Exhibit H

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July 30, 2010

Via Email
Mr. Gordon Erspamer, Esq.
Mr. Daniel Vecchio, 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 Messrs. Erspamer and Vecchio:

I write in response to your letters of July 20 and 26, 2010, with regard to the scope of further document discovery and the proposed joint statement attached to the July 26 letter. We will address your request for entry of a protective order authorizing disclosure of third-party information separately.

In response to your interpretation of our July 12 proposal for the scope of further document discovery as being "far too restrictive,"[1] we reiterate our request that you suggest additions to our proposed definition of scope that will focus discovery efforts on information relevant to the claims before the Court without imposing an undue burden on Defendants. Again, the document requests that you have served seek wide-ranging searches of documents dating back as far as 60 years and spanning more than 20 years, as your July 20 letter emphasizes. Further, the Department of Defense ("DoD") is in the midst of a large-scale investigation consistent with direction from Congress to identify all servicemembers who participated in all chemical and biological testing by the Army so that they may be notified of the tests and provided with pertinent information, which is much of the relief that Plaintiffs seek through this lawsuit. We therefore have sought a protective order staying further discovery until that ongoing investigation is complete and limiting the scope of any further discovery. Nevertheless, Defendants continue to believe that it is possible for the parties to reach an agreement for document searches that are reasonable under these circumstances and designed to produce relevant information without causing undue burden. Such an agreement would obviate our need to seek protective order staying further discovery and to limit the scope of any further discovery.

[1] We disagree that our July 12 proposal in any way backtracks from anything we previously suggested Defendants might agree to.

At the June 30 meet and confer, we suggested that Plaintiffs propose search terms for DoD and Department of the Army to use in conducting additional searches.[2] Mr. Vecchio indicated that Plaintiffs would review the documents and information they have obtained outside of the discovery process and suggest a list of search terms that might aid DoD and Army in identifying documents relevant to this litigation. We understood that Plaintiffs would provide a list of proposed search terms at the same time that Defendants made a proposal regarding the scope of discovery, but to date we have received no such list from you. Also, to the extent that you have documents that you contend suggest DoD's and Army's searches have been inadequate, we request that you provide them so that DoD and Army may evaluate them and conduct any additional searches that are warranted. It is not reasonable for Plaintiffs to reject our proposal as overly restrictive and not propose how it could be appropriately broadened to produce relevant information without becoming unduly burdensome.

We strongly disagree with your letter's assertion that Defendants' compliance with our discovery obligations has been "almost non-existent." (In fact, DoD and Army even agreed to produce documents will the government's motion to dismiss or for summary judgment was pending.) Defendants have produced over 14,000 pages of records in response to Plaintiffs' first set of document requests.[3] Following that production and during the entire time that we have been engaged in good faith efforts to reach an agreement on the scope of further document discovery, DoD and Army have been actively searching for additional documents that might address any health effects associated with substances to which servicemember test participants were exposed, as we told you they would at the outset of the meet-and-confer process, as well as for other documents that may be relevant to the claims before the Court. We will produce relevant documents identified through these additional searches to the extent that they are not privileged. We must observe, however, that because the Army's testing has been the subject of large-scale investigations and congressional inquiries, the subject has been aired extensively and a great deal of information about the tests has been previously disclosed. As a consequence, we do not have reason to believe that there exists a significant amount of information about the tests that is not already publicly known.

With respect to DoD and Army, while Army conducted tests involving servicemembers at multiple locations, DoD and Army expect that records describing those tests and test results, including discussions of any health effects or possible health effects associated with the tested substances, would be stored at Edgewood Arsenal and Fort Detrick because those were the Army's primary research centers for chemical and biological agents. And the individual named Plaintiffs participated in tests at Edgewood. For those reasons, our July 12 proposal identified those locations for searches. Edgewood and Fort Detrick are the focus of the ongoing DoD and Army document searches referenced above. Your July 20 letter references congressional testimony that you say indicates that there is no central repository for historical data on chemical weapons testing programs and such records are stored at "at least six major DoD records holding

[2] We address discovery vis-a-vis the Central Intelligence Agency ("CIA") below.
[3] The Department of Veterans Affairs has produced another approximately 14,000 pages of records in response to Plaintiffs' Rule 45 subpoena on it.

sites and one University site" and "span thousands of linear feet of paper." The military's research concerning chemical weapons dates back to at least World War I, and only a small portion involved human testing. Again, DoD and Army expect that the vast majority of information concerning the Army's human testing is stored at Edgewood and Fort Detrick. Nevertheless, to resolve the parties' dispute concerning the scope of discovery and related issues DoD and Army are prepared to extend their searches beyond those locations if warranted, as described further below.

