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 12

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

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

**PLAINTIFFS' REPLY IN SUPPORT
 OF MOTION TO OVERRULE
 OBJECTIONS AND COMPEL
 30(b)(6) DEPOSITIONS**

Date: October 27, 2010
 Time: 9:30 a.m.
 Ctrm: F, 15th Fl.
 Judge: Hon. James Larson

Complaint filed January 7, 2009

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1 **I. INTRODUCTION**

2 Defendants' pattern of obstructing the orderly progression of discovery into relevant
 3 topics in this litigation continues in their Opposition to Plaintiffs' Motion to Compel 30(b)(6)
 4 Depositions (Docket No. 142) ("Opp'n"). By cherry-picking from distinguishable out-of-Circuit
 5 case law, grossly exaggerating their discovery efforts, and either ignoring or misconstruing the
 6 relevance of numerous topics, Defendants seek to continue to dodge their obligations to produce
 7 knowledgeable witnesses in response to Plaintiffs' Rule 30(b)(6) notices. As Judge Wilken
 8 recently recognized in the Court's October 7, 2010 Order denying Defendants' motion for a
 9 protective order that would have stayed all discovery for a year, "Defendants offer no reason why
 10 Rule 30(b)(6) witnesses should not be designated and depositions should not go forward."
 11 (Docket No. 159 at 3.) The Court should disregard Defendants' myriad excuses and efforts to
 12 drag their feet in resisting discovery and grant Plaintiffs' motion to compel.

13 **II. ARGUMENT**

14 **A. Defendants Misstate the Law Regarding Their Duty To Designate
 15 Rule 30(b)(6) Witnesses.**

16 Defendants claim that they should be excused from producing witnesses to testify on
 17 numerous deposition topics simply because Defendants assert that the witnesses with personal
 18 knowledge of the noticed topics no longer are affiliated with Defendants. (*See* Opp'n at 7
 19 ("...requiring CIA to produce witnesses...would be...wasteful, given the passage of time and the
 20 lack of witnesses with *personal knowledge*") (emphasis added); *id.* at 10 ("...most of the CIA
 21 people who had been involved...had retired from the agency").) This reflects a fundamental
 22 misunderstanding of Defendants' obligations under the law.¹

23
 24 ¹ It is telling that Defendants fail to cite a single case from within the Ninth Circuit to
 25 support this position. (*See, e.g.*, Opp'n at 7 & 11.) Moreover, the cases that Defendants do cite
 26 are distinguishable and unpersuasive. For example, Defendants cite *In re Indep. Serv. Orgs.*
 27 *Antitrust Litig.*, 168 F.R.D. 651 (D. Kan. 1996) for the proposition that Rule 30(b)(6) depositions
 28 are a "highly inefficient" method of discovery. In that case, however, there already was
 "voluminous discovery" conducted in the pending litigation and a related case. *Id.* at 654. Given
 Defendants' limited document production, the same rationale does not apply here. Defendants'
 reliance on *Metro. Life Ins. Co. v. Muldoon*, No. 06-2026, 2007 WL 4561142 (D. Kan. Dec. 20,

(Footnote continues on next page.)

1 First, there is no dispute that a Rule 30(b)(6) witness represents the knowledge of the
2 organization, and is not required to have “personal knowledge” of the matter on which he or she
3 is testifying. *JSR Micro, Inc. v. QBE Ins. Corp.*, No. C-09-03044, 2010 U.S. Dist. LEXIS 40185,
4 at *30 (N.D. Cal. Apr. 5, 2010). Therefore, although an organization has a good-faith obligation
5 to designate knowledgeable persons, if necessary the organization must educate its Rule 30(b)(6)
6 designee on the topics for which he or she has been designated, to ensure that the individual is
7 sufficiently prepared. *See Great Am. Ins. Co. of N.Y. v. Vegas Constr. Co.*, 251 F.R.D. 534, 539
8 (D. Nev. 2008); *see also So. Cal. Stroke Rehab. Assocs. v. Nautilus*, No. 09-CV-744, 2010 U.S.
9 Dist. LEXIS 76508, at *3 (S.D. Cal. July 29, 2010). Therefore, Defendants’ focus on the
10 witnesses’ lack of “personal knowledge” to justify Defendants’ failure to identify an appropriate
11 witness is misplaced.

