

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

United States District Court
Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VIETNAM VETERANS OF AMERICA,
et al.,

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY, et
al.,

Defendants.

Case No.: 09-cv-0037 CW (JSC)

**REPORT AND RECOMMENDATION
RE: PLAINTIFFS' MOTION TO
EXTEND CASE DEADLINES (Dkt. No.
295)**

Pending before the Court is Plaintiffs' Motion to Extend Case Deadlines. (Dkt. No. 295). The motion was referred to the undersigned Magistrate Judge on October 19, 2011. Having considered the papers submitted by the parties, and having had the benefit of oral argument on October 31, 2011 the Court recommends that the motion be GRANTED in part.

DISCUSSION

The parties have engaged in substantial discovery in this action over the past two and a half years. Given the breadth of the action, which concerns the conduct of four

1 government agencies over at least four decades, production of this discovery has taken
2 longer than perhaps any party expected; accordingly, an extension of the case deadlines is
3 proper.

4 Plaintiffs' motion 1) seeks a 90-day extension of the case schedule in this action; and
5 2) requests that the scope of this extended discovery not be restricted. Plaintiffs allege that
6 there are five categories of outstanding discovery which justify the extension of the case
7 deadlines: 1) Department of Veterans Affairs' claims files document production, 2)
8 Department of Defense ("DOD") email and Navy, Air Force and Defense Technical
9 Information Center document production, 3) Battelle document production, 4) magnetic tape
10 production, and 5) deposition scheduling for several key witnesses. The Court's October 5,
11 2011 order requires Defendants to produce additional documents in the first, second and
12 third categories, and on October 13, 2011, the parties were ordered to meet and confer
13 regarding the fourth category. Further, there is a pending discovery dispute regarding the
14 second and fifth categories with briefing to be completed by November 4, 2011. Given the
15 amount of outstanding discovery and the uncertain timing for completion of this discovery,
16 an approximately 90-day extension of the case deadlines is reasonable, especially where
17 Defendants have not asserted any prejudice other than the delay itself. Further, because
18 some of the outstanding discovery may be necessary for purposes of expert reports, the Court
19 recommends staggering the fact discovery and expert discovery deadlines.

20 Accordingly, the Court recommends the following revised case schedule:

Event	New Deadline
Completion of fact discovery	December 23, 2011 ¹
Disclosure of expert witnesses	January 12, 2012
Completion of expert discovery	April 2, 2012

25
26 ¹ Although Plaintiffs requested a December 29, 2011 date for completion of document
27 production and a separate date of January 12, 2012 for completion of fact discovery, the Court
28 recommends setting December 23, 2011 as the close of fact discovery, which provides a
cushion should Plaintiffs need to use materials obtained during fact discovery for completion
of expert reports and avoids the December holidays.

1	Plaintiffs' opening dispositive motion due	April 16, 2012
2	Defendants' opposition and cross-motion due	May 7, 2012
3	Plaintiffs' reply/opposition due	May 21, 2012
4	Defendants' reply to any cross-motion due	June 4, 2012
5	Deadline to hear dispositive motions	July 12, 2012
6	Final pretrial conference	September 18, 2012
7	Trial begins	October 9, 2012

8 To ensure that these deadlines are met, the parties are ordered to meet and confer this
9 week and submit a joint letter to the Court detailing the status of **all outstanding discovery**
10 on Friday, November 4, 2011. The letter shall include the dates for all outstanding
11 depositions and the dates by which all outstanding document production will occur.² To the
12 extent that Plaintiffs need to give Defendants additional information (like search terms) prior
13 to Defendants completing the document production, the parties shall include dates for each
14 stage of the process in their letter. The parties are encouraged to use this meet and confer
15 process to resolve as many of the outstanding issues as possible. For those issues which
16 remain unresolved, the parties shall provide a brief statement of their respective positions in
17 the joint letter. The Court intends to use this letter to adopt a process for resolving all
18 outstanding discovery disputes, which may include ordering the parties to meet and confer in
19 person.

20 Plaintiffs' second request, that it not be bound by the scope of discovery as set forth in
21 the June 20, 2011 stipulation, appears to be an attempt to modify Paragraph 15 of that
22 stipulation. (Dkt. No. 237). Plaintiffs state that at the time of the stipulation, Plaintiffs were
23 unaware that the DOD had not produced emails in response to a document request, and once
24 DOD produces these emails, Plaintiffs will need to review them and possibly serve
25 additional discovery. Paragraph 15(b) of the June 20, 2011 stipulation provides a
26 mechanism for a party to serve additional written discovery if the party obtains a court order

27 _____
28 ² The letter should not include the discovery at issue in Plaintiffs' pending motion for which
briefing will be completed on November 4, 2011.

1 upon a showing of good cause. Accordingly, if Plaintiffs determine that further written
2 discovery is necessary upon review of the DOD emails, then Plaintiffs can seek leave of the
3 Court to take such additional discovery. The Court declines to intervene and modify the
4 parties' stipulation absent a showing that Plaintiffs have good cause for requesting additional
5 discovery. Absent such an order or consent of the other party, the parties may not serve any
6 additional discovery requests.

7 Accordingly, the Court recommends that Plaintiffs' Motion to Extend the Case
8 Deadlines (Dkt. No. 295) be GRANTED in part as set forth above. The parties are ordered
9 to provide the Court with a joint letter detailing the status of all outstanding discovery
10 disputes by November 4, 2011. The parties may not serve any additional discovery requests
11 without the consent of the opposing parties or Court order.

12 **IT IS SO ORDERED.**

13 Dated: October 31, 2011

14 
15 _____
16 JACQUELINE SCOTT CORLEY
17 UNITED STATES MAGISTRATE JUDGE
18
19
20
21
22
23
24
25
26
27
28

United States District Court
Northern District of California