

1 GORDON P. ERSPAMER (CA SBN 83364)  
 Gerspamer@mofo.com  
 2 TIMOTHY W. BLAKELY (CA SBN 242178)  
 TBlakely@mofo.com  
 3 ADRIANO HRVATIN (CA SBN 220909)  
 AHrvatn@mofo.com  
 4 STACEY M. SPRENKEL (CA SBN 241689)  
 SSprenkel@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 Plowshares;  
 9 Veterans Rights Organization; Bruce Price; Franklin D.  
 Rochelle; Larry Meirow; Eric P. Muth; David C. Dufrane;  
 10 and Wray C. Forrest

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

15 VIETNAM VETERANS OF AMERICA, a Non-Profit  
 Corporation; SWORDS TO PLOWSHARES:  
 16 VETERANS RIGHTS ORGANIZATION, a California  
 Non-Profit Corporation; BRUCE PRICE; FRANKLIN  
 17 D. ROCHELLE; LARRY MEIROW; ERIC P. MUTH;  
 DAVID C. DUFRANE; and WRAY C. FORREST,  
 18 individually, on behalf of themselves and all others  
 similarly situated,

19 Plaintiffs,

20 v.

21 CENTRAL INTELLIGENCE AGENCY; LEON  
 PANETTA, Director of the Central Intelligence  
 22 Agency; UNITED STATES DEPARTMENT OF  
 DEFENSE; DR. ROBERT M. GATES, Secretary of  
 23 Defense; UNITED STATES DEPARTMENT OF THE  
 ARMY; PETE GEREN, United States Secretary of the  
 24 Army; UNITED STATES OF AMERICA; and ERIC  
 25 H. HOLDER, JR., Attorney General of the United  
 States,

26 Defendants.

Case No. CV 09-0037-CW

**FIRST AMENDED COMPLAINT  
 FOR DECLARATORY AND  
 INJUNCTIVE RELIEF UNDER  
 UNITED STATES  
 CONSTITUTION AND FEDERAL  
 STATUTES**

(Class Action)

1 **I. INTRODUCTION**

2 “When we assumed the soldier, we did not lay aside the citizen.” — George Washington.

3 **A. The Plight of the “Volunteers”**

4 1. This action chronicles a chilling tale of human experimentation, covert military  
5 operations, and heretofore unchecked abuses of power by our own government. Ironically, one of  
6 the main facilitating events for this debacle was action by a court. In 1950, during the height of  
7 the Cold War, the U.S. Supreme Court issued its decision in *Feres v. United States*, 340 U.S. 135  
8 (1950) (hereafter, “*Feres*”), which in effect ruled that the government is immune from damages  
9 claims brought by Armed Forces personnel arising from DEFENDANTS’ own torts. The  
10 Supreme Court’s decision to absolve DEFENDANTS of legal responsibility for damages caused  
11 by the tortious acts committed by the government upon our nation’s military personnel quickly  
12 led DEFENDANTS to undertake an expansive, multi-faceted program of secret experimentation  
13 on human subjects, diverting our own troops from military assignments for use as test subjects.  
14 In virtually all cases, troops served in the same capacity as laboratory rats or guinea pigs.  
15 DEFENDANTS were able to capitalize on the inherently coercive relationship of a soldier’s  
16 commanding officers to their soldiers, as military orders can be enforced by a strong set of formal  
17 and informal sanctions or punishment.

18 2. In 1942, the War Department — the present day Department of Defense  
19 (“DOD”) — authorized the first experiment on military personnel which used mustard gas, and  
20 various additional experiments were conducted during and following World War II. Beginning in  
21 the early 1950s, the human experiment program was greatly expanded, as the Central Intelligence  
22 Agency (“CIA”) and United States Army planned, organized and executed an extensive series of  
23 experiments involving potential chemical and biological weapons. The CIA also sponsored  
24 human drug experimentation by the Federal Bureau of Narcotics (“FBN”), now the Drug  
25 Enforcement Administration (“DEA”). This vast program of human experimentation —  
26 shrouded in secrecy — was centered at the Army’s compounds at Edgewood Arsenal and Fort  
27 Detrick, Maryland. The human experimentation was conducted without the informed consent of  
28 its subjects and in direct contravention of applicable legal standards and principles of

1 international law. Representatives of DEFENDANTS had also, on many occasions, promised the  
2 test participants (“volunteers”) that they would receive medals for volunteering, as well as health  
3 care, but they instead abandoned Plaintiffs and the other participants, hiding behind the insulating  
4 walls of government bureaucracies and security classifications. Indeed, DEFENDANTS actively  
5 concealed the existence of the human experimentation tests and the test results from the outside  
6 world, and destroyed most of the documentation of the tests once their existence began to leak.  
7 As a result, Plaintiffs and the other service personnel, many of whom are debilitated, have been  
8 left to fight their demons alone for decades without health monitoring, follow-up, or medical  
9 treatment from DEFENDANTS. Instead, DEFENDANTS’ tactic and strategy have been to  
10 ignore the victims and delay action with the expectation that their problems will disappear as the  
11 victim population ages and dies.

12 3. DEFENDANTS’ human experimentation program was far-ranging and had many  
13 purposes, including by way of example the following:

14 a. To develop non-lethal but incapacitating agents that could be disseminated  
15 by airplanes in all environments;

16 b. To explore what levels of various chemicals would produce casualties (the  
17 so-called “man-break” tests);

18 c. To research techniques to impose control over the will of an individual,  
19 including neuron-surgery, electric shock, drugs, and hypnosis;

20 d. To design and test septal electrodes that would enable DEFENDANTS  
21 directly to control human behavior;

22 e. To produce a “knockout” pill that could surreptitiously be dropped into  
23 drinks or added into food;

24 f. To develop a substance that could produce “pure euphoria” with no  
25 subsequent let-down;

26 g. To derive an undetectable substance that would lower the ambition and  
27 general working efficiency of humans;

28

1           h.       To develop a substance that would cause mental confusion and make it  
2 more difficult to fabricate answers under questioning;

3           i.       To create a substance that would alter personality structure and induce  
4 dependency on another person;

5           j.       To develop a substance that would promote weakness or temporarily  
6 compromise hearing or eyesight;

7           k.       To perfect a substance that could be administered surreptitiously, which  
8 would prevent someone from performing any physical activity;

9           l.       To identify a substance that would promote illogical thinking or  
10 impulsiveness;

11          m.       To develop a substance that would increase, prevent or counteract the  
12 intoxicating effects of alcohol;

13          n.       To create materials that would facilitate the induction of hypnosis or  
14 enhance its usefulness;

15          o.       To identify substances that would enhance an individual's ability to  
16 withstand torture, privation, interrogation or brain-washing;

17          p.       To derive substances that would produce physical disablement, paralysis,  
18 or acute anemia; and

19          q.       To find a substance capable of producing extended periods of shock, mania  
20 and stress, and confusion or amnesia.

21 In short, under this program of human experimentation, the roles of military doctors were  
22 reversed from healing to purposely exposing their patients to harm in violation of their  
23 Hippocratic oaths.

24           4.       DEFENDANTS used at least 7,800 armed services personnel in the  
25 experimentation program at the Edgewood Arsenal alone, the vast majority of which were troops  
26 from the Army, although troops from the Air Force and Marines also were used. DEFENDANTS  
27 used code names to refer to the substances administered to soldiers, and the true identities, doses,  
28 and properties of at least 250, but as many as 400, chemical and biological agents administered to

1 soldiers at the Edgewood Arsenal, or to other “volunteers” under contract to the Edgewood  
2 Arsenal, were not disclosed. For example, in 1970, DEFENDANTS provided Congress with an  
3 alphabetical list showing that they had tested 145 drugs during Projects Bluebird, Artichoke,  
4 MKULTRA and MKDELTA. Among the broader group of substances or agents tested were the  
5 following:

6       • **amphetamines**;

7       • **anticholinesterase chemicals** such as the “reversible” inhibitors physostigmine  
8 (eserine), tacrine, and mylaxen; and more lethal nerve agents such as VX (Edgewood Arsenal  
9 designation EA 1701) (a V-series agent developed in England in the early 1950s that is one of the  
10 most deadly chemicals known to man) and sarin (military designation GB; EA 1208), tabun (GA;  
11 EA 1205) and soman (GD; EA 1210) (G-series nerve agents, all of which were developed in  
12 Germany in the 1930s and 1940s), and other lethal compounds such as cyanide;

13       • **anticholinergic drugs** such as atropine, scopolamine and nonlethal, though  
14 potentially harmful, incapacitating agents such as BZ (EA 2277), CAR302,688, and other  
15 glycolate compounds such as EA 3580;

16       • **barbiturates** such as secobarbital;

17       • **biochemicals** such as thiols, hydrogenated quinolines, and indole alkaloids;

18       • **cholinesterase reactivators**, such as the pralidoxime chloride (2-PAM or  
19 EA 2170) and its methyl methanesulfonate derivate P2S, toxogonin (EA 3475) and TMB-4  
20 (EA 1814) (all of which are oximes);

21       • **irritants** such as chloropicrin (PS), the riot control agents brombenzyl cyanide  
22 (CA), *o*-chlorobenzylidene malononitrile (CS or EA 1779), chloroacetophenone (CN or Mace),  
23 nonanoyl morpholide (EA 1778) and disphenylaminochlorasine (DM, an arsenic, or Adamsite);  
24 and vesicants (blister agents) such as mustard gas (H) and mustard agents, and Lewisite;

25       • **narcotic antagonists** such as N-Allil Murmorphine and other drugs to counteract  
26 the effects of morphine, methadone, and other narcotics;

27       • **nettle agents** such as phosgene, also known as dichloroformoxime or CX, a highly  
28 toxic, irritating, and corrosive gas that was first used as a chemical weapon during World War I;

1           • **psychochemicals** such as LSD and its analogues, phencyclidine (SNA or Sernyl,  
2 also known as PCP) (commonly referred to using the code name “L-Fields” or “K-Agents”), THC  
3 and synthetic analogs of cannabis (about 50 times the then street strength of marijuana) such as  
4 dimethylheptylpran (DMHP or EA 1476) and its acetate form EA 2233; and mescaline and  
5 mescaline derivatives; and

6           • **tranquilizers** such as valium, trilafof, and thorazine.

7           5. DEFENDANTS videotaped many of the experiments involving “volunteers” at  
8 Edgewood, as evidenced by releases signed by many of the “volunteers.”

9           6. Varying doses of each substance were administered to the “volunteers,” typically  
10 through multiple pathways, including through intravenous, inhalation, oral and percutaneous.  
11 Placebos were used in only some, but not all of the studies, in an effort to defray costs.

12           7. The experiments involving human subjects were one of the key beneficiaries of the  
13 recruitment of over 1,500 scientists and technicians from Nazi Germany in “Project Paperclip,”  
14 some of whom played a pivotal role in, *e.g.*, the testing of psychochemicals and development of a  
15 new truth serum. Over half of these recruits had been members of the SS or Nazi Party. The  
16 “Paperclip” name was chosen because so many of the employment applications were clipped to  
17 immigration papers.

18           8. In addition to the human experimentation using military personnel that took place  
19 at Edgewood Arsenal and Fort Detrick, DEFENDANTS also contracted with outside researchers  
20 at hospitals, universities, consultants, and prisons to conduct additional human tests of chemical  
21 and biological substances. DEFENDANTS obtained materials from major pharmaceutical  
22 companies, which included drugs found to be commercially non-viable due to hazards and  
23 undesirable side effects (the so-called “rejects”), such as phenylbenzeacetic acid or “brown acid.”  
24 Other test substances included amphetamines, anticholinergic drugs, including glycolate types of  
25 anticholinergic compounds, dimethyltryptamine (a drug similar to LSD), glycolate compounds  
26 such as EA 3580 (the prefix “EA” indicating an Edgewood Arsenal substance), mescaline and  
27 mescaline derivatives, oximes such as pralidosime chloride, phosgene, secobarbital, and many  
28

1 others. These experiments also used civilian “volunteers” such as college students, who were  
2 paid small sums to participate, or prisoners.

3 9. The doses of these chemicals administered to the service members were at times  
4 several multiples above the known toxic threshold, causing excruciating pain, blackouts, memory  
5 loss, hallucinations, flashbacks, trauma, psychotic disorders, and other lasting health problems.  
6 Indeed, a 2007 study found that PTSD rates amongst veterans exposed to chemicals in research  
7 projects were higher than those of combat veterans. In some instances, the “volunteers” suffered  
8 grand mal seizures, epileptic seizures or acute paranoia. In at least a few instances, the victims  
9 died. Initially, the research program was limited to “defensive” purposes such as the testing of  
10 gas masks or development of antidotes, but it quickly was expanded to offensive uses with no  
11 practical limits and blatant disregard of required procedures.

12 10. Not only did DEFENDANTS repeatedly violate principles of ethics and human  
13 decency, as established by international law and convention through, among other  
14 pronouncements, the Nuremberg Code and the Declaration of Helsinki, but they also violated  
15 their own regulations and the U.S. Constitution.

16 11. The expansive scope of DEFENDANTS’ undertakings resulted in *ad hoc* leaks of  
17 bits of information about their nefarious activities. Eventually, Congress convened hearings in  
18 1975 to 1977 in an attempt to shed some light on the top-secret Edgewood and other experiments.  
19 During these hearings, the “pass the buck” strategy began. Admiral Stansfield Turner, the CIA  
20 Director, promised to locate participants in the tests and compensate those whose conditions or  
21 diseases were linked to their exposures during the programs of human experimentation. Turner  
22 assured a joint Congressional Committee that the CIA was working with both the Attorney  
23 General and the Secretary of Health, Education and Welfare “to determine whether it is  
24 practicable . . . to attempt to identify any of the persons to whom drugs may have been  
25 administered unwittingly,” and was “working to determine if there are adequate clues to lead to  
26 their identification, and if so, how to go about fulfilling the Government’s responsibilities in the  
27 matter.” (*Project MKULTRA, The CIA’s Program of Research in Behavioral Modification: Joint*  
28 *Hearing Before the S. Select Comm. on Intelligence and the Subcomm. on Health and Scientific*

1 *Research of the S. Comm. on Human Resources, 95th Cong. (1977) at 8.* Thereafter, the  
2 Attorney General assumed responsibility for the overall governmental effort to locate  
3 “volunteers,” with the other DEFENDANTS providing a supporting role. On January 10, 1979,  
4 Director Turner passed off responsibility for finding and compensating the victims of certain MK-  
5 related programs to the Department of the Army.

6 12. On July 17, 1978, in response to an opinion request from the CIA, the Department  
7 of Justice issued a twenty-five page opinion (the “DOJ Opinion”) that concluded:

8 **[T]he CIA may well be held to have a legal duty to notify those**  
9 **MKULTRA drug-testing subjects whose health the CIA has**  
10 **reason to believe may still be adversely affected by their prior**  
11 **involvement in the MKULTRA drug-testing program [and] that**  
12 **an effort should thus be made to notify these subjects . . . .**

13 (Emphasis added.) A true copy of the DOJ Opinion is attached as Exhibit A hereto, and  
14 incorporated by this reference. (*See* Exh. A at A-006.) However, CIA General Counsel Anthony  
15 Lapham reinterpreted the DOJ Opinion in a July 24, 1978 memorandum to CIA Director Turner,  
16 which undermined the recommendations and conclusions in the DOJ Opinion. Turner approved  
17 the recommendations in Lapham’s memorandum on July 26, 1978.

