documents in the custody, possession or control of Plaintiffs or any of
24 Plaintiffs’ attorneys relating to or referring to any timesheets, diaries, billing records, invoices,
25 engagement letters, retention letters, contracts, or other evidence of work or activities of any
26 person or entity who may or will offer expert testimony on behalf of Plaintiffs in this action in
27 connection with such testimony
28

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 15:**

2 Plaintiffs incorporate by reference each General Objection above as though fully set forth
3 herein. Plaintiffs also object to this Request as premature because it seeks information regarding
4 expert testimony. Plaintiffs object to this request because it is vague, ambiguous, overbroad,
5 unduly burdensome, and oppressive, particularly insofar as it seeks documents concerning any
6 entity who “may” offer expert testimony. Plaintiffs further object to this Request to the extent it
7 seeks information protected by the attorney-client privilege or the attorney work product doctrine.
8 Subject to all forgoing general and specific objections, Plaintiffs respond as follows:

9 Plaintiffs are willing to meet and confer with Defendants regarding the appropriate scope
10 and timing of expert discovery in this action.

11 **REQUEST FOR PRODUCTION NO. 16:**

12 Produce all documents considered or relied on by each of Plaintiffs’ expert witnesses in
13 forming his or her opinions, including any and all electronic files, analyses, spreadsheets, and
14 models.

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 16:**

16 Plaintiffs incorporate by reference each General Objection above as though fully set forth
17 herein. Plaintiffs also object to this Request as premature because it seeks information regarding
18 expert testimony. Plaintiffs object to this request because it is vague, ambiguous, overbroad,
19 unduly burdensome, and oppressive. Plaintiffs further object to this Request to the extent it seeks
20 information protected by the attorney-client privilege or the attorney work product doctrine.
21 Subject to all forgoing general and specific objections, Plaintiffs respond as follows:

22 Plaintiffs are willing to meet and confer with Defendants regarding the appropriate scope
23 and timing of expert discovery in this action.

24 **REQUEST FOR PRODUCTION NO. 17:**

25 Produce all Federal Rule of Civil Procedure 26(a)(2)(B) reports by each of Plaintiffs’
26 expert witnesses prepared in the last 10 years.

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 17:**

2 Plaintiffs incorporate by reference each General Objection above as though fully set forth
3 herein. Plaintiffs also object to this Request as premature because it seeks information regarding
4 expert testimony. Plaintiffs object to this request to the extent it seeks to impose obligations
5 beyond those specified under the Federal Rules of Civil Procedure or other applicable rules.
6 Plaintiffs object to this request because it is vague, ambiguous, overbroad, unduly burdensome,
7 and oppressive. Plaintiffs further object to this Request to the extent it seeks information
8 protected by the attorney-client privilege or the attorney work product doctrine. Subject to all
9 forgoing general and specific objections, Plaintiffs respond as follows:

10 Plaintiffs are willing to meet and confer with Defendants regarding the appropriate scope
11 and timing of expert discovery in this action.

12 **REQUEST FOR PRODUCTION NO. 18:**

13 Produce all publications written or co-written by each of Plaintiffs' expert witnesses in the
14 last 10 years.

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 18:**

16 Plaintiffs incorporate by reference each General Objection above as though fully set forth
17 herein. Plaintiffs also object to this Request as premature because it seeks information regarding
18 expert testimony. Plaintiffs object to this request to the extent it seeks to impose obligations
19 beyond those specified under the Federal Rules of Civil Procedure or other applicable rules.
20 Plaintiffs object to this request because it is vague, ambiguous, overbroad, unduly burdensome,
21 and oppressive. Plaintiffs further object to this Request to the extent it seeks information
22 protected by the attorney-client privilege or the attorney work product doctrine. Subject to all
23 forgoing general and specific objections, Plaintiffs respond as follows:

24 Plaintiffs are willing to meet and confer with Defendants regarding the appropriate scope
25 and timing of expert discovery in this action.

26 **REQUEST FOR PRODUCTION NO. 19:**

27 Produce all communications between each of Plaintiffs' expert witnesses and counsel for
28 Plaintiffs.

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 19:**

2 Plaintiffs incorporate by reference each General Objection above as though fully set forth
3 herein. Plaintiffs also object to this Request as premature because it seeks information regarding
4 expert testimony. Plaintiffs object to this request to the extent it seeks to impose obligations
5 beyond those specified under the Federal Rules of Civil Procedure or other applicable rules.
6 Plaintiffs object to this request because it is vague, ambiguous, overbroad, unduly burdensome,
7 and oppressive. Plaintiffs further object to this Request to the extent it seeks information
8 protected by the attorney-client privilege or the attorney work product doctrine. Subject to all
9 forgoing general and specific objections, Plaintiffs respond as follows:

10 Plaintiffs are willing to meet and confer with Defendants regarding the appropriate scope
11 and timing of expert discovery in this action.

