

Exhibit D

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Confidential

Via U.S. Mail and E-Mail

Caroline Lewis Wolverton
Civil Division, Federal Programs Branch
U.S. Dept. of Justice
P.O. Box 883
Washington D.C. 2044

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

Dear Ms. Wolverton:

I write regarding Defendants' Amended Response to Plaintiffs' Interrogatories, served on August 12, 2010. In composing this Response, Defendants appear to have ignored the Court's Order of July 13, 2010 (the "Order"). In the Order, Judge Larson found that Plaintiffs' interrogatories were relevant to the litigation and that Defendants' initial responses were inadequate, overruled their objections, and compelled Defendants to provide adequate responses. Rather than comply with the Order, however, Defendants have merely made minor alterations to refer Plaintiffs to various ranges of Defendants' inadequate document production. These "amended" responses are inadequate, improper, and in direct contravention of Judge Larson's Order. If Defendants refuse to provide actual, substantive answers, Plaintiffs will seek further relief from the Court.

Defendants once again have objected to nearly all of Plaintiffs' interrogatories as "overly broad and not reasonably calculated to lead to the discovery of admissible evidence." Defendants also incorporated by reference a number of other general objections concerning the scope of Plaintiffs' interrogatories. These objections are not new — they have been raised *and rejected* before. In the Order, Judge Larson reached a different conclusion about these *same* interrogatories, stating that "the interrogatories at issue relate to claims which still remain after [Judge Wilken's] January 19, 2010 order." (Order at 5.)

For example, Judge Larson specifically rejected Defendants' contention that Interrogatory 12 is beyond the scope of this case. (Order at 5.) Yet, Defendants' objections

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to this Interrogatory (numbered as Interrogatory 7 in the Response) are substantially similar to those served prior to the Order. As before, Defendants again object that the Interrogatory is “overly broad, irrelevant to the claims remaining in this action, and not reasonably calculated to lead to the discovery of admissible evidence.” Defendants’ actual response also remains unchanged. Rather than providing a substantive answer, Defendants simply state that the Department of Defense has produced documents responsive to Plaintiffs’ Request for Production # 73, and that the CIA and Department of Justice have not even looked for information regarding this interrogatory. This “response” is utterly inadequate and stands in blatant disregard of the Court’s Order.

Moreover, merely directing Plaintiffs to review portions of Defendants’ inadequate document production in lieu of providing actual answers to interrogatories is improper and unresponsive. Rule 33 provides that each interrogatory must “be answered separately and fully in writing under oath.” Fed. R. Civ. Pr. 33(b)(3). As such, “it is technically improper and unresponsive for an answer to an interrogatory to refer to outside material.” *Equal Rights Center v. Post Properties, Inc.*, 246 F.R.D. 29, 35 (D.D.C. 2007); *see also Williams v. Sprint/United Mgmt. Co.*, 235 F.R.D. 494, 501 (D. Kan. 2006) (holding that party is not permitted to answer interrogatory by generically referring to documents produced). Nevertheless, Defendants frequently refer Plaintiffs to their document production instead of answering the interrogatories. For example, in response to Interrogatory 22 (numbered as Interrogatory 14 in the Response), Defendants provide only a one-sentence summary of the Department of Defense’s purported records, and then direct Plaintiffs to see documents produced responsive to Request for Production # 73.

These are but examples of Defendants’ significant non-compliance with their legal obligations in responding to Plaintiffs’ interrogatories and with the Court’s Order. Defendants have made only slight changes to a handful of responses, and merely refer Plaintiffs to generic ranges of documents; the rest of the responses are precisely the same as they were in the first response served on June 29, 2010 — prior to the Order finding them inadequate. The Court found those responses inadequate then, and they remain inadequate now despite two opportunities to comply. Plaintiffs accordingly request that you amend Defendants’ responses at once to provide answers to each of Plaintiffs’ interrogatories. If you refuse to do so, Plaintiffs will again move the Court for relief, including sanctions.

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Please let me know whether you will agree to supplement your answers a third time; barring that, we will proceed with yet another discovery motion. I am of course available to discuss this on the phone next week if you are available and want to schedule a time. Thank you.

Sincerely,

/s/

Gordon P. Erspamer

cc: Kimberly L. Herb, Esq. (by e-mail)