18 13. DEFENDANTS’ promise in the 1970s to locate the victims of their human  
19 experimentation and to provide compensation and health care, proved to be hollow.  
20 DEFENDANTS never made a sincere effort to locate the survivors. Rather, DEFENDANTS  
21 quickly adopted a variety of artificial means to limit the number and scope of the population  
22 entitled to notice, including eliminating “witting” participants (conveniently defined to include  
23 anyone who had signed a general consent form); requiring that it first be established that the CIA  
24 should bear “primary responsibility” for the conduct of the tests (taking advantage of the fact that  
25 the CIA funded and controlled, but did not actually conduct most of the tests); eliminating tests of  
26 substances that arguably did not qualify as “drugs,” and eliminating drugs that at the time of the  
27 test were considered “not likely to produce long-term aftereffects.” On July 6, 2004, Admiral  
28 Stansfield Turner confirmed in private correspondence that the CIA effort to locate the victims of  
human experimentation did not yield any results other than confirming the death of one  
individual. Yet, despite the CIA’s repeated representations over multiple decades that they could



1 not find any living persons who participated in Edgewood experiments and others, the CIA had in  
2 fact secretly obtained a “large data base” from Edgewood Arsenal in 1974, which contained the  
3 names and personal information of all the “volunteers.” Currently, at a point in time 35 years  
4 later, the DOD claims to be still working to compile a registry of participants and does not expect  
5 to complete work until 2011. “DoD plans to complete its active investigation of potential  
6 exposures by 2011.” (See <http://fhp.osd.mil/CBexposures/>.)

7 14. As a result, DEFENDANTS failed timely to locate or notify test subjects, and  
8 refused to provide compensation or medical screening or treatment to those participants who  
9 contacted DEFENDANTS.

10 15. On or about January 25, 1990, DEFENDANT United States Department of the  
11 Army issued updated regulations formally acknowledging its “Duty to Warn” research subject  
12 volunteers. Those regulations provide:

13 *Duty to warn.* Commanders **have an obligation** to ensure that research  
14 volunteers are adequately informed concerning the risks involved with  
15 their participation in research, and **to provide them with any newly**  
16 **acquired information that may affect their well-being** when that  
information becomes available. **The duty to warn exists even after the**  
**individual volunteer has completed his or her participation** in research.

17 *See* Army Regulation 70-25, *Use of Volunteers as Subjects of Research*, Chapter 3-2(h) (Jan. 25,  
18 1990) (emphasis added). DEFENDANTS’ failure to timely locate or notify test subjects about  
19 information that has come into DEFENDANTS’ possession concerning the human  
20 experimentation program flies in the face of this clear mandate.

21 16. Congressional efforts to locate the “volunteers” and to require medical follow-up  
22 achieved only limited success. In 2005, two United States Congressmen acquired and sent a list  
23 of “volunteers” to the Department of Veterans Affairs (“VA”) to facilitate delivery of the much-  
24 needed, and long-denied, follow-up care. Although the VA offered follow-up medical  
25 *examinations* to some, ongoing medical *care* was not provided. DEFENDANTS’ failure and  
26 refusal to fulfill their promise and duty to provide the “volunteers” with the information and  
27 health care that many of them so desperately need continued.

1           17.     Beginning at a time unknown to Plaintiffs, DEFENDANTS began to give some of  
2 the “volunteers” access to portions of their available Edgewood files, although the records were  
3 not available, incomplete, or heavily redacted in many cases. In addition to the redaction of entire  
4 paragraphs or pages, DEFENDANTS redacted the names of virtually all the perpetrators from  
5 documents prior to release. Some participants learned for the first time that they had been  
6 exposed to chemical agents, including hallucinogenic and psychotropic drugs. These files  
7 provided the first hints regarding a possible relationship between patients’ ailments and the  
8 chemical and biological exposures from Edgewood Arsenal. Other “volunteers” have never been  
9 notified at all.

10           18.     Plaintiffs have repeatedly petitioned Congress and DEFENDANTS to honor the  
11 promises made to them, but DEFENDANTS have done nothing and have renounced any duty to  
12 Plaintiffs, thereby depriving Plaintiffs of their lives and health, their property, and their honor.  
13 Although wary of government retaliation, and believing that their health has been compromised  
14 by DEFENDANTS’ actions, Plaintiffs, all of whom were victims of the Edgewood tests, have  
15 now come forward to challenge DEFENDANTS for needlessly exposing them to known toxins  
16 and failing to fulfill their obligations and promises to make amends. Plaintiffs ask the Court to  
17 use its equitable powers to check flagrant abuses of government power, and seek to avail  
18 themselves of the Court’s truth-seeking function so that they can finally discover and expose the  
19 embarrassing and painful history of America’s human experimentation on its own. This is their  
20 story.

21           **B.     Summary of Action**

22           19.     This is a lawsuit for declaratory and injunctive relief in which Plaintiffs seek the  
23 following equitable relief:

24           a.     A declaration that any consent forms signed by Plaintiffs and members of  
25 the class are not valid or enforceable; that Plaintiffs and the class members are released from any  
26 further obligations under their secrecy oaths; that DEFENDANTS are obligated to notify  
27 Plaintiffs and class members of all available information concerning the nature of the substances,  
28 experimental procedures used, doses, health effects, and other available information; that

1 DEFENDANTS have violated the rights of Plaintiffs under the due process clause of the Fifth  
2 Amendment; that DEFENDANTS' human testing program violated the applicable government  
3 directives and international law; and other declaratory relief, as prayed for below;

4 b. Injunctive relief enjoining DEFENDANTS, and anyone in concert with  
5 them, from failing and refusing promptly to notify and provide medical care to Plaintiffs and class  
6 members, and various other forms of injunctive relief, as prayed for below; and

7 c. As requested by the Organizational Plaintiffs, a declaration that the *Feres*  
8 doctrine is unconstitutional.

9 **C. Jurisdiction and Venue**

10 20. The Court has jurisdiction over the subject matter of this action pursuant to  
11 28 U.S.C. § 1331, and 5 U.S.C. § 702. The action arises out of the Constitution of the United  
12 States, and Plaintiffs seek to redress violations of the First and Fifth Amendments to the United  
13 States Constitution and other constitutional provisions recited herein. Plaintiffs also seek a  
14 declaratory judgment pursuant to 28 U.S.C. § 2201, and seek to compel agency action unlawfully  
15 withheld or unreasonably delayed pursuant to 5 U.S.C. § 706.

16 21. Venue is proper under 28 U.S.C. §§ 1402(a) and 1391(e).

17 **D. The Organizational Plaintiffs**

18 22. Plaintiff VIETNAM VETERANS OF AMERICA ("VVA"), founded in 1978, is a  
19 national non-profit organization primarily dedicated to the interests of Vietnam era veterans and  
20 their families. The VVA's founding principle is "Never again shall one generation of veterans  
21 abandon another." VVA has over 50,000 members, 46 state councils and 630 local chapters.  
22 VVA's principal goals are to promote veterans' access to quality health care, to insure that  
23 veterans receive mandated compensation for diseases or conditions that they have incurred during  
24 or as a result of military service, to support the next generation of America's veterans, including  
25 Operation Iraqi Freedom and Operation Enduring Freedom ("OIF/OEF") veterans, and to hold  
26 government agencies accountable for their legal, ethical, and moral obligations to its veterans.  
27  
28

1           23.    The purposes of the VVA, its State Councils, and its Chapters are:

2                   A. To help foster, encourage, and promote the improvement of the  
3                   condition of the Vietnam-era veteran.

4                   B. To promote physical and cultural improvement, growth and  
5                   development, self-respect, self-confidence, and usefulness of  
6                   Vietnam-era veterans and others.

7                   C. To eliminate discrimination suffered by Vietnam-era veterans  
8                   and to develop channels of communication which will assist  
9                   Vietnam-era veterans to maximize self-realization and enrichment  
10                  of their lives and enhance life-fulfillment.

11                  D. To study, on a non-partisan basis, proposed legislation, rules, or  
12                  regulations introduced in any Federal, State, or local legislative or  
13                  administrative body which may affect the social, economic,  
14                  educational, or physical welfare of the Vietnam-era veteran or  
15                  others; and to develop public policy proposals designed to improve  
16                  the quality of life of the Vietnam-era veteran and others, especially  
17                  in the areas of employment, education, training, and health.

18                  E. To conduct and publish research, on a non-partisan basis,  
19                  pertaining to the relationship between Vietnam-era veterans and the  
20                  American society, the Vietnam War experience, the role of the  
21                  United States in securing peaceful co-existence for the world  
22                  community, and other matters which affect the social, economic,  
23                  educational, or physical welfare of the Vietnam-era veteran or  
24                  others.

25                  F. To assist disabled and needy military veterans including, but not  
26                  limited to, Vietnam-era veterans and their dependents, and the  
27                  widows and orphans of deceased veterans.

28           24.    Among VVA's members are former members of our armed services who  
participated in DEFENDANTS' programs of human experimentation into drugs, chemicals, and  
other substances, and have suffered or continue to suffer from the after-effects of such  
experiments, as described in this Complaint, and have been barred from asserting or deterred  
from asserting damages claims. Several of the Individual Plaintiffs are VVA members.

          25.    Plaintiff SWORDS TO PLOWSHARES: VETERANS RIGHTS  
ORGANIZATION ("Swords" or "Swords to Plowshares"), is a California non-profit service  
organization whose principal administrative office is in the South of Market District in San  
Francisco. Swords also operates veterans housing projects at the Presidio and on Treasure Island.  
Founded in 1974, Swords is a community-based, not-for-profit organization that provides  
counseling and case management, employment and training, housing, and advocacy/legal

1 assistance to more than 1500 homeless and low-income veterans annually in the San Francisco  
2 Bay Area and beyond. Swords promotes and protects the rights of veterans through advocacy,  
3 public education, and partnerships with local, state, and national entities.

4 26. Swords' mission of service to veterans includes the sub-population of veterans  
5 who served as guinea pigs in the testing of biological and chemical weapons. As a direct result of  
6 DEFENDANTS' actions and failures to act in connection with their human testing programs as  
7 alleged herein, organizations like Swords that provide services to these veterans have been forced  
8 to divert and devote, and must continue to divert and devote, already scarce resources to provide  
9 additional services to veterans harmed by DEFENDANTS' actions and failures to act.

10 **E. The Individual Plaintiffs**

11 **Bruce Price**

12 27. Plaintiff BRUCE PRICE ("Bruce") joined the U.S. Army in May 1965. Bruce was  
13 assigned to duty at Edgewood Arsenal for approximately two months in 1966 — from  
14 February 27, 1966, to April 28, 1966. Before being assigned to Edgewood Arsenal, Bruce was  
15 stationed at Ft. George G. Meade and that was where he returned until he was discharged in May  
16 1967. Bruce was trained as a helicopter crew chief, and also had other assignments, such as a  
17 door gunner.

18 28. Bruce first went through a battery of physical and mental evaluations at Edgewood  
19 before being used as a test subject. Bruce and three other volunteers were taken into a room  
20 where four doctors were present. Two of the doctors were dressed in civilian garb and two were  
21 military doctors, including a colonel. The colonel, who seemed to be in charge, described the  
22 program and in substance said: "We know you have heard rumors we use drugs here. Well I am  
23 here to tell you that is true. We cannot tell you what they are. We do not know if the drugs will  
24 have any harmful effects on you. But we have the finest medical facilities. Now, we can't force  
25 you to take these drugs, but if you do not, you will be sent back to your home unit with a bad  
26 recommendation and it will be put in your DD Form 201 file and follow you for the rest of your  
27 life."

1           29.     At some point, Bruce was asked to sign a general consent form that did not state  
2 any information about the drugs to be given. When he started to read the forms, Bruce was  
3 berated and told to hurry up and sign them. Bruce never received a Volunteer Booklet explaining  
4 the details of the Edgewood assignment.

5           30.     Bruce participated in several different experiments involving unknown substances.  
6 Many decades later, he heard that some of the substances he was administered included BZ, LSD,  
7 sarin, and ethanol. He is still not sure what he was given or in what doses. One of the drugs that  
8 was administered to Bruce was given on a Monday, and Bruce did not begin to recover from the  
9 drug's effect until Friday. He thought it was still Monday.

10          31.     At one point, Bruce was ordered to visit a building with a chain link fence that  
11 housed test animals, including dogs, cats, guinea pigs and monkeys. After reporting, Bruce was  
12 strapped across his chest, his wrists, and his ankles to a gurney. Bruce occasionally would regain  
13 consciousness for brief moments. On one such instance, he remembers being covered with a  
14 great deal of blood, and assumed it was his own, but did not really know the source. Also  
15 portions of his arms and the backs of his hand were blue. His wrist and ankles were bruised and  
16 sore at the points where he had been strapped to the gurney. Bruce believes that this is the time  
17 period during which a septal implant was placed in his brain.

18          32.     DEFENDANTS placed some sort of an implant in Bruce's right ethmoid sinus  
19 near the frontal lobe of his brain. The implant appears on CT scans as a "foreign body" of  
20 undetermined composition (perhaps plastic or some composite material) in Bruce's right ethmoid,  
21 as confirmed in a radiology report dated June 30, 2004.

22          33.     Upon leaving Edgewood Arsenal, Bruce was debriefed by government personnel.  
23 Bruce was told to never talk about his experiences at Edgewood, and to forget about everything  
24 that he ever did, said or heard at Edgewood.

25          34.     Within days or weeks of returning to Ft. George G. Meade, Bruce began to have  
26 trouble with his memory. For example, things as simple as filling out a maintenance report on his  
27 chopper and how to spell certain words suddenly became troublesome.



1 some service, and was promoted to Specialist Fourth Class. In 1959, he entered the Army  
2 Reserves. In 1960, Eric joined the National Guard where he remained until 1969 as Staff  
3 Sergeant with top-secret clearance.

4 41. Early in his Army Career, Eric saw a notice on a bulletin board asking volunteers  
5 to help the Army test protective equipment and to test riot gas. Eric signed up for the tour and in  
6 May 1958 attended an orientation at Edgewood Arsenal. At this orientation, an officer spoke to  
7 the enlisted soldiers, telling them that they would be testing military gear and riot gas. There was  
8 no mention of any possible medical or health risks, and the soldiers were promised medical care  
9 and either the Soldier's Medal or a special Congressional Medal, which was then under  
10 consideration by Congress.

11 42. Following the orientation speech, the soldiers were given various forms to sign.  
12 Included in these forms were a participation agreement and a security non-disclosure form. Eric  
13 was warned that his Edgewood tour was top-secret and that he would be punished if he ever  
14 discussed or disclosed any part of it to anyone. It is the mark of a good soldier to follow the  
15 orders and instructions of officers without question or hesitation. Seventeen-year-old Eric,  
16 wanting to show courage and to help his country, signed the forms without a second thought.  
17 However, he never received a Volunteer Booklet that was supposed to be distributed to  
18 participants.