12 **REQUEST FOR PRODUCTION NO. 20:**

13 Produce all communications between each of Plaintiffs' expert witnesses and any
14 individual regarding, or relating to, the contents of the expert witness reports and the subject and
15 substance of any expert testimony that may or will be offered in this action.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 20:**

17 Plaintiffs incorporate by reference each General Objection above as though fully set forth
18 herein. Plaintiffs also object to this Request as premature because it seeks information regarding
19 expert testimony. Plaintiffs object to this request to the extent it seeks to impose obligations
20 beyond those specified under the Federal Rules of Civil Procedure or other applicable rules.
21 Plaintiffs object to this request because it is vague, ambiguous, overbroad, unduly burdensome,
22 and oppressive, particularly insofar as it seeks documents concerning communications with "any"
23 individual. Plaintiffs further object to this Request to the extent it seeks information protected by
24 the attorney-client privilege or the attorney work product doctrine. Subject to all forgoing general
25 and specific objections, Plaintiffs respond as follows:

26 Plaintiffs are willing to meet and confer with Defendants regarding the appropriate scope
27 and timing of expert discovery in this action.

1 **REQUEST FOR PRODUCTION NO. 21:**

2 Produce all documents that you claim support your contention that the Central Intelligence
3 Agency either directly or indirectly participated in the biological or chemical testing of volunteer
4 service members from 1950 through 1975.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 21:**

6 Plaintiffs incorporate by reference each General Objection above as though fully set forth
7 herein. Plaintiffs also object to this Request as premature to the extent it seeks documents
8 supporting Plaintiffs' contentions, and discovery is ongoing. Defendants have only recently
9 begun to produce tens of thousands of documents previously withheld after extensive motion
10 practice. Moreover, Defendants have yet to produce a single witness for deposition, and
11 discovery remains in the very early stages.

12 Plaintiffs further object to this request because it is vague, ambiguous, overbroad, and
13 unduly burdensome, and fails to describe the information sought with reasonable particularity.
14 Plaintiffs further object to this Request to the extent it seeks information protected by the
15 attorney-client privilege, the attorney work-product privilege, and/or any other privilege or
16 immunity. Plaintiffs further object to this Request to the extent that it seeks documents equally
17 available to or already in the possession of Defendants. Plaintiffs further object to this request to
18 the extent it seeks documents that are confidential, proprietary, and/or contain trade secret(s).
19 Plaintiffs further object to this Request on grounds that the Central Intelligence Agency has
20 destroyed or withheld documents and information relevant this request. Subject to all forgoing
21 general and specific objections, Plaintiffs respond as follows:

22 After a reasonably diligent search, Plaintiffs will produce all documents on which they
23 base their contention that the Central Intelligence Agency either directly or indirectly participated
24 in the biological or chemical testing of volunteer service members from 1950 through 1975.

25 **REQUEST FOR PRODUCTION NO. 22:**

26 Produce all documents that you claim support your contention that the Central Intelligence
27 Agency has an obligation "to provide medical care to Plaintiffs and class members." as alleged in
28 paragraph 21.b of the Third Amended Complaint.

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 22:**

2 Plaintiffs incorporate by reference each General Objection above as though fully set forth
3 herein. Plaintiffs also object to this Request as premature to the extent it seeks documents
4 supporting Plaintiffs' contentions, and discovery is ongoing. Defendants have only recently
5 begun to produce tens of thousands of documents previously withheld after extensive motion
6 practice. Moreover, Defendants have yet to produce a single witness for deposition, and
7 discovery remains in the very early stages.

8 Plaintiffs further object to this request because it is vague, ambiguous, overbroad, and
9 unduly burdensome, and fails to describe the information sought with reasonable particularity.
10 Plaintiffs further object to this Request to the extent it seeks information protected by the
11 attorney-client privilege, the attorney work-product privilege, and/or any other privilege or
12 immunity. Plaintiffs further object to this Request to the extent that it seeks documents equally
13 available to or already in the possession of Defendants. Plaintiffs further object to this request to
14 the extent it seeks documents that are confidential, proprietary, and/or contain trade secret(s).
15 Plaintiffs further object to this Request on grounds that the Central Intelligence Agency has
16 destroyed or withheld documents and information relevant this request. Subject to all forgoing
17 general and specific objections, Plaintiffs respond as follows:

18 After a reasonably diligent search, Plaintiffs will produce all documents on which they
19 base their allegations in paragraph 21.b of the Third Amended Complaint.