In the interest of furthering the possibility of an agreement on the scope of further document discovery, we add the following to our July 12 proposal, without agreeing that discovery beyond tests conducted at Edgewood Arsenal involving substances to which the individual named Plaintiffs were exposed is relevant to the claims before the Court. Army, on behalf of itself and DoD, will first conduct reasonable searches to locate the documents that were examined during past investigations into the Army's human testing. These records are the most likely to contain descriptive information about the Army's chemical and biological tests. They are the records examined by the Department of Army Inspector General in 1975 and 1976 and the DoD Chemical Weapons Exposure Study initiated in 1993. Army will produce all of the records, to the extent they are non-privileged, that it is able to locate through reasonable search efforts. Army will then carefully examine the investigations and their underlying documents to identify any additional documents that should be reviewed and any additional locations where reasonable searches may be conducted for additional documents that should be reviewed.[4] In light of Magistrate Judge Larson's ruling with respect to the relevancy of consent as it relates to secrecy oaths, Army will agree to search in the above-described manner for documents addressing consent to testing in addition to documents addressing known or suspected physical or psychological side effects or other health effects associated with any of the substances identified in DoD's Chemical and Biological Test Repository. As stated above, we will consider the addition of search terms that you indicated you would propose.

With respect to additional information that you suggest in your July 20 letter bears on health effects or possible health effects, we have agreed previously to produce available information on the individual doses of the substances that were administered to servicemembers, the number of times a given servicemember was exposed to a given substance, as well as the route of administration (e.g., oral or percutaneous). That information is contained in the massive chem-bio database that DoD has spent years and millions of dollars compiling. We produced the database as it existed in March 2010 and will produce updated versions as appropriate. Searches of individual servicemember test records simply are not feasible in a manner that would be compatible with litigation. Again, the chem-bio database presently spans well over 10,000 test participants.

Army will produce to Plaintiffs all documents identified by the searches described above that are not protected from disclosure by the deliberative process privilege, attorney-client privilege,

[4] However, DoD and Army cannot agree to search test records of individual servicemembers. Such a search would be unduly burdensome in the extreme. As we explained in our July 12 letter, the chem-bio database presently spans well over 10,000 test participants.

attorney work product doctrine, state secrets or any other applicable privilege or immunity recognized under statute, regulation or applicable case law. Army will provide a log describing any documents withheld based on privilege or other protection. Because of the substantial passage of time since the documents at issue were created and the substantial span of time over which the documents were created, the search is expected to be time-consuming. Army will exercise best efforts to complete the search as expeditiously as possible.

Because of the mass of information at issue, we believe that discovery will be both more productive and more expeditious if we proceed with document searches as outlined above rather than in response to specific RFPs. And as stated in our July 12 proposal, Defendants will consider discrete requests from Plaintiffs for specific documents in Defendants' possession, custody or control that Plaintiffs identify by name, and will endeavor in good faith to provide such documents where they can be located through reasonable search efforts and are not protected from disclosure by the deliberative process privilege, attorney-client privilege, attorney work product doctrine, state secrets or any other applicable privilege or immunity recognized under statute, regulation or applicable case law.

With respect to CIA, as we have previously explained, the Agency over the past thirty-five years has conducted numerous and exhaustive searches for documents relating to its past behavioral research programs and any connection to human subject testing. Those searches have resulted from multiple Congressional inquiries, civil suits and many Freedom of Information Act requests regarding CIA's past testing programs. We have informed Plaintiffs of CIA's conclusion that its involvement relating to human subject testing on military personnel was limited to contemplated, but not consummated, servicemember testing at Edgewood Arsenal by the Army that was proposed to be funded through Project OFTEN. CIA has produced documents in support of the Agency's good faith conclusion. In addition, the CIA has gone well beyond the scope of its discovery obligations and provided to Plaintiffs more than 20,000 pages of documents concerning its MKULTRA program that are not relevant to this action. Further, CIA has advised us that it has no reason to believe that it has additional documentation concerning CIA involvement in tests on military servicemembers. Moreover, Defendants understand that Plaintiffs do not accept CIA's conclusion and have consistently offered for more than six months to evaluate any evidence offered by Plaintiffs in support of their contrary view to determine if additional document searches are warranted; Plaintiffs' allegations that CIA is at fault for the lack of a resolution of the dispute between the parties about the scope of discovery is belied by this fact.

We request that if you consider this proposed scope of further document discovery still to be deficient you propose how it might be reasonably adjusted to produce relevant information without imposing undue burden.

In light of this further proposal on the scope of additional discovery, we believe that the parties can avoid burdening the Court, at least at this juncture, with joint statements of discovery dispute on this topic, Defendants' request for a protective order staying further discovery and limiting its scope, as well as Plaintiffs' requests for production of documents and 30(b)(6) deposition notices concerning document searches. If we are unable to reach agreement, then we will provide you

with our comments and edits to your July 26 draft joint statement, and we reserve all rights to object to your document requests and 30(b)(6) notices notwithstanding the proposal outlined above for a very broad scope of discovery. We also observe that Defendants requested a protective order staying further discovery and limiting its scope before the deadlines to respond to either second or third sets of document requests. Insisting on responses to the second and third RFPs in advance of completion of meet-and-confer efforts on the scope of further document discovery and in advance of a ruling on our stay request -- which the Court stated that it would not hear until the meet-and-confer concluded -- is not appropriate because it would improperly deprive Defendants of their ability to have the Court consider their request for stay. [5]

In closing, we remain hopeful that the parties can reach agreement on an approach to further document discovery that will produce relevant information as expeditiously as possible without unduly burdening Defendants.

Sincerely,

/s/

Caroline Lewis Wolverton

[5] In this regard, we note that to date we have received from you no documents in response to Defendants' first set of document requests to Plaintiffs, served May 6, 2010. There is no basis on which Plaintiffs should withhold documents responsive to Defendants' requests.