19 43. The pre-experimentation physicals, x-rays, blood work, and psychological medical  
20 tests run by the Army at the time indicated that Eric had heart problems, was paranoid and manic.  
21 There were concerns about his mental condition and stability, making him an unsuitable  
22 candidate for human experimentation according to DEFENDANTS' own guidelines. This,  
23 however, did not stop the Army from enrolling Eric as a human guinea pig in its tests. (In fact,  
24 Edgewood had no psychiatrist until 1961, when James S. Ketchum, M.D., assumed that position.)

25 44. Eric became Medical Volunteer Number 781. From May to June 1958, Eric was  
26 exposed at least to seven different rounds of chemical agents. He would enter a chamber with  
27 several other "volunteers" all of whom wore chemical masks — the equipment Eric believed he  
28 was testing — and the chamber would suddenly fill with gas. The so-called "protective gear" was



1 always entirely inadequate, and Eric felt searing pain before losing consciousness. Eric and the  
2 other soldiers were unaware that the masks were a charade of deception: they were designed to  
3 fail so that the subject soldiers would inhale the highly dangerous and toxic chemicals. The  
4 undisclosed purpose of the tests was to determine the impact of these biological and chemical  
5 agents upon human beings.

6 45. Eric “volunteered” for a second tour at Edgewood, which occurred from  
7 November to December 1958, during which period Eric was exposed to three or four rounds of  
8 chemical agents. Although doing his best to be brave, Eric had no idea of what they were doing,  
9 and he did experience some fear and knee buckling. One such test was conducted by injecting a  
10 chemical substance intravenously in one arm while simultaneously withdrawing blood from the  
11 other arm. Exposure to DM (“Adamsite,” an arsenic compound) caused him to fall to the floor  
12 vomiting.

13 46. In another test, Eric was given an unidentified pill to swallow. After being  
14 exposed to what he much later learned was EA 1476, he remembers being delirious, arms and  
15 legs flailing, unable to stand or walk and crawling to the water fountain to drink, falling, and  
16 being ordered to void in jars. As a result of another exposure, Eric lost consciousness for  
17 approximately three days, had an extremely low blood pressure, and suffered severe  
18 hallucinations. His exposures record contains lines doctored by a magic marker so that they  
19 cannot be read. He also has a reoccurring dream with an “out of body experience.”

20 47. To this day, Eric continues to have flashbacks of his nightmares, and received a  
21 dual diagnosis of both PTSD and bipolar disorder. He is anxious and high strung. At times, he  
22 has been suicidal. Being confined in small spaces, such as an elevator, terrifies him because it  
23 reminds him of a gas chamber, and he finds himself planning escape routes for any building,  
24 store, or space he frequents. He is fixated on keeping doorways within view. Eric’s list of  
25 physical ailments is long: he has heart problems; post-surgery for aneurisms in both legs;  
26 allergies; sinus issues; emphysema; gastro-intestinal disorders; hearing loss; tinnitus; vestibular  
27 dysfunction; brain ischemia; and spinal degeneration. Notwithstanding these problems, Eric  
28 pursued a successful career as an optician.



1 attendees that they would not be harmed, that the tests were risk free, and that the drugs given  
2 would not be above normal doses. Frank never was told what he would be testing, nor was Frank  
3 warned of any hazards. Frank signed up for the program. He was given a number of tasks and  
4 quizzes to test his competency. He also was asked to sign various forms, including a release  
5 form. A self-described “country boy” who had never been exposed to street drugs, let alone  
6 heard of chemical and other hazardous substances used by the Army, Frank had no clue of what  
7 he was in for. He simply signed the form handed to him. Frank was never given a Volunteer  
8 Booklet.

9 53. Frank was stationed at Edgewood Arsenal for a 60-day tour from September 1,  
10 1968, to the end of October 1968. Although he does not remember ever signing a security non-  
11 disclosure form, he was instructed to never talk about any of his tests. As his first test, he was  
12 given an injection that had no discernable effect on him, possibly because it may have been a  
13 placebo.

14 54. The second experiment on Frank, however, proved to be an entirely different story.  
15 Frank was taken into a chamber by two individuals in white coats. He was placed in front of a  
16 face mask and told to breathe normally. Frank did so, at which point he heard a valve click and  
17 smelled some gas. Within one breath, Frank began to lose consciousness. He struggled to  
18 breathe and had difficulty seeing. He felt dizzy, drunk, nauseous, and had the acute sensation that  
19 his legs were falling through the floor. He vaguely recalls being carried out of the chamber by  
20 two men in white coats. Over the next two to three days, Frank was hallucinating and high: he  
21 thought he was three feet tall, saw animals on the walls, thought he was being pursued by a 6-foot  
22 tall white rabbit, heard people calling his name, thought that all his freckles were bugs under his  
23 skin, and used a razor to try to cut these bugs out. No one from the clinical staff intervened on his  
24 behalf even though he was told that the test subjects would be under constant supervision.  
25 However, when questioned afterwards about the source of the blood, Frank told them that he  
26 dropped his razor while shaving. He was too embarrassed to tell them the truth about what had  
27 happened. Frank’s records show that on that day he was given the glycolate, CAR 302668, an  
28

1 anticholinergic with properties identical to atropine, at a dose above the calculated incapacitating  
2 amount.

3 55. Frank's available records from Edgewood indicate that he participated in a third  
4 round of testing during his tenure at Edgewood. To this day, he is unable to recall a single detail  
5 from this period of time. However, Frank's records suggest that the substances he received were  
6 code-named EA 2233-1 and EA 2233-2. Frank knows nothing about these substances, but  
7 internet research has revealed that EA 2233 is a non-lethal incapacitating agent that is actually  
8 DMHP, and is related in structure to THC. It has eight stereoisomers, which differ markedly in  
9 potency, and the most potent stereoisomer was EA 2233-2. DHMP produces sedation and  
10 hallucinogenic effects similar to THC, but also is known to cause hypotension (low blood  
11 pressure), severe dizziness, fainting, ataxia and muscle weakness.

12 56. When he was released from Edgewood, Frank was promised follow-up medical  
13 care. However, the Army never checked in or followed up with Frank. Instead, they sent Frank  
14 to fight in Vietnam.

15 57. Today, Frank suffers from memory loss, anxiety, vision problems, difficulty  
16 breathing, and sleep apnea. He still has nightmares about his time at Edgewood, has a short  
17 temper, and is highly distrustful of authority figures. Because he believed that his Edgewood  
18 service was top-secret and because he feared punishment for disclosure, Frank did not even tell  
19 his own doctor what he had been through until around 2006. He currently receives 80% VA  
20 disability compensation for obstructive lung defect, anxiety disorder, hearing loss and tinnitus.

21 58. During his assignment to Edgewood, Frank received \$1.50 per day in pay for  
22 travel and a certificate saying that he was an Edgewood participant. He never received any award  
23 or medal. Further, Frank did not receive any follow-up check-ups, care or treatment.

24 59. Recently, Frank's medical problems have worsened and his health has  
25 deteriorated. As a result, Frank is no longer able to work the job that he held for over 28 years.

26 **Larry Meiorow**

27 60. Plaintiff LARRY MEIROW ("Larry") was called up to the United States Army in  
28 the last draft call of the Vietnam Era. He was 19 when he entered the Army as a Private in

1 June 1972. Larry served on active duty until March 1974 when he joined the National Guard. He  
2 returned to active duty in 1975 for 45 days to fulfill his military commitment.

3 61. After being called up in the draft, Larry entered basic training which he completed  
4 in August 1972. Shortly thereafter, in October 1972, his Company Commander came out to the  
5 morning formation and asked for volunteers to go to Edgewood. The members of the company  
6 were told that they would be testing military equipment and would be given 3-day weekends and  
7 extra pay of \$2.00 per day. Still standing in morning formation, the soldiers were asked to raise  
8 their hands if they were interested. Larry raised his hand.

9 62. When morning formation was dismissed, Larry asked the officer for more details  
10 about Edgewood. Larry was told that those who were selected would learn more once at  
11 Edgewood. Larry soon received orders to report to Edgewood by November 3, 1972.

12 63. Upon reporting to Edgewood, Larry was given paperwork to sign, but was not  
13 given the advance opportunity to read or review the contents. He was not given a Volunteer  
14 Booklet. Instead, he was berated and ordered to hurry up and complete the forms. Larry was also  
15 given psychological and medical exams and was examined by a psychiatrist.

16 64. During a group presentation, the soldiers were promised a commendation medal  
17 and health care should anything go wrong. They also were ordered to never disclose any details  
18 of their Edgewood experience and were told that if they disobeyed they would be imprisoned.  
19 After this orientation, the soldiers were released to the camp where they would go into the day  
20 room to play ping pong and wait for their names to be called up.

21 65. Sometime around November 11, 1972, Larry was called out of the day room and  
22 driven to another building. He was ordered to put on a hospital gown and told to lie down on a  
23 table. The people in charge attached leg and arm straps to buckle him down and hold him in  
24 place. He was told that he was going to be injected with a harmless substance.

25 66. Instead, they injected Larry with a substance that caused a burning sensation  
26 through his veins and made his head feel like it was going to explode. Larry felt like he was on  
27 fire and blacked out from the pain. He cannot recall what happened next, but only remembers  
28 regaining consciousness in a bunk bed in a recovery area. While in the recovery area, he was

1 given urine tests every 24 hours. He was told that he would have to continue to have frequent  
2 urine tests even after returning to his permanent base and that he should continue to have them  
3 done even after he had been discharged.

4 67. For over 30 years since Edgewood, Larry has had ongoing symptoms of  
5 fibromyalgia, joint pain, tremors, and numbness. He has suffered from a splitting headache on  
6 the right side of his head, with blurred vision and difficulty swallowing. His head often feels  
7 numb and at times he has uncontrollable drooling. He has hearing loss in both ears and wears a  
8 hearing aid in one ear. He has almost completely lost his short-term memory, and some loss of  
9 his long-term memory. He has been worked up by multiple specialists and diagnosed with cysts  
10 on both kidneys, and pre-cancerous polyps of the colon. His EMG tests were positive for  
11 polyneuropathies and pathology in both upper and lower extremities, and he has demonstrated  
12 persistent problems with balance and fine motor skills. He has severe stomach aches and his  
13 gallbladder had to be removed. He has fatty tissue surrounding his liver. He has been unable to  
14 sleep a full night for over three decades. He has had periods where sobriety became an issue, has  
15 been arrested several times, and has had difficulty holding down jobs for long periods of time.  
16 Larry was so fearful of disobeying the confidentiality order and so traumatized by recalling the  
17 events that he did not tell his spouse of 37 years or his doctors what he had been through until  
18 approximately 2003.

19 68. When he was 49 years old, Larry had to quit working due to his health condition,  
20 and he has been receiving Social Security disability payments since 2004. On Larry's behalf, the  
21 VA requested his medical papers from Edgewood. However, Edgewood Arsenal sent a letter to  
22 the VA dated May 24, 2005 confirming that Larry had been assigned to serve at Edgewood, but  
23 denying that Larry had actually participated in any of their experiments. Larry has never received  
24 the health care or medal of commendation that he was promised.

25 **David C. Dufrane**

26 69. The day after Plaintiff DAVID C. DUFRANE ("David") graduated from high  
27 school in June 1964, he enlisted in the United States Army as a Private E1. David was 17 years  
28 old. He served in the Army until June 1967. He served in both Thailand and Edgewood.

1           70.     In March 1965, while based at Fort Knox, Kentucky, David saw a flyer looking for  
2 volunteers to test clothing and equipment. David asked his Platoon Sergeant what the Edgewood  
3 program was about. David's Platoon Sergeant responded that he did not know, but that since it  
4 was located near some testing grounds, the volunteers might be testing military equipment.  
5 David decided to go to an informational meeting.

6           71.     At the informational meeting, David was told that volunteers would be testing  
7 clothing and military equipment. David was also told that they would not have guard duty, would  
8 not have KP, would be granted increased amounts of vacation, and would receive a special  
9 commendation. Following the information session, David was given a battery of physical and  
10 written tests. Like the others, he did not receive the Volunteer Booklet.

11           72.     Shortly thereafter, David received orders to report to Edgewood in April 1965. He  
12 reported for duty at Edgewood on April 4, 1965. After completing a questionnaire regarding  
13 routine medical data, David waited for his name to be called.

14           73.     In all, David was used as a human test subject in at least eight experiments. He is  
15 able to remember only four of them. Gas was sprayed directly onto his face, causing extreme  
16 burning and blindness that lasted for eight hours. Chemicals were sprayed on his body that, when  
17 exposed to black light, turned his body purple. While held in padded rooms, David was injected  
18 with substances that made him hallucinate for days. He believed that he was eating entire cities  
19 and vomited from the taste of the concrete in his mouth. He also was forced to drink liquids that  
20 made him think objects that he held in his hand had disappeared or were invisible.

21           74.     David was held at Edgewood from early April to the end of May 1965. He spent  
22 most of that time entirely incapacitated. As soon as he was finished with one test — and  
23 sometimes when he was still under the influence of unknown chemical substances — he would be  
24 assigned to participate in another test. He cannot remember much of what happened during that  
25 time.

26           75.     David was later told by the Army that he had signed releases for every test in  
27 which he had participated. However, he does not remember ever seeing or signing any release.  
28 Edgewood provided him with three examples of his supposed releases. One of these releases was

1 dated in June 1964, *prior to his entry into the armed services* and at a time when he was still in  
2 high school. Another was dated in 1969, *after he had already left the Army*. None of these  
3 supposed releases contain any specific information or details as to what he was allegedly agreeing  
4 to do.

5 76. At his exit interview in 1965, David was told that his service at Edgewood was top  
6 secret. He was directed to sign a confidentiality agreement, which he complied with. He also  
7 was told that he should not speak with either a private doctor or the VA about his Edgewood  
8 experience, and that the Army or Edgewood would provide him with any follow-up care he might  
9 need.

10 77. David suffers from frequent flashbacks. His arms and legs are numb and tingle  
11 almost all of the time. He has a chronic headache on the left side of his head, and has broken all  
12 of the teeth on the left side of his jaw due to grinding from the always-present pain. He has  
13 severe breathing and lung problems and almost always hears a hissing noise in his ears.

14 78. David tried to get medical care in 1986. When he approached his VA for  
15 assistance, he was told that he was hallucinating and making things up — he was told that  
16 Edgewood never happened and that he had never served there. For the next 6 years, David did  
17 not seek medical care, fearful that no one would believe him and unable to back up his claims.  
18 After his daughter discovered his Edgewood release papers in the attic, David was able to return  
19 to the VA with proof of his Edgewood service. Doctors have since linked his ailments to his  
20 chemical exposure while at Edgewood. However, he has never been given the follow-up medical  
21 care or medal of commendation that he was promised. David recently was awarded the Vietnam  
22 Service Medal with two Bronze Service Stars for the Vietnam Defense Campaign and the  
23 Vietnam Counter-Offensive Campaign. David currently receives 60% VA disability  
24 compensation for post-traumatic stress disorder.