12 Second, “that an organization no longer has a person with knowledge on the designated
13 topics does *not* relieve the organization of the duty to prepare a Rule 30(b)(6) designee.” *Great*
14 *Am. Ins.*, 251 F.R.D. at 539 (emphasis added). While it is not uncommon for an organization to
15 no longer employ individuals who remember distant events, the entity still must prepare its Rule
16 30(b)(6) designee based on “documents, past employees, or other sources.” *Id.*; *see also Hewlett-*
17 *Packard Co. v. Mustek Sys.*, No. 99-CV-351, 2001 U.S. Dist. LEXIS 26331, at *6-*7 (N.D. Cal.
18 June 8, 2001). Even Defendants’ own authority recognizes this principle. *See, e.g., Dravo Corp.*
19 *v. Liberty Mut. Ins. Co.*, 164 F.R.D. 70, 75 (D. Neb. 1995) (“If *no current employee* has sufficient
20 knowledge to provide the requested information, the party *is obligated to prepare* [one or more
21 witnesses] so that they may give complete, knowledgeable and binding answers on behalf of the
22 corporation.”) (emphasis added) (internal quotations omitted). Therefore, the fact that individuals
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24
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26 (Footnote continued from previous page.)

27 2007) similarly is misplaced. In *Muldoon*, the court already had ruled that the information
28 requested was irrelevant. *Id.* In contrast, Plaintiffs seek highly relevant information here.

1 who personally were involved with the relevant issues may have retired from the various agencies
2 does not constitute an appropriate basis to refuse to produce a Rule 30(b)(6) witness.²

3 **B. Defendants' Document Production Cannot Substitute for the Informed**
4 **Deposition Testimony to Which Plaintiffs Are Entitled.**

5 Instead of preparing appropriate witnesses for deposition, as required by the Federal
6 Rules, Defendants seek to rely on their limited document production, claiming that "the
7 information Plaintiffs seek is . . . retained . . . in documents." (Opp'n at 10.)³ There are obvious
8 problems with Defendants' position that their document production should substitute for
9 Rule 30(b)(6) testimony, however.

10 First, Defendants' document production in this case has been *woefully inadequate*, as
11 detailed in Plaintiffs' pending motions and discussed in greater depth below. Defendants have
12 resisted discovery at every turn, have refused to search known, centralized repositories of clearly
13 relevant documents, and have improperly asserted privileges and withheld significant discovery
14 that they now concede should be provided under an appropriate protective order. (*See generally*
15 *Pls.' Reply In Supp. of Mot. To Compel Produc. of Docs.* (Docket No. 160) ("RFP Reply").) It is
16 clear that Defendants' document production cannot substitute for knowledgeable testimony from
17 Defendants' designated witnesses.

18 Second, even if Defendants' document production was adequate, courts disfavor this
19 practice. *See Great Am. Ins.*, 251 F.R.D. at 539 ("[I]n responding to a Rule 30(b)(6) notice . . . [an

20 ² In fact, because it is likely that few individuals with personal knowledge of Defendants'
21 testing programs still are employed by Defendants, Plaintiffs are *forced* to seek relevant
22 deposition testimony from Defendants pursuant to Rule 30(b)(6).

23 ³ It is ironic that Defendants take the position that documents they produced should
24 substitute for Rule 30(b)(6) witnesses given Defendants' production of fewer than 17,000 pages
25 in this case and continued resistance to producing more. In a motion seeking to stay all discovery
26 until May 2012, Defendants also argued that DoD's own investigation regarding chemical test
27 programs, using Battelle (a private contractor), would reveal sufficient information and substitute
28 for their further document production. (Opp'n at 3 ("DoD is currently undertaking a massive
investigation targeting service member testing"); *see also* *Defs.' Mot. for a Protective Order*
Staying Further Disc. (Docket No. 134).) Judge Wilken denied that motion on October 7, 2010,
noting that "[i]t is not apparent that the DoD investigation addresses all the matters subject to
discovery in this case." (*See* Oct. 7, 2010 Order (Docket No. 159) at 3.) Defendants' pattern has
been to expend most of their energy on resisting discovery in an apparent effort to rely on what
they have already done outside of this litigation.