20 **REQUEST FOR PRODUCTION NO. 23:**

21 Produce all documents that you claim support your contention in paragraph 161 of the
22 Third Amended Complaint that "[t]he 'volunteers' were given no information about the
23 chemicals used on them in the experiments, no warning as to the potential health risks, and no or
24 inadequate follow-up health care to determine the effects (and resulting injuries) caused by the
25 tests."

26 **RESPONSE TO REQUEST FOR PRODUCTION NO. 23:**

27 Plaintiffs incorporate by reference each General Objection above as though fully set forth
28 herein. Plaintiffs also object to this Request as premature to the extent it seeks documents

1 supporting Plaintiffs' contentions, and discovery is ongoing. Defendants have only recently
2 begun to produce tens of thousands of documents previously withheld after extensive motion
3 practice. Moreover, Defendants have yet to produce a single witness for deposition, and
4 discovery remains in the very early stages.

5 Plaintiffs further object to this request because it is vague, ambiguous, overbroad, and
6 unduly burdensome, and fails to describe the information sought with reasonable particularity.
7 Plaintiffs further object to this Request to the extent it seeks information protected by the
8 attorney-client privilege, the attorney work-product privilege, and/or any other privilege or
9 immunity. Plaintiffs further object to this Request to the extent that it seeks documents equally
10 available to or already in the possession of Defendants. Plaintiffs further object to this request to
11 the extent it seeks documents that are confidential, proprietary, and/or contain trade secret(s).
12 Subject to all forgoing general and specific objections, Plaintiffs respond as follows:

13 After a reasonably diligent search, Plaintiffs will produce all documents on which they
14 base their allegations in paragraph 161 of the Third Amended Complaint.

15 **REQUEST FOR PRODUCTION NO. 24:**

16 Produce all documents that you claim support t your contention in paragraph 173 of the
17 Third Amended Complaint that "Defendants have failed and refused to supply all available
18 information to the VA concerning the exposures of 'volunteers'" who have filed or whose
19 survivors have filed claims for service-connected death or disability compensation," including the
20 identification of the specific information that you contend Defendants have failed or refused to
21 supply to VA.

22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 24:**

23 Plaintiffs incorporate by reference each General Objection above as though fully set forth
24 herein. Plaintiffs also object to this Request as premature to the extent it seeks documents
25 supporting Plaintiffs' contentions, and discovery is ongoing. Defendants have only recently
26 begun to produce tens of thousands of documents previously withheld after extensive motion
27 practice. Moreover, Defendants have yet to produce a single witness for deposition, and
28 discovery remains in the very early stages.

1 Plaintiffs further object to this request because it is vague, ambiguous, overbroad, and
2 unduly burdensome, and fails to describe the information sought with reasonable particularity.
3 Plaintiffs further object to this Request to the extent it seeks information protected by the
4 attorney-client privilege, the attorney work-product privilege, and/or any other privilege or
5 immunity. Plaintiffs further object to this Request to the extent that it seeks documents equally
6 available to or already in the possession of Defendants. Plaintiffs further object to this request to
7 the extent it seeks documents that are confidential, proprietary, and/or contain trade secret(s).
8 Subject to all forgoing general and specific objections, Plaintiffs respond as follows:

9 After a reasonably diligent search, Plaintiffs will produce all documents on which they
10 base their allegations in paragraph 173 of the Third Amended Complaint.

11 **REQUEST FOR PRODUCTION NO. 25:**

12 Produce all documents that you claim support your contention in paragraph 234 of the
13 Third Amended Complaint that defendants have used “biased decision makers to decide
14 [plaintiffs’] eligibility for free, priority health care and for SDDC, including DIC.”
15

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 25:**

17 Plaintiffs incorporate by reference each General Objection above as though fully set forth
18 herein. Plaintiffs also object to this Request as premature to the extent it seeks documents
19 supporting Plaintiffs’ contentions, and discovery is ongoing. Defendants have only recently
20 begun to produce tens of thousands of documents previously withheld after extensive motion
21 practice. Moreover, Defendants have yet to produce a single witness for deposition, and
22 discovery remains in the very early stages.