25 **Wray C. Forrest**

26 79. Plaintiff WRAY C. FORREST (“Wray”) was 17 years old when he enlisted in the  
27 United States Air Force. He served in the Air Force from 1967 to 1969 and then, at the age of 19  
28 in January 1969, enlisted in the Army. He served in the Army for 14 years and was honorably



1 discharged in 1982 at the grade of E-7 (Sgt. First Class). He was discharged for alleged  
2 personality disorders.

3 80. While posted at Fort Stewart, Georgia, Wray saw flyers announcing tours of duty  
4 at Edgewood. A meeting was being held at the local post theater. Out of curiosity, Wray  
5 attended. At the meeting representatives from Edgewood announced that they were looking for  
6 soldiers to test Army equipment, vehicles, military combat equipment, and the like. The  
7 representatives said that soldiers selected to participate would have a 4-day work week, with a  
8 guaranteed 3-day pass, and would receive a Commendation Medal for their service. There was  
9 no mention of testing drugs, nor was there any disclosure of hazards or potential risks.

10 81. Soldiers interested in the opportunity to serve at Edgewood were invited to remain  
11 at the post theater to participate in a number of screening interviews. Wray was asked to sign  
12 forms saying that he was interested in serving at Edgewood and was then given written and  
13 psychiatric tests. Eight to ten weeks later, Wray received notification to report to personnel to  
14 pick up his Temporary Duty Orders. He was one of two people from his post ordered to  
15 Edgewood Arsenal.

16 82. After Wray arrived at Edgewood in 1973, he remembers signing some sort of form  
17 consenting to test aircraft equipment. He was ordered to report for testing early Monday  
18 morning. It was only at this point — after he had been ordered to serve at Edgewood, after he  
19 had reported for duty at Edgewood, after he had signed the consent forms to perform tests on  
20 aircraft, and after he showed up on Monday morning for testing — that he was verbally informed  
21 that he would be used to test drugs. He never received a Volunteer Booklet. He was issued a  
22 special identification card to present in the event that he were ever arrested for drug use based  
23 upon the track marks that would soon appear on his arms. At that point, because he was a soldier  
24 following the orders of his officers, he felt that he did not have any real opportunity to back out or  
25 return to his post. Wray became Medical Volunteer Number 6692.

26 83. Wray was a human subject in at least five Edgewood tests. The tests were  
27 conducted in various places: the ward, an aircraft, a dark room with no light, and a classroom  
28

1 setting. He was injected with various substances, and was then asked to describe his side effects,  
2 which included dizziness, blurred vision, difficulty speaking, and a rapid heart rate.

3 84. Following his service at Edgewood, Wray has suffered traumatic stress disorder  
4 and pulmonary and cardiac problems that has led to a 100% Social Security Disability rating. He  
5 never received the Commendation Medal he was promised, nor recognition of any other kind.  
6 Although still an active service member when the Army was requested to provide the names of all  
7 soldier subjects during the Congressional Hearings in 1977, the Army never notified or contacted  
8 Wray. In fact, the only time Wray has been contacted regarding his Edgewood service was by a  
9 VA outreach survey in 2007, three decades after he completed his tour at Edgewood.

10 85. Wray has recently been diagnosed with terminal lung, throat and lymphatic cancer.  
11 His doctors have advised him that he has only 12 to 14 months to live.

#### 12 **Common Issues Among Individual Plaintiffs**

13 86. None of the activities of Plaintiffs described herein constituted participation in  
14 what can properly be considered to be military activities or implicated questions of military  
15 discipline. None of the Plaintiffs or members of the proposed class are currently active members  
16 of the military.

17 87. Except for a handful of veterans compensated by the passage of private bills,  
18 DEFENDANTS have not compensated Plaintiffs or any class members for any of the damages  
19 suffered as the proximate result of DEFENDANTS' actions or reimbursed Plaintiffs or class  
20 members for the private medical care and treatment they have received. In contrast, the British  
21 government in January 2008 provided full compensation to the participants in a parallel set of  
22 human experiments on troops assigned to serve at Porton Down, near Salisbury, England.  
23 Similarly, in 2004, the Canadian government adopted a payment program to recognize the service  
24 of Canadian veterans who participated in chemical warfare experiments at Suffield, Alberta, and  
25 Chemical Warfare Laboratories, Ottawa, from 1941 through the mid-1970s. The vast majority of  
26 Edgewood participants have never received any notice from DEFENDANTS and at most a small  
27 handful have ever received any health care or compensation from DEFENDANTS associated  
28 with their participation in the MKULTRA experiments.

1           88.     DEFENDANTS acquired esoteric and unique knowledge and information, most of  
2 which was never made public, concerning the properties, doses, and health effects, both  
3 immediate and latent, of the substances they tested. Most private physicians lack the background  
4 and experience properly to treat many of the health effects of such substances, some of which  
5 DEFENDANTS have never identified. As a result, the ability of the “volunteers” to obtain  
6 suitable medical care has in many instances been, and continues to be, adversely impacted or  
7 compromised.

8           89.     Nothing herein is intended or should be construed as an attempt to obtain review  
9 of any decision relating to benefits sought by any veteran or to challenge any benefits decisions  
10 made by the Secretary of the VA. Likewise, nothing herein is intended or should be construed as  
11 a request for money damages.

12           **F.     DEFENDANTS**

13           90.     Defendant CENTRAL INTELLIGENCE AGENCY (“CIA”) was created in 1947  
14 by the National Security Act, which also established the Department of Defense and the National  
15 Security Council (“NSC”). CIA was modeled largely after the Office of Strategic Services,  
16 which served as the principal U.S. intelligence organization during World War II. The newly  
17 created agency was authorized to engage in foreign intelligence collection (*i.e.*, espionage),  
18 analysis, and covert actions. It was, however, prohibited from engaging in domestic police or  
19 internal security functions. The CIA has publicly stated that no U.S. citizens should be the object  
20 of CIA operations. Nonetheless, CIA engaged in a surreptitious, illegal program of domestic  
21 human experimentation from the 1950s at least well into the 1970s.

22           91.     Defendant LEON PANETTA, is the current Director of the CIA, and is named  
23 solely in his official capacity. The Director of the CIA serves as the head of the CIA and reports  
24 to the Director of National Intelligence. (The Intelligence Reform and Terrorism Prevention Act  
25 of 2004 amended the National Security Act to provide for a Director of National Intelligence who  
26 would assume some of the roles formerly fulfilled by the Director of Central Intelligence  
27 (“DCI”), with a separate Director of the CIA.) The CIA Director’s responsibilities include:  
28 (a) collecting intelligence through human sources and by other appropriate means, except that he

1 shall have no police, subpoena, or law enforcement powers or internal security functions;  
2 (b) correlating and evaluating intelligence related to the national security and providing  
3 appropriate dissemination of such intelligence; (c) providing overall direction for and  
4 coordination of the collection of national intelligence outside the United States through human  
5 sources by elements of the intelligence community authorized to undertake such collection and, in  
6 coordination with other departments, agencies, or elements of the United States Government that  
7 are authorized to undertake such collection, ensuring that the most effective use is made of  
8 resources and that appropriate account is taken of the risks to the United States and those  
9 involved in such collection; and (d) performing such other functions and duties related to  
10 intelligence affecting the national security as the President or the Director of National Intelligence  
11 may direct.

12 92. Defendant the DEPARTMENT OF DEFENSE (“DOD” or “DoD”) is the federal  
13 department charged with coordinating and supervising all agencies and functions of the  
14 government relating directly to national security and the military. The organization and functions  
15 of the DOD are set forth in Title 10 of the United States Code. The DOD is the major tenant of  
16 the Pentagon building near Washington, D.C., and has three major components — the  
17 Department of the Army, the Department of the Navy, and the Department of the Air Force.  
18 Among the many DOD agencies are the Missile Defense Agency, the Defense Advanced  
19 Research Projects Agency (“DARPA”), the Pentagon Force Protection Agency (“PFPA”), the  
20 Defense Intelligence Agency (“DIA”), the National Geospatial-Intelligence Agency (“NGA”),  
21 and the National Security Agency (“NSA”). The department also operates several joint service  
22 schools, including the National War College.

23 93. Defendant DR. ROBERT M. GATES is the current Secretary of Defense, and is  
24 named solely in his official capacity. The Secretary of Defense is the principal defense policy  
25 advisor to the President and is responsible for the formulation of general defense policy and  
26 policy related to all matters of direct concern to the DOD, and for the execution of approved  
27 policy. Under the direction of the President, the Secretary of Defense exercises authority,  
28 direction and control over the DOD. The Secretary of Defense is a member of the President’s

1 Cabinet and of the National Security Council. In 1964, the DOD took primary responsibility for  
2 the human experimentation “volunteers.” In 1993, the DOD promised to supply VA with  
3 information to help “volunteers” with claims; however, the DOD did not fulfill that promise. On  
4 December 2, 2002, Congress passed the Bob Stump National Defense Authorization Act for  
5 Fiscal Year 2003. In that Act, Congress directed the Secretary of Defense to “work with veterans  
6 and veterans service organizations” to identify “projects or tests conducted by the Department of  
7 Defense that may have exposed members of the Armed Forces to chemical or biological agents.”  
8 In February 2008, the U.S. Government Accountability Office reported to Congress that the DOD  
9 had not met this duty, and that the DOD “has not kept Congress and veterans service  
10 organizations fully informed about its efforts.” Indeed, for decades the DOD resisted release of  
11 the names of the “volunteers” to the VA, as well as other available information.

12 94. Defendant UNITED STATES DEPARTMENT OF THE ARMY (the “Department  
13 of the Army”) is one of three service departments of the Department of Defense. It has  
14 responsibility for the administration of, control, and operation of the United States Army (the  
15 “Army”), a military organization whose primary responsibility is for land-based military  
16 operations. The civilian head of the Department of the Army is the Secretary of the Army, and  
17 the highest ranking military officer in the department is the Chief of Staff, unless the Chairman of  
18 the Joint Chiefs of Staff or Vice Chairman of the Joint Chiefs of Staff is an Army officer. The  
19 Army is made up of three components: the active component, the Regular Army, and two reserve  
20 components, the Army National Guard and the Army Reserve. As of October 31, 2008, the  
21 Regular Army reported just under 546,000 soldiers. The Army National Guard (the “ARNG”)  
22 reported 350,000 personnel and the United States Army Reserve (the “USAR”) reported 189,000  
23 personnel, putting the approximate combined total at 1,085,000 personnel.

24 95. Defendant PETE GEREN is the current United States Secretary of the Army, and  
25 is named solely in his official capacity. Secretary GEREN has statutory responsibility for all  
26 matters relating to the United States Army: manpower, personnel, reserve affairs, installations,  
27 environmental issues, weapons systems and equipment acquisition, communications, and  
28 financial management. Additionally, Secretary GEREN is responsible for the Department of the

1 Army's annual budget and supplemental budget of \$170 billion. He leads a work force of over  
2 one million active duty, Army National Guard, and Army Reserve soldiers, 230,000 Department  
3 of the Army civilian employees and 280,000 contracted service personnel.

4 96. Defendant ERIC H. HOLDER, JR. is the current Attorney General of the UNITED  
5 STATES OF AMERICA, and is named solely in his official capacity, and in connection with the  
6 Attorney General's assumption of responsibility to notify the victims of biological and chemical  
7 weapons tests.

8 97. The inclusion of each defendant named herein is necessary to afford complete  
9 relief, and to avoid a multiplicity of actions and the possibility of inconsistent results.

10 **II. THE HISTORY OF THE GOVERNMENT'S USE OF CITIZENS AS TEST**  
11 **SUBJECTS IN EXPERIMENTS INVOLVING RADIOACTIVE ISOTOPES,**  
12 **CHEMICALS AND BIOLOGICAL AGENTS**

13 **A. DEFENDANTS' Use of Soldiers to Test Toxic Chemical and Biological**  
14 **Warfare Agents**

15 **1. Overview of Testing Programs**

16 98. Edgewood Arsenal was originally established on October 20, 1917, six months  
17 after the United States entered World War I, and one of its responsibilities was to conduct  
18 chemical weapons research, development and testing. Edgewood also provided chemical  
19 production and artillery shell filling facilities to respond to the chemical weapons that were being  
20 used in the fighting in Europe. The main chemicals produced were phosgene, chloropicrin and  
21 mustard. Edgewood offered a military facility where design and testing of ordnance material  
22 could be carried out in close proximity to the nation's industrial and shipping centers. The  
23 installation comprises two principal areas, separated by the Bush River. The Northern area was  
24 known as the Aberdeen Proving Ground area. The southern sector, Edgewood Arsenal —  
25 formerly called the U.S. Army Chemical Warfare Center — was located northeast of Baltimore,  
26 Maryland, in the Northern Chesapeake Bay along a neck of land between the Gunpowder and  
27 Bush rivers. The two areas were administratively combined in 1971.

28 99. During the 1930s, Edgewood Arsenal served as the center of the military's  
Chemical Warfare Service activities. Workers developed gas masks and protective clothing,

1 tested chemical agent dispersal methods, and trained Army and Navy personnel. During World  
2 War II, Edgewood Arsenal continued to produce chemical agents and plans for countermeasures  
3 in case it became necessary to use them. Workers at Edgewood also tested and developed flame  
4 thrower weapons and smoke screens. The Army Chemical and Biological Defense Command  
5 (“CBDCOM”) is home to the Army’s non-medical chemical and biological defense activities,  
6 including research, development, acquisition, and remediation issues associated with chemical  
7 and biological defense.

8 100. By the end of World War II, the U.S. had produced more than 87,000 tons of  
9 sulfur mustard, 20,000 tons of Lewisite, and 100 tons of nitrogen mustard at Edgewood Arsenal  
10 and three other military facilities. In addition to producing chemical materials, Edgewood  
11 became the first American military installation to test lethal agents on humans.

12 101. In 1942, DEFENDANTS for the first time sought formal authority to recruit and  
13 use human subjects in a chemical warfare experiment involving mustard agents. (Office of the  
14 Inspector General and Auditor General, U.S. Dep’t of Army, Use of Volunteers in Chemical  
15 Agent Research, Report DAIG-IN 21-75 (1976) (hereinafter “1976 Army IG Report”) at 29-30.)  
16 The Acting Secretary of War authorized in principle the use of enlisted men as subjects for testing  
17 of mustard agent on soldiers. Initially, volunteer investigators at Edgewood Arsenal were used to  
18 test mustard, phosgene, and other known chemical agents. DEFENDANTS continued to rely  
19 upon this same mustard gas authorization to conduct human experimentation into the 1950s at  
20 Camp Siebert, Alabama, Bushnell, Florida, Dugway Proving Ground, Utah, and off the coast of  
21 Panama near the Panama Canal Zone. (1976 Army IG Report at 30.)