1 organization] may not take the position that its documents state the company’s position.”) The
 2 rationale is simple: because of the “nature” of deposition, where the deponent is under oath to
 3 answer questions in real time, and where the attorney taking the deposition can ask follow-up
 4 questions and observe the witness’s body language, “the deposition process provides a means to
 5 obtain more complete information and is, therefore, favored.” *Id.*

6 Third, the documents at issue in this case are filled with agency-specific jargon (*e.g.*,
 7 Project OFTEN) and technical information that Defendants are in a much better position to
 8 interpret than are Plaintiffs. Moreover, the information contained in the documents that
 9 Defendants have produced often is contradictory. The Project OFTEN documents provided with
 10 the CIA’s initial disclosures are a key case in point. Throughout Defendants’ briefing on the
 11 pending motions to compel, the CIA takes the position that the agency did not sponsor human
 12 testing through Project OFTEN. As Plaintiffs have pointed out, however, Defendants produced
 13 documents contradicting that conclusion, and the DoD testified before Congress that the CIA did
 14 indeed sponsor human testing through Project OFTEN. (*See* RFP Reply at 7-8.) Plaintiffs are
 15 entitled to know each Defendant’s position on the relevant issues, which may not be apparent
 16 from the face of the documents. Plaintiffs’ review of the documents Defendants have produced
 17 simply cannot substitute for educated testimony about relevant matters. Defendants must produce
 18 knowledgeable witnesses to testify about Plaintiffs’ Rule 30(b)(6) deposition topics.⁴

19 **C. Defendants Exaggerate the Scope of Their Discovery Efforts.**

20 As noted above, Defendants seek to rely on the documents they have produced in lieu of
 21 designating Rule 30(b)(6) witnesses. In advancing that position, however, Defendants vastly
 22 overstate the extent to which they have produced relevant documents, as detailed in Plaintiffs’
 23 pending motion to compel (Docket No. 143). As just one example, Defendants greatly
 24

25 ⁴ Defendants claim that the witnesses they have designated on certain topics are “more
 26 than sufficient to provide opportunities to obtain” relevant information. (Opp’n at 12.)
 27 Defendants’ obligation goes beyond “providing opportunities” for Plaintiffs to take discovery
 28 regarding *some* relevant information, however, and the fact that Defendants have designated
 witness for *some* relevant topics does not absolve them of their responsibility for identifying
 appropriate witnesses for others.

1 exaggerate the CIA's participation in discovery. Defendants repeatedly emphasize the "20,000
2 pages" regarding MKULTRA provided to Plaintiffs, but even they admit that these documents
3 were provided "outside of discovery." (Opp'n at 4.) In fact, the CIA's much touted provision of
4 "20,000 pages" is merely a standard FOIA package that the CIA sends to anyone who requests
5 information on MKULTRA. (Decl. of Patricia Cameresi (Docket No. 142-8) at ¶ 6.) These
6 documents are heavily redacted and, because Defendants insisted on providing them outside of
7 discovery, Defendants have avoided updating the classification review or reviewing the
8 longstanding redactions for continued appropriateness.⁵

9 Furthermore, although Defendants insist that Plaintiffs "erroneously assert" that
10 Defendants have not yet searched Edgewood Arsenal (Opp'n at 5), Defendants' positions on this
11 point have been confusing and contradictory. For instance, on July 12, 2010, Defendants
12 proposed to search Edgewood Arsenal in exchange for Plaintiffs' agreement not to serve
13 additional discovery. (Decl. of Caroline Lewis-Wolverton in Supp. of Defs.' Opp'n to Pls.' Mot.
14 to Compel Produc. of Docs. (Docket No. 143-8) at ¶ 10, Ex. E at 1-2.) Assuming that
15 Defendants' proposal was a good-faith effort to negotiate a resolution to the parties' discovery
16 disputes, this proposal suggests that Defendants had not yet searched Edgewood; otherwise this
17 "offer" was nothing more than an offer to do what they already had done or were going to do —
18 tantamount to no offer at all. The confusion about this point underscores the need for
19 Rule 30(b)(6) witnesses to testify regarding Defendants' document search and production. Given
20 Defendants' vague and contradictory representations, Plaintiffs are entitled to know the truth
21 about the scope of Defendants' search and production, once and for all.⁶

22
23
24 ⁵ As Defendants note, the updated classification review of the 1963 CIA Inspector General
report resulted in the production of additional (previously redacted) information. (Opp'n at 23.)

