Exhibit G

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

Dear Brigham:

As agreed at our September 23, 2010 meet-and-confer teleconference, this letter provides additional detail about Plaintiffs' concerns with Defendants' amended interrogatory responses. It is not necessary here to repeat the substance of Gordon Erspamer's September 10, 2010 letter on this topic, nor will I repeat our discussion of September 23. Suffice it to say that, in our view, Defendants' amended interrogatory responses are inadequate and fail to account for or comply with the Magistrate's July 13 Order granting Plaintiffs' motion to compel. In light of Defendants' expressed intent to revisit the amended responses, however, this letter outlines certain general and specific shortcomings in Defendants' responses and identifies certain responses that, in the spirit of compromise, Plaintiffs will not insist that Defendants revisit or revise at this time.

Global Concerns

As you know, Plaintiffs have communicated several global concerns with Defendants' amended interrogatory responses. Below, I set forth some additional detail about these concerns so that Defendants can account for them in updating their amended responses.

First, as we discussed, Defendants' amended interrogatory responses do not provide the stand-alone answers to which Plaintiffs are entitled. Instead, Defendants' responses improperly direct Plaintiffs to review portions of Defendants' document production to search for the responsive information. Plaintiffs are entitled to straightforward, stand-alone responses setting forth Defendants' answers (under oath) to the questions posed. Plaintiffs

should not be required to scour through a range of Defendants' production to cull out answers to the interrogatories, especially because the documents produced by Defendants are, in many cases, contradictory or difficult to decipher. Although this problem is evident throughout Defendants' amended responses, it is particularly pronounced with respect to Defendants' responses to Interrogatory Nos. 6 (concerning document repositories), 11 (communications concerning release from secrecy oaths), 15 (text of each form of consent), 19 (substances administered during test programs that caused mental health effects), 22 (regulations and directives governing test programs), and 25 (documents and communications concerning duty to notify and warn). It is especially troubling that Defendants' responses to Interrogatory Nos. 22 and 25 — which go to the heart of Plaintiffs' APA claims concerning Defendants' duties — do not provide direct answers to the questions posed. We expect that Defendants' revisions will account for this global shortcoming.[1]

Second, Plaintiffs take issue with Defendants' numerous relevance objections. Although it is less than clear, it appears that Defendants have used these objections to justify providing limited responses to nearly all of Plaintiffs' interrogatories, asserting that the interrogatories seek information "irrelevant to the claims remaining in this action." Once again, this issue permeates Defendants' responses. As we have noted before, these relevance objections are not new — they have been raised *and rejected* before. Magistrate Judge Larson, considering these same interrogatories, stated that "the interrogatories at issue relate to claims which still remain after [Judge Wilken's] January 19, 2010 order." (July 13, 2010 Order at 5.)

Of particular concern is Defendants' failure to provide *any* substantive response to Interrogatory Nos. 17 (concerning, *inter alia*, communications between Defendants and the VA about this action) and 18 (concerning tests post-dating 1975). With respect to Interrogatory No. 17, Defendants repeatedly have taken the position that DoD (through private contractor Battelle) is in the process of identifying test subjects and providing information to the VA for purposes of notice. Defendants' communications with the VA about Plaintiffs' notice claims, therefore, clearly are relevant. With respect to Interrogatory No. 18, information learned by Defendants after 1975 concerning health effects potentially related to substances used in the testing programs is relevant to Defendants' duty to notify and warn the test subjects — a duty that, *pursuant to Defendants' own regulations*, continues even after the test subjects' participation in the experiments has concluded.