23 Plaintiffs further object to this request because it is vague, ambiguous, overbroad, and
24 unduly burdensome, and fails to describe the information sought with reasonable particularity.
25 Plaintiffs further object to this Request to the extent it seeks information protected by the
26 attorney-client privilege, the attorney work-product privilege, and/or any other privilege or
27 immunity. Plaintiffs further object to this Request to the extent that it seeks documents equally
28 available to or already in the possession of Defendants. Plaintiffs further object to this request to

1 the extent it seeks documents that are confidential, proprietary, and/or contain trade secret(s).

2 Subject to all forgoing general and specific objections, Plaintiffs respond as follows:

3 After a reasonably diligent search, Plaintiffs will produce all documents on which they
4 base their allegations in paragraph 234 of the Third Amended Complaint concerning Defendants'
5 use of biased decision makers to decide Plaintiffs' eligibility for free, priority health care and for
6 SDDC, including DIC.

7 **REQUEST FOR PRODUCTION NO. 26:**

8 Produce all documents that you claim support your contention in paragraph 231 of the
9 Third Amended Complaint that the Department of Veterans Affairs' "represent[ion] that scientific
10 studies had been conducted showing that exposed veterans did not have any significant adverse
11 health effects and that 'available evidence and follow-up' studies had been conducted which
12 '[did] not support significant long-term physical harm among subjects exposed to acutely toxic
13 amounts of [these] agents other than mustard gas and Lewisite" is false,

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 26:**

15 Plaintiffs incorporate by reference each General Objection above as though fully set forth
16 herein. Plaintiffs also object to this Request as premature to the extent it seeks documents
17 supporting Plaintiffs' contentions, and discovery is ongoing. Defendants have only recently
18 begun to produce tens of thousands of documents previously withheld after extensive motion
19 practice. Moreover, Defendants have yet to produce a single witness for deposition, and
20 discovery remains in the very early stages.

21 Plaintiffs further object to this request because it is vague, ambiguous, overbroad, and
22 unduly burdensome, and fails to describe the information sought with reasonable particularity.
23 Plaintiffs further object to this Request to the extent it seeks information protected by the
24 attorney-client privilege, the attorney work-product privilege, and/or any other privilege or
25 immunity. Plaintiffs further object to this Request to the extent that it seeks documents equally
26 available to or already in the possession of Defendants. Plaintiffs further object to this request to
27 the extent it seeks documents that are confidential, proprietary, and/or contain trade secret(s).

28 Subject to all forgoing general and specific objections, Plaintiffs respond as follows:

1 After a reasonably diligent search, Plaintiffs will produce all documents on which they
2 base their allegations in paragraph 231 of the Third Amended Complaint concerning the
3 Department of Veterans Affairs' representation that scientific studies had been conducted
4 showing that exposed veterans did not have any significant adverse health effects and that
5 available evidence and follow-up studies had been conducted which '[did] not support significant
6 long-term physical harm among subjects exposed to acutely toxic amounts of [these] agents other
7 than mustard gas and Lewisite.

8 **REQUEST FOR PRODUCTION NO. 27:**

9 Produce all documents that you claim support your contention in paragraph 231 of the
10 Third Amended Complaint that the Department of Veterans Affairs' "represent[ation] that the
11 doses and safety of the test substances had been pre-confirmed in animal tests and that doses were
12 increased only where there was' a low risk of serious side effects'" is false.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 27:**

14 Plaintiffs incorporate by reference each General Objection above as though fully set forth
15 herein. Plaintiffs also object to this Request as premature to the extent it seeks documents
16 supporting Plaintiffs' contentions, and discovery is ongoing. Defendants have only recently
17 begun to produce tens of thousands of documents previously withheld after extensive motion
18 practice. Moreover, Defendants have yet to produce a single witness for deposition, and
19 discovery remains in the very early stages.

20 Plaintiffs further object to this request because it is vague, ambiguous, overbroad, and
21 unduly burdensome, and fails to describe the information sought with reasonable particularity.
22 Plaintiffs further object to this Request to the extent it seeks information protected by the
23 attorney-client privilege, the attorney work-product privilege, and/or any other privilege or
24 immunity. Plaintiffs further object to this Request to the extent that it seeks documents equally
25 available to or already in the possession of Defendants. Plaintiffs further object to this request to
26 the extent it seeks documents that are confidential, proprietary, and/or contain trade secret(s).
27 Subject to all forgoing general and specific objections, Plaintiffs respond as follows:
28

1 After a reasonably diligent search, Plaintiffs will produce all documents on which they
2 base their allegations in paragraph 231 of the Third Amended Complaint concerning the
3 Department of Veterans Affairs' representation that the doses and safety of the test substances
4 had been pre-confirmed in animal tests and that doses were increased only where there was' a low
5 risk of serious side effects.

