

1 JAMES P. BENNETT (CA SBN 65179)
 JBennett@mofo.com
 2 STACEY M. SPRENKEL (CA SBN 241689)
 SSprenkel@mofo.com
 3 BEN PATTERSON (CA SBN 268696)
 BPatterson@mofo.com
 4 GRANT C. SCHRADER (CA SBN 273498)
 GSchrader@mofo.com
 5 MORRISON & FOERSTER LLP
 425 Market Street
 6 San Francisco, California 94105-2482
 Telephone: 415.268.7000
 7 Facsimile: 415.268.7522

8 Attorneys for Plaintiffs
 Vietnam Veterans of America; Swords to
 9 Plowshares; Veterans Rights Organization;
 Bruce Price; Franklin D. Rochelle; Larry
 10 Meirrow; Eric P. Muth; David C. Dufrane;
 Kathryn McMillan -Forrest; Tim Michael
 11 Josephs; and William Blazinski

12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA
 14 OAKLAND DIVISION

16 VIETNAM VETERANS OF AMERICA *et al.*,
 17 Plaintiffs,
 18 v.
 19 CENTRAL INTELLIGENCE AGENCY
 20 *et al.*,
 21 Defendants.

Case No. CV 09-0037-CW
**[PROPOSED] INJUNCTION
 PURSUANT TO THE COURT'S
 FEBRUARY 8, 2016 ORDER**
 Complaint filed January 7, 2009

[PROPOSED] INJUNCTION REGARDING MEDICAL CARE

1
2 WHEREAS, this Court has certified a class of individuals who, while serving in the armed
3 forces, were test subjects in any testing program in which humans were exposed to a chemical or
4 biological substance for the purpose of studying or observing the effects of such exposure;

5 WHEREAS, those test subjects were exposed to or participated in experiments involving
6 such chemical and biological substances as sarin, VX, BZ, mustard gas, LSD, tularemia, and
7 Q-Fever;

8 WHEREAS, test subjects have various health ailments including Post-Traumatic Stress
9 Disorder (PTSD), Hallucinogen Persisting Perception Disorder, neurological diseases, sleep
10 disorders, and skin scarring, among others;

11 WHEREAS, this Court and the Ninth Circuit Court of Appeals has held that
12 Army Regulation 70-25 (“AR 70-25”) legally requires the Defendant Department of the Army
13 (the “Army”) to provide class members with medical care, not only during the course of the
14 experiment but also after the experiment has ended;

15 WHEREAS, by promulgating AR 70-25, the Army undertook to provide medical care,
16 medical follow up and tracking to test subjects;

17 WHEREAS, the Army has for decades failed to comply with those regulation
18 requirements and thereby, unlawfully withheld medical care;

19 WHEREAS, since the time that the Army contends the testing programs concluded in
20 1975, the Army has admittedly failed to provide medical care pursuant to AR 70-25, and also
21 failed to track and monitor test subjects and failed to develop a registry database for medical
22 follow-up as required by AR 70-25, thereby making causation determinations unfairly difficult
23 for class members in need of medical care;

24 WHEREAS, sitting as a court of equity in this certified class action when formulating this
25 injunction, the Court hereby intends to provide effective relief to the class members who have
26 been unlawfully denied medical care and the other intended benefits of AR 70-25 over the course
27 of decades, and good cause appearing therefor.
28

1 IT IS HEREBY ORDERED that Defendant Department of the Army is enjoined as
2 follows:

3 1. This injunction pertains only to individuals who, while serving in the armed
4 forces, were test subjects in any testing program in which humans were exposed to a chemical or
5 biological substance for the purpose of studying or observing the effects of such exposure, that
6 was sponsored, overseen, directed, funded, and/or conducted by the Department of the Army.

7 2. Forthwith, the Army shall provide at the Army's expense such test subjects with
8 medical care in accordance with its obligations under AR 70-25. In adjudging this standard, the
9 Court reiterates that the Army has allowed a significant lapse of time to occur between its testing
10 programs and its provision of medical care pursuant to AR 70-25, and that the Army has failed to
11 track and monitor test subjects and to develop a registry database for medical follow-up as
12 required by AR 70-25. Test subjects who are diagnosed with or present with a medical condition,
13 such as, but not limited to, PTSD, Hallucinogen Persisting Perception Disorder, neurological
14 disorders associated with chemical exposure, sleep disorders, skin scarring, or any other injuries,
15 ailments, or diseases diagnosed as or plausibly associated with participation in the testing
16 programs shall be provided with medical treatment forthwith.