Third, it appears that the scope of Defendants' searches for responsive information has been unduly restricted. For example, General Objection 4 states that Defendants "have limited

[1] It may be that certain of Defendants' interrogatory responses adequately can be amended to identify by production number a specific document or documents containing the requested information. For example, without prejudging the outcome, it may be appropriate to amend the response to Interrogatory No. 15 to identify specifically by production number each form of consent used in Defendants' Test Programs rather than reproducing that information in the interrogatory response.

both their search for responsive information ... and their corresponding responses" to testing involving service members "conducted in conjunction with" Edgewood Arsenal, Fort Detrick, and Fort Ord. As you know, and as Plaintiffs have pointed out many times, there are numerous additional sites at which Defendants conducted testing on military personnel. Those sites also should be included in the scope of Defendants' search for responsive information and corresponding responses to Plaintiffs' interrogatories. Similarly, General Objection 4 states that the CIA's responses are limited to Project OFTEN. The CIA's searches and responses must provide information about *all* testing involving Test Subjects, which has been defined to include military personnel and to exclude civilians.

Specific Issues

In addition to the global concerns discussed above, Plaintiffs raise the following specific issues with Defendants' amended responses:

- Several of Defendants' responses (*e.g.*, Nos. 5 and 21) state that DoD is reviewing the classification of six documents that were in the possession of the CIA. What is the status of that review, and when can we expect the production of those materials?

- Similarly, Defendants' response to Interrogatory No. 9 states that the CIA "will return" magnetic tapes and a printout to the DoD for classification review. What is the status of that review, and when can we expect the production of those materials?

- Defendants' response to Interrogatory No. 10 states that the DoD withheld "The Search for Toxic Chemical Agents" in its entirety. On what grounds was this information withheld, and do Defendants intend to produce it?

- In response to Interrogatory No. 12, DoD states that it found no responsive information concerning CIA involvement in the test programs. We find this hard to believe. In fact, in 1977 Deanne C. Siemer testified before Congress on behalf of DoD that Project OFTEN was part of a CIA program that involved testing on military personnel. Even the CIA's limited initial disclosures in this action include what appear to be internal DoD documents on this topic. We ask that DoD appropriately revise its response to this interrogatory, or explain its failure to do so.

- DoD's response to Interrogatory No. 14 states that 61 test volunteers requested release from the testing program and that 6 refused to participate after arrival *at Edgewood*. Please confirm that DoD's search for information and corresponding response to this question was *not* limited solely to Edgewood Arsenal. Plaintiffs expect Defendants to identify *any* test subject who revoked consent or refused to continue participation in *any* of Defendants' test programs at *any* location.

Responses That Need Not Be Revised

As you requested, and in the spirit of compromise, Plaintiffs have identified several responses that Plaintiffs do not ask Defendants to revisit or revise at this time. Specifically, Defendants need not revisit or revise their amended responses to the following interrogatories: 2, 3, 9, 10, 13, 16, 20, 23 and 24 (as numbered in Defendants' amended responses). With respect to Interrogatory Nos. 2 (concerning the identification of test subjects), and 3 (concerning the identification of test programs for each test subject), Plaintiffs do not seek amended responses only to the extent that *all* responsive information is found in the DoD chem-bio database that (presumably) will be augmented with test subject names once a protective order is entered. Of course, Plaintiffs expect that Defendants will update their responses to each of these nine interrogatories, as warranted, based on the ongoing document searches detailed in Defendants' discovery submissions.

* * *

The specific interrogatory responses discussed in this letter are by way of example only. Plaintiffs reserve the right to seek relief with respect to any inadequate response to Plaintiffs' interrogatories. During our September 23 meet-and-confer teleconference, Defendants committed to providing further amended interrogatory responses within 30 days of receipt of this letter. We look forward to receiving them. As noted previously, if Defendants' responses remain inadequate at that time and do not address the issues set forth above, Plaintiffs again will seek relief from the Court. In the meantime, please feel free to reach out to me or Dan Vecchio with any questions or to seek additional clarification.

Very truly yours,

Timothy W. Blakely

cc: Caroline Lewis Wolverton, Esq.
Kimberly L. Herb, Esq.
Lily Farel, Esq.
Gordon P. Erspamer, Esq.