

Exhibit R

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February 29, 2012

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Via E-Mail

Joshua E. Gardner, Esq.
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue NW
Washington, DC 20530

Re: *Vietnam Veterans of America, et al. v. Central Intelligence Agency, et al.*,
No. CV 09-0037 CW (N.D. Cal.)

Dear Mr. Gardner:

I am writing in response to the letter you sent earlier today regarding Plaintiffs' request to depose Dr. Kelley Brix and to resume the depositions of Dee Dodson Morris and Joe Salvatore.

In your letter, you requested that Plaintiffs explain our need for these depositions and the amount of time we wish to depose each individual. In light of today's letter from Ms. Farel regarding David Abbot's back-up files, as addressed below, Plaintiffs now also seek to resume the deposition of Mr. Abbot.

Based on Plaintiffs' continuing review of very recently produced documents and recent deposition testimony, and in light of Defendants' voluminous new privilege log entries, the need to resume these depositions and depose Dr. Brix has become clear. After the fact discovery cut-off, Defendants identified 96 new privilege log entries for Dr. Brix, 133 new entries for Ms. Morris, and 82 new entries for Mr. Salvatore. At the time that Plaintiffs deposed Ms. Morris and Mr. Salvatore, and at the time Plaintiffs selected deponents pursuant to the Court's November 17, 2011 Order (Docket No. 325), Plaintiffs had no idea that Defendants were withholding that volume of documents regarding those deponents. As with the DVA documents ordered to be produced by the Court after its previous *in camera* review (Docket No. 327), many of these documents could be "extremely relevant" and warrant deposition questioning.

Further, discovery Defendants produced after the November 17 Order only bolsters Plaintiffs' need for these depositions. For instance, Defendants just recently produced the e-

MORRISON | FOERSTER

Joshua E. Gardner, Esq.
February 29, 2012
Page Two

mail regarding Dr. Brix's edits to the DVA Information Letter, recommending a "major rewrite" that DVA rejected. (*See* VET140-000723.) Further, Roy Finno revealed during his January 27, 2012 deposition that Dr. Brix "didn't care for" the Edgewood test subjects IOM Study that "concluded that there wasn't any long-term effects." (Finno Deposition Transcript at 177:13 – 178:17.) Given Defendants' reliance on this study — and because Mr. Finno could not remember any specifics (*id.* at 178:15-17), there is good cause for Plaintiffs to depose Dr. Brix regarding her issues with how the study was done (*id.* at 178:11-14) and how Defendants addressed her concerns. Plaintiffs thus request to depose Dr. Brix for no more than 6 hours.

As for Ms. Morris, DOD recently produced Ms. Morris's e-mails regarding, for example, the decision not to send individualized outreach letters to veterans. (*See, e.g.*, VET140-001353.) Plaintiffs depose Ms. Morris without this e-mail and many other e-mails relevant to her. As you are aware, DOD only ran keyword searches for e-mails after the August 2011 Motion to Compel. The vast majority of these e-mails were eventually produced right at or after the fact discovery cut-off under the extended schedule. If Plaintiffs had known that DOD was not planning to produce these e-mails and the volume of relevant e-mails that were being excluded from production, Plaintiffs likely would have not gone forward with Ms. Morris' deposition at that time. Plaintiffs request to resume her deposition for up to 4 hours.

With respect to Mr. Salvatore, the documents produced by DVA pursuant to the Court's deliberative process *in camera* order (Docket No. 327) are alone sufficient to demonstrate good cause to resume his deposition. DVA produced numerous e-mails, draft presentations, and other documents relevant to Mr. Salvatore several months after his deposition, and some of which the Court classified as "extremely relevant" (*see id.*). For instance, Mr. Salvatore, who held a central role during the outreach efforts, received the e-mail from Dr. Brown regarding "significant inaccuracies" in DOD's fact sheet, having sent the initiating e-mail. Plaintiffs request to resume Mr. Salvatore's deposition for up to 4 hours.

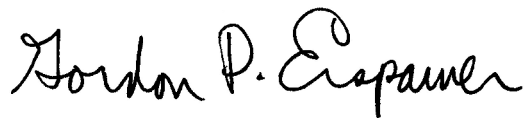
With respect to Mr. Abbot, Ms. Farel's letter revealed today that late last week, DVA discovered a folder on a VBA server that "appears to contain Mr. Abbot's files related to Chem-Bio, including the Chem-Bio mailbox." DVA agreed to produce all responsive, non-privileged documents contained in this file and to "search the remainder of this server to ensure that it contains no additional documents that may be responsive to Plaintiffs' discovery requests." To the extent DVA produces additional documents from Mr. Abbot's file or the remainder of this server, which DVA represents that it discovered just last week, Plaintiffs may need to resume Mr. Abbot's deposition for up to 4 hours regarding that limited set of newly produced documents.

MORRISON | FOERSTER

Joshua E. Gardner, Esq.
February 29, 2012
Page Three

To the extent Defendants do not agree to Plaintiffs taking the deposition of Dr. Brix and resuming the depositions of Ms. Morris, Mr. Salvatore, and Mr. Abbot, Plaintiffs intend to raise the issue in our motion to compel due tomorrow.

Very truly yours,



Gordon P. Erspamer

cc: Kimberly Herb
Brigham Bowen
Lily Farel
Judson O. Littleton