17 3. The Court is appointing a Special Master to ensure the Army does not continue to
18 unlawfully withhold medical treatment that it is obligated to provide under AR 70-25 to test
19 subjects. The Army will be responsible for paying a reasonable hourly rate for this Special
20 Master.

21 4. Within thirty (30) days of the date of entry of this Injunction (the "Entry Date"),
22 the Army shall file with the Court a report:

- 23 a. describing the plans and policies it has developed and any research undertaken in
24 order to provide medical treatment to test subjects, and to notify test subjects of
25 these plans and policies, including any medical follow-up planned to detect
26 long-range problems resulting from participation in research;
- 27 b. describing the efforts it will undertake to study and collect data regarding test
28 subjects' health conditions, and to create a registry of such information;

- 1 c. describing the treatment procedures and protocols developed for the provision of
2 treatment to test subjects, including timelines and deadlines for eligibility
3 determinations and the facilities that will be designated for providing care to
4 ensure that treatment and examinations can be conveniently accessed by class
5 members and care kept reasonably available;
- 6 d. providing class notice communication templates and a class notification plan, for
7 Court approval pursuant to Federal Rule of Civil Procedure 23(c), to inform the
8 class members of this Injunction, the Army's duty to provide medical care to test
9 subjects pursuant to AR 70-25, and the method for applying for such treatment,
10 including the methods to be used for notification which may include direct mail,
11 online notice, and publication notice; and
- 12 e. describing the method that will be used to facilitate test subjects applying for
13 medical treatment and obtaining medical care expeditiously.

14 5. After this initial report, the Army shall file status reports every three months to
15 update the Court and the Special Master on the implementation of these plans, policies, and
16 procedures. These reports shall include at minimum the following information: how many test
17 subjects have applied for medical care, how many test subjects have had their applications
18 granted, how many test subjects have been provided with medical care, how many test subjects
19 have been denied care, the reasons for any individual denials of medical care, the treatment
20 facility locations being made available for care, and the frequency of visits to those facilities by
21 test subjects.

22 6. After the class notice is distributed at the Army's expense, the Army shall provide
23 all test subjects, who come forward requesting it, with physical and mental medical examinations,
24 and shall conduct an interview to record the test subject's medical history to be used in compiling
25 a test subject registry ("Registry") in compliance with the provisions of AR 70-25 and making
26 eligibility determinations for medical care. The Army shall begin providing these medical
27 examinations, according to the procedures adopted, no later than 60 days after the class notice has
28 been published.

1 7. If the Army takes longer than 45 days to decide a test subject's request for medical
2 care, the test subject may immediately apply for relief from the Special Master, to require an
3 expeditious decision on the application. For any test subject who requests medical care from the
4 Army pursuant to this Injunction but is denied such care, the Army shall inform that test subject
5 that they may appeal the denial of care to the Special Master.

6 a. During this appeal process, the Army shall provide the Special Master and the
7 appealing test subject, within thirty (30) days of the appeal being submitted, with
8 all information it possesses concerning the test subject, subject to and in
9 compliance with the requirements of the Health Insurance Portability and
10 Accountability Act ("HIPAA") and Privacy Act. This information shall include
11 their testing records, medical records, all papers related to the application and
12 denial decision, and any information concerning the health effects of the relevant
13 substances, including information in the Registry, information retrieved as part of
14 the Army's compliance with the Court's November 19, 2013 Injunction (ECF
15 No. 545), and/or information available in the Chem-Bio Database, the Mustard
16 Gas Database, the Chemical, Biological, Radiological & Nuclear Defense
17 Information Analysis Center ("CBRNIAC") Database and other related databases
18 created in conjunction with Battelle Memorial Institute, and the Defense Technical
19 Information Center ("DTIC") repository.

20 b. If the Special Master reverses the Army's denial of care decision, that decision by
21 the Special Master will be final, and the Army shall provide the test subject with
22 medical treatment forthwith.

23 c. This Court will also monitor the Army's compliance with this Injunction.

24 8. This injunction shall have no bearing and has no effect on the provision of care or
25 benefits independently performed by the Department of Veterans Affairs ("DVA") under its own
26 statutory and regulatory requirements. Although at the class member's election the Army should
27 provide referrals to DVA facilities and/or private physicians for free medical care, a class
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1 member’s participation in seeking relief under this Injunction shall have no adverse impact on
2 their DVA provided care, benefits, or compensation.

3 9. The Court retains jurisdiction to enforce the terms of this Injunction and Order.

4 **IT IS SO ORDERED AND ADJUDGED.**

5 Dated: _____

6 _____
7 The Honorable Claudia Wilken,
8 District Judge, Northern District of
9 California

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