6 **REQUEST FOR PRODUCTION NO. 28:**

7 Produce all documents that you claim support your contention in paragraph 231 of the
8 Third Amended Complaint that the Department of Veterans Affairs' "represent[ation] that the
9 participants in the tests had received low doses is false.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 28:**

11 Plaintiffs incorporate by reference each General Objection above as though fully set forth
12 herein. Plaintiffs also object to this Request as premature to the extent it seeks documents
13 supporting Plaintiffs' contentions, and discovery is ongoing. Defendants have only recently
14 begun to produce tens of thousands of documents previously withheld after extensive motion
15 practice. Moreover, Defendants have yet to produce a single witness for deposition, and
16 discovery remains in the very early stages.

17 Plaintiffs further object to this request because it is vague, ambiguous, overbroad, and
18 unduly burdensome, and fails to describe the information sought with reasonable particularity.
19 Plaintiffs further object to this Request to the extent it seeks information protected by the
20 attorney-client privilege, the attorney work-product privilege, and/or any other privilege or
21 immunity. Plaintiffs further object to this Request to the extent that it seeks documents equally
22 available to or already in the possession of Defendants. Plaintiffs further object to this request to
23 the extent it seeks documents that are confidential, proprietary, and/or contain trade secret(s).
24 Subject to all forgoing general and specific objections, Plaintiffs respond as follows:

25 After a reasonably diligent search, Plaintiffs will produce all documents on which they
26 base their allegations in paragraph 231 of the Third Amended Complaint concerning the
27 Department of Veterans Affairs' representation that the participants in the tests had received low
28 doses.

1 **REQUEST FOR PRODUCTION NO. 29:**

2 Produce all “data” that you contend in paragraph 231 of the Third Amended Complaint
3 that the Department of Veterans Affairs has withheld from Plaintiffs “concerning the incidence of
4 diseases or conditions experienced by veterans that had been exposed to chemicals and drugs in
5 experiments and the known dangers of interactions between or among different chemicals or
6 substances administered to veterans”“

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 29:**

8 Plaintiffs incorporate by reference each General Objection above as though fully set forth
9 herein. Plaintiffs also object to this Request as premature to the extent it seeks documents
10 supporting Plaintiffs’ contentions, and discovery is ongoing. Defendants have only recently
11 begun to produce tens of thousands of documents previously withheld after extensive motion
12 practice. Moreover, Defendants have yet to produce a single witness for deposition, and
13 discovery remains in the very early stages.

14 Plaintiffs further object to this request because it is vague, ambiguous, overbroad, and
15 unduly burdensome, and fails to describe the information sought with reasonable particularity.
16 Plaintiffs further object to this Request to the extent it seeks information protected by the
17 attorney-client privilege, the attorney work-product privilege, and/or any other privilege or
18 immunity. Plaintiffs further object to this Request to the extent that it seeks documents equally
19 available to or already in the possession of Defendants. Plaintiffs further object to this request to
20 the extent it seeks documents that are confidential, proprietary, and/or contain trade secret(s).

21 Subject to all forgoing general and specific objections, Plaintiffs respond as follows:

22 After a reasonably diligent search, Plaintiffs will produce all documents on which they
23 base their allegations in paragraph 231 of the Third Amended Complaint concerning data the
24 Department of Veterans Affairs has withheld from Plaintiffs concerning the incidence of diseases
25 or conditions experienced by veterans that had been exposed to chemicals and drugs in
26 experiments and the known dangers of interactions between or among different chemicals or
27 substances administered to veterans.

1 **REQUEST FOR PRODUCTION NO. 30:**

2 Produce all documents that you claim support your contention in paragraph 231 of the
3 Third Amended Complaint that the Department of Veterans Affairs' representation "that no
4 specific medical tests or evaluations were available or the types of exposures experienced by
5 veterans" is false.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 30:**

7 Plaintiffs incorporate by reference each General Objection above as though fully set forth
8 herein. Plaintiffs also object to this Request as premature to the extent it seeks documents
9 supporting Plaintiffs' contentions, and discovery is ongoing. Defendants have only recently
10 begun to produce tens of thousands of documents previously withheld after extensive motion
11 practice. Moreover, Defendants have yet to produce a single witness for deposition, and
12 discovery remains in the very early stages.