22 102. On or about January 21, 1944, DEFENDANTS carried out a mission to test the  
23 effects of mustard gas bombs on American prisoners who had volunteered for the assignment on  
24 the understanding that they would be released from prison after it was concluded. These  
25 volunteers were placed in underground fortified bunkers on an island off the coast of Australia.  
26 In an effort to cover their tracks, DEFENDANTS used Australian pilots in American Air Force  
27 planes to conduct an air strike on the fortified bunkers, hoping to gain information to plan the  
28 invasion of Pacific Islands held by Japan. The secret mission was headed by Lt. Col. Jess

1 Crowther of the 5th U.S. Air Force. The prisoners were killed in the bombing, and  
2 DEFENDANTS suppressed or destroyed information concerning the mission and its results.

3 103. DEFENDANTS and other government agencies have reported conflicting  
4 estimates regarding the total number of armed services members exposed at Edgewood Arsenal  
5 and other locations. The VA has reported that, between 1950 and 1975, approximately 6,720  
6 soldiers were used as human guinea pigs for experiments involving exposure to at least 254 toxic  
7 biological and chemical warfare agents at the U.S. Army's laboratories at Edgewood Arsenal.  
8 These tests were conducted jointly by the U.S. Army Intelligence Board and the Chemical  
9 Warfare Laboratories at Edgewood Arsenal's research facility.

10 104. One of the principal objectives of activities at Edgewood and Fort Detrick was to  
11 research and test drugs that could be used for "psychological warfare." In accordance with this  
12 policy, the United States government began human testing of newer chemical agents, including  
13 LSD, PCP, and synthetic cannabis analogs.

14 105. DEFENDANTS also tested mustard agents on soldiers at Edgewood. From 1958  
15 to 1974, the government conducted tests of the riot control agent CS on at least 1,366 human  
16 subjects at Edgewood, including skin applications, aerosol exposures, and direct application to the  
17 individuals' eyes.

18 106. The CIA, which referred to Edgewood as EARL (Edgewood Arsenal Research  
19 Labs), Department of Defense, and Special Operations Division of the U.S. Army were actively  
20 involved in human experimentation, which used soldiers as test subjects. The CIA's involvement  
21 violated its Charter, which restricts or forbids domestic CIA activities. *See* 50 U.S.C. § 403-  
22 3(d)(1).

## 23 2. The CIA and Other DEFENDANTS Hatch Project MKULTRA

24 107. The U.S. Supreme Court's decision in *Feres* emboldened DEFENDANTS  
25 dramatically to expand the use of military personnel as test subjects, confident that they would be  
26 insulated from liability. In April 1953, Richard Helms, the CIA's Acting Deputy Director of  
27 Plans, proposed that the CIA institute a program for the "covert use of biological and chemical  
28 materials" on an ultra-sensitive basis, meaning that knowledge of its existence would be limited



1 to senior CIA officers and that its activities and budget would be exempt from normal budget,  
2 accounting, and legislative oversight requirements. (Memorandum from Richard Helms, Acting  
3 Deputy Dir. of Plans, to Allen Dulles, Dir. of Cent. Intelligence (Apr. 3, 1953) (copy attached at  
4 Tab A to a 1963 Report of Inspection of MKULTRA by CIA Inspector General J.S. Earman ( the  
5 “1963 CIA IG Report,” a true copy of which is attached as Exhibit B hereto)); *see* Exh. B at  
6 B-029-B-042.) (Helms was later convicted of lying to Congress regarding the CIA’s role in the  
7 attempted overthrow of President Salvador Allende in Chile.)

8 108. On or around April 13, 1953, CIA Director Allen Dulles approved Helms’s  
9 proposal and a covert CIA mind-control and chemical interrogation research program known as  
10 “MKULTRA” was created. (Memorandum from Allen Dulles, Dir. of Cent. Intelligence, to  
11 Deputy Dir. of Admin. (Apr. 13, 1953); *see* Exh. B at B-038-B-039; *see also* Exh. B at B-040.)  
12 “Through the course of MKULTRA, CIA sponsored numerous experiments on unwitting  
13 humans.” (The Advisory Committee on Human Radiation Experiments (ACHRE), Interim  
14 Report of ACHRE (Oct. 21, 1994) at App. E.) MKULTRA testing was conducted at Edgewood  
15 Arsenal together with other sites such as Fort McClellan, Alabama, Fort Benning, Georgia, and  
16 Fort Bragg, North Carolina. The CIA also contracted with Fort Detrick, which conducted a series  
17 of experiments using human subjects, one of which was known as “Project White Coat.”

18 109. The MKULTRA projects were under the control of the Chemical Division, within  
19 the Technical Services Division of the CIA. Beginning in 1951, Dr. Sidney Gottlieb became the  
20 director of the Chemical Division. During testimony he gave to Congress in 1977, Dr. Gottlieb  
21 claimed that the creation of MKULTRA was inspired by reports of mind-control work in the  
22 Soviet Union and China. He stated that the mission was “to investigate whether and how it was  
23 possible to modify an individual’s behavior by covert means.” (*Human Drug Testing by the CIA,*  
24 *1977: Hearings on S. 1893 Before the Subcomm. on Health and Scientific Research of the S.*  
25 *Comm. on Human Resources, 95th Cong. (1977) at 169.)*

26 110. A secret arrangement devoted a percentage of the CIA budget to MKULTRA. For  
27 instance, in 1953, the MKULTRA Director, Dr. Sidney Gottlieb, was granted six percent of the  
28 Technical Services Section’s research and development budget without any meaningful oversight

1 or accounting. (Exh. B at B-030, B-034.) MKULTRA, the “funding vehicle,” soon established  
2 over 149 subprojects that involved experiments using drugs on human behavior, lie detectors,  
3 hypnosis, and electric shock. The CIA also enlisted the cooperation of over 44 colleges and  
4 universities, 15 research foundations, 12 clinics or hospitals, and 3 prisons. The CIA established  
5 front organizations to channel funds to institutions conducting or assisting in the experiments  
6 using benign, descriptive names such as the “Society for the Investigation of Human Ecology.”

7 111. The calculating mindset behind MKULTRA was revealed in a national security  
8 assessment prepared for President Eisenhower in 1954 entitled “Report on the Covert Activities  
9 of the Central Intelligence Agency,” which urged:

10 If the United States is to survive, long-standing American concepts  
11 of “fair play” must be reconsidered. We must . . . learn to subvert,  
12 sabotage, and destroy our enemies by more clever, more  
13 sophisticated, and more effective methods than those used against  
14 us. It may become necessary that the American people will be  
15 acquainted with, understand and support this fundamentally  
16 repugnant philosophy.

17 (James H. Doolittle, et al., Report on the Covert Activities of the Central Intelligence Agency  
18 (Sept. 30, 1954) at 2-3.)

19 112. On February 26, 1953 — during the same year that MKULTRA began — the CIA  
20 and DOD prepared and issued a directive that purported to bring the U.S. government in  
21 compliance with the 1947 Nuremberg Code on medical research (the “1953 Wilson Directive”).  
22 The 1953 Wilson Directive, a true copy of which is attached as Exhibit C hereto, initially was  
23 classified as “top secret” and provided in relevant part that:

24 a. “The voluntary consent of the human subject is absolutely essential,” and  
25 that “the person involved should have legal capacity to give consent; should be so situated as to  
26 be able to exercise free power of choice, without the intervention of any element of force, fraud,  
27 deceit, duress, over-reaching, or other ulterior forms of constraint or coercion; and should have  
28 sufficient knowledge and comprehension of the elements of the subject matter involved as to  
enable him to make an understanding and enlightened decision,” [which requires that he know]  
“the nature, duration, and purpose of the experiment; the method and means by which it is to be  
conducted; all inconvenience and hazards reasonably to be expected; and the effects upon his

1 health or person which may possibly come from his participation in the experiment” (Exh. C at  
2 C-001-C-002);

3 b. “The number of volunteers used shall be kept to a minimum . . .” (Exh. C  
4 at C-002);

5 c. “The experiment should be so designed and based on the results of animal  
6 experimentation and a knowledge of the natural history of the disease or other problem under  
7 study . . .” (Exh. C at C-002);

8 d. “The experiment should be so conducted as to avoid all unnecessary  
9 physical and mental suffering and injury” (Exh. C at C-002);

10 e. “The experiment should be conducted only by scientifically qualified  
11 persons. The highest degree of skill and care should be required through all stages of the  
12 experiment . . .” (Exh. C at C-003);

13 f. “During the course of the experiment the human subject should be at  
14 liberty to bring the experiment to an end if he has reached the physical or mental state where  
15 continuation of the experiment seems to him to be impossible,” and “the scientist in charge must  
16 be prepared to terminate the experiment at any stage . . .” (Exh. C at C-003); and

17 g. “In each instance in which an experiment is proposed . . ., the nature and  
18 purpose of the proposed experiment and the name of the person who will be in charge of such  
19 experiment shall be submitted for approval to the Secretary of the military department in which  
20 the proposed experiment is to be conducted,” and no experiment “shall be undertaken until such  
21 Secretary has approved in writing the experiment proposed . . .” (Exh. C at C-003).

22 113. The classification of the 1953 Wilson Directive as “Top Secret” and later “Secret”  
23 rendered it unknown to Plaintiffs, other “volunteers,” and the vast majority of the managers of the  
24 human experimentation program. In fact, the existence of the 1953 Wilson Directive was kept  
25 secret from researchers, subjects and policymakers for over two decades, and the implementing  
26 instructions to the field for the 1953 Wilson Directive were delayed, and monitoring and  
27 enforcement of the directive were almost non-existent.  
28

1 114. Following a series of revelations concerning MKULTRA and other unethical CIA  
2 practices, President Gerald Ford issued Executive Order 11905 on Foreign Intelligence Activities  
3 in February 1976, which prohibited “experimentation with drugs on human subjects, except with  
4 the informed consent, in writing and witnessed by a disinterested third party.” (Exec. Order  
5 11905 §5(d).)

6 115. On or about April 19, 1979, the National Commission for the Protection of Human  
7 Subjects of Biomedical and Behavioral Research, Department of Health, Education and Welfare  
8 published a report pursuant to the National Research Act, which set forth basic ethical principles  
9 and guidelines for the protection of human subjects in biomedical and behavioral research (the  
10 “Belmont Report”).

11 116. On or about December 4, 1981, President Reagan issued Executive Order 12333,  
12 which governed the conduct of U.S. intelligence activities. Section 2.10 of which, entitled  
13 “Human Experimentation,” provided:

14 No agency within the Intelligence Community shall sponsor,  
15 contract for or conduct research on human subjects except in  
16 accordance with guidelines issued by the Department of Health and  
Human Services. The subject’s informed consent shall be  
documented as required by those guidelines.

17 117. On or about January 7, 1983, DEFENDANT DOD issued Directive No. 3216.2  
18 regarding the Protection of Human Subjects in DOD-Supported Research, which extended basic  
19 procedures of the 1953 Wilson Directive and applied to all DOD-supported research,  
20 development, tests, evaluations, and clinical investigations by DOD and DOD contractors.

21 118. On June 30, 1953, the Department of the Army Office of the Chief of Staff issued  
22 a CONFIDENTIAL Memorandum, numbered Item 3247, concerning Use of Volunteers in  
23 Research. This Memorandum echoed the Wilson Directive and set forth opinions of the Judge  
24 Advocate General that furnished “specific guidance for all participants in research in atomic,  
25 biological and/or chemical warfare defense using volunteers.” Among other things, the  
26 guidelines established in this Memorandum provided that:

1           a.       Agents used in research must have several “limiting characteristics,”  
2 including “[n]o serious chronicity anticipated,” “[e]ffective therapy available,” and an  
3 “[a]dequate background of animal experimentation.”

4           b.       “As added protection for the volunteers, the following safeguards *will be*  
5 *provided*: . . . . Medical treatment and hospitalization *will be provided* for all casualties of the  
6 experiments as required.” (Emphasis added.)

7           119.     On or about March 26, 1962, the Department of the Army issued Army  
8 Regulation 70-25, concerning the Use of Volunteers as Subjects in Research (“AR 70-25”).  
9 AR 70-25 prescribed policies “governing the use of volunteers as subjects in Department of Army  
10 research, including research in nuclear, biological and chemical warfare, wherein human beings  
11 are deliberately exposed to unusual or potentially hazardous conditions.” AR 70-25 set forth  
12 certain “basic principles” that “must be observed to satisfy moral, ethical, and legal concepts.”  
13 The first basic principle listed is that “Voluntary consent i[s] absolutely essential.” In furtherance  
14 of that basic principle, AR 70-25 instructs (among other things) that:

15           a.       the volunteer “must have sufficient understanding of the implications of his  
16 participation to enable him to make an informed decision, so far as such knowledge does not  
17 compromise the experiment”; and

18           b.       the volunteer “will be fully informed of the effects upon his health or  
19 person which may possibly come from his participation in the experiment.”

20           120.     Another basic principle set forth by AR 70-25 is that volunteers “will have no  
21 physical or mental diseases which will make the proposed experiment more hazardous for them  
22 than for normal healthy persons.”

23           121.     AR 70-25 also mandates that “[a]s added protection for volunteers, the following  
24 safeguards *will be provided*: . . . Required medical treatment and hospitalization *will be provided*  
25 for all casualties.” (Emphasis added.)

26           122.     In June 1991, the same basic principles contained in the 1953 Wilson  
27 Memorandum were propounded in regulations issued by DEFENDANT DOD. *See* 32 C.F.R.

28

1 Part 219. This set of regulations is generally referred to as the “Common Rule,” a denomination  
2 that is also used in this Complaint.

3 123. DEFENDANT DOD issued a series of directives adopting or certifying the  
4 Common Rule in Directives 3216.02 (“Protection of Human Subjects and Adherence to Ethical  
5 Standards in DOD-Supported Research,” March 25, 2002) and 6200.2 (“Use of Investigational  
6 New Drugs for Force Health Protection,” August 1, 2000). The directives, regulations (including,  
7 but not limited to, AR 70-25) and other governmental actions regarding the Common Rule, the  
8 Belmont Report and the 1953 Wilson Memorandum are sometimes referred to collectively as the  
9 “Official Directives.” Throughout the period of time encompassed by this Complaint, the basic  
10 ethical principles memorialized in the Official Directives did not change. However, what did  
11 markedly change is the willingness of government officials to ignore or depart from ethical norms  
12 or circumvent procedures or mechanisms to patrol or monitor compliance with such norms.

13 124. The rationale for DEFENDANTS’ policy of secrecy regarding its human  
14 experimentation program was summarized by Atomic Energy Commission’s Colonel O. G.  
15 Haywood: “It is desired that no document be released which refers to experiments with humans  
16 and might have adverse effect upon on public opinion or result in legal suits. Documents  
17 covering such work field should be classified ‘secret.’” (Memorandum from Col. O.G. Haywood,  
18 Jr., U.S. Army Corps of Eng’rs, U.S. Atomic Energy Comm’n, to U.S. Atomic Energy Comm’n  
19 (Apr. 17, 1947).)

