

1 GORDON P. ERSPAMER (CA SBN 83364)
 Gerspamer@mofo.com
 2 EUGENE ILLOVSKY (CA SBN 117892)
 EIllovsky@mofo.com
 3 STACEY M. SPRENKEL (CA SBN 241689)
 SSprenkel@mofo.com
 4 MORRISON & FOERSTER LLP
 425 Market Street
 5 San Francisco, California 94105-2482
 Telephone: 415.268.7000
 6 Facsimile: 415.268.7522

7 Attorneys for Plaintiffs Vietnam Veterans of America; Swords to
 Plowshares; Veterans Rights Organization; Bruce Price; Franklin
 8 D. Rochelle; Larry Meirov; Eric P. Muth; David C. Dufrane;
 9 Wray C. Forrest; Tim Michael Josephs; and William Blazinski

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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

VIETNAM VETERANS OF AMERICA, *et al.*,
 Plaintiffs,
 v.
 CENTRAL INTELLIGENCE AGENCY, *et al.*,
 Defendants.

Case No. CV 09-0037-CW

**PLAINTIFFS' NOTICE OF MOTION
 AND MOTION TO COMPEL
 DISCOVERY FROM DEFENDANT
 DEPARTMENT OF VETERANS
 AFFAIRS**

Hearing Date: August 23, 2012
 Time: 9:00 a.m.
 Courtroom: F, 15th Floor
 Judge: Hon. Jacqueline Scott Corley

Complaint filed January 7, 2009

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 23, 2012, at 9:00 a.m., before U.S. Magistrate Judge Jacqueline Scott Corley, at the United States District Courthouse, San Francisco, California, Plaintiffs, Vietnam Veterans of America; Bruce Price; Franklin D. Rochelle; Larry Meirow; Eric P. Muth; David C. Dufrane; Wray C. Forrest; Tim Michael Josephs; and William Blazinski (“Plaintiffs”), will and hereby do move the Court for an order compelling Defendant United States Department of Veterans Affairs to produce discovery as specified in the attached Motion to Compel Discovery.

This Motion to Compel Discovery is based on this Notice of Motion, the Memorandum of Points and Authorities filed herewith, the Declaration of Ben Patterson, attached exhibits filed herewith, all other pleadings and matters of record, and such further oral and documentary evidence as may be presented at or before the hearing on this motion. Counsel for Plaintiffs certify that, prior to filing this motion, they in good faith conferred with Defendants’ counsel in an effort to resolve these matters without court action, as required by Federal Rule of Civil Procedure 37(a) and Civil Local Rule 37-1.

MEMORANDUM OF POINTS AND AUTHORITIES

1
2 Plaintiffs once again respectfully seek the Court's intervention to resolve a dispute
3 concerning Defendant Department of Veterans Affairs' ("DVA") assertion of the deliberative
4 process privilege. In light of the numerous prior filings and the Court's prior Orders concerning
5 this topic (*see, e.g.*, Docket Nos. 327, 336, 423, 430, 443), Plaintiffs will be brief.

6 By letter dated June 28, 2012, DVA provided a new privilege log, identifying eight new
7 documents being withheld or redacted under claims of the deliberative process privilege.
8 (Declaration of Ben Patterson ("Patterson Decl.") ¶ 2, Ex. A.) Based on the descriptions in the
9 privilege log, these documents appear to fall into the same categories as documents the Court has
10 previously ordered produced over DVA's assertions of the qualified deliberative process
11 privilege. The parties met-and-conferred regarding this topic by letters dated July 5, 2012 and
12 July 6, 2012, and agreed today by telephone that they are at an impasse.¹ (Patterson Decl. ¶¶ 3-4,
13 Ex. B.)

14 In light of the Court's findings following previous *in camera* reviews, Plaintiffs question
15 whether the new documents being withheld or redacted are in fact deliberative and predecisional.
16 (*See, e.g.*, Docket No. 423 at 7 ("Defendant's redactions are not deliberative, but strategic. . .");
17 Docket No. 430 at 4 ("Defendant has identified either the September 12, 2006 Training Letter or
18 the June 30, 2006 final notification letter as the decisional document; however, there are several
19 documents within these categories which *post-date* the final notification letter and the training
20 letter".))

21 Furthermore, based on the descriptions, Plaintiffs have a substantial need for these
22 documents for the same reasons articulated in prior filings, which Plaintiffs incorporate by
23 reference. (*See, e.g.*, Docket Nos. 404 at 7-13; 447 at 4-6.) For example, several of the
24 documents pertain to "verification guidance" and procedures for "verifying" exposure. (Patterson

25 ¹ In consideration of Defendants' counsel's schedule, Plaintiffs agree to allow Defendants
26 the full 14 days for their opposition, declaration, and simultaneous submittal of these documents
27 to the Court. Because of the current case schedule (Docket No. 418), however, should the Court
28 deem oral argument prudent, Plaintiffs respectfully request that the hearing be scheduled for
earlier than August 23. Plaintiffs intend to file their reply (if any) by July 30.

1 Decl. ¶ 2, Ex. A at 1.) As explained in prior filings, Plaintiffs have a substantial need for these
2 documents because the “verification” process determines who is sent an outreach letter and whose
3 claims are denied from inception for lack of verifying participation. (*See, e.g.*, Docket Nos. 300
4 at 2; 307 at 4.) Accordingly, these documents would be relevant to not only the DVA bias claim,
5 but also the claims against the other Defendants related to Notice. In addition, these documents
6 appear to have been collected during supplemental searches from custodian, Allegra Long. In
7 comparison to other custodians, DVA has not produced or logged as many documents from
8 Ms. Long, and therefore, it seems even more likely that these recently found documents will
9 contain entirely new information.

10 **CONCLUSION**

11 In light of the Court’s prior Orders, Plaintiffs respectfully ask the Court to compel DVA to
12 produce the documents withheld under assertion of deliberative process privilege on DVA’s
13 June 28, 2012 Privilege Log.

14 Dated: July 13, 2012

GORDON P. ERSPAMER
EUGENE ILLOVSKY
STACEY M. SPRENKEL

MORRISON & FOERSTER LLP

18 By: /s/ Gordon P. Erspamer
19 Gordon P. Erspamer
[Gerspamer@mofo.com]

20 Attorneys for Plaintiffs