13 Plaintiffs further object to this request because it is vague, ambiguous, overbroad, and
14 unduly burdensome, and fails to describe the information sought with reasonable particularity.
15 Plaintiffs further object to this Request to the extent it seeks information protected by the
16 attorney-client privilege, the attorney work-product privilege, and/or any other privilege or
17 immunity. Plaintiffs further object to this Request to the extent that it seeks documents equally
18 available to or already in the possession of Defendants. Plaintiffs further object to this request to
19 the extent it seeks documents that are confidential, proprietary, and/or contain trade secret(s).
20 Subject to all forgoing general and specific objections, Plaintiffs respond as follows:

21 After a reasonably diligent search, Plaintiffs will produce all documents on which they
22 base their allegations in paragraph 231 of the Third Amended Complaint concerning the
23 Department of Veterans Affairs' representation that no specific medical tests or evaluations were
24 available for the types of exposures experienced by veterans.

25 **REQUEST FOR PRODUCTION NO. 31:**

26 Produce all documents that you claim support your contention in paragraph 231 of the
27 Third Amended Complaint that the Department of Veterans Affairs has failed to "train
28 adjudicators and medical personnel to fairly evaluate and process SCDDC claims based upon

1 exposure to substances used in chemical and biological weapons or the program of mind-control
2 experimentation.”

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 31:**

4 Plaintiffs incorporate by reference each General Objection above as though fully set forth
5 herein. Plaintiffs also object to this Request as premature to the extent it seeks documents
6 supporting Plaintiffs’ contentions, and discovery is ongoing. Defendants have only recently
7 begun to produce tens of thousands of documents previously withheld after extensive motion
8 practice. Moreover, Defendants have yet to produce a single witness for deposition, and
9 discovery remains in the very early stages.

10 Plaintiffs further object to this request because it is vague, ambiguous, overbroad, and
11 unduly burdensome, and fails to describe the information sought with reasonable particularity.
12 Plaintiffs further object to this Request to the extent it seeks information protected by the
13 attorney-client privilege, the attorney work-product privilege, and/or any other privilege or
14 immunity. Plaintiffs further object to this Request to the extent that it seeks documents equally
15 available to or already in the possession of Defendants. Plaintiffs further object to this request to
16 the extent it seeks documents that are confidential, proprietary, and/or contain trade secret(s).
17 Subject to all forgoing general and specific objections, Plaintiffs respond as follows:

18 After a reasonably diligent search, Plaintiffs will produce all documents on which they
19 base their allegations in paragraph 231 of the Third Amended Complaint concerning the
20 Department of Veterans Affairs’ failure to train adjudicators and medical personnel to fairly
21 evaluate and process SCDDC claims based upon exposure to substances used in chemical and
22 biological weapons or the program of mind-control experimentation.

23 **REQUEST FOR PRODUCTION NO. 32:**

24 Produce all documents that you claim support your contention in paragraph 232 of the
25 Third Amended Complaint that the Department of Veterans Affairs’ “decision makers respecting
26 eligibility for health care and SCDDC,” are biased.

RESPONSE TO REQUEST FOR PRODUCTION NO. 32:

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2 Plaintiffs incorporate by reference each General Objection above as though fully set forth
3 herein. Plaintiffs also object to this Request as premature to the extent it seeks documents
4 supporting Plaintiffs' contentions, and discovery is ongoing. Defendants have only recently
5 begun to produce tens of thousands of documents previously withheld after extensive motion
6 practice. Moreover, Defendants have yet to produce a single witness for deposition, and
7 discovery remains in the very early stages.

8 Plaintiffs further object to this request because it is vague, ambiguous, overbroad, and
9 unduly burdensome, and fails to describe the information sought with reasonable particularity.
10 Plaintiffs further object to this Request to the extent it seeks information protected by the
11 attorney-client privilege, the attorney work-product privilege, and/or any other privilege or
12 immunity. Plaintiffs further object to this Request to the extent that it seeks documents equally
13 available to or already in the possession of Defendants. Plaintiffs further object to this request to
14 the extent it seeks documents that are confidential, proprietary, and/or contain trade secret(s).
15 Subject to all forgoing general and specific objections, Plaintiffs respond as follows:

16 After a reasonably diligent search, Plaintiffs will produce all documents on which they
17 base their allegations in paragraph 232 of the Third Amended Complaint concerning bias by the
18 Department of Veterans Affairs' decision makers respecting eligibility for health care and
19 SCDDC.

REQUEST FOR PRODUCTION NO. 33:

21 Produce all documents that you claim support your contention in paragraph 132 of the
22 Third Amended Complaint that "[m]any scientists who worked at Edgewood, such as Dr. Ray
23 Treichler, or under Edgewood contracts, were on the CIA's payroll.