20 125. The links between the Army’s Edgewood Arsenal and the CIA were close. Many  
21 scientists who worked at Edgewood, such as Dr. Ray Treichler, or under Edgewood contracts  
22 were on the CIA’s payroll. Importantly, the CIA funded Edgewood research for over 20 years.  
23 The CIA financed, directed, and used the information derived from the tests at Edgewood for  
24 their own purposes. At least three CIA officers were members of DOD’s Committee on Medical  
25 Sciences (“CMS”) from 1948 until 1953. Reputedly, many of the Army officers running the  
26 Edgewood experiments were actually CIA agents. DEFENDANTS did not comply with the  
27 protocols established in the 1953 Wilson Directive or the Official Directives in their conduct of  
28 the human experimentation program. Rather, DEFENDANTS continued to flagrantly, repeatedly

1 and deliberately flout the safeguards in the Official Directives and international law, depending  
2 on secrecy to operate with impunity.

3 126. The 1963 CIA IG Report by J.S. Earman (*see supra* ¶ 104) listed the following  
4 activities as having been “appropriate [for] investigation” under the MKULTRA charter:  
5 radiation, electro-shock, various fields of psychology, psychiatry, sociology, anthropology,  
6 graphology, harassment substances, and paramilitary devices and materials. (Exh. B at B-006.)  
7 Ongoing activities as of 1963 included “projects in offensive/defensive [categories] BW, CW  
8 [biological and chemical weapons] and radiation,” “petroleum sabotage,” “defoliants,” and  
9 “devices for remote measurement of physiological processes.” (Exh. B at B-024.) The 1963 CIA  
10 IG Report noted that “original charter documents specified that TSD [Technical Services  
11 Division] maintain exacting control of MKULTRA activities,” but that “redefinition of the scope  
12 of MKULTRA is now appropriate.” (Exh. B at B-006.)

13 127. Major program elements of MKULTRA and its progeny have never been publicly  
14 revealed. For example, key parts of the 1963 CIA IG Report were redacted, including all  
15 information concerning one of the two major MKULTRA programs. (Exh. B at B-003, B-005,  
16 B-030, and B-033.)

17 128. The 1963 CIA IG Report found that DEFENDANTS had pursued a policy of  
18 “minimum documentation,” which “precluded use of routine inspection procedures.” (Exh. B at  
19 B-007.) Only two individuals in TSD had “full substantive knowledge of the program, and most  
20 of that knowledge is unrecorded.” (Exh. B at B-008.)

21 129. The managers of MKULTRA concluded in 1955 that the “testing of materials  
22 under accepted scientific procedures” would “fail[] to disclose the full pattern of reactions and  
23 attributions that may occur in operational situations.” Therefore, DEFENDANTS initiated a  
24 “program for covert testing of materials on unwitting U.S. Citizens” in 1955. (Exh. B at B-008-  
25 B-009.)

26 130. By the early 1960s MKULTRA had evolved into a “highly elaborated and  
27 stabilized . . . structure” (Exh. B at B-009), which was divided into the following key parts:  
28

1           a.       Securing new materials through “standing arrangements with specialists in  
2 universities, pharmaceutical houses, hospitals, state and federal institutions, and private research  
3 organizations.” (Exh. B at B-009.) For example, using Dr. Charles F. Geschickter as a cover  
4 under Subproject 35, the CIA secretly arranged for the financing and construction of a wing of the  
5 Georgetown University Hospital in 1950 to provide a secure locale for clinical testing of  
6 biological, radiological and chemical substances on human beings. (Advisory Committee on  
7 Human Radiation Experiments (ACHRE), Interim Report of ACHRE (Oct. 21, 1994) at App. E.)  
8 The so-called “Geschickter Fund for Medical Research” served as the “principal ‘cut-out source’  
9 for CIA’s secret funding of numerous MKULTRA human experiment projects” (*id.* at FN 6), and  
10 insured that the “Agency’s [CIA’s] sponsorship of sensitive research projects would be  
11 completely deniable since no connection would exist between the University and Agency.”  
12 (Memorandum from Chief, Deputy Dir., Plans, Technical Servs. Section, CIA, to Dir. of Cent.  
13 Intelligence (Allen Dulles) (Nov. 15, 1954) at Tab A (Subproject 35 - Project MKULTRA, T.S.  
14 101077A).) A “cut-out” is a straw man or cover mechanism designed to hide the true ownership  
15 or financing of an operation, project or activity. This arrangement became necessary when  
16 researchers complained that existing cover mechanisms exposed scientists and other researchers  
17 to “unnecessary and highly undesirable personal risk[s]” as their connection to the projects  
18 “might seriously jeopardize their professional reputations.” (*Id.*)

19           b.       The CIA also financed studies by Dr. D. Ewen Cameron at the Department  
20 of Psychiatry, McGill University, in the 1950s, which explored methods to erase memory and  
21 rewrite the psyche, using patients being treated for conditions such as post-partum depression,  
22 marital problems, and anxiety. Dr. Cameron used a combination of intense electro-shocks,  
23 sensory deprivation, isolation, drugs such as LSD and insulin (to induce extended sleep).  
24 Eventually, the subjects regressed to a vegetative, pre-verbal or infantile state. Once this  
25 “depatterning” had occurred, Dr. Cameron forced patients to listen to repetitive pre-recorded  
26 messages that contained principles intended to guide future behavior such as, “You are a good  
27 mother,” which he referred to as “psychic driving.” Most of Dr. Cameron’s patients emerged  
28



1 from his therapies with more serious symptoms and problems, including memory loss,  
2 hallucinations, intense anxiety, and loss of touch with reality.

3 c. Grants of funds were made “under ostensible research foundation auspices  
4 to the specialists located in the public or quasi-public institutions,” therefore “conceal[ing] from  
5 the institution the interest of [the] CIA.” (Exh. B at B-009.) “The system in effect ‘buys a piece’  
6 of the specialist in order to enlist his aid in pursuing the intelligence implications of his research,”  
7 including “systematic search of the scientific literature, procurement of materials, their  
8 propagation, and the application of test dosages to animals and under some circumstances to  
9 volunteer human subjects.” (Exh. B at B-010.) This “funding of sensitive MKULTRA projects  
10 by sterile grants in aid . . . [was] one of the principal controversial aspects of this program.”  
11 (Exh. B at B-010.) In addition to the CIA, the Department of Health, Education and Welfare, and  
12 the Law Enforcement Assistance Administration provided funding for experiments involving  
13 behavior modification and mind control.

14 d. The intensive testing of substances on human subjects by “physicians,  
15 toxicologists, and other specialists in mental, narcotics and general hospitals and in prisons, who  
16 are provided the products and findings of the basic research projects . . . . Where health permits,  
17 test subjects are voluntary participants in the program.” (Exh. B at B-011-B-012.) One series of  
18 experiments on prisoners took place at the California Medical Facility at Vacaville, where  
19 psychiatrists administered anectine, a strong muscle relaxant which deprives the victim of all  
20 muscular control and arrests breathing, and induces strong sensations of suffocation and  
21 drowning.

22 e. The “final phase of testing of MKULTRA materials involves their  
23 application to unwitting subjects in normal life settings.” (Exh. B at B-012.) To accomplish this,  
24 the CIA entered into an “informal arrangement” with individuals in the Bureau of Narcotics  
25 (“FBN” - (“DEA”)) in 1955 with the understanding that the FBN would “disclaim all knowledge  
26 and responsibility in the event of a compromise.” (Exh. B at B-013.) FBN operated safehouses  
27 in both San Francisco and New York where they secretly administered experimental substances to  
28 the patrons of prostitutes. (Exh. B at B-013-B-014; *see also Project MKULTRA, The CIA’s*

1 *Program of Research in Behavioral Modification*, 95th Cong. (1977) at 57 (J. Gittinger), 115 (R.  
2 Lashbrook, M.D.), and 184 (S. Gottlieb, M.D.).) The FBN maintained “close working relations  
3 with local police authorities which could be utilized to protect the activity in critical situations.”  
4 (Exh. B at B-015.) The brothel experiments were code-named “Operation Midnight Climax.”

5 f. The final step in the “research and development sequence” was to  
6 “deliver[] MKULTRA materials into the MKDELTA control system governing their employment  
7 in clandestine operations.” (Exh. B at B-015.) “The final stage of covert testing of materials on  
8 unwitting subjects is clearly the most sensitive aspect of MKULTRA.” (Exh. B at B-016.)  
9 “Present practice is to maintain no records of the planning and approval of test programs.”  
10 (Exh. B at B-016.)

11 131. Ironically, the operational returns of MKULTRA were scanty. The products were  
12 rarely used in field operations, and had limited success where used. (Exh. B at B-018-B-019; *see*  
13 *also Project MKULTRA, The CIA’s Program of Research in Behavioral Modification*, 95th Cong.  
14 (1977) at 43.) “There is an extremely low rate of operational use of the controlled materials.”  
15 (Exh. B at B-023.) One of the reasons for nonuse was that “some case officers have basic moral  
16 objections to the concept of MKDELTA and therefore refuse to use the materials.” (Exh. B at  
17 B-021-B-022.)

18 132. Under MKULTRA and its progeny, at least 1,000 “volunteers” were given up to  
19 20 doses of LSD to test the drug as an interrogation weapon, even though the tests were known by  
20 Edgewood scientists to result in serious physical and psychological problems. Dr. Van Sim, a  
21 physician responsible for the human subjects used at Edgewood, previously worked at the British  
22 Chemical Defense Establishment at Porton Down, where similar experiments had been conducted  
23 on humans. After returning to the United States, Dr. Van Sim warned that the British  
24 experiments had shown that “during acute LSD intoxication the subject is a potential danger to  
25 himself and to others; in some instances a delayed and exceptionally severe response may take  
26 place and be followed by serious after effects lasting several days.”

27 133. Despite this knowledge, test subjects at Edgewood and elsewhere were given LSD  
28 and other drugs and then sometimes subjected to hostile questioning. Moreover, the test subjects

1 were not given any specific information about the nature of the drugs they were receiving, which  
2 exacerbated the state of the victims' anxiety while on mind-altering agents.

3 134. Some of the experiments at Edgewood and other sites were designed to replicate  
4 some of those that were conducted by Nazi doctors in concentration camps. American  
5 psychiatrist Paul Hoch's experiments on mental patients in New York, where he was working on  
6 Edgewood projects supervised by DEFENDANTS and as a CIA consultant, killed one patient  
7 with a mescaline injection (Harold Blauer) and seriously injured another. As the federal judge  
8 concluded in a case brought by Mr. Blauer's daughter, "the real reason Blauer died was not  
9 medical incompetence in the administration of a therapeutic or diagnostic drug, but the fact that  
10 he was used as a human guinea pig." *Barrett v. United States*, 660 F. Supp. 1291, 1308  
11 (S.D.N.Y. 1987). MKULTRA's experiments also resulted in the death of Frank Olson, an Army  
12 scientist who mysteriously fell out of a hotel window after members of the CIA secretly slipped  
13 LSD into his drink. A 1994 GAO publication also notes that during the course of the extensive  
14 radiological, chemical, and biological research programs conducted or sponsored by  
15 DEFENDANTS, some participants died. (Frank C. Conahan, Assistant Comptroller Gen., U.S.  
16 Gen. Accounting Office, Human Experimentation: An Overview on Cold War Era Programs,  
17 Testimony Before The Legis. and National Security Subcomm. of the H. Comm. on Government  
18 Operations, GAO/T-NSIAD-94-266 (Sept. 28, 1994) at 1.)

19 135. Sporadic information regarding DEFENDANTS' activities began to circulate and  
20 the 1963 CIA IG Report recommended termination of unwitting testing. However, the CIA's  
21 Deputy Director for Research, Richard Helms, who later became the CIA Director, surreptitiously  
22 continued the program under a new name in 1964: MKSEARCH. The MKSEARCH project  
23 attempted, among other things, to produce a perfect truth serum for use in interrogating suspected  
24 Soviet spies during the Cold War, and generally to explore any other possibilities of mind control.

25 136. DEFENDANTS adopted a policy to create only "sparse documentation" of the  
26 projects, with a preference that results of experiments be "conveyed verbally." Nor did  
27 DEFENDANTS prepare adequate documentation of the medical records of test participants or  
28 follow-up to determine long-term health effects. "Present [CIA] practice is to maintain no

1 records of the planning and approval of test programs.” (Exh. B at B-016.) Medical records  
2 regarding the exposure of hundreds of “volunteers” that were maintained by the Medical  
3 Research Laboratory mysteriously disappeared in the 1960s. And, shortly before he left office in  
4 1973, CIA Director Richard Helms authorized the destruction of the CIA’s files regarding human  
5 experimentation and Dr. Gottlieb’s drug files, the intent of which was to prevent discovery of the  
6 embarrassing and indefensible details of their crimes. As a result, most of the records  
7 documenting the human experimentation program are not available.

8 137. The Court should draw adverse inferences from DEFENDANTS’ document  
9 destruction, redactions, spoliations, and other wrongful acts described herein.

10 138. DEFENDANTS also developed a protocol to classify any documents that referred  
11 to the human experimentation program based upon concerns that they might have “an adverse  
12 effect on public opinion or result in legal suits.” (*See* 1947 Haywood memo, *supra* ¶ 124.)

13 DEFENDANTS also ordered that:

14 Precautions must be taken not only to protect operations from  
15 exposure to enemy forces but also to conceal these activities from  
16 the American public in general. The knowledge that the Agency  
17 [CIA] is engaging in unethical and illicit activities would have  
serious repercussions in political and diplomatic circles and would  
be detrimental to the accomplishment of its mission.

18 (CIA Inspector General’s Survey of Technical Servs. Div., 1957, as cited in S. Rep. No. 94-755  
19 (“Church Committee Report”), Book 1, §XVII (1976) at 394; *see Project MKULTRA, The CIA’s*  
20 *Program of Research in Behavioral Modifications*, 95th Cong. (1977) at 74.) A July 26, 1963  
21 Memorandum to the CIA Director also concluded that “[t]he concepts involved in manipulating  
22 human behavior are found by many people both within and outside the Agency [CIA] to be  
23 distasteful and unethical.” (Memorandum from J.S. Earman, Inspector General, CIA, to Dir. of  
24 Cent. Intelligence (July 26, 1963) (attaching the 1963 CIA IG Report); *see* Exh. B at B-002.)

25 139. Documents from the CIA’s “Family Jewels” declassified file establish that drugs  
26 that had been rejected by private manufacturers were tested on soldiers at Edgewood.  
27 Specifically, as explained in the CIA’s own documents: “the reported [behavioral] drug was part  
28 of a larger program in which the Agency had relations with commercial drug manufacturers,

1 whereby they passed on drugs rejected because of unfavorable side effects. The drugs were  
2 screened with the use of ADP equipment, and those selected for experimentation were tested at  
3 [redacted] using monkeys and mice. Materials of having [sic] further interest, as demonstrated by  
4 this testing, were then tested at Edgewood, using volunteer members of the Armed Forces.”  
5 (Memorandum from WVB to Executive Sec’y, CIA Mgmt. Comm. (undated), “CIA Family  
6 Jewels” at 00413.)