25 ⁶ Defendants' only basis for refusing Rule 30(b)(6) depositions on document collection
26 and production is that they would be premature before the completion of Defendants'
27 productions. (Opp'n at 25.) Defendants cite no authority for this proposition. Regardless,
28 delaying these clearly permissible depositions until the purported completion of Defendants'
document productions could jeopardize Defendants' ability to cure any defect revealed by the
testimony.

1 **D. Defendants Improperly Contest the Relevance of Important Deposition**
 2 **Topics.**

3 Faced with Plaintiffs’ motion to compel, Defendants now have reversed course and
 4 conceded that certain topics to which they have continually objected are, indeed, relevant to the
 5 litigation. (*See, e.g.*, RFP Reply at 2-4.) Nevertheless, Defendants continue to insist that other
 6 topics — or even specific issues within topics they admit are relevant — are not relevant, despite
 7 clear evidence to the contrary.

8 **1. Information about health effects is critical to Plaintiffs’ claims.**

9 Nearly ten months ago, the Court ruled that Defendants’ duty to notify test subjects of
 10 “the effects upon his health or person which may possibly come from his participation in the
 11 experiment” is a core issue in this litigation. (*See* Jan. 19, 2010 Order (Docket No. 59) (“MTD
 12 Order”) at 15; *see also* Army Regulation (“AR”) 70-25, *Use of Volunteers As Subjects of*
 13 *Research* (Mar. 26, 1962).) Moreover, the Court ruled that Defendants’ own regulations require
 14 them to provide medical treatment “for all casualties” of the experiments, even if “symptoms
 15 appear after the experiment ends.” (MTD Order at 16-17.) Defendants’ regulations further
 16 require them to warn test subjects and to provide them with any “newly acquired information that
 17 may affect their well-being . . . even after the individual volunteer has completed his or her
 18 participation in research.” (Second Am. Compl. (Docket No. 53) (“Compl.”) ¶ 17; AR 70-25
 19 (Jan. 25, 1990).) Clearly, the health effects of the test substances are critical to this litigation, a
 20 fact which Defendants finally have acknowledged after months of resistance. (*See* Defs.’ Opp’n
 21 to Pls.’ Mot. to Compel Produc. (Docket No. 143) (“RFP Opp’n”) at 2.) Inexplicably, however,
 22 Defendants continue to insist that they need not designate Rule 30(b)(6) witnesses to testify about
 23 numerous categories of information directly related to the issue of possible health effects. To wit:

24 Topic 17 — Dose and Effects of Substances Administered to Test Subjects: While the
 25 DoD database produced by Defendants reports some dose information, Defendants concede that it
 26 does not contain information regarding the *effects* of the drugs on the test subjects — *i.e.*, the
 27 dose-response relationship. (*See* Decl. of Arnold Dupuy (Docket No. 142-4) at ¶ 3.) As such,
 28

1 even under Defendants' view of the world, their production is insufficient to provide relevant
2 information about health effects. Plaintiffs are entitled to educated testimony on this topic.

3 Topic 34 — Testing From 1975 to Date: Defendants claim that any testing done after
4 1975 is irrelevant to Plaintiffs' claims. (Opp'n at 19.) Not so: as noted above, Defendants have
5 a duty to warn and to provide "newly acquired" information that could affect the test subjects'
6 health. (*See supra* at 6.) Information newly acquired as a result of testing that took place after
7 1975 is, therefore, relevant (at the very least) to Plaintiffs' notice claims under the APA. Such
8 information also is relevant to the health effects that "may possibly come" from exposure to
9 substances used during Defendants' testing programs. (*See* MTD Order at 15.)