RESPONSE TO REQUEST FOR PRODUCTION NO. 33:

25 Plaintiffs incorporate by reference each General Objection above as though fully set forth
26 herein. Plaintiffs also object to this Request as premature to the extent it seeks documents
27 supporting Plaintiffs' contentions, and discovery is ongoing. Defendants have only recently
28 begun to produce tens of thousands of documents previously withheld after extensive motion

1 practice. Moreover, Defendants have yet to produce a single witness for deposition, and
2 discovery remains in the very early stages.

3 Plaintiffs object to this Request on grounds that the Central Intelligence Agency has
4 destroyed or withheld documents and information relevant this request. Plaintiffs further object
5 to this request because it is vague, ambiguous, overbroad, and unduly burdensome, and fails to
6 describe the information sought with reasonable particularity. Plaintiffs further object to this
7 Request to the extent it seeks information protected by the attorney-client privilege, the attorney
8 work-product privilege, and/or any other privilege or immunity. Plaintiffs further object to this
9 Request to the extent that it seeks documents equally available to or already in the possession of
10 Defendants. Plaintiffs further object to this request to the extent it seeks documents that are
11 confidential, proprietary, and/or contain trade secret(s). Subject to all forgoing general and
12 specific objections, Plaintiffs respond as follows:

13 After a reasonably diligent search, Plaintiffs will produce all documents on which they
14 base their allegations in paragraph 132 of the Third Amended Complaint that many scientists who
15 worked at Edgewood, such as Dr. Ray Treichler, or under Edgewood contracts, were on the
16 CIA's payroll.

17 **REQUEST FOR PRODUCTION NO. 34:**

18 Produce all documents that you contend support your responses to each of Defendants'
19 Interrogatories.

20 **RESPONSE TO REQUEST FOR PRODUCTION NO. 34:**

21 Plaintiffs object to this Request because it is vague, ambiguous, overbroad, and unduly
22 burdensome, and fails to describe the information sought with reasonable particularity. Plaintiffs
23 further object to this request because it is duplicative, particularly with respect to Defendants'
24 Requests for Production numbers 21 through 32.

1 As to the interrogatories, see Attachment A.

2 As to the objections:

3 Dated: January 10, 2011

GORDON P. ERSPAMER
TIMOTHY W. BLAKELY
STACEY M. SPRENKEL
DANIEL J. VECCHIO
DIANA LUO
MORRISON & FOERSTER LLP

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By: 
Gordon P. Erspamer
[Gerspamer@mof.com]

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Attorneys for Plaintiffs

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Attachment A

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VERIFICATION

I, Michael Blecker, _____, am authorized to make this verification for and on behalf of Swords to Plowshares: Veterans Rights Organization, and I make this verification for that reason. I have read the foregoing PLAINTIFFS' RESPONSES AND OBJECTIONS TO DEFENDANTS' FIRST SET OF INTERROGATORIES (the "Responses"). Swords to Plowshares: Veterans Rights Organization makes no representation as to the Responses to Interrogatories Nos. 8(d), 9-17 and 23, as these interrogatories are directed at contentions made in the Fourth Claim for Relief, which is not asserted on behalf of Swords to Plowshares. With respect to the Responses to all other Interrogatories, I am informed and believe based on Plaintiffs' and Plaintiffs' counsel's investigation to date that the matters stated are true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

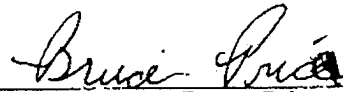
Executed on January 10, 2011, at 1060 Howard St.
San Francisco, CA 94103

Michael Blecker

VERIFICATION

I, Bruce Price, have read the foregoing PLAINTIFFS' RESPONSES AND OBJECTIONS TO DEFENDANTS' FIRST SET OF INTERROGATORIES (the "Responses"). I am informed and believe based on Plaintiffs' and Plaintiffs' counsel's investigation to date that the matters stated in the Responses are true and correct.

Executed on January 7, 2011, at Mountain City, TN



Bruce Price,

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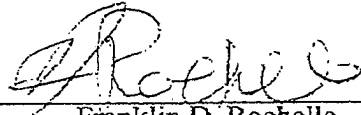
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VERIFICATION

I, Franklin D. Rochelle, have read the foregoing PLAINTIFFS' RESPONSES AND OBJECTIONS TO DEFENDANTS' FIRST SET OF INTERROGATORIES (the "Responses"). I am informed and believe based on Plaintiffs' and Plaintiffs' counsel's investigation to date that the matters stated in the Responses are true and correct.