7 140. In the decades following the 1953 Wilson Directive, DEFENDANTS’ human  
8 experimentation program continued and rapidly expanded under a shifting series of secret code  
9 names, changes that usually were adopted to facilitate statements by DEFENDANTS denying that  
10 recent or earlier programs such as MKULTRA were ongoing, including the following:

11 a. DEFENDANTS changed the program name from MKULTRA to  
12 MKSEARCH after release of the CIA IG’s 1963 Report, which was highly critical of  
13 MKULTRA;

14 b. the OFTEN and CHICKWIT projects, jointly conducted by the Army and  
15 CIA at the Edgewood Arsenal, but also funded by the CIA, which involved the collection of  
16 information about foreign pharmaceuticals and experiments with human subjects;

17 c. the BLUEBIRD and ARTICHOKE projects, where DEFENDANTS  
18 researched hypnosis, drugs such as sodium pentothal, the stimulant Desoxyn (methamphetamine),  
19 and bulbocapnine (an alkaloid), which facilitate recovery of information under hypnosis, and  
20 other substances that might aid in the interrogation of prisoners of war and defectors;

21 d. the MKDELTA project, a mind control research and development program  
22 devised by DEFENDANTS that concentrated upon the use of biochemicals in clandestine  
23 operations;

24 e. the MKNAOMI project, a successor to MKDELTA, which focused on the  
25 research, testing, manufacture and means of diffusion or distribution of lethal and non-lethal  
26 biological agents and materials;

27 f. the CHATTER project, which focused on the development and use of truth  
28 serum and other interrogation drugs such as anabasis, aphylla, scopolamine, and mescaline; and

1 g. a series of related or follow-on projects with code names including  
2 “PANDORA,” “SPELLBINDER,” “MONARCH,” “SLEEPING BEAUTY,” as well as others.  
3 Hereinafter, DEFENDANTS’ group of experiments and programs involving human subjects,  
4 including DEFENDANTS’ human experimentation conducted at Edgewood or under the  
5 direction of Edgewood personnel, shall collectively be referred to as the “Human Test Series.”

6 141. The MKULTRA and MKSEARCH project sponsors operated “safe houses” in  
7 New York City and San Francisco, where drugs were surreptitiously administered to human  
8 subjects lured to the site by prostitutes, and the effects were witnessed and/or recorded on film.  
9 Experiments also were conducted on aged veterans in VA domiciliaries. DEFENDANTS often  
10 used surrogates in the private sector to perform many of these experiments.

11 142. DEFENDANTS formally launched Sub-Project 119 in 1960, the purpose of which  
12 was to research, study, and interpret “bioelectric signals from the human organism, and activation  
13 of human behavior by remote means.” (Memorandum for the Record re MKLUTRA Subproject  
14 119 from Technical Servs. Div., Research Branch, CIA (Aug. 17, 1960).) This Sub-Project  
15 involved the installation of “permanent septal electrodes . . . to determine the locus in which  
16 stimulations will produce specific reactions,” first in animals and later in humans. (Proposal  
17 Materials re MKULTRA Subproject 106, CIA (Jan. 1961) at 106-1.) The Army’s own report of  
18 the health effects of LSD experiments concluded in 1980 that: “Early experimental studies by  
19 Monroe and Heath and associates using electrodes implanted deeply in the brains of human  
20 subjects demonstrated the occurrence of spiking (epileptiform) activity in portions of the limbic  
21 system (hippocampus, amygadala [sic] and septal area) in response to LSD administration.”  
22 (U.S. Army Med. Dep’t, LSD Follow-Up Study Report (Oct. 1980) at 34-35.) DEFENDANTS’  
23 research program continued under various other code names, including Subproject 106 (in 1962),  
24 and others, and DEFENDANTS used an unidentified “cut-out and cover” to run the program and  
25 to camouflage their role. DEFENDANTS classified this work as “Agency Top Secret,” and  
26 DEFENDANTS have either destroyed or classified the results of the Sub-Project 119 and 106  
27 studies, as well as their progeny.  
28

1           143. Dr. Jose Delgado began to research the use of pain and pleasure for mind control  
2 during WWII. Later, as Director of Neuropsychiatry at Yale University Medical School, he  
3 refined the design of his “transdermal stimulator,” a computer controlled, remote neurologic  
4 transceiver and aversion stimulator. Dr. Delgado was especially interested in Electronic  
5 Stimulation of the Brain. Dr. Delgado discovered that he could wield enormous power over his  
6 subject by implanting a small probe into the brain. Using a device he called the “stimoceiver,”  
7 which operated by FM radio waves, he was able to electrically orchestrate a wide range of human  
8 emotions, including rage, pleasant sensations, elation, deep thoughtful concentration, odd  
9 feelings, super relaxation (an essential precursor for deep hypnosis), colored visions or  
10 hallucinations, lust, fatigue and various other responses. Dr. Delgado researched and perfected  
11 many of his devices under the auspices of MKULTRA Sub-Project 95, in which he was joined by  
12 Dr. Louis Jolyon West, who had mastered a technology called “RHIC-EDOM.” RHIC means  
13 “Radio Hypnotic Intracerebral Control,” and EDOM means “Electronic Dissolution of Memory.”  
14 These implants could be stimulated to induce a post-hypnotic state. EDOM involves the creation  
15 of “Missing Time” or the loss of memory.

16           144. Dr. Delgado ominously wrote: “*The individual may think that the most important*  
17 *reality is his own existence, but this is only his personal point of view. . . . This self-*  
18 *importance . . . lacks historical perspective. [The notion that man has] **the right to develop his***  
19 ***own mind** . . . [is a] kind of liberal orientation [that] has great appeal, but . . . its assumptions*  
20 *are not supported . . . by . . . studies.” (Jose M.R. Delgado, M.D., *Physical Control of the Mind,**  
21 *Toward a Psychocivilized Society (1969) at 236, 239 (emphasis added).)*

22           145. Additional studies, conducted by Dr. Ewen Cameron and funded by the CIA, were  
23 directed towards erasing memory and imposing new personalities on unwilling patients.  
24 Cameron discovered that electroshock treatment caused amnesia. He set about a program that he  
25 called “de-patterning,” which had the effect of erasing the memory of selected patients. Further  
26 work revealed that subjects could be transformed into a virtual blank machine (Tabula Rasa) and  
27 then be re-programmed with a technique which he termed “psychic driving.”  
28

1           146. From 1965 through to 1970, Defense Advanced Projects Research Agency  
2 (DARPA), with up to 70-80% funding provided by the military, set in motion operation  
3 PANDORA to study the health and psychological effects of low intensity microwaves with regard  
4 to the so-called “Moscow signal.” This project appears to have been quite extensive and included  
5 (under U.S. Navy funding) studies demonstrating how to induce heart seizures, create leaks in the  
6 blood/brain barrier and production of auditory hallucinations. Despite attempts to render the  
7 Pandora program invisible to scrutiny, FOIA filings revealed memoranda of Richard Cesaro,  
8 Director of DARPA, which confirmed that the program’s initial goal was to discover whether a  
9 carefully controlled microwave signal could control the mind. Cesaro urged that these studies be  
10 made for potential weapons applications.

11           147. Notwithstanding the international standards identified above, DEFENDANTS’  
12 experiments on human subjects were conducted shrouded in secrecy, and have been characterized  
13 by stealth, evasion, treachery, and deceit. Most of the subjects have been collected under  
14 programs that operate under the umbrella of “non-lethal” or “less than lethal” weapons, and  
15 include a wide assortment of different technologies based upon electro-magnetic radiation,  
16 microwaves, lasers, infrasound, acoustic and polysound generators, and others.

### 17                           3.       **Secrecy Oaths**

18           148. “Volunteers” in the Edgewood and other experiments were in most instances  
19 required to sign a statement agreeing that they would:

20                                   not divulge or make available any information related to U.S. Army  
21                                   Intelligence Center interest or participation in the [volunteer  
22                                   program] to any individual, nation, organization, business,  
23                                   association, or other group or entity, not officially authorized to  
24                                   receive such information. I understand that any action contrary to  
25                                   the promises of this statement will render me liable to punishment  
26                                   under the provisions of the Uniform Code of Military Justice.

27           The “volunteers,” including many or all of the Individual Plaintiffs, were also generally forced to  
28           sign forms consenting to the videotaping of the experiments.

          149. In fact, DEFENDANTS’ form misled the “volunteers” by implying that the  
          Uniform Code of Military Justice applied to them after their discharge from service.



1           150. The existence of their secrecy oaths not only interfered with participants' ability to  
2 obtain health care, but to seek redress or assert claims. In 2003, the VA concluded that "most of  
3 the volunteer subjects of these experiments conducted by the U.S. Military were told at the time  
4 that they should never reveal the nature of the experiments, and apparently, almost to a man, they  
5 kept this secret for the next 40 or more years."

6           151. In approximately September 2006, some, but not all, Edgewood recipients,  
7 received form letters from the VA advising them that notwithstanding their secrecy oaths, the  
8 DOD had authorized them to discuss exposure information with their health care providers, but  
9 warning them not to "discuss anything that relates to operational information that might reveal  
10 chemical or biological warfare vulnerabilities or capabilities." In addition, the DOD has  
11 maintained a web site that contains incomplete and misleading information concerning the human  
12 experimentation program.

#### 13                           **4. Purported "Consent" by Human Test Subjects**

14           152. Many "volunteers" used as test subjects at Edgewood and elsewhere were duped  
15 into volunteering to test chemical warfare clothing and gas masks and instead were secretly given  
16 nerve gas, psychochemicals, incapacitating agents, and hundreds of other dangerous drugs. The  
17 "volunteers" were given no information about the chemicals used on them in the experiments, no  
18 warning as to the potential health risks, and no or inadequate follow-up health care to determine  
19 the effects (and resulting injuries) caused by the tests — despite the government's knowledge and  
20 conclusion that informed, voluntary consent was necessary.

21           153. Indeed, informed consent was precluded by DEFENDANTS' own plan, which  
22 noted that "[c]are should be exercised not to mention to the prospect the exact properties of the  
23 material that lends itself to intelligence application." Moreover, DEFENDANTS withheld  
24 information from the "volunteers" concerning health problems that they had discovered from  
25 examinations and tests at Edgewood, and Edgewood medical records for participants were  
26 separated from the participants' service medical files, and kept under lock and key.

27           154. The Medical Volunteer Handbook of the U.S. Army purportedly given to test  
28 participants in the late 1950s and 1960s falsely represented that the tests involved "non-hazardous

1 exposure to compounds as well as the evaluation of methods, procedures and equipment utilized  
2 by the soldier in the field.” (U.S. Army Chemical Warfare Labs., U.S. Army Chemical Center,  
3 MD, The Medical Research Volunteer Program (U), CWL Special Pub. 2-13 (June 1958) at 1.)  
4 DEFENDANTS’ policy toward uncooperative “volunteers” was reflected in a publication  
5 distributed to the “volunteers” entitled “What is Expected of a Volunteer,” the 1972 edition of  
6 which stated:

7           It is essential that you show up on time for admission to the wards  
8           and for testing . . . . As for the testing, this of course is what you  
9           are here for . . . . Failure to show up on time for admission or the  
          test will usually result in your being returned to your permanent  
          duty station.

10           155. The Army’s Inspector General concluded that although there was evidence that  
11 some form of the informed consent policy was eventually made known to commanders and  
12 investigators working with human subjects, often in practice “consent was relegated to a simple,  
13 all-purpose statement to be signed by the volunteer.” (1976 Army IG Report at 78.) Further,  
14 even in instances where a more detailed form was used, “the intent of the informed consent policy  
15 did not appear to have been fulfilled, since the revised form did not require disclosure of the  
16 chemical agent to be used or the full effects of the drug, nor did the publication appended to the  
17 volunteer agreement form contain that information.” (*Id.* at 80.)

18           156. The Inspector General noted that although, with few exceptions, human subjects  
19 who were used for chemical testing had technically “volunteered,” the issue was “not whether the  
20 subjects volunteered, but whether they were provided sufficient information to permit an  
21 enlightened decision.” (*Id.* at 82.) On this point, the Inspector General’s report concluded:  
22 “volunteers were not fully informed, as required, prior to their participation; and the methods for  
23 procuring their services, in many cases, appeared not to have been in accord with the intent of the  
24 Department of the Army policies governing the use of volunteers in research.” (*Id.* at 87.)  
25 Indeed, “in spite of the clear guidelines concerning the necessity for ‘informed consent,’ there  
26 was a willingness to dilute and in some cases negate the intent of the policy.” (*Id.* at 40.) The  
27 consents signed by “volunteers” included the words “I certify that . . . I [am] completely aware  
28

1 of all hazards.” Yet, DEFENDANTS have admitted that even they were not aware of such  
2 hazards.

3 157. Further, the Army Inspector General’s findings regarding consent at Edgewood  
4 were even more troubling. The report noted that “in most cases the [participation] agreement was  
5 signed prior to arrival at Edgewood Arsenal, or on the first day after arrival. In either case, it was  
6 usually signed before the subject was selected for a specific agent test. Therefore, it was not  
7 likely that meaningful information regarding all hazards to his health were provided the volunteer  
8 prior to his signing the participation agreement.” (*Id.* at 84.) Indeed, one of the purposes of the  
9 experimentation was to learn about health effects on humans, in areas which were previously  
10 unknown.

11 158. Indeed, in designing their LSD studies in 1956, the Army attempted to avoid the  
12 impact of “suggestion” or “placebo” effect on the observed effects by insuring that at least one  
13 control group administered LSD-25 be neither given a training lecture nor provided any  
14 information on the drug being administered.

15 159. Another problem with the purported “consent” by volunteers was that  
16 “inducements were offered to persuade the soldier[s] to volunteer.” (*Id.* at 85.) The Inspector  
17 General identified examples of such inducements, including: a promise of a 3-day pass each  
18 weekend; better living and recreational accommodations than normally available; a guaranteed  
19 letter of commendation that would be placed in the volunteer’s official personnel file; and a sense  
20 of patriotic contribution to the nation’s national security. (*Id.* at 85.) The report noted that such  
21 inducements “represented substantial rewards” in the 1950s and 1960s. (*Id.* at 85.) These  
22 inducements were used to influence the prospective subject’s decision by offering special  
23 privileges or rewards and thus, were contrary to the guidelines, which stated that informed  
24 consent should be given without influence over the volunteer’s free choice.

25 160. A 1993 GAO Report acknowledged that “[m]ilitary procedures have long required  
26 that the volunteers be fully informed of the nature of the studies in which they participate and the  
27 foreseeable risks. However, prior to 1975, these procedures were not always followed.” (U.S.  
28 Gen. Accounting Office, *Veterans Disability: Information from the Military May help VA Assess*

1 Claims Related to Secret Tests, GAO/NSIAD-93-89 (Feb. 1993) at 2; *see also* Frank C. Conahan,  
2 Assistant Comptroller Gen., U.S. Gen. Accounting Office, Human Experimentation: An  
3 Overview on Cold War Era Programs, Testimony Before The Legis. and National Security  
4 Subcomm. of the H. Comm. on Government Operations, GAO/T-NSIAD-94-266 (Sept. 28, 1994)  
5 at 2, 10.)

6 161. In 2003, the VA admitted that “[i]t would be naive to assume that there will be no  
7 lapses in compliance with human subjects protections in future studies involving human  
8 subjects.”