10 Topics 36-37 — Use of Patients from VA Medical Facilities: Defendants' knowledge of
11 possible health effects from experiments on VA patients involving the same substances that
12 Defendants used on military test subjects is relevant, at the very least, to whether Defendants have
13 satisfied their duty to provide the "volunteers" with notice of possible health effects. This issue,
14 of course, is fundamental to Plaintiffs' notice claim under the APA.

15 Topics 44-48 — Septal Implants: Plaintiffs allege that Defendants engaged in
16 experiments concerning brain implants at Edgewood and elsewhere, and specifically that
17 Defendants inserted an implant in the brain of one of the Individual Plaintiffs, Bruce Price.
18 (Compl. ¶¶ 33-34, 149.) Although Defendants deny these allegations, they have no basis for
19 refusing to provide a witness to testify as to their knowledge of (and position regarding) this
20 topic. And, as Plaintiffs have informed Defendants, there is evidence that Defendants sponsored
21 brain implant testing through Tulane University. (*See, e.g.*, Defs.' Mot. for Protective Order
22 Limiting Scope of Disc. (Docket No. 140) at 23.)

23 **2. Information concerning Defendants' legal duties is critical to**
24 **Plaintiffs' claims.**

25 Defendants' legal duties with respect to the test subjects, and whether Defendants have
26 fulfilled those legal duties, are at the heart of Plaintiffs' claims under the APA. Incredibly,
27 however, Defendants continue to argue that they need not respond to discovery into topics
28 relating to these duties. For example:

1 Topics 2 and 3 — “Interface” with VA Regarding Test Subject Claims: Defendants have
2 argued in this litigation that it is *the VA*’s responsibility to provide healthcare to veterans who
3 participated in Defendants’ testing programs, and have stated that *the VA* has taken on the
4 responsibility to notify veterans based on information gathered by DoD’s private contractor,
5 Battelle. (*See* Defs.’ Mot. to Dismiss (Docket No. 29) at 3-5.)⁷ Yet, the Court already has ruled
6 that *Defendants* possess that duty. Any failure by Defendants to provide complete or accurate
7 information in response to VA requests in support of veteran healthcare claims obviously would
8 impair the ability of the VA to provide appropriate healthcare to veterans exposed during
9 Defendants’ test programs. Topics 2 and 3 are relevant, and Defendants must produce an
10 educated witness.

11 Topic 54 — Confidential Army Memorandum on the Use of Volunteers in Research:
12 Defendants take the position that they should not be required to produce a knowledgeable witness
13 to testify about the 1953 Confidential Memorandum Item 3247 (Army Directive CS: 385). As
14 alleged in the Complaint, however, this Army Directive is a source of Defendants’ duty under the
15 APA to provide medical care to casualties of Defendants’ experiments. (Compl. ¶ 125 (“Medical
16 treatment and hospitalization *will be provided* for all casualties of the experiments as required.”)
17 (quoting Memorandum) (emphasis added); *see also* MTD Order at 17 (“The fact that symptoms
18 appear after the experiment ends does not obviate the need to provide care.”).) Defendants’
19 refusal to produce a witness to testify about an official Directive underlying the source of a duty
20 grounding Plaintiffs’ APA claims is unsupportable. Unless Defendants are prepared to concede
21 that: (a) the Directive sets forth an enforceable duty under the APA; (b) Defendants have not
22 fulfilled this duty; and (c) Plaintiffs are entitled to an order under the APA requiring Defendants
23 to provide healthcare as required by the Directive, Plaintiffs are entitled to depose a
24 knowledgeable witness on these issues that go to the very heart of Plaintiffs’ claims.

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27 ⁷ Defendants also filed subsequent motions to dismiss Plaintiffs’ amended complaints, in
28 which they made largely the same arguments. (*See* Docket Nos. 34, 57.)