Executed on ~~12/15/11~~, 2011, at Jacksonville, FL

Jan 11



Franklin D. Rochelle

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VERIFICATION

I, Larry Meirow, have read the foregoing PLAINTIFFS' RESPONSES AND
OBJECTIONS TO DEFENDANTS' FIRST SET OF INTERROGATORIES (the "Responses").
I am informed and believe based on Plaintiffs' and Plaintiffs' counsel's investigation to date that
the matters stated in the Responses are true and correct.

Executed on January 7th, 2011, at 9:40 PM.

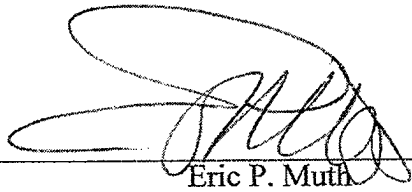
Larry Meirow
Larry Meirow

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VERIFICATION

I, Eric P. Muth, have read the foregoing PLAINTIFFS' RESPONSES AND
OBJECTIONS TO DEFENDANTS' FIRST SET OF INTERROGATORIES (the "Responses").
I am informed and believe based on Plaintiffs' and Plaintiffs' counsel's investigation to date that
the matters stated in the Responses are true and correct.

Executed on JANUARY 7, 2011, at MILFORD, CT.



Eric P. Muth

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VERIFICATION

I, David C. Dufrane, have read the foregoing PLAINTIFFS' RESPONSES AND
OBJECTIONS TO DEFENDANTS' FIRST SET OF INTERROGATORIES (the "Responses").
I am informed and believe based on Plaintiffs' and Plaintiffs' counsel's investigation to date that
the matters stated in the Responses are true and correct.

Executed on 1-7, 2011, at 11:00 AM.


David C. Dufrane

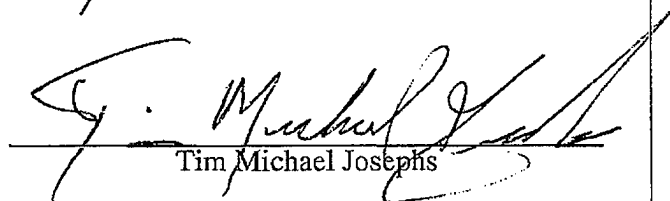
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VERIFICATION

I, Tim Michael Josephs, have read the foregoing PLAINTIFFS' RESPONSES AND OBJECTIONS TO DEFENDANTS' FIRST SET OF INTERROGATORIES (the "Responses"). I am informed and believe based on Plaintiffs' and Plaintiffs' counsel's investigation to date that the matters stated in the Responses are true and correct.

Executed on January 10, 2011, at LA.


Tim Michael Josephs

CERTIFICATE OF SERVICE

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I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 755 Page Mill Road, Palo Alto, California 94304-1018. I am not a party to the within cause, and I am over the age of eighteen years.

I further declare that on January 10, 2011, I served a copy of:

PLAINTIFFS' RESPONSES TO DEFENDANTS' FIRST SET OF INTERROGATORIES & SECOND SET OF PRODUCTION REQUESTS.

BY OVERNIGHT DELIVERY [Fed. Rule Civ. Proc. rule 5(b)] by placing a true copy thereof enclosed in a sealed envelope with delivery fees provided for, addressed as follows, for collection by UPS, at 755 Page Mill Road, Palo Alto, California 94304-1018 in accordance with Morrison & Foerster LLP's ordinary business practices.

I am readily familiar with Morrison & Foerster LLP's practice for collection and processing of correspondence for overnight delivery and know that in the ordinary course of Morrison & Foerster LLP's business practice the document(s) described above will be deposited in a box or other facility regularly maintained by UPS or delivered to an authorized courier or driver authorized by UPS to receive documents on the same date that it (they) is are placed at Morrison & Foerster LLP for collection.


BY ELECTRONIC SERVICE [Fed. Rule Civ. Proc. rule 5(b)] by electronically mailing a true and correct copy through Morrison & Foerster LLP's electronic mail system to the e-mail address(es) set forth below, or as stated on the attached service list per agreement in accordance with Federal Rules of Civil Procedure rule 5(b).

Joshua E. Gardner (Joshua.E.Gardner@usdoj.gov)
U.S. Department of Justice
Civil Division
Federal Programs Branch
20 Massachusetts Ave., N.W.
Washington, D.C. 20001
(202) 305-7583

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Palo Alto, California, this 10th day of January, 2011.

Michael J. Kryston
(typed)


(signature)