9 162. DEFENDANTS have admitted that a number of their research projects were  
10 conducted “without knowledge of the host system or on unwitting subjects.” (Memorandum for  
11 the Record from William V. Broe, Inspector General, CIA, to Dir. of Cent. Intelligence (May 23,  
12 1973), “CIA Family Jewels” at 00402.)

13 163. The consents purportedly signed by “volunteer” soldiers were ineffective for  
14 multiple reasons including fraud in the inducement, lack of disclosure of the substances involved  
15 in the experiments, lack of specificity, duress and others. These purported “volunteer” test  
16 subjects were not told which drugs and the drug doses that they were given, what side effects to  
17 expect, and were never fully informed of the extreme physical and psychological effects these  
18 drugs would have on them.

19 164. DEFENDANTS have failed and refused to supply all available information to the  
20 VA concerning the exposures of “volunteers” who have filed or whose survivors have filed  
21 claims for service-connected death or disability compensation, or advised the VA that relevant  
22 records of participation had been destroyed, thereby thwarting or compromising the success of  
23 many claims.

### 24 **III. CLASS ACTION ALLEGATIONS**

#### 25 **A. Class Definition**

26 165. The proposed Plaintiff class for purposes of all claims includes all veterans who  
27 were involved in the Human Test Series (hereinafter the “Proposed Class Members”). The  
28 proposed class does not include participants in Project 112/SHAD (“Shipboard and Hazard

1 Defense), a separate program directed by the U.S. Army Deseret Test Center. Project 112/SHAD  
2 was conducted on ships and land to test the vulnerability of ships to chemical and biological  
3 attacks, and, with respect to tests on land, to determine how biological and chemical weapons  
4 would be affected by climate. Although members of the military were exposed to hazardous  
5 biological and chemical substances during Project 112/SHAD, the principal purpose of the  
6 program was not to test the effects of biological and chemical weapons upon human subjects, as  
7 were the veterans involved in the Human Test Series.

8 166. The proposed class representatives are Plaintiffs VVA and Swords to Plowshares,  
9 the Organizational Plaintiffs in this action.

10 167. Plaintiffs reserve the right to amend this Complaint to add additional class  
11 representatives, either before or after a Motion to Certify the Class, subject to the provisions of  
12 Rule 15 of the Federal Rules of Civil Procedure.

13 **B. Presence of Common Issues of Fact or Law**

14 168. The members of the Proposed Class are so numerous that joinder of all members is  
15 impracticable.

16 169. There are material questions of law and fact common to the proposed class,  
17 including but not limited to the following:

- 18 a. The constitutionality of DEFENDANTS' actions and activities recited  
19 above;
  - 20 b. DEFENDANTS' failures to notify and timely provide medical care to the  
21 Proposed Class Members;
  - 22 c. Whether DEFENDANTS conducted the Human Test Series in compliance  
23 with the Official Directives and/or international law;
  - 24 d. Whether the consent forms signed by the Proposed Class Members  
25 respecting the Human Test Series were effective or not;
  - 26 e. Whether the Proposed Class Members are bound by secrecy oaths;
- 27  
28

1 f. Whether DEFENDANTS are currently conducting human experiments  
2 with human subjects in violation of the Official Directives and international law, and, to the  
3 extent they are, whether injunctive relief should be awarded to Plaintiffs;

4 g. As to the Third Claim for Relief, whether the *Feres* doctrine violates the  
5 U.S. Constitution; and

6 h. The applicability and effectiveness of certain defenses asserted by  
7 DEFENDANTS to the claims raised in this action, including subject matter jurisdiction, standing,  
8 sovereign immunity, statute of limitations, and others, and applicability of the doctrine of  
9 equitable estoppel and any other arguments advanced by Plaintiffs.

10 170. The claims of the members of or constituencies served by the Organizational  
11 Plaintiffs are typical of the claims of the Proposed Class Members, and the proposed class  
12 representatives will fairly and adequately protect the interests of the class.

13 171. The prosecution of separate actions by various members of the class would create  
14 a risk:

15 a. of inconsistent or varying adjudications with respect to Proposed Class  
16 Members that would establish incompatible standards of conduct for DEFENDANTS; and

17 b. that adjudications with respect to individual Proposed Class Members  
18 would, as a practical matter, be dispositive of the interests of Proposed Class Members who are  
19 not parties to such adjudications or substantially impair or impede their ability to protect their  
20 interests.

21 172. DEFENDANTS have acted and/or refused to act on grounds generally applicable  
22 to the Proposed Class Members, thereby making appropriate final injunctive relief and/or  
23 declaratory relief with respect to the Proposed Class Members as a whole.

24 **FIRST CLAIM FOR RELIEF**  
25 **(Declaratory Relief as to All Plaintiffs)**

26 173. Plaintiffs reallege and incorporate herein by reference as though fully set forth,  
27 each and every allegation contained in Paragraphs 1 through 172 of this Complaint.  
28

1           174. Plaintiffs seek a declaration that the consent forms signed by Plaintiffs are not  
2 valid or enforceable; that Plaintiffs are released from any obligations or penalties under their  
3 secrecy oaths; that DEFENDANTS are obligated to notify Plaintiffs and other test participants  
4 and provide all available documents and evidence concerning their exposures and known health  
5 effects; that DEFENDANTS have violated the rights of Plaintiffs under the due process clause of  
6 the Fifth Amendment; and, finally, that DEFENDANTS are obligated to confer the medical care  
7 promised to Plaintiffs, and the other relief prayed for above.

8           175. A present controversy exists between Plaintiffs and DEFENDANTS concerning  
9 the foregoing, and Plaintiffs contend and DEFENDANTS deny that:

10           a. DEFENDANTS have unconstitutionally infringed on Plaintiffs' life,  
11 property and liberty rights protected by the Due Process Clause of the Fifth Amendment to the  
12 United States Constitution, which provides that "No person shall . . . be deprived of life, liberty or  
13 property without due process of law," and upon Plaintiffs' right to privacy;

14           b. The programs of human experimentation on military subjects and civilians  
15 failed to comply with the 1953 Wilson Directive, the Official Directives, and international law;

16           c. The "consents," if any, obtained from Plaintiffs and other test subjects were  
17 invalid or not enforceable;

18           d. Plaintiffs are not bound by the secrecy oaths they took, and that such oaths  
19 are invalid; and

20           e. DEFENDANTS must fully comply with their duty to locate and warn all  
21 test participants.

22           176. A present controversy exists between Plaintiffs and DEFENDANTS in that  
23 Plaintiffs contend and DEFENDANTS deny that DEFENDANTS violated Plaintiffs' rights under  
24 the First, Fourth, Fifth and Ninth Amendments by surreptitiously administering the noxious  
25 agents described above and committing the other wrongful acts alleged herein.

26           177. A present controversy exists between Plaintiffs and DEFENDANTS in that  
27 Plaintiffs contend and DEFENDANTS deny that DEFENDANTS violated Plaintiffs' property  
28 and liberty rights protected by the Due Process Clause of the Fifth Amendment to the United

1 States Constitution by concealing (and continuing to conceal) the extent and nature of the tests  
2 conducted on Plaintiffs and the known or suspected effects of such experiments, and failing to  
3 provide adequate medical treatment to Plaintiffs after Plaintiffs were discharged from the  
4 military.

5 178. The Court should issue a declaration stating that DEFENDANTS must fully  
6 disclose to Plaintiffs complete medical information concerning all tests conducted on Plaintiffs  
7 (including any results thereof), as well as the other relief prayed for above, and stating that  
8 DEFENDANTS' duty to provide Plaintiffs with all necessary medical treatment on an ongoing  
9 basis is mandatory.

10 **SECOND CLAIM FOR RELIEF**  
11 **(Injunctive Relief as to All Plaintiffs)**

12 179. Plaintiffs reallege and incorporate herein by reference as though fully set forth,  
13 each and every allegation contained in Paragraphs 1 through 178 of this Complaint.

14 180. Plaintiffs seek injunctive relief enjoining DEFENDANTS, and anyone in concert  
15 with them, from failing and refusing to do the following:

16 a. Notify Plaintiffs and all "volunteers" of the details of their participation in  
17 human experimentation programs and provide them with full documentation of the experiments  
18 done on them and all known or suspected health effects;

19 b. Conduct a thorough search of all available document repositories and  
20 archives, and other sources, and provide victims with all available documentation concerning the  
21 details and conduct of the human experimentation program and known or suspected health  
22 effects;

23 c. Provide examinations and medical care and treatment to all participants in  
24 the MKULTRA, Edgewood, and other human experiments with respect to any disease or  
25 condition that may be linked to their exposures;

26 d. Supply all available information to the VA with respect to any past,  
27 existing or future claims for service-connected death or disability compensation based on  
28 DEFENDANTS' human experimentation programs; and



1 e. To the extent violations have continued, to cease committing any violations  
2 of the Official Directives or international law.

3 **THIRD CLAIM FOR RELIEF**  
4 **(Declaratory Relief as to Organizational Plaintiffs)**

5 181. The Organizational Plaintiffs reallege and incorporate herein by reference as  
6 though fully set forth, each and every allegation contained in Paragraphs 1 through 180 of this  
7 Complaint.

8 182. Congress enacted the Federal Tort Claims Act (“FTCA”) in 1948, the intent of  
9 which was to place all Americans on equal footing in litigating the civil liability of the federal  
10 government for claims based upon tort injuries. 28 U.S.C. § 1346 (1948). The FTCA included  
11 an express exception excluding certain types of claims arising out of government activities from  
12 the waiver of sovereign immunity, including “[a]ny claim arising out of the combatant activities  
13 of the military or naval forces, or the Coast Guard, during time of war” the so-called “Foreign  
14 Combatant Exception.” *Id.* at § 2860(f). However, in *Feres*, the Supreme Court dramatically  
15 expanded and broadened the Foreign Combatant Exception to encompass all injuries sustained by  
16 military personnel “where the injuries arise out of or are in the course of activity incident to  
17 service.” 340 U.S. at 146. The holding in *Feres* was expanded over the years in a long series of  
18 cases; *Feres* and its progeny are often referred to as the *Feres* doctrine, which has roundly been  
19 criticized by academics, judges, and others.

20 183. VVA’s members have been adversely affected by the *Feres* doctrine, as it has  
21 either precluded members from successfully prosecuting FTCA claims and lawsuits, and/or  
22 deterred members from bringing FTCA claims and lawsuits arising out of their military service.  
23 Likewise, the constituencies served by Swords to Plowshares have also been blocked in their  
24 efforts to prosecute FTCA claims and lawsuits, and/or to bring FTCA claims and lawsuits arising  
25 out of their military service.

26 184. Both VVA and Swords to Plowshares also have been directly damaged by the  
27 *Feres* doctrine by being forced to devote their scarce time and resources to aiding veterans whose  
28 tort claims and lawsuits are barred by the *Feres* doctrine and to petition Congress to pass

1 legislation to overturn or limit the scope of the *Feres* doctrine. Such veterans, except for their  
2 inability to recover damages in tort due to the *Feres* doctrine, would not need services (or the  
3 level of services) provided by the Organizational Plaintiffs. Providing these otherwise  
4 unnecessary services requires the Organizational Plaintiffs to divert scarce resources to these  
5 veterans, to the detriment of the Organizational Plaintiffs' ability to otherwise fulfill their  
6 missions.

7 185. As an example, Swords has been required to devote substantial time and resources  
8 to providing legal services/VA benefits advocacy to disabled veterans as a direct result of the  
9 *Feres* doctrine, which leaves veterans disabled by military service to pursue remedies only  
10 through the VA. Swords also has been required to devote resources to educating the public and  
11 policymakers about the unfair and harmful consequences of the *Feres* doctrine: Veterans  
12 prohibited by the *Feres* doctrine from suing the government for their service-related injuries are  
13 forced into the VA claims system, where they are unable to secure meaningful attorney  
14 representation to help pursue VA compensation, and where the compensation amounts are  
15 significantly lower than veterans otherwise would be expected to recover through FTCA claims.

16 186. A dispute has arisen between the Organizational Plaintiffs and DEFENDANTS in  
17 that the Organizational Plaintiffs contend and the DEFENDANTS deny that the *Feres* doctrine  
18 violates the U.S. Constitution, including the separation of powers, equal protection and the due  
19 process clause, for the reasons set forth in the dissenting opinion by Judge Warren J. Ferguson in  
20 *Costco v. United States*, 248 F.3d 863, 869-70 (9th Cir. 2001) (Ferguson, J., dissenting).  
21 Similarly, Justice Scalia has criticized the rationale for the *Feres* doctrine in *Johnson v. United*  
22 *States*, 481 U.S. 681, 688-700 (1987) (Scalia, J., dissenting). *See also O'Neill v. United States*,  
23 140 F.3d 564, 565 (3d Cir. 1998) (Becker, C.J., dissenting) (recognizing widespread criticism of  
24 *Feres* doctrine and “urg[ing] the Supreme Court to grant *certiorari* and reconsider *Feres*”);  
25 *Johnson v. United States*, 749 F.2d 1530, 1532-35 (11th Cir. 1983) (reviewing history and  
26 development of *Feres* doctrine, and noting “widespread, almost universal, criticism” of it);  
27 *Johnson v. United States*, 704 F.2d 1431, 1435 (9th Cir. 1983) (original rationale for *Feres*  
28 doctrine has been undercut and abandoned).

1           187. The *Feres* doctrine creates two different classes, composed of veterans and  
2 civilians, who are disparately treated despite the fact that they are similarly situated with respect  
3 to the FTCA and the intent of Congress.

4           188. A further dispute has arisen in that the Organizational Plaintiffs contend, and  
5 DEFENDANTS deny, that the *Feres* doctrine was not a legislative provision and has no  
6 foundation in the language and legislative history of the FTCA, and therefore is not entitled to  
7 any deference by this or any other Court.

8           189. Recognizing that the Court may feel bound to uphold the *Feres* doctrine as a  
9 matter of *stare decisis*, the Organizational Plaintiffs nonetheless seek a declaration from the Court  
10 that the *Feres* doctrine is unconstitutional. This claim is a nonfrivolous argument for modifying  
11 or reversing existing law or establishing new law.

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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for judgment against DEFENDANTS as follows:

190. On the First Claim for Relief, for declaratory relief as prayed for above.

191. On the Second Claim for Relief, for a preliminary and permanent injunction as prayed for above.

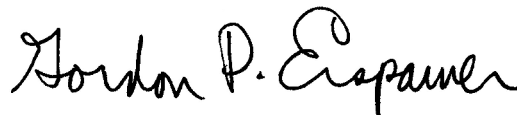
192. On the Third Claim for Relief, for declaratory relief in favor of the Organizational Plaintiffs as prayed for above.

193. On all causes of action, for Plaintiffs' reasonable attorneys' fees and costs incurred herein pursuant to 28 U.S.C. § 2412 and any other applicable law.

194. For such other relief as the Court deems just and proper.

Dated: July 24, 2009

GORDON P. ERSPAMER  
TIMOTHY W. BLAKELY  
ADRIANO HRVATIN  
STACEY M. SPRENKEL  
MORRISON & FOERSTER LLP



By:

\_\_\_\_\_  
Gordon P. Erspamer  
[Gerspamer@mofo.com]

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