1 **3. Information concerning test subject consent is relevant.**

2 Defendants also finally have conceded that information regarding the test subjects'
3 consent to the testing is relevant. Notwithstanding the fact Defendants raised consent as an
4 affirmative defense in their Answer over six months ago, Defendants assert that they only *now*
5 understand, based on the Court's July 13, 2010 Order, that the issue of consent remains in the
6 case. (RFP Opp'n at 2; *see also* Defs.' Answer to Compl. (Docket No. 71) at 40.) Again,
7 however, Defendants continue to resist designating Rule 30(b)(6) deponents for topics clearly
8 related to this issue. For example, Topic 32 seeks information regarding attempts by test subjects
9 to withdraw their consent or refuse to participate in Defendants' tests. Defendants concede that
10 any information about whether test subjects withdrew or refused consent likely is contained in the
11 records pertaining to the individual "volunteers." (*See, e.g.*, Decl. of Lloyd Roberts (Docket
12 No. 142-3) at ¶ 7.) Defendants, however, *refuse to search those records*. (Opp'n at 16-17; *see*
13 *also* RFP Opp'n at 14.) Defendants' untenable position, then, is that this relevant information
14 simply *should go undiscovered*. Defendants cannot justify such an inequitable result, and
15 Plaintiffs' are entitled to knowledgeable testimony on this topic.

16 **4. Information regarding the CIA's participation in the test programs is**
17 **relevant.**

18 Defendants continue to insist that participation by the CIA in the discovery process should
19 be limited (if not eliminated altogether) based on the CIA's self-serving "conclusion" that it did
20 not participate in human testing on military servicemembers. (Opp'n at 14.) Even the limited
21 documents produced by the CIA in this litigation to date cast doubt on this "conclusion,"
22 however, and in fact, the DoD — the CIA's co-defendant in this litigation — concluded that the
23 CIA *did indeed* sponsor drug testing on military personnel. (*See* RFP Reply at 7-8; Pls.' Opp'n to
24 Defs.' Mot. for Protective Order (Docket No. 157) at 10-11.) Plaintiffs are entitled to test this
25 issue through deposition, at the very least to explore these contradictions. For example:

26 Topics 10, 11, and 52 — the 1963 CIA Inspector General Report: Plaintiffs are entitled to
27 testimony regarding this document, which is an important source of information regarding the
28

1 CIA's participation in human testing programs — particularly given Defendants' repeated
2 attempts to rely on the CIA's "conclusions" in lieu of participating in discovery.

3 Topics 20, 22, 23, and 24 — Third Party Contracts and Cut-Outs: Defendants' argument
4 that the "nature of the [CIA's] contractual relationships simply has no bearing on whether *DoD*
5 must provide healthcare and/or notice to plaintiffs" (Opp'n at 18 (emphasis added)), badly
6 misconstrues the state of the record in this case. In denying Defendants' motion to dismiss, Judge
7 Wilken held that *the CIA* (as well as the DoD) has a duty to warn test subjects. (MTD Order
8 at 15-16.) The CIA's involvement in the testing programs, whether directly or through various
9 contractual intermediaries, is relevant to Plaintiffs' claims about *the CIA's* responsibility to
10 provide notice to the test participants. Although Defendants apparently would prefer to proceed
11 as if the Court did not permit the claims against the CIA to go forward, Plaintiffs are entitled to
12 depose one or more knowledgeable CIA witness(es) on these topics.

13 Topics 50 and 51 — Application of MKULTRA Materials and Tests by Dr. Paul Hoch:
14 Defendants have conceded that information concerning the health effects of substances used in
15 their experiments are relevant to this litigation. (*See supra* at 6.) As such, to the extent that the
16 CIA's MKULTRA projects involved the use on humans of substances also tested as part of
17 Defendants' testing programs, information about those projects is relevant and discoverable.
18 Accordingly, Defendants' assertion that the time is not right to evaluate their invocation of the
19 state secrets privilege is without merit. (*See Opp'n* at 21-22.) Because Defendants have not
20 properly asserted that privilege, they must produce one or more knowledgeable witnesses on this
21 topic. Furthermore, even were the CIA not directly involved in the test programs, its roles in
22 financing, procuring, field testing, and sponsoring private research provides a more-than-ample
23 basis for discovery and liability. (*See Mot.* at 5.)

24 **5. Defendants must provide Rule 30(b)(6) witnesses to testify regarding**
25 **their document search and production efforts.**

26 Defendants' concerted resistance to conducting searches and producing documents in this
27 litigation highlight the critical importance of testimony to delineate precisely what they have and
28 have not done. Such testimony will be key for Plaintiffs to understand, for example, which

1 document repositories already have been searched for relevant information, and to tailor future
2 discovery requests accordingly.

3 Moreover, in response to Plaintiffs' motions, the Army and the DoD claim that they are
4 conducting "continuing" or "ongoing" searches for documents. (*See, e.g.*, RFP Opp'n at 17.)
5 The precise scope of these searches, or why they were not performed earlier, is unclear. The CIA,
6 on the other hand, claims that it has "provided to Plaintiffs the full range of documents it has
7 collected" in connection with Congressional investigations over the years. (Opp'n at 16.) Given
8 the CIA's production of only one collection of documents (fewer than 200 pages) related to
9 Project OFTEN as part of Defendants' initial disclosures, this position hardly is credible.⁸ In any
10 event, Plaintiffs are entitled to deposition testimony regarding the scope and content of
11 Defendants' searches to date. Furthermore, Topic 14 seeks testimony regarding the scope and
12 conduct of Defendants' document searches in connection with various Congressional
13 investigations, which Plaintiffs are entitled to test through deposition — particularly given
14 Defendants' repeated contention that they should be permitted to rely on these searches in lieu of
15 further discovery.

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26 ⁸ Even assuming this were true (and there is ample reason *not* to), Defendants' position
27 that the CIA has produced the "full range" of relevant documents undercuts Defendants'
28 concurrent argument that depositions regarding document search and production efforts should
not go forward now because their searches are not complete.

1 **III. CONCLUSION**

2 For the foregoing reasons, Plaintiffs respectfully request that the Court overrule
3 Defendants' objections and compel Defendants to: (1) designate knowledgeable witnesses who
4 can testify on Topics 2-3, 10-11, 14, 17, 20, 22-24, 32, 34, 36-37, 44-48, 50-52, and 54 of
5 Plaintiffs' November 16, 2009 30(b)(6) Notice; and (2) designate knowledgeable witnesses from
6 the DoA, DoD, and CIA who can testify on the topics in Plaintiffs' June 16, 2010 Rule 30(b)(6)
7 Notices.

8 Dated: October 13, 2010

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Responses and Replies

[4:09-cv-00037-CW Vietnam Veterans of America et al v. Central Intelligence Agency et al](#)

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U.S. District Court
Northern District of California
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The following transaction was received from by Erspamer, Gordon entered on 10/13/2010 4:16 PM and filed on 10/13/2010

Case Name: Vietnam Veterans of America et al v. Central Intelligence Agency et al

Case Number: [4:09-cv-00037-CW](#)

Filer: Swords to Plowshares
Veterans Rights Organization
Vietnam Veterans of America
Bruce Price
Franklin D. Rochelle
Larry Meirow
Eric P. Muth
David C. Dufrane
Wray C. Forrest

Document Number: [162](#)

Docket Text:

[Reply Memorandum re \[125\] MOTION to Overrule Objections and Compel 30\(b\)\(6\) Depositions MOTION to Overrule Objections and Compel 30\(b\)\(6\) Depositions filed by David C. Dufrane, Wray C. Forrest, Larry Meirow, Eric P. Muth, Bruce Price, Franklin D. Rochelle, Swords to Plowshares, Veterans Rights Organization, Vietnam Veterans of America. \(Erspamer, Gordon\) \(Filed on 10/13/2010\)](#)

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

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4:09-cv-00037-CW Please see [General Order 45 Section IX C.2 and D](#); Notice has NOT been electronically mailed to:

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

CMECF.widgit.ProcessingWindowDestroy() RONG>Document description:Main Document

Original filename:C:\Documents and Settings\keb1\Desktop\10-13-10

Filings\Plaintiffs__Reply_ISO_Mot_to_OVERRULE_Objections_and_Compel_30_b__6__Depositions.pd

Electronic document Stamp:

[STAMP CANDStamp_ID=977336130 [Date=10/13/2010] [FileNumber=6808480-0]

[529d9b608c594a911b4f3a51ed8d69ce27ab98370b76c4e163eb2523bcafb43042d3

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